



IP Pay Merchant Application & Agreement

Chicago
16W215 83rd Street
Suite D
Burr Ridge, IL 60527
Ph: (847) 346-0990
Fax: (847) 346-0991
http://www.ippay.com

Acquiring Bank Disclosure

- Merrick Bank 101 Crossways Park West, Woodbury NY 11797, 800-328-9155
- Susquehanna DV 101 S. Bryn Mawr, Bryn Mawr PA 19010, (800) 733-5222

Signature of Officer/Owner _____ Date _____

Member Bank (Acquirer) Responsibilities:

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

MERCHANT NAME (DBA or Trade Name)

CyberStreet

CORPORATE/LEGAL NAME (if Different)

CyberStreet, Inc.

PHYSICAL ADDRESS

1617 Hendry St. Suite 414

PO BOX Use as mailing address

CORPORATE ADDRESS (if Different)

1617 Hendry St. Suite 414

PO BOX Use as mailing address

CITY

Fort Myers

STATE

FL

ZIP

33901

CITY

Fort Myers

STATE

FL

ZIP

33901

CONTACT NAME

Lesley Peterson

CONTACT EMAIL ADDRESS

lpeterson@cyberstreet.com

CONTACT TELEPHONE

239/334-4484

FAX NUMBER

FEDERAL TAX ID#

65-0791667

NAME TO APPEAR ON CARDHOLDER'S STATEMENT

CyberStreet

PHONE # TO APPEAR ON CARDHOLDER'S STATEMENT (if MOTO)

239-334-4484

COMPANY WEBSITE

www.cyberstreet.com

DOES THIS LOCATION CURRENTLY TAKE VISA/MASTERCARD/DISCOVER?

- No Yes Reason For Leaving

Better rates / no gateway

HAVE MERCHANT OR OWNERS/PRINCIPALS EVER BEEN TERMINATED FROM ACCEPTING BANKCARDS FOR THIS BUSINESS OR ANY OTHER BUSINESSES?

- No Yes (if yes, please explain)

NO

OWNERSHIP

- Individual/Sole Proprietor
- Corporation
- Non-Profit (Must Provide 503-C)
- Private
- Partnership
- LLC State: _____
- Publicly Traded
- Government

LOCATION:

- Building Type: Shopping Center Office Building Industrial Building Residence
- Merchant: Owns Rents
- Area Zoned: Commercial Industrial Residential
- Square Footage: 0-500 501-2500 2501-5000 5001-10000+

PRINCIPALS

Principal Name:

First: Lesley Middle: L Last: Peterson SSN: 069569437 % Ownership: 51 Title: Treasurer
 Home Address: 1967 Nott Rd City: Cape Coral State: FL Zip: 33991 Date of Birth: 12-15-60
 Home Phone: 239-8394434 Cell Phone: _____ Email Address: lpeterson@CyberStreet.com

Principal Name:

First: Walter Middle: E Last: Peterson SSN: 266492601 % Ownership: 49 Title: President
 Home Address: 967 Nott Rd City: Cape Coral State: FL Zip: 33991 Date of Birth: 5-9-60
 Home Phone: 239-699-4168 Cell Phone: _____ Email Address: Walterp@cyberstreet.com

HAVE MERCHANT OR OWNERS/PRINCIPALS EVER FILED:
 Business Bankruptcy Personal Bankruptcy
 (If yes, please explain)

YEARS IN BUSINESS*

13

AVERAGE TICKET

\$ 40.00

HIGH TICKET

\$ 1500.00

MONTHLY BANKCARD VOLUME

\$ 2000.00

NATURE OF BUSINESS:

(What are you accepting credit cards for? When is the card charged? When is the product or service delivered? Please include any marketing materials or additional attachments as necessary that may help describe your product or service.)

Access Provider 4899

Seasonal Sales: Yes No If so, please list high volume months:

REFUND POLICY:

(Provide details of your return policy.)

SALES METHOD:

Retail Swiped _____ % Keyed with Signatures or Imprints _____ % Mail Order _____ % Phone 100 %
 Inbound Calls _____ % Outbound Calls _____ % Internet _____ % ACH _____ %

PROCESSING EQUIPMENT INFORMATION: Software Terminal

PLATYPUS

Reporting Options: Real-Time Reporting Daily Settlement Reporting Virtual Terminal Reporting Other: _____
 E-Mail Address to send Daily Sales Summaries to: _____

VENDOR REFERENCES (List 2 - include: name, address, and phone number)

1. Platypus
- 2.

OTHER SERVICES ACCEPTED (Place the account number in the space below for existing accounts)

- American Express _____ Apply
- Discover _____ Apply
- ACH/eCHECK _____ Apply

* By checking "Apply" for either American Express and/or Discover merchant accounts, you acknowledge that you will receive Terms and Conditions from the card company for which you wish to apply. Please note that these companies are separate entities with their own pricing and acceptance policies. We will notify you as to the status of your application with each of these companies.



IP Pay Merchant Application & Agreement

PCI DSS (Payment Card Industry Data Security Standard) Compliance Information:

Has your organization ever been required to provide PCI DSS certification? no

If yes, who is your current qualified security assessor? _____

Please provide the contact information for the person who will be responsible for overseeing, maintaining and reporting future PCI DSS compliance for your organization (required regardless of current PCI DSS certification status):

Name: Lesley Peterson
Email: lpeterson@cyberstreet.com
Contact Phone: 239/334-4484

Merchant Acceptance

Lesley L. Peterson, the duly elected, qualified and acting Treasurer of CyberStreet, a Corp (the "Company"), do hereby certify as follows:

WHEREAS, the Company desires to enter into a Merchant Agreement (the "Merchant Agreement") with Bank and Convergence Technologies Inc dba IP PAY, an Illinois S corporation ("IP PAY"), a copy of which Merchant Agreement is attached hereto as Exhibit "A";

WHEREAS, pursuant to the terms of the Merchant Agreement, Bank and IP PAY will provide certain credit card financing and processing for VISA, MASTERCARD and/or DISCOVER NETWORK credit card purchases made by the Company's customers;

WHEREAS, pursuant to the terms of the Merchant Agreement, (a) the Company may be required to establish a Reserve Account (as defined in the Merchant Agreement) and (b) Bank may require the Company to direct certain funds relating to credit card purchases to such Reserve Account;

WHEREAS, pursuant to the terms of the Merchant Agreement, Bank may require the Company to execute instruments evidencing Bank's security interest in the Operating Account (as defined in the Merchant Agreement) and Reserve Account; and

WHEREAS, pursuant to the terms of the Merchant Agreement, the Company is required to comply with strict requirements concerning the processing of credit card transactions and the sale of the Company's products.

NOW, THEREFORE, BE IT RESOLVED, that the Merchant Agreement by and among the Company, Bank and IP PAY, pursuant to which Bank and IP PAY shall act as the Company's exclusive provider of VISA, MASTERCARD and/or DISCOVER NETWORK credit card financing and processing services, is hereby approved and adopted in the form attached to these resolutions, together with such additions, changes or modifications as may be deemed necessary, advisable or appropriate by the officer(s) executing or causing the same to be completed, and RESOLVED FURTHER, that in connection with the Merchant Agreement, the appropriate officer(s) of the Company is/are hereby authorized to establish (a) an Operating Account into which funds from credit card sales by the Company will be directed, and (b) if necessary, a Reserve Account into which funds from credit card sales by the Company may be directed by Bank in accordance with the provisions of the Merchant Agreement; RESOLVED FURTHER, that the Company hereby grants Bank a security interest in the funds held by the Company in the Operating Account and Reserve Account, and the appropriate officer(s) of the Company is/are hereby authorized to execute all documents reasonably required by Bank to perfect such security interests; RESOLVED FURTHER, that the appropriate officer(s) of the Company is/are hereby authorized to enter into such additional agreements, and take such additional actions as may be reasonably required by Bank or IP PAY in connection with the Merchant Agreement; and RESOLVED FURTHER, that the Secretary/managing member/general partner (circle one) of the Company is hereby authorized to deliver to Bank and IP PAY a Certificate (i) identifying the officers of the Company, (ii) verifying the signatures of such officers, and (iii) certifying a copy of these resolutions, and Bank and IP PAY are hereby authorized to rely on such Certificate until formally advised by a like certificate of any changes therein, and is hereby authorized to rely on any such additional copies of certificates.

By executing this Merchant Application on behalf of the Company described above, the undersigned individual(s): (i) represent(s) and warrant(s) that all information contained in this Merchant Application is true, correct and complete as of the date of this Merchant Application, and that such individual(s) have the requisite corporate power and authority to complete and submit this Merchant Application and make and provide the acknowledgements, authorizations and agreements set forth below, both on behalf of the Company and individually; (ii) acknowledge(s) that the information contained in this Merchant Application is provided for the purpose of obtaining, or maintaining a merchant account with IP PAY ("IP PAY") and Bank on behalf of the Company; (iii) authorize IP PAY and Bank to investigate the credit of the Company and each person listed on this Merchant Application; and (iv) agree, on behalf of the Company and in the event this Merchant Application is accepted and executed by Bank and IP PAY, to all of the terms and conditions set forth in the Merchant Agreement attached to this Merchant Application and the Fee Schedule set forth above. By executing this Merchant Application, each of Bank and IP PAY accept this Merchant Application, and agree to all of the terms and conditions set forth in the Merchant Agreement attached to this Merchant Application and the Fee Schedule set forth on the Merchant Application Page or as set forth on Schedule A.

The parties acknowledge they have read and agree to the terms of the Merchant Agreement. If the Company is a corporation, its proper Corporate Officers must sign. This Agreement may be signed by one or more counterparts and all signed agreements shall be considered as one.

Merchant:
Principal 1: [Signature] Date: 10-22-10
(Signature of Officer/Owner)
Principal 2: _____ Date: _____
(Signature of Officer/Owner)

Bank
By: _____ Date: _____
Name and Title: _____
IP PAY:
By: _____ Date: _____
Name and Title: _____

Guarantee of Payment

By signing below, each individual or entity (a "Guarantor") jointly and severally (if there is more than one Guarantor) and unconditionally guarantees to IP PAY and Bank the prompt payment and performance of all obligations of the Merchant identified above under the Merchant Agreement (as that term is defined above), including, without limitation, all promises and covenants of the Merchant, and all amounts payable by the Merchant under the Merchant Agreement, including, without limitation, interest, costs and other expenses, such as attorney's fees and court costs. This means, among other things, that IP PAY or Bank can demand performance or payment from any Guarantor if the Merchant fails to perform any obligation or pay what the Merchant owes under the Agreement. Each Guarantor agrees that his or her liability under this guaranty will not be limited or canceled because: (1) the Merchant Agreement cannot be enforced against the Merchant; (2) either IP PAY or Bank agrees to changes or modifications to the Merchant Agreement; (3) IP PAY or Bank releases any other Guarantor or the Merchant from any obligation under the Merchant Agreement; (4) a law, regulation or order of any public authority affects the rights of either IP PAY or Bank under the Merchant Agreement; and/or (5) anything else happens that may affect the rights of either IP PAY or Bank against the Merchant or any other Guarantor. Each Guarantor further agrees that: (a) IP PAY and Bank each may delay enforcing any of its rights under this guaranty without losing such rights; (b) IP PAY and Bank each can demand payment from such Guarantor without first seeking payment from the Merchant or any other Guarantor; and (c) such Guarantor will pay all court costs, attorney's fees and collection costs incurred by either IP PAY or Bank in connection with the enforcement of any terms of the Merchant Agreement or this guaranty, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court.

Guarantor 1: [Signature] Date: 10-22-10 Guarantor 2: _____ Date: _____
(Signature of Officer/Owner) (Signature of Officer/Owner)
Print Name: Lesley L. Peterson Print Name: _____
Company: CyberStreet, Inc. SSN/EIN: _____ Company: _____ SSN/EIN: _____



IP Pay Merchant Application & Agreement

MERCHANT AGREEMENT

In consideration of the mutual promises and covenants contained in this Merchant Agreement ("Agreement"), the parties agree as follows:

- 1. Parties.** The parties to this Agreement are ("Bank", as marked and described below), Convergence Technologies Inc dba IP Pay, an Illinois S Corporation whose address is 16W215 83rd Street, Ste D, Burr Ridge, IL 60527 ("IP PAY"), and the Merchant set forth on the Merchant Application form to which this Agreement is attached ("Merchant").
- 2. Definitions.** For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires:
- (a) **Address Verification** shall mean a service that allows Merchant to verify the home address of Cardholders with the relevant Issuer.
 - (b) **Association(s)** shall mean VISA USA, Inc. ("Visa"), MasterCard International, Inc. ("MasterCard") and Discover® Network ("Discover Network").
 - (c) **Authorization** shall mean an affirmative response, by or on behalf of an Issuer to a request to effect a Transaction, that a Transaction is within the Cardholder's available credit limit and that the Cardholder has not reported the Card lost or stolen. All Transactions require Authorization.
 - (d) **Authorization Center** shall mean the facility or facilities designated from time to time by Bank or IP PAY to which Merchant shall submit all requests for Authorization.
 - (e) **Business Day** shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which banking institutions are authorized by law or executive order to be closed (and on which Bank is in fact closed).
 - (f) **Card(s)** shall mean either a Visa, MasterCard or Discover Network credit card, debit card or other similar card that requires a PIN for identification purposes or pre-paid, stored-value or gift card.
 - (g) **Cardholder** shall mean a person authorized to use a Card.
 - (h) **Chargeback** shall mean a Transaction that Bank returns to Merchant pursuant to this Agreement.
 - (i) **Forced Sale** shall mean a sales Transaction processed without an approved electronic Authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.
 - (j) **Full Recourse Transactions** shall mean mail orders, telephone orders, e-commerce (Internet) orders, Pre-Authorized Recurring Order Transactions, and other "card not present" sales.
 - (k) **Issuer** shall mean a member of an Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards.
 - (l) **Merchant Statement** shall mean an itemized monthly statement of all charges and credits to the Operating Account (as that term is defined in Section 9 of this Agreement).
 - (m) **Mid-Qualified Transactions** shall mean: (i) key-entered retail Transactions; (ii) Visa telephone or mail Transactions without Address Verification; (iii) any MasterCard or Discover Network telephone or mail Transaction; and (iv) any Transaction designated as such by the organization designated by Bank to settle Transactions with the Associations
 - (n) **Non-Qualified Transactions** shall mean: (i) any Transaction submitted for processing more than 48 hours past the time the Authorization occurred; (ii) any Transaction missing required data; and (iii) any Transaction designated as such by the organization designated by Bank to settle Transactions with the Associations.
 - (o) **Normal Transaction** shall mean a Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the Card's magnetic strip.
 - (p) **Pre-Authorized Recurring Order Transactions** shall mean Transactions that have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.
 - (q) **Qualified Transactions** shall mean: (i) retail Transactions in which the Card is swiped; (ii) Visa telephone or mail Transactions with Address Verification; or (iii) Transactions that are part of a special registered program approved by the Associations.
 - (r) **Services** shall mean the transaction processing services provided by Bank under this Agreement.
 - (s) **Transaction** shall mean the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank, whether the Transaction is approved, declined, or processed as a Forced Sale. The term "Transaction" also includes credits, errors, returns and adjustments.
- 3. Merchant agrees to participate in program.** Merchant agrees to participate in the card processing services program established by Bank.
- 4. IP PAY to provide services to Merchant.** During the term of this Agreement, subject to the terms and conditions of this Agreement, IP PAY agrees to provide technical documentation and support in order to allow Merchant to accept and process Transactions. IP PAY shall provide technical support and customer support for all Transactions, including, without limitation, Authorization, settlement, Chargeback processing and reporting, twenty-four hours each day, seven days each week during the term of this Agreement. IP PAY agrees to provide Merchant with the Services on *Schedule A* which are not provided by Bank, as amended from time to time by IP PAY, during the term of this Agreement, subject to the terms and conditions of this Agreement.
- 5. Bank to Provide Services to Merchant.** Bank agrees to provide Merchant with the Services indicated on *Schedule A*, as amended from time to time by Bank, during the term of this Agreement, subject to the terms and conditions of this Agreement.
- 6. Independent Contractor.** In the performance of its duties hereunder, IP PAY shall be an independent contractor, and not an employee or agent of Bank.
- 7. Compliance with Association Rules.** Merchant agrees to comply with the bylaws, rules, regulations, policy statements and guidelines of the Associations.
- 8. Term.** This Agreement shall become effective when all parties sign the Merchant Application form to which this Agreement is attached and, unless sooner terminated, shall remain in effect for a term of three (3) years. This Agreement shall renew automatically for successive terms of one (1) year each, unless any party provides written notice of termination to the other parties at least 90 days prior to the end of the then-current term. Prior to termination and regardless of the circumstances for termination, Merchant grants IP PAY a right of first refusal in connection with any proposal made to Merchant by any other merchant services provider to provide a product or service that is the same or substantially similar to any product or service offered by Bank or IP PAY and which proposal Merchant wishes to accept. Merchant shall promptly notify IP PAY, in writing, of any such proposal and if Merchant fails to provide such notice, IP PAY shall have the option to charge merchant for liquidated damages (LD), as specified in Section 38 of this Merchant Agreement. The notice from Merchant shall reasonably and sufficiently describe both the price and the non-price terms of the products and services to be offered pursuant to the proposal. Within thirty (30) days from the date IP PAY received written notice from Merchant, IP PAY may elect to exercise its right of first refusal by offering the same or substantially similar product or service on the same or more favorable price and non-price terms as that of the other merchant services provider and so notifying Merchant in writing. In the event IP PAY fails to exercise its right of first refusal with respect to any such proposal, Merchant may accept that proposal, provided, however, that IP PAY's failure to exercise its right of first refusal in any one instance shall not preclude or otherwise void or affect IP PAY's right of first refusal with respect to any other proposal. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and Merchant shall remain liable for all obligations to Cardholders and Bank incurred while this Agreement was in effect.
- 9. Merchant Operating Account.** Prior to accepting any Cards, Merchant shall establish a demand deposit account at Bank, or at a financial institution approved by Bank ("Operating Account"), through which fees, charges and credits due in accordance with this Agreement may be processed. Merchant authorizes Bank to debit all amounts Merchant owes Bank or IP PAY hereunder from the Operating Account, whether maintained at Bank or another financial institution, at times deemed appropriate by Bank, through the ACH Banking Network or by a manual debit of the Operating Account. Merchant waives any claims for loss or damage arising out of any such charges or debits to the Operating Account against any other financial institution where the Operating Account is maintained.
- 10. Reserve Account.** Upon, or at any time after, execution of this Agreement, Bank may establish a reserve account at Bank or any other financial institution designated by Bank ("Reserve Account"), for all future indebtedness of Merchant to Bank or IP PAY that may arise out of or relate to the obligations of Merchant under this Agreement, including, but not limited to, Chargebacks and fees, in such amount as Bank from time to time may determine in its sole discretion. Bank may fund the Reserve Account by deduction from payments due Merchant or a charge against Merchant's Operating Account or against any of Merchant's accounts at Bank. The Reserve Account will be maintained for a minimum of six months after the date on which this Agreement terminates or until such time as Bank determines that the release of the funds to Merchant is prudent, in the best interest of Bank, and commercially reasonable, and that Merchant's account with Bank is fully resolved. Upon expiration of this six-month period, any balance remaining in the Reserve Account will be paid to Merchant. Bank will inform Merchant in writing of any charges debited to the Reserve Account during this six-month period.
- 11. Fees.** Merchant shall pay Bank and IP PAY all fees specified on *Schedule A*, as amended by Bank or IP PAY from time to time. For each Transaction, Bank or IP PAY will charge Merchant as follows:
- (a) Actual Visa, MasterCard and Discover Network interchange and assessments; and/or;
 - (b) An amount ("Merchant Discount Fees") equal to a specified percentage of the total cash price of each sales and cash withdrawal Transaction ("Merchant Discount Rate");
 - (c) A specified amount per Transaction ("Transaction Fee"); and
 - (d) A specified amount per Authorization ("Authorization Fee").



IP Pay Merchant Application & Agreement

Merchant Discount Rates apply to Qualified, Mid-Qualified and Non-Qualified Transactions, as shown on *Schedule A*. Merchant agrees that Bank and IP PAY will deduct Merchant Discount Fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on *Schedule A*. Merchant also agrees to pay Bank or IP PAY the amount of any fees, charges or penalties assessed against Bank or IP PAY by any Association or Issuer for Merchant's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such entities. Merchant shall pay Bank or IP PAY for any other services provided to Merchant by Bank or IP PAY and for all other fees shown on *Schedule A*, including, but not limited to monthly minimum fees, Chargeback fees and customer service fees.

12. Billing. All amounts Merchant owes Bank or IP PAY may be charged to the Operating Account or Reserve Account, recouped by adjustment to any credits due to Merchant, or set off against any account or property Bank or IP PAY holds for or on behalf of Merchant.

13. Security Interest. As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to Bank a security interest in the funds held in the Operating Account and in the Reserve Account. Merchant will execute and deliver to Bank such documents, in form satisfactory to Bank, as Bank may reasonably request in order to perfect Bank's security interest in the Operating Account and Reserve Account, and will pay all costs and expenses of filing the same or of filing this Agreement in all public filing offices, where filing is deemed by Bank to be necessary or desirable. Bank is authorized to file financing statements relating to the Operating Account and the Reserve Account without Merchant's signature where authorized by law.

14. Power of Attorney. Merchant appoints Bank as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or IP PAY.

15. Equipment. In processing Transactions, Merchant shall use only equipment or software programs provided or approved by the Authorization Center or IP PAY ("equipment") and related equipment installed or approved by IP PAY, subject to Bank's approval, and the following additional terms:

- The equipment shall be suitable for processing the Services;
- Merchant will provide, at Merchant's expense, suitable electric power and telephone services and will pay for any alterations to Merchant's premises required to properly locate Merchant's equipment;
- If Merchant is using equipment, Merchant acknowledges receipt of a copy of the equipment User's Guide. Merchant will use and operate the equipment only in accordance with the equipment User's Guide; and
- Bank will have no liability to Merchant if any installation is delayed or cannot be completed. IP PAY will not have liability to Merchant if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of IP PAY. At no time will IP PAY liability exceed the amount of fees collected or reasonably expected to be collected from merchant for this delay period.

16. Documenting Transactions. Merchant shall submit the following information to Bank or Bank's designee in connection with Transaction processing:

- The DBA name of Merchant (if any), name of Merchant and Merchant's address;
- Merchant's customer service telephone number;
- Merchant's Internet address (if applicable);
- The Merchant Number assigned to Merchant by Bank;
- The Card account number, validation date and/or expiration date of the Card, if one appears on the Card used to effect the Transaction;
- The name, address and telephone number of Cardholder; and
- Such additional information as may from time to time be required by Bank and/or the relevant Issuer.

Merchant shall not submit a Transaction to Bank (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Merchant shall not transmit any Transaction to Bank that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant is responsible for its employees' actions. Merchant may transmit a Transaction that effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations.

17. Authorization for Transactions. Merchant shall obtain Authorization for Transactions as follows:

(a) **Electronically Transmitted Transaction.** Merchant shall submit each Normal Transaction for Authorization to the Authorization Center using the equipment. The Authorization Center shall authorize or decline a Normal Transaction transmitted for Authorization and shall capture and process for Merchant the information relating to the Normal Transaction. If equipment is inoperable at the time of an Authorization request, the Transaction may be authorized by using the appropriate dial-up facility. In that case, the Transaction shall be entered as a Forced Sale Transaction, provided the approval number is also entered, and Merchant shall be subject to an additional voice or audio response unit "ARU" Authorization Fee as outlined on *Schedule A*.

(b) **Full Recourse Transactions.** The following additional requirements apply to Full Recourse Transactions:

- All Full Recourse Transactions are at Merchant's risk. As to each Full Recourse Transaction, Merchant warrants to Bank that the person whose name is submitted to Bank as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank may charge back the Transaction to Merchant. If Bank charges back the Transaction to Merchant: (i) Merchant shall pay Bank the amount of the Transaction, any Chargeback fee set forth on *Schedule A*, plus any Association fine or assessment; and (ii) Bank may charge all such amounts to the Operating Account or Reserve Account without prior notice to Merchant;
- All Full Recourse Transactions must be electronically authorized through the Authorization Center and, in addition to the information required in Section 16 of this Agreement, each such request for Authorization also shall include: (i) an Authorization code, if required; (ii) the Cardholder's address and Address Verification results; and (iii) in lieu of the Cardholder's signature, a notation of (A) mail order (MO), (B) telephone order (TO), (C) e-commerce order (EO), or (D) pre-authorized order (PO) on the signature line;
- If Merchant accepts a Pre-Authorized Recurring Order Transaction, the Cardholder shall execute and deliver to Merchant a written request for this pre-authorization. This written request shall be maintained by Merchant and made available upon request to Bank. All annual billings must be reaffirmed at least once each year. Merchant shall not deliver goods or perform services covered by a pre-authorization order after receiving notification from the Cardholder that the pre-authorization is canceled or from Bank that the Card covering the pre-authorization is not to be honored; and
- Merchant shall verify Cardholder's address from the Association network. For telephone or mail order sales, Merchant shall transmit a ticket/invoice number and shall do an Address Verification to qualify for the Qualified Transaction discount rate.

18. Prohibited Transactions. Merchant shall not do any of the following with respect to any Transaction:

- Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
- Charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check;
- Establish a minimum or maximum dollar Transaction amount;
- Obtain multiple Authorizations for amounts less than the total sale amount;
- Obtain Authorization for purposes of setting aside Cardholder's credit line for use in future sales;
- Extend credit for or defer the time of payment of the total cash price in any Transaction;
- Honor a Card except in a Transaction where a total cash price is due and payable;
- Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
- Transmit or accept for payment any Transaction that was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in the Merchant Application form to which this Agreement is attached;
- Honor or accept a Card as payment for any legal services or expenses arising out of or related to: (i) the defense of any crime other than a traffic violation; (ii) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (iii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
- Redeposit a previously charged Transaction, regardless of whether the Cardholder consents;
- Initiate a Transaction credit without a balance in the Operating Account equal to the credit;
- Use the equipment or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;
- Use the equipment or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
- Draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;
- Disclose any information obtained through the equipment to any person except for necessary disclosures to affected Cardholders, Bank and/or the Issuer;
- Add any tax to Transactions unless applicable law expressly requires that Merchant be permitted to impose a tax. Any tax, if allowed, must be included in the Transaction amount

INITIAL



IP Pay Merchant Application & Agreement

and not collected separately;

- (s) Disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;
- (t) Disburse funds in the form of cash;
- (u) Accept a Card to collect or refinance an existing debt;
- (v) Issue a transaction credit in respect of goods or services acquired in a cash transaction which are returned; or
- (w) Make any cash refund to a Cardholder who has made a purchase with a Card. All transaction credits will be issued to the same Card account number as the sale.

19. Prohibition of Furnishing Account Information. Merchant shall not, without the Cardholder's consent, sell, purchase, provide or exchange Card account number information in the form of Transaction documents, carbon copies of imprinted Transaction documents, mailing lists, tapes, journal rolls or other media obtained by reason of a Card to any third party.

20. Daily Reconciliation of Transactions.

(a) **Electronically Transmitted Transactions.** Transactions will be settled on a daily basis. Bank shall deliver payment to Merchant as soon thereafter as practicable by a credit to the Operating Account equal to the reconciled charges denied, refused or charged back; (ii) all refunds processed on account of Cardholders during said time period; (iii) the fees and charges, including Chargebacks, Merchant owes Bank or IP PAY hereunder; (iv) all taxes, penalties, charges and other items incurred by Bank that are reimbursable pursuant to this Agreement; and (v) all applicable rates, fees and charges described on *Schedule A*.

(b) **Reconciliation of Transactions.** Merchant shall reconcile each settled Transaction within fifteen (15) days after the date on which such Transaction is submitted to Bank for payment, and shall notify Bank and IP PAY immediately of any discrepancies or errors Merchant notes as a result of such reconciliation. Neither Bank nor IP PAY shall have any responsibility or liability for Transaction-related errors or omissions that are brought to their attention more than thirty (30) days after the date on which the Transaction to which such error or omission relates is first presented to Bank for settlement.

(c) **Provisional Credit.** Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to Chargeback by the Issuer, Cardholder or Associations. Bank may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant Issuer or Bank and/or IP PAY receive adequate supporting documentation from Merchant to authenticate the Transaction and mitigate Chargeback risk.

21. Adjustments and Returns. Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall pay Bank the excess. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this Section 21. If no refund or return will be given, Cardholder must be advised in writing that the sale is a "final sale" and "no returns" are permitted at the time of the Transaction. Cardholder also must be advised in writing of any policy of Merchant that provides for no-cash refunds and in-store credit only. Merchant shall follow Association reservation/no-show policies. Merchant shall notify Cardholders in writing of this policy on all advance reservations. Merchant also shall notify Cardholders at the time of the reservation of the exact number of days required for reservation deposit refunds.

22. Chargebacks. The acceptance by Bank of any Transaction processed in accordance with the terms of this Agreement shall be without recourse to Merchant, except for: (i) Full Recourse Transactions; (ii) as otherwise indicated in this Agreement; and (iii) as follows:

- (a) No specific prior Authorization for the Transaction was obtained from the Authorization Center, the approval number does not appear in the electronic transmittal that is maintained by Bank, or the Transaction was submitted to the Bank or IP PAY thirty (30) days or more after the date on which the goods and/or services to which the Transaction relates were purchased or leased by the relevant Cardholder;
- (b) The Transaction was based on a pre-authorization form and the Card on which the Authorization was based has been canceled and Merchant was so notified prior to the Transaction;
- (c) The Card giving rise to the Transaction was canceled and prior to, or at the time of, the Transaction, and Merchant received notice of the cancellation through the electronic terminal, in writing or otherwise;
- (d) The Card expired prior to the date of the Transaction or the date of Transaction was prior to the validation date, if any, indicated on the Card;
- (e) The information required in Sections 16 and 17(b) above was not submitted to Bank;
- (f) Bank or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;
- (g) The Cardholder makes a written complaint to Bank or Issuer that the Cardholder did not make or authorize the Transaction;
- (h) A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Transaction;
- (i) The Transaction was made at or by a Merchant other than Merchant named in this Agreement;
- (j) The Transaction otherwise violates the terms of this Agreement or any other Association or Issuer bylaw, rule, regulation, policy or guideline;
- (k) A Transaction is charged back by an Issuer; or

(l) Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

In any such case, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to the Merchant, and Merchant shall pay Bank the amount of the Transaction. Merchant agrees that Bank, without prior notice to Merchant, may (i) charge the amount of the Transaction to the Operating Account or Reserve Account; (ii) recoup the amount of the Transaction by adjustment of the credits due to Merchant; or (iii) set off the amount of the Transaction against any account or property Bank holds for or on behalf of Merchant. If Merchant disagrees with Bank's decision to charge back a Transaction, Merchant must so notify Bank in writing within 10 days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued.

Without limiting the generality of any other provision of this Agreement, if Bank or IP PAY, if IP PAY has indemnified Bank, takes legal action against Merchant for any Chargebacks or any amounts due Bank or IP PAY hereunder, Merchant shall pay the costs and attorneys' fees incurred by Bank and/or IP PAY, whether suit is commenced or not.

23. Merchant Statement. At least once per month, Bank shall provide Merchant with a statement (the "Merchant Statement"). All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 30 days of the date of the Merchant Statement.

24. Retention of Original Sales Information. Merchant shall retain the information required by Sections 16 and 17(a) for seven years from the date of the Transaction. At the request of Bank, Merchant shall provide such information to Bank or IP PAY, as directed by Bank, within five (5) days of receipt of a request from Bank. Failure to meet such time frame or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall constitute a waiver by Merchant of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.

25. Recovery of Cards. Merchant will use its best efforts to reasonably and peaceably recover and retain any Card for which Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given: (i) electronically through the equipment; (ii) by the Authorization Center through any means; or (iii) by listing on any canceled Card or restricted Card list. Merchant shall also take reasonable steps to recover a Card which it has reasonable grounds to believe is counterfeit, fraudulent or stolen.

26. Customer Complaints. Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Bank, Bank may terminate this Agreement. Bank reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:

- (a) The Cardholder's name;
- (b) The Card account number;
- (c) The date and time the Cardholder asserted the claim or defense;
- (d) The nature of the claim or defense; and
- (e) The action that Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Bank with this information in writing within 10 days.

27. Confidentiality. Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to Bank, to IP PAY and to Issuers.

INITIAL



IP Pay Merchant Application & Agreement

- 28. Associations' and Issuers' Requirements.** Merchant shall comply with all bylaws, rules, regulations, policies and guidelines of the Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement. Merchant will display prominently at its place of business Card emblems and other promotional material and literature provided by Bank directly or through IP PAY. Subject to the prior written consent of Bank and upon such conditions as authorized by Bank, Merchant may use Card service marks or design marks in its own advertisement and promotional materials.
- 29. Compliance with Applicable Law.** Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to sell any product or provide any service it intends to offer, and that it is in compliance with the Telephone Disclosure and Dispute Resolution Act and the regulations of the Federal Trade Commission and the Federal Communications Commission. Merchant shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act and the Federal Equal Credit Opportunity Act, as amended.
- 30. Taxes.** Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If Bank or IP PAY are required to pay any taxes, interests, fines or penalties owed by Merchant, said amount shall become immediately due and payable by Merchant to Bank or IP PAY. If excise, sale or use taxes are imposed on the Transactions, Merchant shall be responsible for the collection and payment thereof. Bank or IP PAY shall be entitled to recover of any of said taxes paid by it on behalf of Merchant from Merchant immediately after payment.
- 31. Limitation of Liability.** In addition to all other limitations on the liability of Bank and IP PAY contained in this Agreement, neither Bank nor IP PAY shall be liable to Merchant or Merchant's customers or any other person for any of the following:
- (a) Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;
 - (b) Any loss caused by a Transaction downgrade resulting from defective or faulty equipment regardless if owned by Bank, IP PAY or Merchant;
 - (c) The unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Bank, IP PAY or any other person for any reason; or
 - (d) Interruption or termination of any Services caused by any reason except for failure of IP PAY to repair or replace equipment at Merchant's expense. At no time will IP PAY's liability exceed the amount of fees collected or reasonably expected to be collected from merchant for this delay period.
- NEITHER BANK NOR IP PAY SHALL BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK OR IP PAY PURSUANT TO THIS AGREEMENT.
- MERCHANT ACKNOWLEDGES THAT BANK HAS PROVIDED NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT AND THAT BANK HAS NO LIABILITY WITH RESPECT TO ANY EQUIPMENT. BANK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S OR IP PAY'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK'S AND IP PAY'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE OR SUPPLYING SUCH OMISSIONS IN THE WORK PRODUCT IN WHICH THEY HAVE OCCURRED.
- 32. Limitation on Damages.** In no case shall Merchant be entitled to recover damages from IP PAY or Bank that exceed the fees retained by Bank and IP PAY pursuant to this Agreement during the six month period immediately prior to the event giving rise to the claim for damages.
- 33. Indemnification.** Merchant agrees to indemnify and hold Bank and IP PAY harmless from any and all losses, claims, damages, liabilities and expenses, including attorneys' fees and costs (whether or not an attorney is an employee of Bank or Bank's affiliates, IP PAY or affiliates of IP PAY) arising out of any of the following:
- (a) Merchant's failure to comply with this Agreement;
 - (b) Any act or omission of Merchant;
 - (c) Merchant's failure to comply with the equipment's User's Guide;
 - (d) Merchant's failure to comply with any bylaw, rule, regulation, guideline or policy of any Association or Issuer;
 - (e) Merchant's failure to comply with any applicable law, rule or regulation;
 - (f) Any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service;
 - (g) The fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns;
 - (h) Merchant's selection of an Internet service provider or other telecommunication services provider;
 - (i) The theft of or damage or destruction to any equipment; or
 - (j) Full Recourse Transactions, unauthorized Transactions and prohibited Transactions.
- 34. Credit Investigation and Bank Auditing.** Bank may audit, from time to time, Merchant's compliance with the terms of this Agreement. Merchant shall provide all information requested by Bank to complete Bank's audit. Merchant authorizes parties contacted by Bank to release the credit information requested by Bank, and Merchant agrees to provide Bank a separate authorization for release of credit information, if requested. Merchant shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Merchant's financial condition. Such information shall be true, complete and accurate. [Without limiting the generality of the foregoing, Merchant shall provide to Bank and IP PAY its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement.]
- 35. Termination of Agreement by Bank and IP PAY.** Bank may terminate this Agreement upon at least 30 days' prior written notice to the other parties. In addition, Bank and IP PAY jointly may terminate this Agreement without notice to Merchant under any of the below listed circumstances. Any such notice of termination by Bank is effective upon mailing.
- (a) Any information concerning Merchant obtained by Bank is unsatisfactory to Bank in Bank's sole discretion;
 - (b) Any act of fraud or dishonesty is committed by Merchant, its employees and/or agents, or IP PAY or Bank believes in good faith that Merchant, its employees and/or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation;
 - (c) Chargebacks are excessive in the opinion of Bank;
 - (d) Breach of this Agreement by Merchant;
 - (e) Any representation or warranty made by Merchant in this Agreement is not true and correct;
 - (f) Merchant files a petition under any bankruptcy or insolvency law;
 - (g) Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Bank hereunder;
 - (h) Merchant's percentage of error Transactions or retrieval requests is excessive in the opinion of Bank;
 - (i) Any insurance policy obtained by Bank, IP PAY or Merchant relating to Transactions and/or Chargebacks is cancelled or terminated for any reason;
 - (j) Merchant fails to provide financial statements suitable to Bank on request; or
 - (k) IP PAY does not or cannot perform its duties under this Agreement and Bank determines that it is not feasible to provide to Merchant the Services contemplated by this Agreement.
- Bank is not obligated to provide replacement Services if IP PAY does not or cannot perform.
- Bank may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement. In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of such Transaction.
- 36. Termination of Agreement by Merchant.** Merchant may terminate this Agreement upon at least 30 days' prior written notice to the other parties if Bank amends *Schedule A* pursuant to Section 39 to increase the rates, fees or charges Merchant pays hereunder, except for fees or rates that result from a pass through from an Association.
- 37. Setoff.** In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Bank and/or IP PAY may set off any amounts due to Bank and/or IP PAY under this Agreement against any property of Merchant in the possession or control of Bank or IP PAY.
- 38. Exclusivity.** Merchant shall submit, on an annual basis, not less than 75% of Merchant's total Transactions to Bank, unless Bank indicates to Merchant that it cannot or will not process that number of Transactions for Merchant. Additionally, Merchant shall provide to Bank the name and address of each other entity that Merchant elects to use to process Transactions, and copies of monthly statements from each such entity, in order to allow Bank to verify compliance by Merchant with the foregoing requirement. In the event Merchant fails to submit to Bank at least 75% of the total number of Transactions processed for or on behalf of Merchant during any twelve-month period during the term of this Agreement, Merchant: (i) acknowledges and agrees that the actual damages sustained by Bank as a result of such failure would be difficult, if not impossible, to calculate with precision; and (ii) agrees to pay to Bank and IP PAY, as liquidated damages for such failure, an amount calculated as per Schedule A.

The obligations of Merchant under this Section 38 shall survive any termination or expiration of this Agreement.

39. Amendments to this Agreement. From time to time Bank may amend this Agreement as follows:



IP Pay Merchant Application & Agreement

(a) **Amendment to Cards and/or Services.** Bank may amend or delete Cards or Services listed in *Schedule A* by notifying Merchant in writing of any such amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank shall notify Merchant of the fees to be charged for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Bank has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.

(b) **Amendment to Fees and Charges.** From time to time, Bank or IP PAY may change all rates, fees and charges set forth on *Schedule A*. Bank or IP PAY will provide written notice to Merchant of all such amendments. Bank or IP PAY may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in the Merchant Application form to which this Agreement is attached. If notice is required, Bank or IP PAY will give written notice on the Merchant Statement or by sending separate notice by mail. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement or was sent by mail, unless Merchant terminates this Agreement in accordance with Section 36.

(c) **Amendments to all other Provisions.** Bank may amend this Agreement in any manner other than as described in Section 39(a) or 39(b) above simply by providing written notice of such amendment to Merchant, and such amendment shall become effective on the latter of: (i) the date on which such written notice is received by Merchant; or (ii) a date specified by Bank in such written notice.

40. Assignment. This Agreement may not be assigned by Merchant without the prior written consent of Bank. Bank may assign this Agreement without limitation. Assignment of this Agreement by Bank shall relieve Bank of any further obligations under this Agreement.

41. Financial Accommodations. Bank, IP PAY and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant.

42. Waiver. To the extent that Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Bank for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Bank's rights or claims under this Agreement.

43. Cooperation. In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the transactions contemplated hereby.

44. Entire Agreement. This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.

45. Severability. If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof.

46. Notices. Except for notices provided by Bank to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party hereunder shall be in writing and each shall be deemed to have been properly given when (i) served personally on an officer of the party to whom such notice is to be given, (ii) upon expiration of a period of three (3) Business Days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (iii) upon delivery by a nationally recognized overnight delivery service, addressed as follows:

If to BANK:

With a Copy to:

Address listed on Acquirer Discloser

IP PAY

If to IP PAY:

If to MERCHANT:

IP PAY:

Address listed on Merchant Application

ATTN: Charles Wu
16W215 83rd Street, Ste D
Burr Ridge, IL 60527

Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforesaid.

47. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.

48. Captions. Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.

49. No Waiver. Any delay, waiver or omission by Bank to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.

50. Force Majeure. The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

51. ACH Processing. When requested by Merchant, IP PAY will also provide ACH processing services under the terms and conditions specified in the ACH Processing Addendum at the rates specified in *Schedule A*. Merchant agrees that information supplied in this application may be used to establish a separate ACH account. If this service is requested, Merchant understands that a personal credit review may be deemed necessary and authorizes such an action. Merchant agrees that Bank and IP PAY will deduct processing fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on *Schedule A*. Merchant also agrees to pay Bank or IP PAY the amount of any fees, charges or penalties assessed against Bank or IP PAY.

52. Honoring Cards. (a) Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to Visa rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit Cards. Merchant's election is set forth in the Application. (b) Merchant shall not establish minimum or maximum amounts for Card sales as a condition for accepting any Card. (c) Merchant shall not require any Cardholder to pay a surcharge any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a customer presenting a Card to pay any charge or price as a condition of sale that is not also required from a customer paying cash. However, Merchant may not, by this term, be prevented from offering discounts to customers for cash purchases. (d) Merchant shall not engage in a Card Transaction (other than a mail order, telephone order, ecommerce or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.

53. Important Merchant Responsibilities. (a) Ensure compliance with cardholder data security and storage requirements. (b) Maintain fraud and chargebacks below Association thresholds. (c) Review and understand the terms of the Merchant Agreement. (d) Comply with all Association Operating Regulations.

INITIAL



ACH PROCESSING ADDENDUM

The Terms and Conditions governing the agreement between the Company (the Originator) named on the Application and Agreement to which these Terms and Conditions are attached (hereinafter Client,) and Convergence Technologies Inc, dba IP Pay, hereinafter "IP PAY", and its officers, employees, affiliates, licensees, agents and/or its Designated Service Provider/s (hereinafter Processor):

WHEREAS: Client desires Processor, and Processor agrees, to provide Automated Clearing House (ACH) Services as a Processor of ACH transaction data. The transactions are placed through a third party ACH processor who will send all transactions through an Origination Depository Financial Institution (ODFI). Processor will debit money (a Debit Entry) for purposes of collecting payments for (1) the accounts of Clients customers (Receivers); (2) checks returned to Client merchant for non-sufficient funds (NSF); (3) Point of Sale Purchases from the accounts of Clients customers, and/or credit money (Credit Entry) to the Clients accounts, all in accordance with the terms of this Agreement, the Operating Rules (Rules) of the National Automated Clearing House Association (NACHA) and the applicable Federal Regulations (Regulations) governing ACH transaction. Entry or Entries shall mean either a Credit Entry or Debit Entry as appropriate. In order to provide ACH services according to the Rules and Regulation the parties hereto agree as follows: 1) The Client agrees to comply with all rules at the time each entry is initiated by the Client with respect to NACHA's most recent Represented Check Entry Program Guidelines and that each entry shall in no way breach any Federal, State, or local statute of regulation pertaining to and for electronic funds transfers and/or electronic check re-presentation, including the Electronic Funds Transfer Act and Regulation E, and all such other laws and regulations including the Operating Rules of NACHA.

1.0 SPECIFIC ELECTRONIC CHECK RE-PRESENTMENT/ACH GUIDELINES

1.0 The following items must be specifically adhered to in conducting electronic re-presentation but do not constitute all of the rules governing NACHA's RCK (electronic check re-presentation) program.

[A] A Represented Item Must Meet The Following Eligible Item Requirements:

1. A check in an amount less than \$5,000.
2. A check dated 180 days or less from the day of issuance.
3. A check that has not been transmitted twice electronically - a total of 3 deposits are allowed on any check in any combination of physical or electronic presentations.
4. A check that indicates on its face that it was returned NSF, Non Sufficient Funds, Uncollected Funds, or comparable language.

[B] Client must notify customer of Client's intentions to redeposit check electronically should the check be returned:

Compliance may be in the form of:

1. Signed authorization or other recorded authorizations as prescribed by REG E.
2. Posted notice at point of sale,
3. Letter of notification informing customer of electronic redeposit and their ability to recover the original paper check.

[C] Client must obtain or have some kind of written authorization from the account holder when collecting a fee.

[D] Client must retain the original paper check for 90 days and a copy or image for 7 years.

[E] All other rules in the current NACHA Guidelines must be adhered to a copy will be supplied upon request.

1.1 Definitions. In the Agreement which follows, persons presenting checks to you for settlement are your Customer's checks presented to the automated clearing house for presentation to your Customer's bank are debits or for presentation to your bank to pay back funds previously credited are called credits; Debits and credits are called entries. The account at your bank (the settlement bank) at which the credits are offset against the debits is the settlement account, and the residual balance which is maintained in the settlement account to pay credits is called the reserve. The writing approved by us by which your customer authorizes you to process the entry electronically and to charge the state's allowable fee if the entry is returned is called the authorization. The laws and regulations governing electronic transfers and automated clearing house transactions are called rules.

2.0 YOUR RESPONSIBILITIES

2.1. Obtaining Authorizations. (a) Point-Of-Sale (P.O.S.) Entries: You will obtain a signature authorization from a Customer/Accountholder prior to asking us to process an Entry (b) Return Item Entries: You will obtain a signature authorization prior to asking us to charge the Customer the state's allowable fee for NSF checks. (c) Record Retention: You will comply with IP PAY's requests for record retention and signature authorization. You grant to us or our designee the right to audit these authorizations and your record retention compliance, at your expense.

2.2. Submitting Entries. (a) POS Entries: You can transmit electronic entries on a 24 hour daily basis.

2.3. Representations. Client represents and warrants with respect to all entries we process for you that: (a) EACH Customer has authorized the debiting and/or crediting of his, her, or its account and the collection of any NSF check fees, (b) EACH entry is for an amount agreed to by the Customer, (c) EACH entry is in accordance with the rules and properly authorized in all other respects. Client agrees to defend, indemnify, and hold Processor and all its agents harmless for any losses, liabilities, costs or expenses we incur as a result of any breach of these representations and warranties. Client shall cease initiating Entries immediately upon receiving actual or constructive notice of the termination or revocation by the Receiver of authority.

2.4. Regulatory Compliance. Client will use its best efforts, & bears the final responsibility to ensure that Clients policies and procedures meet the requirements of all applicable. Rules and Regulations pertaining to ACH Transactions of any kind. Processor is very concerned that Client remains compliant to the rules and regulations regarding ACH Transactions. Client is encouraged to consult Clients counsel regarding compliance of authorization and payment procedures whenever there is any doubt about compliance. It is understood that Processor is solely a Data Processor and therein not required to be licensed by any Federal, State or Local government. Processor must and will comply with all rules and regulations governing ACH transactions.

2.5. Identifying Numbers. We may rely solely on identifying numbers provided by CLIENT to determine the bank account and other information with respect to a Receiver even if the numbers identify a bank or account holder different from the one Client identified by name. Client will indemnify IP PAY and/or its Processor for any losses, liabilities, costs, or expenses IP PAY and/or its Processor suffers or incurs as a result of incorrect or fraudulent data supplied by Client.

2.6. Settlement and Hold Period Requirements. You agree that we may require you to maintain a minimum balance in your settlement account. You agree that we may require an increase in this amount, or an extension of the hold period as a condition of your continued service. You authorize us to create a reserve in your name to cover any liabilities that may arise. We have the right to increase the amount of this reserve.

2.7 SECONDARY COLLECTIONS: The CLIENT agrees that if the check items cannot be collected electronically (account closed, etc.) they will be sent to a third party collection agency at no charge to the CLIENT. Any check items that cannot be processed or collected electronically will be returned to the CLIENT if the CLIENT opts not to use a Secondary Collection Agency.

3.0 DEBIT AUTHORIZATION

3.0 Merchant hereby authorizes IP PAY, or its designees, to initiate debit and/or credit entries to Merchant's bank account in accordance with the banking information provided in this agreement. IP PAY's authority will remain in full force and effect until either (a) 180 days after IP PAY has received written notification from Merchant of the termination of this agreement to provide IP PAY and/or its Designated Service Provider/s reasonable opportunity to act upon any outstanding liabilities; or (b) all obligations of Merchant to



IP Pay Merchant Application & Agreement

IP PAY that have arisen under this agreement have been paid in full, including, but not limited to, those obligations described in this agreement. This obligation extends to such entries in said account concerning lease, rental, or purchase agreements for P.O.S. terminals and/or accompanying equipment and/or check processing fees and/or guarantee fees. (c) Wherein a CLIENT is processing bankcard transactions with IP PAY and request that ACH services also be rendered, this agreement, whether signed or not, is considered legally binding on all parties involved.

3.1 Processor's Responsibilities. Submitting entries - Entries shall be submitted to the Processor by the Client using the Virtual Terminal, ePay Software, or batch protocol as provided by the Processor. Entries received by the processor by 3:30 PM EST shall be processed the same day.

3.2 Accepting Transactions: (a) P.O.S. Entries: We will accept any properly authorized check accepted by an approved electronic check reader/imager or other device as specified in 3.1. We are responsible for accepting and processing only those entries that have been received in a proper format and on a timely basis. (b) Returned Entries: Any entry returned to us will be re-presented by us in accordance with the rules.

3.3 Originating Transactions. Processor will use the information provided by Client to originate Client entries through the ACH. Client understands that Processor may reject Clients Entries for any reason permitted or required in the Rules and Regulation. Client also understands that an Entry may be rejected by Processor or its origination may be delayed if the Entry would cause Processor to knowingly violate any Federal Reserve or other regulatory risk control program or any law or regulation. At Client's request, Processor will make reasonable efforts to reverse or delete an Entry, but Processor will have no responsibility for the failure of Processor or any other person or entity to comply with client request. All requests MUST be in writing and faxed, delivered or mailed to IP PAY.

3.4 Returned Entries Processor will apply returned Entries to Clients account when they are received. All returns will be processed and available through the Virtual Terminal/ ePay software or by other means as agreed to by the Processor and the Client.

3.5 Settlement and Finality. We will settle all entries as follows: (a) P.O.S. Settlement: Entries received prior to our cut off time of 3:30 PM EST on any banking day (as defined by the Federal Reserve) will be credited to your settlement bank the following banking day, or after the hold period, at our discretion. (b) Settlement of Returned Entries: Entries not honored by your customer's bank will be debited from your settlement account. After the entries have been successfully recovered by the re-presentation process, if service is being provided by us, we will recredit your account. (c) If any Debit Entry is returned to Processor, Processor will debit the Account for the amount of the returned item plus fees and costs incurred by Processor immediately or on an agreed schedule. In the event there are not sufficient funds in the Account to cover Clients obligations under this Agreement, Client agrees to pay Processor the amount of the deficiency on demand in immediately available funds. Processor may, as a last resort, debit any account maintained by Client to recover returned transactions. Any Credit Entries that Client creates will be debited from Clients account in accordance with the hold period prior to the credit being distributed to Client payees accounts. In the event the Debit Entry is returned for any reason, the Credit Entries will be canceled due to the unavailability of funds. (d) Re-presentation, and Lockbox - Client's account will be credited after a pre-agreed hold period, normally five (5) business days from the date the Return items are initially transmitted to the ACH or on a schedule agreed to in writing and made as part of this agreement. This hold period allows sufficient time for as many returns to be received by Processor as possible before settlement.

3.7 Limits of Our Liability. Processor will be responsible for Processor's performance in processing ACH services as a Third Party Processor of ODFI transactions in accordance with the terms of this Agreement, and the Rules and Regulations. Processor does not accept responsibility for errors, acts or failures to act of others, including, and among other entities, banks, communications carriers or clearing houses through which Entries may be originated or Processor receives or transmits information, and no such entity shall be deemed Processor's agent. Processor shall not be responsible nor bear any loss, liability or delay caused by fires, earthquakes, wars, civil disturbances, power surges or failures, acts of government or God, labor disputes, failures in communication networks, legal constraints or other events beyond Processor control.

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CYBERSTREET INC.
1617 HENDRY STREET
SUITE 414
FORT MYERS, FL 33901
(239) 334-4484

63-751-631

PAY TO THE ORDER OF

DATE

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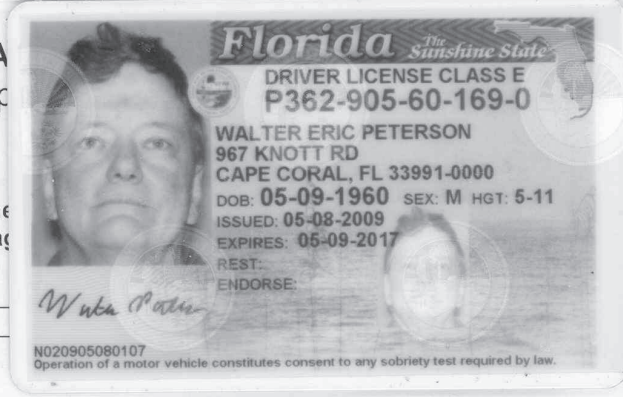
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PRINCIPAL
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copy of the
first page



ATTACH COPY OF SECONDARY PRINCIPAL IDENTIFICATION HERE
(or on a separate page)

Any one of the following Current Auto Insurance Card or Registration
Current Utility Bill

