

County of Rock  
Public Works Department



Highways  
Parks  
Airport

3715 Newville Road  
Janesville Wisconsin 53545  
Telephone: 608/757-5450  
Fax: 608/757-5470  
www.co.rock.wi.us

## **NOTE LOCATION!**

### **A G E N D A**

Public Works Committee Meeting  
Tuesday, January 27, 2015 – 8:00 a.m.  
Terminal Building  
Southern Wisconsin Regional Airport  
1716 West Airport Road – Endeavor Room  
Janesville WI 53546

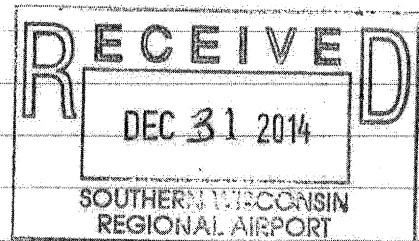
1. Call to Order
2. Approval of Agenda
3. Citizen Participation, Communications, and Announcements
4. **ACTION ITEMS**
  - a. Consider Request from Airport House Tenants to Extend Lease for One Year
  - b. Consider Contracts for Credit Card Acceptance at Airport for Rents and Landings
  - c. Airport Accounts Receivables
  - d. Cancel Vouchers, Approve Bills, Encumbrances/Pre-Approved Encumbrances, Amendments and Transfers
5. **INFORMATION ITEMS**
  - a. Terminal Project Update
6. Next Meeting Date
7. **EXECUTIVE SESSION:** Pursuant to Wis. Stat. Sec. 19.85 (1)(e) for the specified public business of establishing bidding parameters and requirements on the upcoming Request for Proposals for a Restaurant at the Southern Wisconsin Regional Airport.
8. Adjournment

Dec. 31, 2014

To Whom it may concern,

We do plan on remaining here in this house near the airport again for the year of 2015. We like it here and hope you once again approve our lease to do so. Thank you so much.

The Willard Family



## Government/Education Services Merchant Application



Merchant Services 1-888-963-3600  
One Heartland Way, Jeffersonville IN 47130

Note: White Out is Not Acceptable on Merchant Applications

Relationship Manager:	
Phone:	Fax:
<input type="checkbox"/> New Merchant	<input type="checkbox"/> Additional Location Chain #:
<input type="checkbox"/> New Owner	<input type="checkbox"/> Existing HPS MID #:
Name of Affiliate:	

### COMPANY INFORMATION

**DBA NAME:** Southern Wisconsin Regional Airport

Address: 1716 W Airport Rd., Suite 100 # of Locations: \_\_\_\_\_

City: Janesville ST: WI Zip: 53546

DBA Phone: 608-757-5768 Fax: \_\_\_\_\_

Primary Contact Name: Cynthia Hevel Phone: 608-757-5768  DBA  Home  Cell

Secondary Contact Name: Ron Burdick Phone: 608-757-5768  DBA  Home  Cell

Email Address: hevel@co.rock.wi.us Website Address: http://www.jvlairport.com

**LEGAL OR CORPORATE NAME:** County of Rock Federal Tax ID/EIN: 396005736  
(Please complete - must correspond with IRS Filing Name) (Must correspond with Legal Name)

Address: 51 S. Main St. Phone: \_\_\_\_\_

City: Janesville ST: WI Zip: 53545

### FEE SCHEDULE

<b>Payment Types and Fee</b>	<input type="checkbox"/> Interchange Plus	<b>Annual Volume:</b> \$ 298000.00	
<input checked="" type="checkbox"/> VISA	Flat per Item Fee of: \$ _____ or 2.50%*	<b>Average Ticket:</b> \$ 372.00	
<input checked="" type="checkbox"/> MasterCard		<b>High Ticket:</b> \$ 1000.00	
<input checked="" type="checkbox"/> Discover / JCB		<b>SETTLEMENT</b>	
<input checked="" type="checkbox"/> American Express		<input checked="" type="checkbox"/> Daily/Split <input type="checkbox"/> Daily/Net	
<input checked="" type="checkbox"/> PIN Debit		<input type="checkbox"/> Monthly Disc Fee _____ BP	

### Bolletta Products

Web Payment: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IVR / Phone Payment: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Cashier: <input type="checkbox"/> Yes <input type="checkbox"/> No	Mobile Payments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

### INTERCHANGE QUALIFICATION

MOTO / Internet  Retail

### CARD ACCEPTANCE

### DEPOSIT METHOD

### DISPUTE LETTERS

<input checked="" type="checkbox"/> All Cards Accepted	<input type="checkbox"/> Standard	<b>Mailing Options</b>	<b>Electronic Options*</b>
<input type="checkbox"/> Credit / Business Cards Only	<input checked="" type="checkbox"/> By Batch	<input type="checkbox"/> Legal	<input type="checkbox"/> Fax
<input type="checkbox"/> Consumer Prepaid/ Debit Check Cards)Only	<input type="checkbox"/> By Card Type	<input checked="" type="checkbox"/> DBA	<input checked="" type="checkbox"/> Email
* Select mail option as back-up.			

### STATEMENT OPTIONS

<b>Statement Type</b>	<b>Mail Statements To</b>
<input checked="" type="checkbox"/> Standard	<input type="checkbox"/> Legal
<input type="checkbox"/> Non-Qual Breakout	<input type="checkbox"/> DBA
<input type="checkbox"/> By Card Type	<input type="checkbox"/> Suppress Statements
<input type="checkbox"/> Chain Recap Summary	<input checked="" type="checkbox"/> All Electronic Communications:
	<input type="checkbox"/> Same as InfoCentral
	<input type="checkbox"/> Preferred Email Address: HEVEL@co.rock.wi.us

### MERCHANT DETAIL

Type of Business:  Public

Type of Ownership:  Government/Municipality/Agency  Public College/University  
 Utility (Non-Government)  Public K-12

Date Business Started: \_\_\_\_\_ Date began accepting Credit Cards: \_\_\_\_\_

Do you currently accept Credit Cards:  Yes  No Do you accept credit card information via website:  Yes  No

**MERCHANT DETAIL (continued)**

Has your business experienced a cardholder account data compromise / involved in a PCI Compliance investigation:  Yes  No

If yes, has the PCI investigation been completed:  Yes  No

If yes, what was the date of the compromise: \_\_\_\_\_

Note: A copy of the completed Forensic Investigation is required with the Application.

Does your company utilize a Data Storage Entity or Merchant Servicer that has access to cardholder data (i.e., Payment gateway or data storage, etc.):  Yes  No

Does your company provide third party services for any other company to store, process or transmit cardholder data:  Yes  No

Are you a Payment Facilitator/Payment Service Provider:  Yes  No For additional information go to: [www.heartlandpaymentsystems.com/resources](http://www.heartlandpaymentsystems.com/resources).

What Products and /or services do you provide: Hanger Rent/ Building Lease/Landing Charges

Define your Refund Policy (Note: All credits must be made to the Customer's Credit Card): Back to Payee card

SALES METHOD		PROCESSING METHOD		FUTURE DELIVERY*	
On Premise Face to Face Sales	10%	Card Swiped	100%	2-5 Days	%
Off Premise Face to Face Sales	%	Keyed with Imprinted Receipt	%	6-10 Days	%
Mail Order Sales	%	Keyed without Imprinted Receipt	%	11-30 Days	%
Real - Time Internet Sales	85%	<b>TOTAL = 100%</b>		31-60 Days	%
Inbound Telephone Order Sales	5%	<b>MOTO CARD TYPE</b>		61-90 Days	%
Outbound Telephone Order Sales	%			91-120 Days	%
Internet Keyed	%			> 120 Days	%
Recurring Billing	%			<b>If Applicable Total =</b>	<b>100%</b>
<b>TOTAL = 100%</b>				<b>% of Future Delivery</b>	<b>%</b>

**AUTHORIZED SIGNER INFORMATION**

1. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Phone: \_\_\_\_\_ DOB (mm/dd/yyyy): \_\_\_\_\_  
 2. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Phone: \_\_\_\_\_ DOB (mm/dd/yyyy): \_\_\_\_\_

**DEBIT / CREDIT AUTHORIZATION**

Merchant hereby authorizes Acquirer to debit and credit Merchant's Checking/savings account. This authority shall remain in full force until (a) Acquirer has received written notification from Merchant of its termination; and (b) all obligations of Merchant to Acquirer under this Agreement have been paid in full.

Depository Bank Name: First National Bank & Trust Co. Phone: 608-363-8077  
 City: 345 E. Grand Ave., Beloit ST: WI Zip: 53511

ACCOUNT TYPE (check one) - <input type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> GL	TRANSIT ROUTER / ABA NUMBER (9 digits)  075900973	ACCOUNT NUMBER
FUNDS TRANSFER METHOD - <input type="checkbox"/> Deposits <input type="checkbox"/> Fees <input type="checkbox"/> Both		1204013
ACCOUNT TYPE (check one) - <input type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> GL	TRANSIT ROUTER / ABA NUMBER (9 digits)	ACCOUNT NUMBER
FUNDS TRANSFER METHOD - <input type="checkbox"/> Deposits <input type="checkbox"/> Fees <input type="checkbox"/> Both		

**AGREEMENT ACCEPTANCE, CERTIFICATION AND CONSUMER REPORT AUTHORIZATION**

Merchant authorizes HPS, any credit bureau or reporting agency employed by Acquirer, or any agents thereof, to investigate the references, statements or data provided by Merchant or the undersigned for purposes of this Application. I further certify that I have received, read, understand and agree to the Merchant Processing Agreement Terms and Conditions which together with this application shall constitute the agreement(s) between the parties. I further certify that this business or any Owner/Officer has never been terminated by a Card Brand.

<b>REQUIRED</b>	X	1. Authorized Signers Signature	Print Name & Title	Date
	X	2. Authorized Signers Signature	Print Name & Title	Date
	X	Witness Signature	Print Name & Title	Date

**THE TERM OF THIS AGREEMENT IS THREE (3) YEARS**

**HPS OFFICIAL USE ONLY**  
 Application Approved By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# Heartland PAYMENT SYSTEMS

Note: White Out is Not Acceptable on Merchant Applications

## ACH Application

Merchant Services 1-888-963-3600  
One Heartland Way, Jeffersonville IN 47130

Relationship Manager:

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Partner:

Affiliate Name:

Current Credit Card MID:

Business Unit:

Affiliate/Partner ID:

Current Credit Card Processor:

### COMPANY INFORMATION

New Merchant  Additional Location

Merchant DBA Name: Southern Wisconsin Regional Airport

Store #: \_\_\_\_\_

CS # for CNP Merchant: \_\_\_\_\_

# of Locations: \_\_\_\_\_

Address: 1716 W Airport Rd., Suite 100

City: Janesville

State: WI

Zip: 53546

DBA Phone #: 608-757-5768

Fax #: \_\_\_\_\_

Primary Contact Name: Cynthia Hevel

Phone #: 608-757-5768

DBA  Home  Cell

Secondary Contact Name: Ron Burdick

Phone #: 608-757-5768

DBA  Home  Cell

Email Address: hevel@co.rock.wi.us

Website Address: http://www.jvlairport.com/

Legal or Corporate Name: County of Rock

Federal Tax ID / EIN: 396005736

(Please Complete - Must correspond with IRS Filing Name)

(Must correspond with Legal Name)

Address: 51 S. Main

Phone #: \_\_\_\_\_

City: Janesville

State: WI

Zip: 53545

Corporate Headquarters/Management Company Name:

(If Management Company, please provide copy of Management Agreement)

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Fax#: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

### FEE SCHEDULE

Transaction Fee	Monthly Fee	Returned Item Fee	One Time Setup Fee	Convenience Fee:	\$2.00
\$1.50	\$0	\$25.00	\$0	(Select One Option)	%

Representment:  Yes  No (Limitation of 2 per NACHA guidelines) Representment Fee: \$

K12-OnePay Program Fee: Single: \$12.95 Multi: \$26.95

Settlement Method:  Daily Split  Daily Net  Monthly Net

Monthly Average ACH Volume:	6705.00	Average # of ACH Transactions per Month:	18
Average ACH Amount:	372.50	Max ACH Limit:	1000.00
High Transaction Amount:	1000.00		

### STATEMENT OPTIONS

#### Send Statements To

Standard

Suppress Statements

### RETURN NOTIFICATIONS

All Electronic Communications:

Email: \_\_\_\_\_

Preferred Email Address: \_\_\_\_\_

### MERCHANT DETAIL

Type of Ownership:  Corporation  LLC  Sole Proprietorship  
 Government/Municipality  Partnership  Non-Profit

Date Business Started: \_\_\_\_\_

Date Acquired by Current Owner: \_\_\_\_\_

Is there a peak week / date in the month for processing recurring transactions: (i.e., 1<sup>st</sup> and 15<sup>th</sup>): \_\_\_\_\_

Products/Service Provided: \_\_\_\_\_

Has Merchant / Business ever filed Bankruptcy:  Yes  No

Type:  Personal  Business

Date Filed: \_\_\_\_\_

Date Released: \_\_\_\_\_

### PROCESSING METHOD

Corporate Credit or Debit (CCD)	95%	Web	85%	ACH Debit	100%
Prearranged Payment and Deposit (PPD)	%	ACH Credits*	15%	ACH Credit	%
Telephone (TEL)	5%			ACH Recurring Debit**	%

\*This transaction type is used for credit adjustments offsetting a valid sale transaction.

\*\*PPD/CCD/Web Txns Only

**OWNERS / OFFICERS/AUTHORIZED SIGNER INFORMATION**

1. Name: \_\_\_\_\_ Title: \_\_\_\_\_ SSN: \_\_\_\_\_ DOB (mm/dd/yyyy) \_\_\_\_\_  
 Home Address: \_\_\_\_\_ City: \_\_\_\_\_ ST: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_  
 Driver's License #: \_\_\_\_\_ Length at Home Address: \_\_\_\_\_ Business Equity Ownership: \_\_\_\_\_ %

2. Name: \_\_\_\_\_ Title: \_\_\_\_\_ SSN: \_\_\_\_\_ DOB (mm/dd/yyyy) \_\_\_\_\_  
 Home Address: \_\_\_\_\_ City: \_\_\_\_\_ ST: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_  
 Driver's License #: \_\_\_\_\_ Length at Home Address: \_\_\_\_\_ Business Equity Ownership: \_\_\_\_\_ %

**PERSONAL GUARANTY**

FOR VALUE RECEIVED, and in consideration of the mutual understandings contained in the Merchant Processing Agreement (the "Agreement") Terms and Conditions and the ACH Processing Agreement, if applicable, by and between the Merchant submitting this Application ("Merchant") and ("Acquirer"), the undersigned jointly and severally, if more than one, unconditionally and irrevocably guarantee to Acquirer and their successors and assigns the full and prompt payment when due of all obligations of every kind and nature arising directly or indirectly out of the Agreement. The undersigned (does/do) hereby certify that (he/she/they) (has/have) read, understand(s) and agree(s) to all Merchant Processing Agreement Terms and Conditions, the ACH Processing Agreement, if applicable, and specifically those that relate to the personal guaranties.

X \_\_\_\_\_ X \_\_\_\_\_  
 (1) Personal Guarantor Signature Date (2) Personal Guarantor Signature Date

**DEBIT / CREDIT AUTHORIZATION**

Merchant certifies that any starter check provided is for a business account in good standing and that the Business Name on the below checking account is the same as the Business name on the enclosed Heartland Payment Systems Merchant Application. In addition, Merchant hereby authorizes Acquirer to debit and credit Merchant's checking/savings account. This authority shall remain in full force until (a) Acquirer has received written notification from Merchant of its termination; and (b) all obligations of Merchant to Acquirer under this Agreement have been paid in full.

Depository Bank Name: First National Bank & Trust Co. Phone #: 608-363-8077  
 City: 345 E. Grand Ave., Beloit ST: WI Zip: 53511

**MERCHANT ACCOUNT****FEES/DEPOSITS**

Account Type:	TRANSIT ROUTER / ABA NUMBER (9 digits)	ACCOUNT NUMBER (14 digits)
<input type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> GL	075900973	1204013

**RETURNS**

Account Type:	TRANSIT ROUTER / ABA NUMBER (9 digits)	ACCOUNT NUMBER (14 digits)
<input type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> GL		

**AGREEMENT ACCEPTANCE, CERTIFICATION AND CONSUMER REPORT AUTHORIZATION**

Merchant authorizes HPS, any credit bureau or reporting agency employed by Acquirer, or any agents thereof, to investigate the references, statements or data provided by Merchant or the undersigned for purposes of this Application. I further certify that I have received, read, understand and agree to the Merchant Processing Agreement Terms and Conditions and the ACH Processing Agreement, if applicable, which together with this application shall constitute the agreement(s) between the parties.

X \_\_\_\_\_  
 (1) Signature - Owner / Officer / Authorized Signer Print Name & Title Date

X \_\_\_\_\_  
 (2) Signature - Owner / Officer / Authorized Signer Print Name & Title Date

X \_\_\_\_\_  
 Witness Signature Print Name & Title Date

**THE TERM OF THIS AGREEMENT IS THREE (3) YEARS**

Application Approved By: \_\_\_\_\_ HPS OFFICIAL USE ONLY Title: \_\_\_\_\_ Date: \_\_\_\_\_



**Merchant Order & Receipt Form**

DBA: Southern Wisconsin Regional Airport  
 MID: \_\_\_\_\_  
 EF Client ID: \_\_\_\_\_  
 EF Location ID: \_\_\_\_\_

SERVICE CHARGES (ALL ARE NON-REFUNDABLE)	Qty	Price/Fee	Taxable	Bill RM	Merchant
Application Processing Fee		\$		\$	\$
Installation & Training Fee		\$			\$
Gateway License Purchase		\$	\$	\$	\$
HPS Connect		\$	\$	\$	\$
HPS Access		\$	\$	\$	\$
Express Connect / Accounting SW (Specify below as Other)		\$	\$	\$	\$
Other (Specify)		\$	\$	\$	\$
Extra Rolls of Paper (6 rolls \$5.50; 12 rolls \$10.50)		\$	\$	\$	\$
Wireless Monthly Fee (Per Wireless Terminal)		\$	\$	\$	\$

Disclaimer: Wireless services are provided by third party carriers. HPS MAKES NO GUARANTEE OR WARRANTY WITH RESPECT TO SERVICES PROVIDED BY THIRD PARTY CARRIERS OR THE AVAILABILITY OR COVERAGE OF SUCH SERVICE FOR ANY LOCATION.

PINPADS	Model	Qty	Purchase	Fee	Taxable	Bill RM	Merchant
PINPad Purchase		1	\$ 250.00		\$	\$	\$
Internal — PINPad Encryption Fee				\$50.00		\$	\$
External — PINPad Encryption Fee				\$25.00		\$	\$

**EQUIPMENT - PURCHASE / RENTAL OPTIONS — Rental Agreement Type must be checked.**

Rental Options —  36 Mo  Month to Month (Deposit Required)  Rent-to-Own 36 Mo (Add RTO Fee + 36 Mo Fee): \$

*Note: Equipment is billed within 48 hours of shipment*

Hardware	Model	Qty	Purchase	Rental Fee	Taxable	Bill RM	Merchant
Terminal w/Integrated Ptr			\$	\$	\$	\$	\$
Check Readers			\$	\$	\$	\$	\$
PC Software (Non-Refundable)			\$	\$	\$	\$	\$
Manual Imprinter			\$25.00		\$	\$	\$
Accessories			\$		\$	\$	\$
Other:			\$	\$	\$	\$	\$
Equipment Deposit							\$

DBA: Southern Wisconsin Regional Airport  
 MID: \_\_\_\_\_  
 EF Client ID: \_\_\_\_\_  
 EF Location ID: \_\_\_\_\_

EQUIPMENT UPGRADE PROGRAM								
Upgrade	Hardware	Upgrade Cost	Qty	Total	Rental Fee	Taxable	Bill RM	Merchant
Upgrade To						\$	\$	\$
Upgrade From						\$	\$	\$

*Note: Full Value of Equipment Upgrade will be debited if used equipment is not returned within 10 days.*

SHIPPING CHARGES							
Purchase, Upgrade & Accessory Shipping Costs							
Equipment Type	2nd Day	Ground	Sat Delivery	Next Day	Bill RM	Merchant	
Terminal / Printer / Check Reader	Free	Free	\$28.00	\$18.00	\$	\$	
Pin Pad	Free	Free	\$25.00	\$15.00	\$	\$	
Accessories / Other	\$10.00	\$5.00	\$34.00	\$24.00	\$	\$	

**SPECIAL INSTRUCTIONS**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SALES TAX INFORMATION — Equipment price plus applicable sales tax**

Non-Taxable Merchant:  Yes  No Reason: \_\_\_\_\_

Tax Rate: \_\_\_\_\_ % ST: \_\_\_\_\_ County: \_\_\_\_\_ (Processing Charges are Tax Exempt)

**SHIP TO**

RM  Merchant  AM  Legal (N/A if P.O. Box)

**BILLING INFORMATION**

ACH  Installment # of Months (Maximum 6): \_\_\_\_\_  Check #: \_\_\_\_\_  Credit Card #: \_\_\_\_\_ Exp. Date: \_\_\_\_\_

**Note: FEES MAY BE DEBITED SEPARATELY**

	Bill RM	Bill Merchant
Taxable	\$	\$
Sales Tax	\$	\$
Non-Tax	\$	\$
<b>GRAND TOTAL DUE HPS</b>	<b>\$</b>	<b>\$</b>

Merchant hereby authorizes HPS or their respective successors and assigns to debit Merchant's account in any amounts owed by Merchant hereunder. Merchant shall at all times maintain a direct deposit account (the "Account" or "DDA"), and Merchant is solely liable for all fees and all overdrafts, regardless of cause. HPS shall have the unlimited right to debit without prior notice, any Account containing funds for the purpose of satisfying any liability incurred on behalf of Merchant and any amounts owed to HPS under this Agreement.

X \_\_\_\_\_ RM: \_\_\_\_\_ Region: \_\_\_\_\_

**OWNER/OFFICER SIGNATURE REQUIRED\*** Print Name / Owner / Signor (Above) Date

\*Signature must be that of the Owner/Officer which signed the HPS Merchant Processing Agreement



# PURCHASE, RENTAL & CUSTOMER OWNED EQUIPMENT AGREEMENT

## I. Equipment Options:

Equipment means the terminals, printers, readers, and accessories hardware necessary to operate Merchant's chosen Heartland Payment Systems, Inc. (HPS) solution. Merchant may choose to provide its own Equipment, to purchase equipment from or through HPS, to rent equipment or any combination of these options. This agreement provides the rules for any of these options, with the terms of Section II applying to all options. This Agreement is part of and shall be governed by the terms and conditions of the Merchant Processing Agreement and is incorporated therein by reference.

- (a) **Providing Your Own Equipment:** Merchant may choose to purchase or lease Equipment from parties other than HPS. In such case, HPS makes no promise that Equipment acquired through third parties ("Third-Party Equipment") will work correctly with and for HPS Software, Services and Equipment. Except as specifically stated in this Agreement, HPS will not be responsible for any failure, speed or adequacy of Third-Party Equipment, for performance of HPS Software or Services on Third-Party Equipment or for repair or replacement of any Third-Party Equipment except as specifically stated in this Agreement. HPS may elect to support certain Third-Party Equipment in its sole discretion, and if it so elects HPS will replace and repair Merchant's Third-Party Equipment should the equipment become inoperative, in which event Merchant will receive replacement equipment and the repaired Third-Party Equipment will be placed in HPS inventory. Merchant will be billed for all replacements and repairs of Merchant's Third-Party Equipment. Returned Merchant Third-Party Equipment that cannot be repaired will be replaced and billed as a new purchase. HPS does not provide repair or replacement service for Third-Party Equipment provided by third party Point of Sale (POS) System providers.
- (b) **Purchasing Equipment from HPS:** Merchant may choose to buy some or all of the necessary Equipment from or through HPS. Such purchases must be properly noted on the Merchant Order and Receipt Form. Unless otherwise specifically described in the documentation provided with the Equipment, HPS provides a one year warranty beginning on the date of shipment on all HPS manufactured Equipment (including its internal software) that such Equipment shall be free from faulty workmanship and defects in materials ("HPS Hardware Warranty"). Equipment sold to Merchant by or through HPS will be replaced at no cost to the Merchant during the applicable warranty period. After such warranty period, HPS will replace such Equipment and repair damaged Equipment at Merchant's expense. If Equipment is damaged by the negligence or the willful acts or omissions of Merchant, its employees, agents or customers during the applicable warranty period, Merchant will be charged for Equipment repairs or replacements. If Equipment purchased from HPS is returned within sixty (60) days of purchase HPS will pro-rate the purchase price of the Equipment and refund the difference less a restocking fee of \$100 for new Equipment and \$50 for used repair/replacements. HPS will not accept returned Equipment after 60 days of purchase.
- (c) **Renting Equipment from HPS:** Merchant may choose to rent Equipment from HPS. Merchant is liable for all rental payments due hereunder. Rental privileges shall last as long as Merchant continues to remit timely rental payments and complies with its Agreements with HPS. Rented Equipment is the personal property of HPS and will not be deemed for any purpose to be fixtures. HPS shall have the right to affix or attach to all rented Equipment a tag or label indicating its

ownership of, or interest in, said Equipment. Merchant will not remove, or permit the removal of, any such tag or label. Merchant will not sell, lease, encumber, or otherwise dispose of any interest in any rented Equipment and will keep it free of all liens, claims or encumbrances whatsoever. Rental Equipment is the sole property of HPS and will be replaced at no expense to Merchant if the Equipment becomes inoperable through no fault of Merchant, its employees, agents or customers. However, if the repair of rental Equipment is due to damage caused by the negligence or the willful acts or omissions of Merchants, its employees, agents or customers Merchant will be charged for the repairs. Merchant will not be liable for ordinary wear and tear of Equipment. However, Merchant will be liable in the event the Equipment is lost, destroyed, or made inoperative as a result of the negligence or the willful acts or omissions of Merchant, its employees, agents or customers. Merchant will indemnify HPS against any loss or destruction of any Equipment for any cause whatsoever, excepting the negligence of HPS. The Equipment deposit is refundable subject to the condition of the returned Equipment. Upon Merchant's written request HPS will return the rental deposit upon the return of Equipment with no more than ordinary wear and tear. HPS shall not be obligated to refund Merchant's rental deposit unless written request for such refund is made by the Merchant within forty-five (45) days following termination of the Agreement. Merchant shall pay the monthly rental price indicated on the Merchant Order and Receipt Form. Rental fees will be collected monthly via an automatic ACH debit to Merchant's Account and will be billed monthly including the last month in which Merchant processes Transactions. All HPS owned Equipment must be returned to HPS at the expense of the Merchant, and rental billing will continue until Equipment is received by HPS. Should Merchant discontinue processing bankcard Transactions with HPS prior to the expiration of the term of the Processing Agreement it shall pay to HPS an Equipment Agreement cancellation fee of \$100.00. If rented Equipment malfunctions and HPS issues a replacement for said Equipment, Merchant shall, within ten (10) days of receipt of the replacement equipment, ship the malfunctioning Equipment to HPS at Merchant's expense. If Merchant fails to so return the malfunctioning Equipment to HPS, Merchant shall be liable for the full replacement value of said Equipment and for any legal cost incurred by HPS in connection with recovery of the malfunctioning Equipment. Merchant's DDA Account will be debited for all amounts due HPS for unreturned Equipment.

## II. Universal Terms:

- (a) **Installation and Training:** HPS will program terminal(s) for Authorization and appropriate draft capture. HPS will ship the Equipment at Merchant's expense to Merchant's designated business location ("Location") as set forth in the Merchant Application and Processing Agreement. HPS will provide Merchant with a reasonable number of Quick Reference Guides and/or User Guides, as applicable, to help Merchant install the Equipment. HPS may amend the Quick Reference Guides and/or User Guides as applicable to the terminal functionality. Merchant agrees to comply with all applicable instructions as set forth in the Quick Reference Guides and/or User Guides when installing Equipment at the Location. HPS shall provide additional training as HPS may deem necessary or appropriate. When additional training is deemed to be necessary by HPS, Merchant will cooperate with HPS in scheduling its employees for training at mutually convenient times and in making its employees available at the time scheduled. Promptly after the completion of such training at any Location or immediately upon receipt of the Quick Reference Guides and/or User Guides when training is not deemed necessary by HPS, HPS shall commence providing the Services through the Equipment.

installed and connected at such Location, subject to the further terms and conditions of this Equipment Agreement. The obligations of HPS under this Section II.A shall not apply to Third-Party Equipment except for Third-Party Equipment which HPS in its sole discretion elects to support,

- (b) **Software:** All HPS created software is licensed (not sold) to Merchant on a non-exclusive basis to use such software on the appropriate Equipment for Merchant's internal purposes only in conjunction with HPS Services. HPS created software is the sole and exclusive property of HPS, including all applicable rights to patents, copyrights, trademarks and trade secrets and shall be held in confidence by Merchant. Merchant will not remove any HPS designation mark from any supplied material. Merchant agrees not to disassemble, decompile, reverse engineer or otherwise reduce the software to perceptible form. Merchant may not rent, lease, sub-license or transfer the software. Merchant may not use HPS software for any purpose or in any manner outside this license. HPS warrants that software created by HPS shall perform substantially in the manner set forth in the applicable Quick Reference Guide and/or User Guide ("HPS Software Warranty"). Third-party software is licensed or sub-licensed to Merchant under the terms, including without limitation the warranty terms, of the manufacturer's license and of this Agreement. Software licensed on a subscription basis is warranted during the period the subscription is in full force and effect. Software licensed on a standalone basis that is not part of Equipment acquired from HPS and for which a different warranty period is not expressly provided for in the documentation accompanying such software is warranted for ninety (90) days beginning on the date of shipment or download. HPS does not offer refunds on HPS created software or software licensed or sublicensed by HPS on behalf of a third party. Should HPS determine during the applicable warranty period that the software created by HPS does not operate as warranted, HPS will, at its option, replace or repair the software. In the case of third-party software, the determination whether to replace or repair shall be made by the applicable third-party software licensor. Please contact your Relationship Manager if issues arise relating to the installation of any software licensed or sublicensed to Merchant by or through HPS. U.S. GOVERNMENT RESTRICTED RIGHTS. The software and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c) (1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.22719, as applicable. The manufacturer of HPS software is Heartland Payment Systems, Inc., 90 Nassau Street, Princeton, New Jersey 08542. EXPORT RESTRICTIONS. Merchant acknowledges that the software acquired hereunder may include technical data subject to U.S. export control laws and regulations. Merchant confirms that it will not export or re-export the software, directly or indirectly, either to
- (i) any countries that are subject to U.S. export restrictions,
  - (ii) any end user who Merchant knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons; or
  - (iii) any end user who has been prohibited from participating in the U.S.A. export Transactions by any federal agency of the U.S.A. government.

- (c) **Warranty and Support:** HPS MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BEYOND THOSE EXPRESSLY STATED HEREIN. HPS SPECIFICALLY DISCLAIMS WARRANTIES AS TO THE MERCHANTABILITY,

CONDITION, DESIGN, OR COMPLIANCE WITH SPECIFICATIONS OR STANDARDS, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OF ANY EQUIPMENT, SOFTWARE OR SERVICE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, WITH RESPECT TO ANY EQUIPMENT, SOFTWARE OR SERVICE. HPS DOES NOT WARRANT THAT THE EQUIPMENT, SERVICE OR SOFTWARE WILL OPERATE WITHOUT INTERRUPTION OR ON AN ERROR-FREE BASIS, AND EXCEPT AS OTHERWISE PROVIDED IN THE EXPRESS WARRANTIES MADE BY HPS IN THIS EQUIPMENT AGREEMENT THE EQUIPMENT AND SOFTWARE ARE PROVIDED "AS IS". HPS SHALL HAVE NO LIABILITY TO MERCHANT FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, REVENUES AND BUSINESS OPPORTUNITIES, OR DAMAGES FOR INJURY TO PERSON OR PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE USE BY MERCHANT OF ANY EQUIPMENT OR SERVICE. HPS' sole obligation with respect to a warranty claim received by HPS during the applicable warranty period shall be to replace any malfunctioning Equipment or HPS software under warranty, provided however, that Merchant has first utilized HPS' telephone assistance services and such assistance has not resolved the Equipment or Software problem. Equipment returned to HPS as a Repair / Replacement must be in repairable order. Product warranties are not available for used PinPads or PinPad swaps. In addition any PinPad swap must be of like equipment. HPS will provide, or cause to be provided, telephone assistance in response to telephone inquiries, twenty-four (24) hours a day, seven (7) days a week, including holidays. These hours may be changed at any time, at HPS' sole discretion. Authorization Services typically will be available through installed or connected terminal(s) continuously twenty-four (24) hours a day, seven (7) days a week, except that Services may be interrupted for usually no more than thirty (30) minutes in the aggregate between the hours of 12 midnight and 8 a.m. (CST) for the purpose of system maintenance. Provision of the Services may also be interrupted for reasons beyond the control of HPS or any independent contractor utilized by HPS in providing Services. Any extended warranty programs which may be offered by HPS with respect to Equipment or software, if any, shall be governed by the terms and conditions applicable to such extended warranty programs.

- (d) **Third-Party Payment Services:** Use of third-party payment services is subject to the terms and conditions imposed by the third-party service providers sponsoring or otherwise supporting such services ("Third Party Services Terms and Conditions"). Merchant agrees to comply with all applicable Third Party Services Terms and Conditions and should refer to the website of the applicable service provider and other documents provided by such service provider from time to time for the current terms and conditions. Any breach by Merchant of any Third Party Services Terms and Conditions in connection with any Transaction or other matter that is subject to the terms and conditions of the Merchant Processing Agreement may be deemed by HPS to be a breach of this Agreement and the Merchant Processing Agreement and Merchant agrees that the indemnification provisions under Section 9 of the Merchant Processing Agreement shall apply to any such breach of the Third Party Services Terms and Conditions and/or the Merchant Processing Agreement.



**Sponsor Bank Disclosure**

Merchant Name: Southern Wisconsin Regional Airport  
Address: 1716 W. Airport Rd., Suite 100  
City: Janesville ST: WI Zip: 53546  
Contact Name: Cynthia Hevel or Ron Burdick Phone: (608) 757-5768

Visa regulation 2.5.B.5.b requires disclosure of the sponsoring bank to the merchant and that the merchant must sign and receive a copy of the disclosure form.

**IMPORTANT MERCHANT RESPONSIBILITIES**

- 1. Merchant must ensure compliance with cardholder data security and storage requirements.
- 2. Merchant must maintain fraud and chargeback below thresholds.
- 3. Merchant must review and understand the terms of the Merchant Processing Agreement.
- 4. Merchant must comply with Visa Operating Regulations. For card acceptance rules go to [www.visa.com](http://www.visa.com)

**Note:** The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the merchant understands some important obligations of each party and that the Visa Member (Acquirer) is the ultimate authority should the merchant have any problems.

**IMPORTANT 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 settle funds with the Merchant.
- 5. The Visa Member is responsible for all funds held in reserve that are derived from settlement.

**Member Bank (Acquirer) Information:**

Barclay Bank  
125 South West Street  
Wilmington, DE 19801  
Phone: (302) 622-8990

The Bancorp Bank  
409 Silverside Road, Suite 105  
Wilmington, DE 19809  
Phone: (302) 385-5000

Wells Fargo Bank, N.A.  
1200 Montego  
Walnut Creek, CA 94598  
Phone: (925) 746-4167

**Debit Bank Sponsor**

Bay Bank, FSB  
7151 Columbia Gateway Drive  
Suite A  
Columbia, MD 21046

I, the undersigned hereby acknowledge that Heartland Payment Systems will select one of the Member Sponsor Bank's listed above based on the following criteria; business type, POS equipment compatibility, depository institution and/or existing HPS relationship.

X Ronald D. Burdick  
Merchant's Name Printed

X \_\_\_\_\_  
Merchant's Signature

\_\_\_\_\_  
Date

**BANK USE ONLY**

_____ Date Received	_____ Date Returned to Merchant	_____ HPS Rep Name
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# Merchant Processing Agreement

Card Acceptance Policies | Procedures | Terms & Conditions



# Merchant Processing Agreement

## Welcome to Heartland Payment Systems™

Thank you for selecting Heartland Payment Systems™ as your payments processor – and welcome to the Heartland family!

We look forward to bringing you worry-free payments processing, processing your payments quickly, efficiently and accurately – and providing full and honest disclosure with easy-to-read statements – so you can focus on what really matters most: improving and growing your business.

Heartland Payment Systems believes in fairness and transparency in credit and debit card processing. That's why we developed and adhere to – The Merchant Bill of Rights, a public advocacy initiative that educates business owners about the complexities of card processing and managing the associated costs.

The Merchant Bill of Rights calls for:

1. The right to know the fee for every transaction – and who's charging it.
2. The right to know the markup on Visa®, MasterCard® and Discover Network fee increases.
3. The right to know all Visa, MasterCard and Discover Fee reductions.
4. The right to know all transaction middlemen.
5. The right to know all surcharges and bill-backs.
6. The right to a dedicated local service representative.
7. The right to encrypted card numbers and secure transactions.
8. The right to real-time fraud and transaction monitoring.
9. The right to reasonable equipment costs.
10. The right to live customer support 24/7/365.

To learn more, visit [MerchantBillOfRights.com](http://MerchantBillOfRights.com).

By using equipment or services by Heartland Payment Systems, you (the merchant) acknowledge you have reviewed and understand the policies, procedures, terms and conditions outlined in this document, and further agree the information you supplied to obtain such services is, and remains, accurate.

# MERCHANT PROCESSING AGREEMENT

The following are the Terms & Conditions of the Merchant Processing Agreement.

## 1. Services

- 1.1 Merchant agrees that during the Term of this Agreement, Heartland shall be the exclusive provider of the services received hereunder, including for all electronic payments processing, for Merchant and each of its Locations, unless approved by HPS.
- 1.2 Merchant acknowledges that HPS may provide payment Transaction processing services hereunder through contracts or subcontracts with third parties engaged in the business of Transaction processing and Authorization, and specifically authorizes such third parties to exercise all of the rights of HPS hereunder, including but not limited to, the rights under 4.20 to debit Merchant's Account for all fees, costs, charges, and other liabilities. Upon request in writing by Merchant, HPS will identify the third parties involved in Merchant's processing.
- 1.3 Merchant agrees that it:
  - (a) shall comply with this Agreement;
  - (b) shall cause, to the extent applicable, each of its Locations and Third Party Agents to comply with this Agreement; and
  - (c) is responsible for any non-compliance by its Locations and/or Third Party Agents.

## 2. Definitions

- 2.1 "Account" means a commercial checking Account maintained by Merchant for the crediting of collected funds and the debiting of fees and charges pursuant to the terms of this Agreement.
- 2.2 "ACH" means the Automated Clearing House service offered by the Federal Reserve.
- 2.3 "Agreement" means this Merchant Processing Agreement and the Merchant Application. It includes the application submitted and executed by the Client and HPS.
- 2.4 "Authorization" means the act of obtaining approval from the Card Issuer for an individual Transaction.
- 2.5 "Card" means:
  - (a) a valid credit, debit or payment Card in the form issued under license from the Card Schemes; or
  - (b) any other valid credit, debit or payment Card accepted by Merchant under this Agreement with HPS.
- 2.6 "Card Schemes" means VISA U.S.A., Inc., VISA International, Inc., MasterCard International, Inc., Discover Financial Services or any other Card Issuer that provides Cards that are accepted by Merchant under this Agreement with HPS and, with respect to on-line debit Card Transactions and on-line Debit Networks,
- 2.7 "Card Issuer" means the financial institution or company that has provided a Card to the Cardholder.
- 2.8 "Cardholder" means the person whose name is embossed upon the face of the Card.
- 2.9 "Card-Not-Present Transaction" means any Transaction for which required data is not electronically captured by reading information encoded in or on the Card and includes mail order, telephone order and Internet Transactions.
- 2.10 "Card Swipe" means the electronic capture of a Card's magnetic stripe data by point of sale equipment or other electronic payment device at the time of Sale, and the inclusion of that data with the electronic submission of the Sale. Only a "Card Swipe" or its manual equivalent, an "Imprint," is acceptable by the Card Scheme as proof that the Card was present at the time of the Sale.
- 2.11 "Chargeback" means the procedure by which:
  - (a) a sales Transaction (or disputed portion thereof) is returned to HPS by a Card Issuer because such item does not comply with the Card Issuer's applicable Rules or operating regulations or for any other reason as provided in this Agreement; and
  - (b) the Merchant's Account is debited for such return.
- 2.12 "Credit Voucher" means a document or Transaction executed by Merchant evidencing any refund or price adjustment relating to Products or services to be credited to a Cardholder account.
- 2.13 "Debit Networks" means the Authorization networks utilized by Merchant for PIN Debit Transactions.
- 2.14 "Discount" means the fee paid by Merchant to HPS expressed as a percentage of Card Scheme sales processed by HPS.
- 2.15 "EBT Provider" means any merchant which participates in programs for debit card access to electronically distributed government benefits.
- 2.16 "EBT Transaction" means any retail sale of Products, from a Merchant for which the customer makes payment using an EBT Card presented to HPS for payment.
- 2.17 "HPS" means collectively Heartland Payment Systems, Inc., and its sponsoring banks.
- 2.18 "Imprint" means:
  - (a) a physical impression of a Card on a Sales Draft manually obtained through the use of an imprinter; or
  - (b) the electronic equivalent obtained by swiping a Card through equipment and electronically printing a Sales Draft. Only an "Imprint" or its electronic equivalent, a "Card Swipe," is acceptable by the Card Scheme as proof that the Card was present at the time of Sale.
- 2.19 "Internet Merchant" means a Merchant that accepts Transactions electronically via the World Wide Web (www.).
- 2.20 "Locations" means an entity that receives card and/or Authorization and Settlement Services pursuant to a contractual arrangement with Merchant; including Merchant-owned Locations and Locations owned by third parties for whom Merchant assumes complete responsibility, including but not limited to licensees, franchisees, jobbers, and dealers.
- 2.21 "Merchant" generally means the party identified as the recipient of this Agreement and its principals and owners and, as applicable each separate Location of Merchant.
- 2.22 "Merchant Servicer" means a Third Party Agent that:
  - (a) is engaged by a Merchant;
  - (b) is not a Member of the Card Schemes;
  - (c) is not directly connected to VISA/Net;
  - (d) is party to the Authorization and/or clearing message; and
  - (e) has access to Cardholder data, or processes, stores, or transmits Transaction data.
- 2.23 "Merchant Service Providers (MSP)" means non-members that are registered by MasterCard International Incorporated as Merchant Service Providers (MSP) to provide processing services to a member, or any member that is registered by MasterCard International Incorporated as an MSP to provide Third Party Processor (TPP) Program Services to another member.

- 2.24 **“Non-Qualified”** means a Transaction that did not meet the Card Schemes Authorization and/or settlement requirements and is not eligible for the best rate possible. Some of these Transactions could be prevented while other Card type Transactions are assessed higher rates than preferred rates by the Card Schemes and are not preventable.
- 2.25 **“Outbound Telemarketing Transaction”** means a Transaction in which a sale of Products or services results from a Merchant initiated contact with a Cardholder via a telephone call, or a mailing (other than a catalog) that instructs the Cardholder to call the Merchant.
- 2.26 **“Products”** means all goods and services that are sold or provided by Merchant.
- 2.27 **“Reserve Account”** means amount of monies held in a non-interest bearing Account established by HPS based upon the Merchant’s processing history and anticipated risk of loss to HPS.
- 2.28 **“Rules”** means the operating regulations, terms and conditions of the Card Schemes presently in effect and as they may be amended from time to time.
- 2.29 **“Sales Draft”** means the paper form, whether electronically or manually imprinted, evidencing a sales Transaction.
- 2.30 **“Third Party Agent (TPA)”** means entities that have been engaged by a Merchant or a member to perform contracted services on behalf of that Merchant or member, including VARs and payment gateway providers.
- 2.31 **“Transaction”** means any retail sale of Products, or credit therefore, from a Merchant for which the customer makes payment using any Card presented to HPS for payment.
- 2.32 **“Voice Authorization”** means an Authorization obtained by a direct-dialed telephone call.

### **3. Data Security Requirements**

- 3.1 The PCI Security Standards Council (“PCI SSC”) was founded by American Express, Discover Financial Services, JCB, MasterCard Worldwide and Visa, Inc. All five founders agreed to incorporate PCI Data Security Standards (“PCI DSS”) as the technical requirements of each of their data security compliance programs. The PCI SSC is responsible for the Payment Application Data Security Standard (“PA-DSS”) and PIN Transaction Security Requirements for PIN-Entry Devices (“PED”).

PCI DSS applies to any Merchant or Merchant Servicer that stores, processes, or transmits Cardholder information. All eligible Merchants, regardless of size, must comply with these standards. Following are standards that, at a minimum, Merchant must comply with:

- (a) Install and maintain a firewall configuration to protect Cardholder data.
- (b) Do not use vendor-supplied defaults for system passwords and other security parameters.
- (c) Protect stored Cardholder data.
- (d) Encrypt transmission of Cardholder data across open, public networks.
- (e) Use and regularly update anti-virus software.
- (f) Develop and maintain secure systems and applications.
- (g) Restrict access to Cardholder data by business need-to-know.
- (h) Assign a unique ID to each person with computer access.
- (i) Restrict physical access to Cardholder data.
- (j) Track and monitor all access to network resources and Cardholder data.
- (k) Regularly test security systems and processes.
- (l) Maintain a policy that addresses information security.

More information, including the complete PCI DSS specifications can be found at:

[www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).

Each of the Card Schemes has requirements based on PCI DSS that define a standard of due care and enforcement for protecting sensitive information. Merchant must meet the compliance validation requirements defined by the Card Schemes available at:

[www.visa.com/cisp](http://www.visa.com/cisp)

[www.mastercard.com/sdp](http://www.mastercard.com/sdp)

[www.discovernetwork.com/fraudsecurity/disc.html](http://www.discovernetwork.com/fraudsecurity/disc.html)

[www.americanexpress.com/datasecurity](http://www.americanexpress.com/datasecurity)

In cases where payment application software is used as a part of Authorization or settlement of Cardholder data, Merchant must use a PA-DSS compliant payment application or have current proof of PCI DSS compliance validation. The List of Validated Payment Applications may be found at:

<https://www.pcisecuritystandards.org/approvedcompanies/providers/vpaagreement.php>

In cases where PIN-based debit Transactions are processed, Merchant must use a compliant PIN Entry Device (“PED”). The List of PCI SSC Approved PIN Transaction Security Devices may be found at:

[https://www.pcisecuritystandards.org/security\\_standards/ped/pedapprovallist.html](https://www.pcisecuritystandards.org/security_standards/ped/pedapprovallist.html).

Transactions should be Triple Data Encryption Standard (TDES) protected.

In addition, Merchant must immediately notify HPS of its use of any agent or Merchant Servicer that will have any access to Cardholder data and provide the full name and business address of such agent or Merchant Servicer and change thereto.

The Card Schemes or HPS may levy fines, suspend or terminate services, or impose other restrictions if it is determined that Merchant is not compliant with applicable security standards. Merchant is responsible for all fines and fees assessed by any Card Scheme in connection with violation of data security standards.

- 3.2 A Card Scheme may require Merchant to conduct an independent forensics review due to its data security procedures. Upon notice of such request, Merchant shall provide, at its sole cost and expense, through an approved forensic review process, information as may be required by the Card Scheme.

### **4. Rights, Duties, and Responsibilities of Merchants**

- 4.1 Merchant shall make a selection on Card acceptance as follows: All Cards Accepted, Credit/Business Cards Only and Consumer Prepaid/Debit (Check Cards) Only. At the time of signing the Agreement, Merchant will select one of the options, which will be indicated on the Agreement. Merchant shall honor the card types selected provided that the Card is valid and is presented to Merchant at the time of the sale by the Cardholder or an authorized user of the Card. A Card is valid only if it is presented on or after the valid date, if any, and before the expiration date shown on its face and the Card is used as payment for Products that are sold or rendered by Merchant under the terms of this Agreement.

- 4.2 In accordance with applicable law and Card Scheme regulations:
- (a) Merchant may establish a minimum sale amount as a condition for honoring credit Card Transactions, so long as such minimum amount does not exceed \$10.00. This amount shall be subject to automatic increase as provided by applicable law. In accordance with applicable law and Card Scheme regulations, a maximum sale amount for credit Card Transactions may only be set by Merchants which are federal agencies or institutions of higher learning;
  - (b) Except as specifically set forth in this Section 4.2, Merchant shall not establish a minimum or maximum sale amount as a condition for honoring PIN Debit, Signature Debit (non-PIN Debit) and/or prepaid Cards. Merchant shall not request or require that a Cardholder provide any personal information as a condition for honoring PIN Debit, Signature Debit (non-PIN Debit) and/or prepaid Cards Transactions unless such information is required to provide delivery of goods and services or Merchant has reason to believe the identity of the person presenting the Card may be different from that of the Cardholder.

- 4.3 Merchant shall complete a Sales Draft or Credit Voucher, in a form approved by HPS and in compliance with the Card Schemes Rules, which shall be legible and contain the following:
- (a) The Merchant and Cardholder's electronically printed copy shall not contain the expiration date and should only display in legible print the last four digits of the Card number. Any other portion of the Card number must be represented by fill characters such as "x", "\*", or "#";
  - (b) the information embossed on the Card being presented;
  - (c) the date of the Transaction;
  - (d) a brief description of the Products involved in detail sufficient to identify the Transaction;
  - (e) the total amount of the sale or credit (including any applicable taxes) or the words "deposit" or "balance" if full payment is to be made at different times on different Sales Drafts;
  - (f) the city and state wherein such Transaction occurred; and
  - (g) the signature of the Cardholder of the bankcard.

In cases where prompted by the equipment to do so, Merchant shall key enter the last four digits of the bankcard to verify the contents of the magnetic stripe and shall deliver a completed copy of the Sales Draft to the Cardholder. However, the Cardholder's electronically printed copy shall not contain the expiration date and no more than the last four digits of the credit Card number. This provision shall not apply to those Transactions specifically excluded from these requirements by Card Schemes Rules.

- 4.4 For all mail or telephone orders, Merchant shall type or legibly print on the signature line of the Sales Draft the letters or words indicated: "Mail Order," "MO," or "Telephone Order," "TO."
- 4.5 In the event a Transaction is to be completed without a (legible) Card Imprint, Merchant shall print legibly the following information on the Sales Draft:
- (a) Merchant's name and address;
  - (b) the Card Issuer's name;
  - (c) the account number of the Card;
  - (d) the expiration date of the Card and any effective date on the Card; and
  - (e) the Cardholder's name. In a non-imprint Transaction, whether or not an Authorization is obtained, Merchant shall be deemed to warrant to HPS the Cardholder's identity as an authorized user of the Card.

Merchant shall:

- (a) compare the signature on the Sales Draft with the signature on the Card presented to ascertain that they appear to be the same;
- (b) check the effective date, if any and expiration date on the Card;
- (c) examine any security features on the Card; and
- (d) compare the actual Card number against the information contained in the electronic equipment by review of the equipment screen or by verification of the printed receipt.

In the event the two signatures do not bear a reasonable resemblance or there exists any other discrepancy in these verification requirements or there exists any other reasonably presumed indication of fraud or of prohibited or improper usage, Merchant shall not honor the Card tendered. This provision shall not apply to those Transactions specifically excluded from these requirements by Card Associations' Rules.

- 4.6 Merchant's policy for the exchange or return of goods sold and adjustment for services rendered shall be established and posted in accordance with applicable regulations of the applicable Card Scheme. Merchant agrees to disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned:
- (a) no Refund, or less than full refund, will be given;
  - (b) returned merchandise will only be exchanged for similar merchandise of comparable value;
  - (c) only a credit toward purchases will be given;
  - (d) a restocking fee will be charged; or
  - (e) special conditions or circumstances apply to the sale (e.g. late delivery, delivery charges or other non-credit terms).

If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. In no circumstances shall any cash refunds be given on any item originally charged to a Card. The foregoing disclosures must be made on all copies of Sales Drafts issued at the time of the sale in letters approximately 1/4 inch high in close proximity to the space provided for the Cardholder's signature. In circumstances where credits or adjustments are due, Merchant shall prepare and deliver to the Cardholder a properly completed Credit Voucher. Merchant will input Credit Vouchers into the equipment on the day of the credit Transaction for inclusion in Merchant's daily transmission of Transactions.

- 4.7 Merchant shall not transmit for processing and payment any Transaction(s) representing the refinancing of an existing obligation of a Cardholder including, but not limited to, obligations:
- (a) previously owed to Merchant;
  - (b) arising from the dishonor of a Cardholder's personal check; or
  - (c) representing the collection of any other preexisting debt.
- 4.8 Merchant shall not, under any circumstances disclose, sell, purchase, provide or exchange any Cardholder's account number or any credit information relating to any Cardholder's account or any Sales Drafts or Credit Vouchers that may have been obtained or imprinted with any Card to any person other than HPS, except as expressly authorized in writing by the Cardholder, HPS, or as required by law.
- 4.9 Merchant shall not require any Cardholder to pay any part of any Discount or charge imposed upon Merchant by this Agreement, whether through increase in price or otherwise. Subject to Card Scheme regulations and applicable law, the terms of this Section 4.9 shall not be construed as prohibiting Discounts to customers for any form of payment so long as such Discount is not based on the Card Issuer and/or Card Scheme.



**4.10** On the date of the Transaction and prior to honoring any Card, Merchant agrees to obtain an Authorization on all Transactions for the total amount of the Transaction by physically sliding the Card through the Card reader of the equipment thereby causing the equipment to electronically read a magnetically encoded stripe on the reverse side of each Card, except Card-Not-Present Transactions, which are governed by Section 4.11 hereof. Any Transaction that cannot be authorized electronically through the equipment or manually key entered is subject to a Voice Authorization call. Merchant shall obtain an Authorization prior to completing a Card-Not-Present Transaction. Any Transaction that is not properly authorized is made with full recourse and may be charged back to Merchant; furthermore, any Card-Not-Present Transaction will be subject to additional charges for a Mid or Non-Qualifying Transaction. An Authorization does not constitute a guarantee of payment, only an indication of available credit, and may be subject to dispute or Chargeback.

Except at such times as the equipment may be inoperable, Merchant shall not engage in soliciting or accepting Card-Not-Present Transactions without the prior written permission of HPS, and then only for such Products and in such amounts as stated in such written permission. Merchant shall not utilize the service of any third party (e.g. telemarketer) to solicit or accept orders or engage in Outbound Telemarketing Transactions.

**4.11 MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION DOES NOT CONSTITUTE:**

- (A) A WARRANTY THAT THE PERSON PRESENTING THE CARD IS THE RIGHTFUL CARDHOLDER; OR
- (B) A PROMISE OR GUARANTEE BY HPS THAT IT WILL PAY OR ARRANGE FOR PAYMENT TO MERCHANT FOR THE AUTHORIZED TRANSACTION. AN AUTHORIZATION DOES NOT PREVENT A SUBSEQUENT CHARGEBACK OF AN AUTHORIZED TRANSACTION PURSUANT TO THIS AGREEMENT.

**4.12** When possible to do so, Merchant shall utilize the equipment as the exclusive method for obtaining Authorization codes. Voice Authorization service is for use during equipment downtime periods only. Use of Voice Authorization systems will result in additional charges for such use being assessed to Merchant based on HPS then-current rates. Merchant will record for every Transaction applicable Authorization and reference numbers on each Sales Draft to facilitate the timely and accurate retrieval of information as requested by HPS.

**4.13** Merchant shall use its best efforts, by reasonable and peaceful means, to recover the Card when:

- (a) Merchant is advised to recover the Card in response to an Authorization request; or
- (b) Merchant has reasonable grounds to believe that the Card is counterfeit, fraudulent or stolen. Merchant shall take no action to recover a Card that may result in a breach of the peace.

**4.14** Merchant may utilize the equipment's keypad to input Card number(s) in the following instances:

- (a) Card-Not-Present Transactions; or
- (b) the magnetic stripe on a Card is damaged and therefore unreadable by the equipment; or
- (c) the equipment's Card reader is inoperative, in which case Merchant shall immediately advise HPS.

**4.15** If a Merchant is approved as an Internet, Mail Order or Telephone Order Merchant, the following sections of this Agreement shall not apply: 4.3 (b) and (g), 4.5, 4.10, 4.13, 4.14, 4.25 (h) and (l) and 7.2 (b)(II) and such sections shall be replaced by the following:

- (a) Merchant shall obtain an Authorization for all Transactions. Any Transaction that cannot be authorized electronically is subject to a Voice Authorization call. Any Transaction that is not properly authorized is made with full recourse and may be charged back to the Merchant. An Authorization does not constitute a guarantee of payment, but may be subject to dispute or Chargeback;
- (b) Merchant shall print legibly the following information on the Sales Draft: Merchant's name and address;
  - (i) the Card Issuer's name;
  - (ii) the account number of the Card;
  - (iii) the expiration date of the Card and any effective date on the Card; and
  - (iv) the Cardholder's name. Merchant shall be deemed to warrant to HPS the Cardholder's identity as an authorized user of the Card;
- (c) Merchant is required to use a real-time Internet payment gateway authorized in advance by HPS to obtain Authorization codes and process Transactions;
- (d) Internet Transactions are Card-Not-Present Transactions and must be performed on the Internet by the customer; or
- (e) In the case of a Virtual Terminal (a credit Card processing equipment on a secure server on the Internet whereby Merchant can key enter credit Card Transactions manually), the Internet Merchant Store Front (the customer interface) must be Web Hosted so that the credit Card transactions are received over a secure socket layer (SSL) by the Merchant;
- (f) In any Card-Not-Present Transaction, as a material part of the consideration for HPS to enter into this Agreement, Merchant accepts such Transactions solely at its own risk, and further assumes all risks of loss attendant to non-imprint Card-Not-Present Transactions.
- (g) An Internet Merchant agrees to adhere to those Rules governing electronic commerce as well as HPS requirements as set forth herein; which include, but are not limited to ensuring the following information is included or properly referenced on the Internet Merchant website:
  - (i) Internet Merchant's legal name and permanent corporate address, including the country of domicile which should be located on the check-out screen, along with the final purchase amount or those pages accessed by a Cardholder during the check-out process;
  - (ii) the Products offered for sale and related prices, form of currency, as well as how to complete a purchase and the point at which the purchase is complete;
  - (iii) the Internet Merchant's customer service telephone number, email and URL addresses;
  - (iv) shipping and delivery policies;
  - (v) refund and returned merchandise policies;
  - (vi) any other legal policies, including export control, privacy policies and terms of use.

**4.16** The following additional terms apply to Card-Not-Present Transactions:

- (a) Merchant shall use and retain for not less than one-year proof of a traceable delivery system utilized for the delivery of Products to customers.
- (b) Merchant shall use an address verification service to verify each Transaction.
- (c) Merchant must utilize if available through their gateway a Payer Authentication Program. This program identifies the Cardholder by authenticating their personal PIN entry. Specific programs could include Verified by VISA and MasterCard Secure Code.

- (d) Except where Merchant has specified future delivery on the Application, no customer's Card shall be debited until the Product purchased has been shipped.
  - (e) Upon request by HPS, Merchant shall provide copies of all advertisements, catalogues, brochures or other materials used to solicit mail or telephone orders and any forms used in recording or transmitting orders.
- 4.17 In all cases, unless stipulated in the Merchant Processing Agreement, the shipment of goods to a Cardholder will be no later than the business day following the date on which that Transaction was transmitted to HPS for processing.
- 4.18 Card-Not-Present Transactions will be subject to the applicable interchange rates as defined by the Card Schemes.
- 4.19 Merchant agrees to electronically deposit Sales Drafts and Credit Vouchers no later than the day of the Transaction. The time of receipt by HPS will affect the timing of payment to Merchant. If Merchant fails to submit transactions on a timely basis as provided herein, Merchant will be charged and agrees to pay the additional fees assessed to HPS by the Card Schemes.
- 4.20 Merchant shall at all times maintain a direct deposit Account (the "Account" or "DDA"), in good standing at a bank that is a Receiving Depository Financial Institution (RDFI) of the Federal Reserve Bank ACH System or other ACH settlement network. Merchant agrees that all credits for collected funds and debits for fines, fees, Chargebacks, Credit Vouchers, payments and adjustments and other amounts due under the terms of this Agreement (including but not limited to attorney fees and early termination charges) shall be made to the Account. Merchant shall not close, restrict or change the Account without prior written approval from HPS. Merchant agrees to pay HPS a twenty-five dollar (\$25.00) handling fee to change the DDA information and a twenty-five dollar (\$25.00) fee on all returned ACH items. Merchant is solely liable for all fees and all overdrafts, regardless of cause. HPS shall have the unlimited right to debit, without prior notice, any Account containing funds for the purpose of satisfying any liability incurred on behalf of Merchant.
- 4.21 Merchant agrees to retain original Card Scheme Sales Drafts and Credit Vouchers for a period of not less than two (2) years from the date of the sale or credit. All other credit Card receipts should be maintained at the length set by the issuers of those Cards. Such documents shall be stored in a secure manner permitting retrieval and submission of legible copies on the same day that Merchant receives a request from HPS. Since a Card Issuer may over a period of time request duplicate copies of the same Sales Draft, Merchant must retain at least one legible copy of each Card Transaction. Failure to provide HPS with requested documentation within five (5) business days after receipt of such request may result in the Transaction being charged back to the Merchant and HPS shall have the right to debit the Account for the full amount of the Transaction. Material containing Cardholder account information shall be destroyed in a manner that renders the data unreadable.
- 4.22 Merchant shall not deposit any Transaction for the purpose of obtaining or providing a cash advance, or make a cash disbursement to any other Cardholder (including Merchant when acting as a Cardholder), or receive monies from a Cardholder and subsequently prepare a credit to Cardholder's account.
- 4.23 As partial consideration for this Agreement, Merchant expressly authorizes HPS to change the financial institution providing settlement services to Merchant. Merchant will execute all necessary documents enabling HPS to effect such change.

4.24 Merchant shall provide HPS with immediate notice of intent to:

- (a) transfer, sell or liquidate any substantial part of its assets;
- (b) change the basic nature of its business, including selling any Products or services not related to its current business;
- (c) change ownership or transfer control of business; or
- (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes more than a ten percent (10%) interest in Merchant's business.

Merchant also shall provide HPS with prompt written notice of any material changes regarding any information provided in the Application, including Merchant's address, ticket size or monthly volume. HPS determination of materiality shall be conclusive and binding. Failure to provide notice as required above may be deemed a material breach of this Agreement and shall be grounds for termination. If any of the changes listed above should occur, HPS shall have the option to amend the terms of this Agreement or to immediately terminate this Agreement based upon the nature of the changes reported by Merchant. Merchant and principal owner(s) identified on an approved Application and any new owner of Merchant or successor Merchant shall be jointly and severally liable to HPS and remain liable for any and all losses, costs and expenses suffered or incurred by HPS in accordance herewith, unless the original Merchant or successor thereof is released in writing by HPS.

4.25 Merchant agrees to pay HPS the face amount of any Transaction processed by HPS pursuant to this Agreement whenever any Card Transaction is reversed in accordance with the Rules, any state or federal statute, regulation, court or administrative order, or terms of this Agreement. By way of example, but not limitation, the following will result in Chargebacks:

- (a) goods are returned or an order for goods is cancelled whether or not a Credit Voucher is delivered to HPS;
- (b) the sale Transaction was not specifically authorized;
- (c) any Transaction is alleged by the Cardholder to have been executed improperly or without authority;
- (d) the documentation prepared by Merchant evidencing the Transaction is illegible or incomplete;
- (e) the Cardholder disputes the sale, quality or delivery of goods or the quality of performance of services covered by the Sales Draft;
- (f) the Cardholder asserts against HPS any claim, dispute, defense, offset or counterclaim that the Cardholder may have as a buyer against Merchant (and HPS shall not have any obligation to inquire into or determine the validity of any such claim, dispute, defense, offset or counter-claim);
- (g) the extension of credit for goods sold or services performed was in violation of law, Rules or regulations of any federal, state or local government agency or in violation of this Agreement;
- (h) the Sales Draft lacks a Card Imprint or Cardholder's signature;
- (i) the Cardholder claims the dollar amount was altered after the Sales Draft was completed;
- (j) two or more Sales Drafts were prepared by Merchant for the same Transaction except as otherwise permitted;
- (k) the Card had expired before the Transaction date or the Transaction arises from the use of counterfeit or otherwise ineffective Card;

- (l) the embossed name on the Card differs from or is dissimilar to the name signed on the signature panel of the Card; or the signature on the signature panel of the Card differs from or is dissimilar to the signature on the Sales Draft;
  - (m) the information contained in the Sales Draft was received by HPS more than ten (10) business days after the Transaction date shown thereon;
  - (n) the Sales Draft is a duplicate of one previously processed or includes a charge previously paid by the Cardholder;
  - (o) the Sales Draft is fraudulent or the Transaction was not a bona fide Transaction in Merchant's ordinary course of business;
  - (p) the Card Issuer has information that Merchant fraud occurred at the time of the Transaction, whether or not such Transaction was properly authorized by the Card Issuer or the Card Issuer certifies that there was no Card outstanding with the account number used;
  - (q) in any other situation where a Sales Draft was executed or depository credit given in circumstances constituting a breach of any duty, term, condition, representation or warranty by Merchant hereunder, or where any action or lack of action by Merchant in violation of the Rules has resulted in the Sales Draft being charged back to HPS by an issuing member of a Card Scheme pursuant to the Rules, or the Sales Draft is charged back to HPS for any other reason.
- 4.26** Merchant agrees to pay HPS any fees or fines imposed on HPS by a Card Scheme resulting from Chargebacks and any other fees or fines imposed by a Card Scheme with respect to or resulting from acts or omissions of Merchant.
- 4.27** HPS agrees to mail or electronically transmit all Chargeback documentation to Merchant promptly at Merchant's address shown in the Application; however, HPS at any time without prior notice may debit Merchant's DDA or any other Merchant Account for Chargebacks. Merchant is responsible for verifying its monthly statement and its daily deposit for Chargebacks, Chargeback handling fees, Discount and other charges pursuant to this Agreement. Merchant shall notify HPS in writing within forty-five (45) days after any debit or credit is or should have been affected. If Merchant notifies HPS after such time, HPS may, in its discretion, assist Merchant, at Merchant's expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but HPS shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by HPS to assist Merchant in investigating such matters shall not create an obligation to continue such investigation or any future investigation. Merchant must provide all information requested by HPS by the time specified in a request for information. Failure to respond within the specified time shall constitute a waiver by Merchant of its ability to dispute or reverse a Chargeback or other debit, and Merchant shall be solely responsible where it fails to timely provide information concerning any Chargeback. If HPS elects, in its sole discretion, to take action on a Chargeback or other debit after the time specified to respond has expired, Merchant agrees to pay all costs incurred by HPS. Merchant agrees to pay HPS a processing fee for Sales Draft retrieval requests at HPS' discretion.
- 4.28** Merchant agrees to reimburse HPS for the amount of the Sales Draft in the event of a Chargeback together with a handling fee for each Chargeback, which fee may be amended from time to time. Merchant hereby irrevocably authorizes HPS to debit without notice Chargebacks and Chargeback handling fees and all other amounts due hereunder from Merchant's daily deposit and if such collection is inadequate, agrees to reimburse HPS immediately for any shortage that occurs as a result of such charges.
- 4.29** Merchant will be subject to a Chargeback on Card sales in accordance with the Rules in effect at the time of the Chargeback. The basis for Chargebacks and the rules for their processing are governed by the Rules. However, all disputes that are not resolved through established Chargeback procedures shall be settled between Merchant and the Cardholder, and Merchant will indemnify HPS for all expenses, including reasonable attorneys' fees, that may be incurred as the result of any Cardholder claim that is pursued outside the Rules.
- 4.30** Merchant shall not accept or deposit any fraudulent Transaction, or any Transaction about which Merchant has knowledge or notice of circumstances that would impair the validity of the Transaction or the indebtedness thereunder or its collectability.
- 4.31** Merchant unconditionally represents and warrants to HPS that all Sales Drafts submitted to HPS hereunder will represent the indebtedness of the Cardholder with whom Merchant has completed a Transaction in amounts set forth therein for Products only and shall not involve any element of credit for any other purposes, and shall not be subject to a defense, dispute, offset or counterclaim that may be raised by Cardholder under the Card Schemes Rules, the Consumer Credit Protection Act (15 USC § 1601) or other relevant state or federal statute or regulation. Further, Merchant warrants that any Credit Voucher that it issues represents a bona fide refund or adjustment on a Transaction by Merchant with respect to which a Sales Draft has been accepted by HPS.
- 4.32** Merchant shall not, under any circumstances, present for processing or credit, directly or indirectly, a Transaction that originates with any other Merchant or any other source.
- 4.33** Merchant shall not deposit duplicate Transactions. Merchant shall be debited for any adjustments for duplicate Transactions and shall be liable for any Chargebacks, which may result therefrom. Any such deposit shall be grounds for immediate termination and HPS may hold funds sufficient to compensate HPS for the amount of the duplicate Transaction.
- 4.34** Merchant shall not initiate a Sales Transaction in an attempt to collect a Chargeback.
- 4.35** Merchant shall give HPS immediate written notice of any complaint, subpoena, Civil Investigative Demand or other process issued by any state or federal governmental entity that alleges, refers or relates to any illegal or improper conduct of Merchant, its owner(s) or other entity under common ownership or control. Failure to give such notice shall be deemed to be a material breach of this Agreement.
- 4.36** Merchant must obtain final approval by HPS of debit network sponsorship prior to submitting any debit Transaction.
- 4.37** Merchant shall not be assessed a Chargeback Fee for the first three Chargeback requests processed in any twelve month period beginning with the Merchant's anniversary date. Once three Chargeback requests have been submitted by the Card Scheme or Bank in any such 12 month period, HPS shall bill the Chargeback Fee applicable at that time. For purposes of this Section 4.37, the anniversary date shall be the date of Merchant's first deposit with HPS unless otherwise designated by HPS.

- 4.38 HPS shall have no liability for customer data that is lost or stolen from the Merchants POS system or equipment and Merchant shall indemnify HPS from any claim or loss arising out of or relating to such lost or stolen data.
- 4.39 Merchant shall ensure HPS has the correct business taxpayer ID ("TIN") and legal name on file for Form 1099-K tax reporting purposes. Any merchant reporting an invalid TIN and legal name combination is subject to backup withholding of amount as defined by IRS and State regulations.
- 4.40 Merchant shall at all times comply with the Rules and operating regulations of each of the Card Schemes and American Express as well as all applicable federal, state, and local, Rules and regulations.
- 4.41 Merchant, at its own expense, will have installed and will maintain the equipment, unless otherwise agreed to by the parties in writing. Each equipment type, installed at a Location must be compatible with HPS' System and HPS has the right to test the equipment to assure compatibility. Merchant will submit each equipment type and all new core hardware, and any releases of modifications to the implementation software to HPS for quality assurance testing at least thirty (30) days prior to the equipment, hardware or software's first use at a Location; provided however, both parties acknowledge that the quality assurance test may take less than thirty (30) days, and HPS will use commercially reasonable efforts to accomplish the testing as soon as practicable. Quality assurance testing is applicable to each implementation software release for each equipment type. If Merchant changes the method used to communicate with HPS' System from one form of technology to another, e.g., dial to frame relay, once any necessary quality assurance testing has been completed, Customer will arrange for, with the assistance of HPS, if necessary, the equipment to be connected to HPS and then tested to ensure that the new method of communication works properly, which test will be conducted in accordance with Merchant's and HPS' procedures and paid by each party, respectively. Once the new technology has been tested and approved, it will not be necessary for each Location that adopts the new technology to perform the testing referred to in this paragraph.
- 4.42 Merchant agrees that it will not introduce into HPS' System any virus, "time bomb", or any other contaminant, including but not limited to, codes, commands, or instructions that could damage or disable HPS' System or property.
- 4.43 Merchant shall assume responsibility for managing the repair of problems associated with Merchant's own telecommunications and processing system (both hardware and software), including terminals.
- 4.44 Special pricing through Agreement between HPS and a Merchant association shall apply to Merchant members in good standing of such Merchant association; any special pricing may be discontinued without notice.
- 4.45 If Merchant is a Covered Entity, HealthCare Provider, or Business Associate under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Rules"), Merchant represents and warrants that it shall not transmit to HPS any Protected Health Information ("PHI"), as defined in 45 C.F.R. §164.501. HPS operates under an exemption in the HIPAA Rules for financial institutions performing consumer conducted payment Transactions. Furthermore, any exposure to PHI shall be random, infrequent and incidental to the provision of services by HPS, as allowed under the HIPAA Rules, and is not meant for the purpose of accessing, managing the PHI or creating or manipulating the PHI. Any transmission of PHI by Merchant to HPS shall be the responsibility of Merchant and Merchant agrees to pay HPS any fees or fines imposed on HPS by any agency of the U.S. Government with respect to or resulting from acts or omissions of Merchant regarding PHI.

- 4.46 MSP/TPA must comply with all Card Brand Rules and regulations as set forth in this Agreement and the following websites:

- [http://usa.visa.com/merchants/risk\\_management/thirdparty\\_agents.html](http://usa.visa.com/merchants/risk_management/thirdparty_agents.html)
- [http://www.mastercard.com/us/merchant/pdf/BM-Entire\\_Manual\\_public.pdf](http://www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf)

## **5. Debit Card Processing: EBT Services**

- 5.1 Merchant understands and agrees that HPS and Carrollton Bank or any other bank to which this Agreement is assigned is a sponsored affiliate or member of each debit network and HPS is a service provider for processing Merchant's debit Card Transactions pursuant to the terms herein.
- 5.2 Until and unless otherwise authorized by HPS, Merchant agrees to utilize compliant and compatible equipment/pin-pads or systems capable of processing all ACH debit Card Transactions as well as on-Debit Card Transactions at its Locations. All HPS applications software residing on the equipment or systems is the sole property of HPS. Any software residing in Merchant owned equipment or systems must be HPS compatible. Merchant's placement of the equipment or system at its Merchant Locations shall constitute acceptance of all terms and conditions set forth in this section. Merchant understands and agrees that HPS has no responsibility whatsoever for inoperative equipment or systems (or software if applicable). In the case of an inoperative equipment or system, Merchant shall consult Merchant's warranty or equipment maintenance Agreement as applicable. Merchant also acknowledges that all equipment/pin-pads or systems capable of processing all debit Card Transactions at its Locations must remain compliant with the data security requirements of Section 3 of this Agreement.
- 5.3 Merchant shall utilize HPS compatible equipment/pinpad or system to process all debit Card Transactions and to abide by all applicable Rules and regulations of the applicable debit Card on-line network selected by HPS. HPS has no responsibility or liability for any of the debit Card Networks.
- 5.4 Merchant agrees to indemnify and hold HPS harmless from any and all claims, actions, proceeding and other liability, which may arise pertaining to such debit transactions.
- 5.5 IN NO EVENT SHALL HPS BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES, AND BUSINESS OPPORTUNITIES. MERCHANT AGREES TO REIMBURSE HPS FOR ALL COSTS AND EXPENSES, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES INCURRED AS A RESULT OF ANY SUCH ACTION, PROCEEDING OR LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
- 5.6 Any claims Merchant may have regarding Debit services may not be offset against bankcard sales.
- 5.7 Merchant assumes all responsibility for retention of paper copies of debit Card Transactions; pursuant to the appropriate debit Card network Rules.
- 5.8 Within one (1) business day of the original Transaction, Merchant must balance each Location to the system for each business day that each Location is open. If Merchant determines that any Transaction(s) have been processed in error, Merchant will initiate the appropriate Transaction for adjustment. Merchant is responsible for all applicable adjustment fees assessed by the Debit Network Rules.

5.9 Merchant shall be responsible for all telephone message unit costs, if any, as they are incurred by Merchant for any of the services provided.

5.10 HPS will provide installation, training, service and support for all purchased and rented equipment provided by HPS. Equipment purchased and provided by a third party vendor should be supported and maintained by the vendor.

5.11 Merchant shall be responsible for the following debit related fees:

- (a) HPS Debit Fee (does not include Debit Network Fee);
- (b) Debit Network Set-up Fee;
- (c) Service & Regulatory Mandate Fee.

Any or all of the above referenced fees are subject to change at any time and from time-to-time upon fifteen (15) days prior written notice by HPS.

5.12 Debit Transactions are governed by network regulations as well as federal and state laws and regulations, including but not limited to the Electronic Funds Transfer Act, and Regulation E, pursuant to which consumers may have up to sixty (60) days to dispute a Transaction. Merchant shall comply with all applicable federal, state and local laws and regulations.

5.13 Non-Request for PIN Disclosure Procedures. Merchant agrees to ensure that no employee or agent requests a Cardholder to divulge their PIN number.

5.14 Prevention of PIN Entry Observation. Merchant agrees to reasonably prevent others from observing the entered PIN number. Some prevention examples could be, but not limited to:

- (a) Placement of security cameras in relation to PIN Entry Device (PED);
- (b) PED shielding; or
- (c) PED placement on POS counter.

#### 5.15 EBT Transactions

If Merchant elects to accept Electronics Benefit Transactions ("EBT"), the additional following terms and conditions will apply:

##### 5.15.1 EBT Services.

Merchant will participate in and Heartland Payment Systems will provide access to the programs for debit card access to electronically distributed government benefits as agreed to between the parties from time to time. ("EBT Programs"). Each EBT Program shall be treated as a "Network" for purposes of the Agreement and each EBT card issued for access to government benefits issued under such EBT Programs shall be treated as a "debit card" under the Agreement.

##### 5.15.2 Rights, Duties and Responsibilities of Merchant.

- (a) At all times during the term, including any renewal thereof, Merchant shall remain a participant in good standing in each EBT Program selected hereunder.
- (b) Merchant shall submit to HPS EBT as amended from time to time, for each Merchant Location where EBT will be offered. HPS must receive EBT request a minimum of fourteen (14) days prior to the desired activation date.
- (c) Merchant shall notify Heartland Payment Systems at least thirty (30) days prior to the termination or withdrawal of its participation in any such EBT Program, or if such participation is terminated involuntarily and without prior notice to Merchant, immediately following such notice.

(d) Merchant shall pay to HPS the fees set forth in the original Agreement hereto in consideration of the Services provided hereunder. HPS may modify the Agreement to provide for additional fees and charges for the support services for an EBT Program that imposes additional cost on HPS.

(e) Merchant will comply with all applicable laws, regulations, Rules, or administrative guidelines related to its participation in each EBT Program and acceptance of EBT Cards, including any Network rules. Without limiting the foregoing, Merchant shall not resubmit any EBT Transactions except as specifically permitted by Rules related to such EBT Program. In addition, if Merchant accepts EBT under the Food Stamp Program, Merchant shall deploy and identify its equipment consistent with Department of Agriculture requirements. Merchant will not take any action that would cause Heartland Payment Systems to be in violation of any law, regulation, rule or administrative guideline applicable to an EBT Program, including any Network rules.

(f) With respect to each EBT Program in which Merchant participates, Merchant shall comply with any obligations or duties imposed on Merchants participating in such EBT Program under an Agreement ("Processor Agreement") between HPS and the administrator of the EBT Program ("EBT Provider") pursuant to which HPS is authorized to process Transactions for the EBT Program, and the EBT Provider shall have the right to directly enforce the terms and conditions of the Processor Agreement against Merchant in the event that Merchant breaches its obligations hereunder.

(g) Merchant agrees that HPS may release information regarding Merchant's use of the EBT Program upon request by any Federal or State agency, and that Merchant shall not have a claim or cause of action for such release of information.

(h) Merchant will accept EBT Cards only for Transactions and purchases permitted under the applicable EBT Program.

(i) Regardless of Merchant's standard operating procedure for handling refunds, it shall provide refunds with respect to EBT Transactions only in accordance with applicable laws, regulations, Rules, or administrative guidelines related to its participation in each EBT Program, including Network rules.

(j) If required by an EBT Program, Merchant shall seek to obtain telephone Authorization of each EBT Transaction in situations in which it is unable to obtain electronic response from the Card Authorization system for the EBT Program. If HPS processes manual Sales Drafts for Merchant, Merchant shall complete any such manual Sales Draft for an EBT Transaction in accordance with the requirements of the EBT Program.

(k) Merchant shall maintain records of EBT Transactions as required by applicable laws, regulations, Rules, or administrative guidelines related to its participation in each EBT Program, including Network rules.

(l) Merchant shall not use or disclose any information concerning a Recipient for any purpose not directly connected with the performance of Merchant's duties under an EBT Program.

(m) Merchant shall not discriminate in the provision or denial of any EBT Transactions on the basis of a Recipient's disability or handicap (if any), age, race, color, religion, sex, sexual preference, political belief, national origin, creed, marital status or veteran's status.

- (n) Merchant shall provide to HPS and any EBT Provider any information reasonably required by HPS or the EBT Provider to assist HPS or the EBT Provider in ensuring the integrity, security and successful performance of the EBT Network.
- (o) Merchant shall, at its own expense, ensure that its employees receive appropriate training in the use of equipment and procedures with respect to each EBT Program in which Merchant participates. If Merchant so requests, HPS shall provide such training to Merchant's employees, provided that Merchant shall pay HPS the usual and customary fees charged by HPS for its employees time in conducting such training and shall reimburse HPS for employee travel, lodging and other reasonable out-of-pocket expenses incurred in conducting on-site training.

#### 5.15.3 HPS Representations and Warranties.

HPS hereby represents and warrants that it is a qualified processor in each EBT Program identified and that it has obtained any and all Authorizations, certifications or other evidence of authority, and has properly executed and delivered any and all applications, Agreements or other documents necessary to participate in each such EBT Program.

#### 5.15.4 Rights, Duties and Responsibilities of HPS.

- (a) HPS shall provide the EBT services identified in accordance with the terms of EBT, the Agreement and applicable laws, regulations, Rules and administrative guidelines applicable to each selected EBT Program, including any Network rules.
- (b) HPS shall have the authority, without any liability, to terminate or suspend the provision of services hereunder with respect to each and every EBT Program, at the direction of any federal, state or other authority with responsibility for oversight or implementation of such EBT Program, or upon HPS determination to terminate support for such EBT Program for all customers. If HPS is directed to terminate or suspend the provision of services hereunder with respect to an EBT Program, HPS may also terminate or suspend provision of services hereunder for any other EBT Program without liability.

#### 5.15.5 Indemnity.

In addition to any indemnification obligations of Merchant set forth in the Agreement, Merchant agrees to indemnify and hold harmless HPS from and against any and all claims or losses arising out of:

- (a) any act or omission by Merchant in violation of any applicable federal, state or local law or regulation, or rule or administrative guideline related to an EBT Program, including an Network Rule;
- (b) any negligent or fraudulent act or omission or intentional misconduct by Merchant;
- (c) any failure by Merchant to comply with any obligation or duty imposed on Merchants participating in an EBT Program under a Processor Agreement; or
- (d) any act or omission of Merchant that causes HPS to breach any undertaking under a Processor Agreement, including any performance standards hereunder.

#### 5.15.6 Limitation of Liability.

In addition to the limitation of liability set forth in the Agreement, Merchant agrees and acknowledges that HPS shall have no liability to Merchant arising out of any act or omission by an EBT Provider. Without limiting the foregoing, HPS and its EBT provider shall have no liability to Merchant for an EBT Provider's

rejection, Chargeback or other failure to fully process in the ordinary course and without penalty any adjustment based upon a restriction on EBT Provider's ability to process such adjustment to the Account of a recipient of government benefits, regardless of whether the error being adjusted was caused, in whole or in part, by HPS.

#### 5.15.7 Deluxe EBT Program.

If Merchant is a participant in an EBT Program in the State of Kansas, Louisiana, (or any other state where Deluxe Data Systems, Inc. ("Deluxe") is the prime contractor for the state), Merchant agrees that Deluxe, which is the EBT Provider for those states, shall have no liability to Merchant arising out of Deluxe's management of the EBT Program or processing of Transactions except for Merchant's direct damages caused by fraud or intentional misconduct committed by Deluxe's employees. In no event shall Deluxe be liable to Merchant for indirect, incidental or consequential damages. Merchant agrees and acknowledges that Deluxe is a third party beneficiary of EBT for purposes of this limitation liability.

### 6. Fees

- 6.1 This Agreement creates a contract for the extension of financial accommodations to Merchant within the meaning of Section 365 of the Bankruptcy Code. As consideration for the services to be provided by HPS, Merchant shall pay HPS various fees in the manner and pursuant to the Schedule of Fees set forth herein and in the Application.
- 6.2 HPS, from time to time, may amend the Schedule of Fees and the charges set forth in such amended Schedule shall be effective on the date specified in a written notice thereof, which date shall not be fewer than fifteen (15) days after the date of notice. Merchant shall attach each such revised Schedule of Fees, or written notice to the Merchant's copy of this Agreement. As certain pricing to Merchant is based upon annual volume, average ticket and method of doing business stated in the Application, HPS may adjust Merchant's Discount and/or Transaction fees without prior written notice in the event actual volume and/or average ticket are not as stated or if in the sole opinion of HPS, Merchant has significantly altered its stated method of doing business.
- 6.3 Merchant shall pay fees charged to Merchant by third parties for telephone equipment, the preparation of the site(s) prior to installation of electronic data capture equipment and/or peripheral equipment, installation, maintenance, line charges, and utility costs. In addition, Merchant shall be liable for any increase in long-distance communication costs, internet access, gateway costs, IP, SSL, DSL, lease, frame, and processing charges from third party vendors that may be reflected in an increase in the Discount rate or fee schedule upon fifteen (15) days, prior written notice to Merchant.
- 6.4 Merchant shall pay all applicable sales taxes for services and Products provided by HPS.
- 6.5 Merchant shall pay:
  - (a) the adjusted fees provided in the then current Schedule of Fees in the event of any of the following:
    - (i) any Transaction that is a Card-Not-Present Transaction or is deposited more than one (1) business day following the Transaction date;
    - (ii) "Non-Qualifying Transactions" for any Transaction that is not Authorized or is deposited more than two (2) business days following the Transaction date;

- (iii) Any non-qualifying fees for any Transaction where a Card is presented and qualifies at higher interchange fees than the qualification that is marked on the application. This may include Corporate, Business, Purchasing and signature Cards and any other Cards issued by the Card Schemes.
  - (iv) Any non-qualifying fees for any Transaction where a Card Scheme Card is presented and qualifies at higher interchange fees than is marked on the application due to Merchant-owned, third party supplied or maintained POS System.
  - (b) an amount equal to any increase in interchange rates from the Card Schemes effective upon fifteen (15) days written notice to Merchant;
  - (c) Voice Authorization fee \$0.65 per Transaction or HPS' then current rate for Voice Authorizations.
- 6.6** Merchant shall pay such fees and charges as may be set by HPS for any requested system enhancements or services in addition to those specified herein or in the application or as may be requested by applicable law or changes in Card Scheme Rules.

## **7. Rights, Duties and Responsibilities of HPS**

- 7.1** HPS is the only entity approved to extend acceptance of Card Scheme Products directly to the Merchant.
- (a) HPS is the principal (signer) to the Merchant Agreement.
  - (b) HPS will make reasonable efforts to educate the Merchant on pertinent Card Scheme Operating Regulations with which Merchants must comply.
  - (c) HPS is responsible for and will settle funds with the Merchant.
  - (d) HPS is responsible for all funds held in reserve that are derived from settlement.
- 7.2** HPS will accept all Sales Drafts deposited by Merchant that comply with the terms of this Agreement. HPS will pay to Merchant the total face amount of each Sales Draft, less any Credit Vouchers, Discounts, fees or adjustments determined daily, weekly or monthly. All payments, credits and charges are subject to audit and final review by HPS and prompt adjustment shall be made as required. Notwithstanding any other provision in this Agreement, HPS may refuse to accept any Sales Draft, revoke its prior acceptance, or delay processing of any Sales Draft for any reasonable period of time, as HPS deems necessary and appropriate. HPS shall have no liability to Merchant for additional charges, higher rates, or any other loss, expense or damage Merchant may incur directly or indirectly due to any such refusal, revocation or delay. Circumstances in which acceptance may be refused, delayed or revoked include, but are not limited to the following:
- (a) the sale giving rise to such Sales Draft was not made in compliance with all of the terms and conditions of this Agreement including the Rules as well as applicable laws and regulations of any governmental authority; or
  - (b) the Cardholder disputes his or her liability for any of the following reasons:
    - (i) the Products covered by such Sales Draft were returned, rejected or defective in some respect or Merchant failed to perform any obligation on its part in connection with such Products, and Merchant has refused to issue a Credit Voucher in the proper amount;
    - (ii) the signature on the Sales Draft was not that of an authorized user; or
    - (iii) the Cardholder claims that he/she did not authorize the Transaction.

- (c) misrepresentation of or material variation in annual bankcard volume, average ticket amount, or nature of Merchant's business from that stated in the Application;
  - (d) Merchant fraud or reasonable grounds for belief that fraud may have occurred;
  - (e) unauthorized Transactions;
  - (f) excessive Retrieval requests; or
  - (g) excessive Chargebacks.
- 7.3** HPS will accept all customer service calls and other communications from Merchant relating to the services provided under this Agreement including, but not limited to, equipment service, disbursement of funds, Account charges, Merchant statements and Chargebacks. Merchant waives any claim relating to amounts charged to Merchant or amounts paid to Merchant unless presented within forty-five (45) days of statement date.
- 7.4** HPS will process all requests for Sales Drafts from Card Issuers and all Chargebacks and will provide Merchant with prompt notice of requests and Chargebacks.
- 7.5** HPS will provide terminals, printers and peripheral equipment at Merchant's request and expense. HPS will obtain repair and replacements on purchased and rented equipment. Merchant shall be liable for all non-warranty repairs, shipping and handling costs.
- 7.6** HPS may provide online data management information concerning Merchant to Sponsor Banks, Card Schemes, GSBN, etc. This information includes but is not limited to Merchant detail, deposits, ACH, batches, equipment, Chargebacks, retrievals, online statements and monthly affiliate reports.
- 7.7** HPS will provide Merchant with all necessary supplies to complete and document Transactions at Merchant's request and expense as set forth in HPS product price list in effect at the time of such request.
- 7.8** From time to time HPS may make available to Merchant Products or services provided by independent third party providers. Any Agreement relating to the provision of such Products or services shall be solely between the provider and Merchant. Under no circumstance shall HPS have any liability arising out of or related to the performance or nonperformance of any product or service to be provided by any such third party provider.
- 7.9** HPS reserves the right, without notification, to change or modify all or part of the network configuration used to provide the services. Selection of equipment, hardware, etc., to be used by HPS or HPS' System shall be left solely to HPS' discretion. HPS shall not change its equipment protocol or HPS compatibility requirements without prior notice to Merchant.

## **8. Reserve and Payment Obligations**

- 8.1** Merchant authorizes HPS to establish a noninterest bearing Reserve Account (as defined in this Agreement) pursuant to the terms and conditions set forth herein. The amount of such Reserve Account shall be set and may be revised by HPS in its sole discretion at any time, based upon Merchant's processing history and the anticipated risk of loss to HPS.
- 8.2** In instances of fraud, an Event of Default (as defined in this Agreement), or suspected or known financial loss to HPS, Reserve Account funding may be immediate; otherwise the Merchant shall be notified within three business days of funding the Reserve. HPS may require that such Reserve Account be funded by all or any combination of the following:
- (a) debits to Merchant's Account or any other Accounts owned by Merchant;
  - (b) deductions or offsets to any payments otherwise due to Merchant;

- (c) Merchant's delivery of a letter of credit; or
  - (d) Merchant's pledge to HPS of a freely transferable negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to HPS. In the event of termination of this Agreement by either Merchant or HPS, an immediate Reserve Account, if not already established, will be established by HPS, and the Reserve Account will be held by HPS for six-months after termination of this Agreement or for such longer time as HPS may, in its discretion, deem necessary based upon Merchant's liability to HPS arising prior to or after termination of this Agreement, and HPS may deposit into and retain in the Reserve Account any and all amounts otherwise payable to Merchant. Merchant's funds held in a Reserve Account may be held in a commingled Reserve Account for the reserve funds of HPS's Merchants, without involvement by an independent escrow agent. Merchant agrees that it shall have no right, title or interest in or to the commingled Account. However, Merchant shall have an unsecured contractual claim against HPS with respect to any amount due to Merchant after the expiration of the period described herein. Alternatively in the sole discretion of HPS, HPS may place the funds in a Reserve Account in Merchant's name, and such funds shall be payable to Merchant therefrom only as provided in this Agreement. Any amount remaining in the Reserve Account when HPS determines that the Reserve Account may be closed shall be released to Merchant.
- 8.3 To secure the Merchant's obligations to HPS under this Agreement and any other Agreement for the provision of related equipment or related services ("Obligations"), Merchant grants to HPS a lien and security interest in and to any of Merchant's funds now or hereafter in the possession of HPS, whether now or hereafter due or to become due to Merchant from HPS. HPS hereby authorized (any related notice and demand are hereby expressly waived), to set off, recoup, appropriate, and apply any and all such funds against and on Account of Merchant's obligations under this Agreement, whether such Obligations are liquidated, un-liquidated, fixed, contingent, matured or un-matured. Merchant agrees to duly execute and deliver to HPS such instruments and documents as HPS may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and appropriation set forth in this Agreement.
- 8.4 Merchant agrees that HPS may withdraw funds from the Reserve Account at any time without notice to Merchant in the amount of any obligation of liability of Merchant to HPS hereunder, arising prior to or after termination, including any applicable Early Termination Fees pursuant to Section 11.4. If Merchant's funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from Merchant, or if the funds in the Reserve Account have been released, Merchant agrees to promptly pay HPS the amount of such deficiency upon request.
- 9.2 Merchant shall indemnify and hold harmless HPS from and against all liability, loss and damage, including reasonable attorney's fees and costs, arising out of a claim of any third party arising out of any Agreement to permit Merchant to access other financial services through point of sale equipment provided by HPS, or arising out of actions, omissions, or any other cause or fault of Merchant.
- 9.3 HPS shall have no liability for increased fees or other charges resulting from Merchant's use of equipment or other software not provided and installed by HPS.
- 9.4 Except as provided in section 9.6 below, HPS' sole liability to Merchant hereunder shall be to correct to the extent reasonably practical errors that have been caused by HPS, except that any claim by the Merchant relating to statement accuracy or amounts owed by HPS to the Merchant is waived unless presented within forty-five (45) days of statement date.
- 9.5 No claim for damages for any performance or failure of performance by HPS under this Agreement shall exceed the Discount fee amount and any other fees or charges paid to HPS in connection with the Card Transaction that is the subject of the alleged failure of performance.
- 9.6 IN NO EVENT SHALL HPS BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES, AND BUSINESS OPPORTUNITIES. MERCHANT AGREES TO REIMBURSE HPS FOR ALL COSTS AND EXPENSES, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES INCURRED AS A RESULT OF ANY SUCH ACTION, PROCEEDING OR LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. Without limitation of the foregoing, HPS shall not be liable to Merchant for delays in data transmission. Merchant acknowledges that any losses hereunder are commercial in nature.
- 9.7 HPS MAKES NO WARRANTY WHATSOEVER REGARDING CARD AUTHORIZATIONS, DECLINES OR REFERRAL CODES, RESPONSES TO REQUESTS FOR AUTHORIZATION, PROCESSING, SETTLEMENT, OR ANY OTHER SERVICES PROVIDED BY OR ON BEHALF OF HPS HEREUNDER, AND HPS HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, and HPS shall have no liability to Merchant or any other person for any loss, liability or damage arising directly or indirectly in connection herewith. Without limitation of the foregoing, Merchant acknowledges that HPS has no liability or responsibility for the actions of any Card Scheme, Card Issuer or Cardholder.
- 9.8 HPS shall not be liable for delays in processing or other non-performance caused by such events as fires; telecommunications failures; equipment failures; strikes; riots; war; non-performance of vendors, suppliers, processors or transmitters of information; acts of God or any other causes over which HPS has no control.

## **9. Limitation of Liability; Indemnification; Due Care**

- 9.1 Merchant shall indemnify and hold harmless HPS from all claims, liability, loss and damage, including reasonable attorney's fees and costs, whether direct or indirect, arising out of any breach by Merchant of the terms of this Agreement, or arising from any act, omission or failure, or for the breach of any representation or warranty by Merchant pursuant to the terms of this Agreement and the Card Schemes Rules and operating regulations and violations of any federal or state law, rule or regulation.



## **10. Display of Materials: Trademarks**

- 10.1** Merchant agrees to prominently display the promotional materials provided by HPS in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with Card(s) shall fully comply with specifications contained in applicable Card Schemes operating regulations and shall be limited to informing to the public that Card(s) will be accepted at Merchant's place(s) of business.
- 10.2** Merchant shall not use any promotional materials or Marks in any way that suggests or implies that a Card Scheme endorses Merchant's Products or services.
- 10.3** Merchant may use promotional materials and marks subject to the approval HPS.

## **11. Term: Termination**

- 11.1** This Agreement shall become effective upon acceptance of the first Merchant deposit by HPS and shall continue in effect for a term of thirty-six (36) months therefrom. Thereafter, the Agreement will automatically renew for additional twelve (12) month periods unless terminated by any party by giving sixty (60) days written notice prior to the end of any term, except that in case of an Event of Default by Merchant, this Agreement may be terminated by HPS immediately, and HPS shall give Merchant written notice within ten (10) days thereafter.
- 11.2** If any of the following events shall occur (each an "Event of Default"):
- (a) Merchant shall default in any material respect in the performance or observance of any term, covenant, condition or Agreement contained in this Agreement, including, but not limited to, the establishment of or maintenance of funds in a Reserve Account in accordance with the provision of Section 8.1 and 8.2; or Any noncompliance with the Rules or the operating regulations of a Card Scheme or a reasonable belief by HPS that Merchant will constitute a risk to HPS by failing to meet the terms of this Agreement; or
  - (b) Material adverse change in the business, financial condition, business procedure, prospects, Products or services of Merchant; or
  - (c) any information contained in the Application was or is incorrect in any material respect, is incomplete or omits any information necessary to make such information and statements not misleading to HPS; or
  - (d) any assignment or transfer of voting control of Merchant or its parent; or
  - (e) a sale of all or a substantial portion of Merchant's assets; or
  - (f) irregular Card sales or credits by Merchant, Card sales substantially greater than the annual volume or average ticket amount stated on Merchant's Application, excessive Chargebacks or any other circumstances which in the sole discretion of HPS, may increase the risk of Merchant Chargebacks or otherwise present a financial or security risk to HPS; or
  - (g) reasonable belief by HPS that Merchant is engaged in practices that involve elements of fraud or conduct deemed to be injurious to Cardholders, including, but not limited to fraudulent, prohibited or restricted Transaction(s); or

- (h) any voluntary or involuntary bankruptcy or insolvency proceedings involving Merchant, its parent or an affiliated entity, or any other condition that would cause HPS to deem Merchant to be financially insecure; or
- (i) Merchant engages in any Outbound Telemarketing Transactions; or
- (j) Merchant or any other person owning or controlling Merchant's business is or becomes listed in any Card Schemes security reporting; or
- (k) Early termination of the Agreement by Merchant without cause,

Then, upon occurrence of any Event of Default, all amounts payable hereunder by Merchant to HPS, including any applicable Early Termination Fees (payable as set forth in Section 11.4), shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by Merchant.

- 11.3** In the event of termination, regardless of cause, Merchant agrees that all obligations and liabilities of Merchant including all Chargebacks, fees, credits and adjustments with respect to any Sales Draft or Credit Voucher presented prior to the effective date of termination shall survive such termination and expressly authorizes HPS to withhold and discontinue the deposit to Merchant's Account for all Card and other payment Transactions of Merchant in the process of being collected and deposited.
- 11.4** Merchant agrees to pay Heartland a fee of \$295 per Location ("Early Termination Fee" or "ETF") if Merchant terminates the Agreement prior to the expiration of the term set forth herein (except if as a result of Heartland's material uncured breach of the Agreement). The ETF may be assessed per Service and shall be deducted in a single payment for the full amount via ACH debit to the Account upon Heartland's receipt of Merchant's notice of termination.
- 11.5** Neither the expiration nor termination of this Agreement shall terminate the obligations or rights of the parties pursuant to provisions of the Agreement, which by their terms are intended to survive or be perpetual or irrevocable.
- 11.6** If any Event of Default shall have occurred and be continuing, HPS may, in their sole discretion, exercise all of their rights and remedies under applicable law, including, without limitation, those provided in this Agreement.
- 11.7** The provisions governing processing and settlement of Card Transactions, all related adjustments, fees and other amounts due from Merchant and the resolution of any related Chargebacks, will continue to apply after termination of this Application or as subsequently adjusted by HPS. Supplies ordered under the "Transactions Included" program or "Free Supplies" program that are above and beyond the normal usage of Transactions processed can be billed accordingly with the variance not to exceed 5%. Supply orders are shipped via ground and any additional shipping fees such as overnight, second day, third day and Saturday delivery will be charged to the Merchant. HPS will collect all charges for supplies and shipping via ACH.

## **12. Terminated Merchant File**

- 12.1 If Merchant is terminated for any of the reasons specified as cause by a Card Scheme, including but not limited to fraud, counterfeit, duplicate or unauthorized Transactions, excessive Chargebacks or suspect activity, HPS may report Merchant's business name and the names and other identification of its principals to the Terminated Merchant File. Merchant expressly agrees and consents to such reporting, and HPS shall have no liability to Merchant for any loss, expense or damage Merchant may sustain directly or indirectly due to such reporting. Merchant shall indemnify and hold harmless HPS against any loss, damage or expense, including reasonable attorneys' fees, arising from any claim against HPS by any other party that results from a claim by Merchant against such other party as a result of such reporting.

## **13. Additional Locations & Services**

- 13.1 Merchant from time to time may wish to utilize services provided by HPS under this Agreement at its other business Locations ("Additional Locations"). Merchant may apply to add such Additional Locations provided that such Locations conduct the same type of business and sell the same type of Products and services. Any other business Locations submitted for processing services under this Agreement shall be subject to approval by HPS, and Merchant shall submit a new Application for any such Location(s).
- 13.2 Merchant also desires to have the ability to easily access additional systems and services ("Additional Services") from HPS beyond those originally requested in the Application. In order to expedite the establishment of Additional Services, Merchant hereby authorizes HPS to take whatever measures necessary to promptly establish any Additional Service that Merchant might request in writing from time to time and to execute necessary authorization(s) on its behalf on the warranty hereby given that Merchant's signature on the Agreement shall be valid for all Additional Services. Delivery of any requested Additional Services shall be deemed to have occurred upon Merchant's first use of any such Additional Services. Merchant acknowledges that all Additional Services shall be governed by this Agreement and the Rules.

## **14. Notices**

- 14.1 All notices and other communication required or permitted under this Agreement shall be deemed delivered when mailed first-class mail, postage prepaid, addressed to the Merchant at the address stated in the Application and to HPS at the address set forth below, or at such other address as the receiving party may have provided by written notice to the other:

### **Heartland Payment Systems**

Attn: Customer Care  
One Heartland Way  
Jeffersonville, IN. 47130  
Phone: (888) 963-3600

### **Bank Sponsors**

Issues Regarding Credit Cards

### **Heartland Bank**

Attn: Card Services  
212 S. Central  
Clayton, MO 63105  
Phone: (314) 512-8500

### **Wells Fargo Bank, N.A.**

1200 Montego Way  
Walnut Creek, CA. 94598  
Phone: (925) 746-4167

**The Bancorp Bank**  
409 Silverside Road, Suite 105  
Wilmington, DE 19809  
Phone: (302) 385-5000

**Barclay Bank**  
125 South West Street  
Wilmington, DE 19801  
Phone: (302) 622-8990  
Issues Regarding Debit Cards

**Carrollton Bank**  
1689 Sulpher Spring Road  
Suite 102  
Baltimore, MD 21227

## **15. Additional Terms**

- 15.1 Truth of Statements: Merchant represents to HPS that all information and all statements contained in the Application are true and complete and do not omit any information necessary to make such information and statements not misleading to HPS.
- 15.2 Personal Guarantees & Guarantor(s): Any individual(s) by execution of the application as guarantor, hereby unconditionally and irrevocably guarantees to HPS the full and faithful performance or payment by Merchant of each and all of its duties and obligations herein set forth, including payment of all sums due and owing and any attorney's fees and cost associated with the enforcement of terms hereof, whether prior or subsequent to termination or expiration of this Agreement. HPS shall not be required to proceed against Merchant or enforce any other remedy before proceeding against the guarantor(s). This is a continuing guaranty and shall not be discharged or affected by the death of the guarantor(s). It shall bind the heirs, administrators, representatives and assigns or the guarantor(s) and may be enforced by or for the benefit of any successor of HPS.
- 15.3 Entire Agreement: This Agreement constitutes the entire understanding of HPS and Merchant and supersedes all prior agreements, understanding, representations, and negotiations, whether oral or written between them.
- 15.4 Amendments: Except as otherwise provided herein, no provision of this Agreement may be waived, amended or modified except in writing by an officer of HPS.
- 15.5 No Waiver of Rights: Any failure of HPS to enforce any of the terms, conditions or covenants of this Agreement shall not constitute a waiver of any rights under this Agreement.
- 15.6 Section Headings: All section headings contained herein are for descriptive purposes only, and the language of such section shall control.
- 15.7 Assignability: Merchant may not assign this Agreement directly or by operation of law, without the prior written consent of HPS. HPS may assign this Agreement without Merchant's consent. This Agreement shall be binding upon the parties hereto, their successors and permitted assigns. Any assignment by Merchant without the prior written consent of HPS shall be void.
- 15.8 Damages: In any judicial or arbitration proceedings arising out of or relating to this Agreement, including but not limited to these actions or proceedings related to the collection of amounts due from merchant, the prevailing party shall recover, in addition to all damages awarded, all court costs, fees and expenses of experts and reasonable attorney's fees.
- 15.9 Relationship of the Parties: Nothing contained herein shall be deemed to create a partnership, joint venture or, except as expressly set forth herein, any agency relationship between HPS and Merchant.

**15.10 Severability:** If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such terms or provisions shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**15.11 Privacy Policy:** HPS takes privacy and information security very seriously and we take all reasonable steps to protect the confidential information of our Merchants. All financial and personal information about Merchant's and their vendors and suppliers, is considered confidential data. Confidential information includes but is not limited to the following:

- (a) Customer's name, address and telephone number;
- (b) Customer's social security number, driver's license number, etc.;
- (c) Customer's deposit or ACH Account numbers, balances, Transactions, etc.;
- (d) Personal financial information;
- (e) Information regarding any other services used by our customer's.

This information will be used only in connection with the services provided by HPS and third parties designated by HPS to Merchant under the terms of this Agreement and the performance of this Agreement. Notwithstanding the foregoing or anything else contained herein, Merchant information may be provided by HPS to any third party including but not limited to, Card Schemes, collection agencies, financial institutions or organizations, or Merchant associations. In addition, this information will be provided in response to a subpoena or governmental order.

**15.12 Governing Law:** This Agreement shall be construed and governed by the laws of the State of New Jersey without regard to legal principles related to conflict of laws.

**15.13 Jurisdiction & Venue:** Any suit, action or proceeding (collectively "action") arising out of or relating to this Agreement shall be brought only in the Superior Court of the State of New Jersey in the County of Mercer, New Jersey, or the United States District Court for the district of New Jersey and Merchant hereby agrees and consents to the personal and exclusive jurisdiction of said courts over it as to all such actions, and Merchant further waives any claim that such action is brought in an improper or inconvenient forum. In any such action, the parties waive trial by jury.

**15.14 No Third Party Beneficiary:** Under no circumstance, shall any third party be considered a third party beneficiary of Merchant's rights or remedies under this Agreement or otherwise be entitled to any rights or remedies of Merchant under this Agreement.

**15.15 Changes:** HPS may change the terms of or add new terms to this Agreement at any time in accordance with applicable law. Any such changes or new terms shall be effective when notice thereof is given by HPS either through written communication or on its Merchant website located at [www.HeartlandMerchantCenter.com](http://www.HeartlandMerchantCenter.com).

**15.16 Public Statements:** Merchant shall obtain the prior written consent of HPS prior to making any written or oral public disclosure or announcement, whether in the form of a press release or otherwise, which directly or indirectly refers to HPS.



# Equipment

## PURCHASE, RENTAL & CUSTOMER OWNED EQUIPMENT AGREEMENT

### I. Equipment Options:

Equipment means the terminals, printers, readers, and accessories hardware necessary to operate Merchant's chosen Heartland Payment Systems, Inc. (HPS) solution. Merchant may choose to provide its own Equipment, to purchase equipment from or through HPS, to rent equipment or any combination of these options. This agreement provides the rules for any of these options, with the terms of Section II applying to all options. This Agreement is part of and shall be governed by the terms and conditions of the Merchant Processing Agreement and is incorporated therein by reference.

- (a) **Providing Your Own Equipment:** Merchant may choose to purchase or lease Equipment from parties other than HPS. In such case, HPS makes no promise that Equipment acquired through third parties ("Third Party Equipment") will work correctly with and for HPS Software, Services and Equipment. Except as specifically stated in this Agreement, HPS will not be responsible for any failure, speed or adequacy of Third Party Equipment, for performance of HPS Software or Services on Third Party Equipment or for repair or replacement of any Third Party Equipment except as specifically stated in this Agreement. HPS may elect to support certain Third Party Equipment in its sole discretion, and if it so elects HPS will replace and repair Merchant's Third Party Equipment should the equipment become inoperative, in which event Merchant will receive replacement equipment and the repaired Third Party Equipment will be placed in HPS inventory. Merchant will be billed for all replacements and repairs of Merchant's Third Party Equipment. Returned Merchant Third Party Equipment that cannot be repaired will be replaced and billed as a new purchase. HPS does not provide repair or replacement service for Third Party Equipment provided by third party Point of Sale (POS) System providers.
- (b) **Purchasing Equipment from HPS:** Merchant may choose to buy some or all of the necessary Equipment from or through HPS. Such purchases must be properly noted on the Merchant Order and Receipt Form. Unless otherwise specifically described in the documentation provided with the Equipment, HPS provides a one year warranty beginning on the date of shipment on all HPS manufactured Equipment (including its internal software) that such Equipment shall be free from faulty workmanship and defects in materials ("HPS Hardware Warranty"). Equipment sold to Merchant by or through HPS will be replaced at no cost to the Merchant during the applicable warranty period. After such warranty period, HPS will replace such Equipment and repair damaged Equipment at Merchant's expense. If Equipment is damaged by the negligence or the willful acts or omissions of Merchant, its employees, agents or customers during the applicable warranty period, Merchant will be charged for Equipment repairs or replacements. If Equipment purchased from HPS is returned within sixty (60) days of purchase HPS will pro-rate the purchase price of the Equipment and refund the difference less a restocking fee of \$100 for new Equipment and \$50 for used repair/replacements. HPS will not accept returned Equipment after 60 days of purchase.
- (c) **Renting Equipment from HPS:** Merchant may choose to rent Equipment from HPS. Merchant is liable for all rental payments due hereunder. Rental privileges shall last as long as Merchant continues to remit timely rental payments and complies with its Agreements with HPS. Rented Equipment is the personal property of HPS and will not be deemed for any purpose to be fixtures. HPS shall have the right to affix or attach to all rented Equipment a tag or label indicating its ownership of, or interest in, said Equipment.

Merchant will not remove, or permit the removal of, any such tag or label. Merchant will not sell, lease, encumber, or otherwise dispose of any interest in any rented Equipment and will keep it free of all liens, claims or encumbrances whatsoever. Rental Equipment is the sole property of HPS and will be replaced at no expense to Merchant if the Equipment becomes inoperable through no fault of Merchant, its employees, agents or customers. However, if the repair of rental Equipment is due to damage caused by the negligence or the willful acts or omissions of Merchants, its employees, agents or customers Merchant will be charged for the repairs. Merchant will not be liable for ordinary wear and tear of Equipment. However, Merchant will be liable in the event the Equipment is lost, destroyed, or made inoperative as a result of the negligence or the willful acts or omissions of Merchant, its employees, agents or customers. Merchant will indemnify HPS against any loss or destruction of any Equipment for any cause, whatsoever, excepting the negligence of HPS. The Equipment deposit is refundable subject to the condition of the returned Equipment. Upon Merchant's written request HPS will return the rental deposit upon the return of Equipment with no more than ordinary wear and tear. HPS shall not be obligated to refund Merchant's rental deposit unless written request for such refund is made by the Merchant within forty-five (45) days following termination of the Agreement. Merchant shall pay the monthly rental price indicated on the Merchant Order and Receipt Form. Rental fees will be collected monthly via an automatic ACH debit to Merchant's Account and will be billed monthly including the last month in which Merchant processes Transactions. All HPS owned Equipment must be returned to HPS at the expense of the Merchant, and rental billing will continue until Equipment is received by HPS. Should Merchant discontinue processing bankcard Transactions with HPS prior to the expiration of the term of the Processing Agreement it shall pay to HPS an Equipment Agreement cancellation fee of \$100.00. If rented Equipment malfunctions and HPS issues a replacement for said Equipment, Merchant shall, within ten (10) days of receipt of the replacement equipment, ship the malfunctioning Equipment to HPS at Merchant's expense. If Merchant fails to so return the malfunctioning Equipment to HPS, Merchant shall be liable for the full replacement value of said Equipment and for any legal cost incurred by HPS in connection with recovery of the malfunctioning Equipment. Merchant's DDA Account will be debited for all amounts due HPS for unreturned Equipment.

## **II. Universal Terms:**

- (a) **Installation and Training:** HPS will program equipment for Authorization and appropriate draft capture. HPS will ship the Equipment at Merchant's expense to Merchant's designated business Location ("Location") as set forth in the Merchant Application and Processing Agreement. HPS will provide Merchant with a reasonable number of Quick Reference Guides and/or User Guides, as applicable, to

help Merchant install the Equipment. HPS may amend the Quick Reference Guides and/or User Guides as applicable to the equipment functionality. Merchant agrees to comply with all applicable instructions as set forth in the Quick Reference Guides and/or User Guides when installing Equipment at the Location. HPS shall provide additional training as HPS may deem necessary or appropriate. When additional training is deemed to be necessary by HPS, Merchant will cooperate with HPS in scheduling its employees for training at mutually convenient times and in making its employees available at the time scheduled. Promptly after the completion of such training at any Location or immediately upon receipt of the Quick Reference Guides and/or User Guides when training is not deemed necessary by HPS, HPS shall commence providing the Services through the Equipment installed and connected at such Location, subject to the further terms and conditions of this Equipment Agreement. The obligations of HPS under this Section IIA shall not apply to Third Party Equipment except for Third Party Equipment which HPS in its sole discretion elects to support,

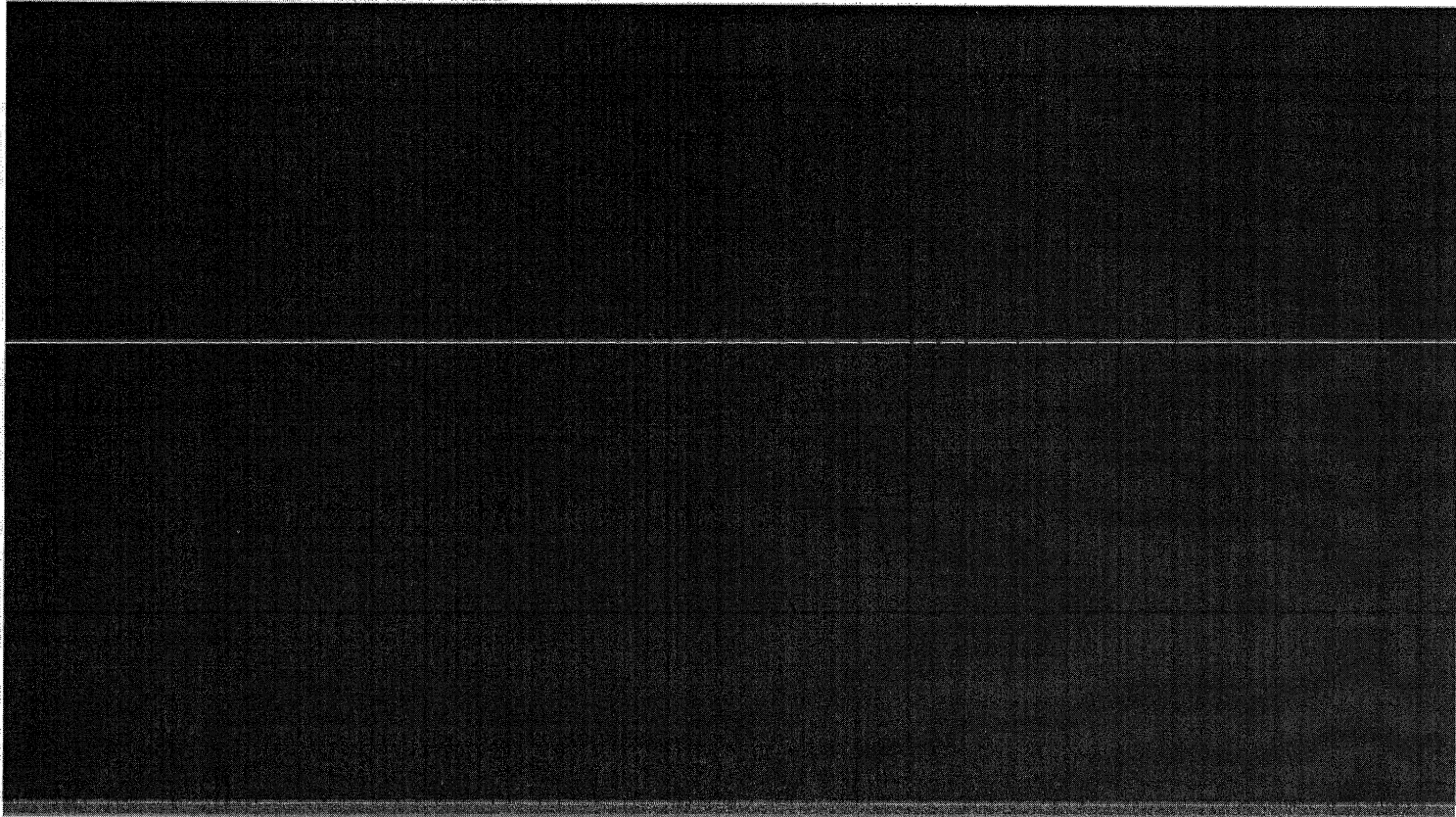
- (b) **Software:** All HPS created software is licensed (not sold) to Merchant on a non-exclusive basis to use such software on the appropriate Equipment for Merchant's internal purposes only in conjunction with HPS Services. HPS created software is the sole and exclusive property of HPS, including all applicable rights to patents, copyrights, trademarks and trade secrets and shall be held in confidence by Merchant. Merchant will not remove any HPS designation mark from any supplied material. Merchant agrees not to disassemble, decompile, reverse engineer or otherwise reduce the software to perceptible form. Merchant may not rent, lease, sub-license or transfer the software. Merchant may not use HPS software for any purpose or in any manner outside this license. HPS warrants that software created by HPS shall perform substantially in the manner set forth in the applicable Quick Reference Guide and/or User Guide ("HPS Software Warranty"). Third party software is licensed or sub-licensed to Merchant under the terms, including without limitation the warranty terms, of the manufacturer's license and of this Agreement. Software licensed on a subscription basis is warranted during the period the subscription is in full force and effect. Software licensed on a standalone basis that is not part of Equipment acquired from HPS and for which a different warranty period is not expressly provided for in the documentation accompanying such software is warranted for ninety (90) days beginning on the date of shipment or download. HPS does not offer refunds on HPS created software or software licensed or sublicensed by HPS on behalf of a third party. Should HPS determine during the applicable warranty period that the software created by HPS does not operate as warranted, HPS will, at its option, replace or repair the software. In the case of third party software, the determination whether to replace or repair shall be made by the applicable third

party software licensor. Please contact your Relationship Manager if issues arise relating to the installation of any software licensed or sublicensed to Merchant by or through HPS. U.S. GOVERNMENT RESTRICTED RIGHTS. The software and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.22719, as applicable. The manufacturer of HPS software is Heartland Payment Systems, Inc., 90 Nassau Street, Princeton, New Jersey 08542. EXPORT RESTRICTIONS. Merchant acknowledges that the software acquired hereunder may include technical data subject to U.S. export control laws and regulations. Merchant confirms that it will not export or re-export the software, directly or indirectly, either to:

- (i) any countries that are subject to U.S. export restrictions,
  - (ii) any end user who Merchant knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons; or
  - (iii) any end user who has been prohibited from participating in the U.S.A. export Transactions by any federal agency of the U.S.A. government.
- (c) **Warranty and Support:** HPS MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BEYOND THOSE EXPRESSLY STATED HEREIN. HPS SPECIFICALLY DISCLAIMS WARRANTIES AS TO THE MERCHANTABILITY, CONDITION, DESIGN, OR COMPLIANCE WITH SPECIFICATIONS OR STANDARDS, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OF ANY EQUIPMENT, SOFTWARE OR SERVICE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, WITH RESPECT TO ANY EQUIPMENT, SOFTWARE OR SERVICE. HPS DOES NOT WARRANT THAT THE EQUIPMENT, SERVICE OR SOFTWARE WILL OPERATE WITHOUT INTERRUPTION OR ON AN ERROR-FREE BASIS, AND EXCEPT AS OTHERWISE PROVIDED IN THE EXPRESS WARRANTIES MADE BY HPS IN THIS EQUIPMENT AGREEMENT THE EQUIPMENT AND SOFTWARE ARE PROVIDED "AS IS". HPS SHALL HAVE NO LIABILITY TO MERCHANT FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, REVENUES AND BUSINESS OPPORTUNITIES, OR DAMAGES FOR INJURY TO PERSON OR PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE USE BY MERCHANT OF ANY EQUIPMENT OR SERVICE. HPS' sole obligation with respect to a warranty claim received by HPS during the applicable warranty period

shall be to replace any malfunctioning Equipment or HPS software under warranty, provided however, that Merchant has first utilized HPS' telephone assistance services and such assistance has not resolved the Equipment or Software problem. Equipment returned to HPS as a Repair / Replacement must be in repairable order. Product warranties are not available for used PinPads or PinPad swaps. In addition any PinPad swap must be of like equipment. HPS will provide, or cause to be provided, telephone assistance in response to telephone inquiries, twenty-four (24) hours a day, seven (7) days a week, including holidays. These hours may be changed at any time, at HPS' sole discretion. Authorization Services typically will be available through installed or connected equipment continuously twenty-four (24) hours a day, seven (7) days a week, except that Services may be interrupted for usually no more than thirty (30) minutes in the aggregate between the hours of 12 midnight and 8 a.m. (CST) for the purpose of system maintenance. Provision of the Services may also be interrupted for reasons beyond the control of HPS or any independent contractor utilized by HPS in providing Services. Any extended warranty programs which may be offered by HPS with respect to Equipment or software, if any, shall be governed by the terms and conditions applicable to such extended warranty programs.

- (d) **Third Party Payment Services:** Use of third party payment services is subject to the terms and conditions imposed by the third party service providers sponsoring or otherwise supporting such services ("Third Party Services Terms and Conditions"). Merchant agrees to comply with all applicable Third Party Services Terms and Conditions and should refer to the website of the applicable service provider and other documents provided by such service provider from time to time for the current terms and conditions. Any breach by Merchant of any Third Party Services Terms and Conditions in connection with any Transaction or other matter that is subject to the terms and conditions of the Merchant Processing Agreement may be deemed by HPS to be a breach of this Agreement and the Merchant Processing Agreement and Merchant agrees that the indemnification provisions under Section 9 of the Merchant Processing Agreement shall apply to any such breach of the Third Party Services Terms and Conditions and/or the Merchant Processing Agreement.



HeartlandPaymentSystems.com | 866.941.1477



## Terms & Conditions Acknowledgement

"Merchant" acknowledges that Heartland Payment Systems, Inc. ("Heartland") has provided it with a copy of the Card Acceptance Policies, Procedures, Terms & Conditions (the "Terms and Conditions") and the Merchant Application, which together make up the entire agreement between the parties. Merchant has read, understands, and agrees to be bound by the Terms and Conditions, as may be amended from time to time. Merchant acknowledges that the Terms and Conditions are a fundamental part of the parties' agreement without which Heartland would not be able to enter into an agreement with the Merchant. The Terms and Conditions can be reviewed at any time by visiting the Heartland InfoCentral at [www.HeartlandInfoCentral.com](http://www.HeartlandInfoCentral.com). In addition, Merchant can request another copy of the Terms and Conditions at any time by sending a written request for a copy to Heartland at the following address:

Heartland Payment Systems; Attn Customer Care; One Heartland Way; Jeffersonville IN 47130

_____	_____ / ____ / ____
Merchant Signature	Printed Date
_____	_____ / ____ / ____
Relationship Manager	Printed Date

## Site Inspection

I hereby verify that (check one).

\_\_\_\_\_ I have physically inspected the business premises & certify that the merchant has the proper facilities, equipment, inventory, agreements, and licenses required to conduct the business.

\_\_\_\_\_ I was not reasonably able to complete a Site Inspection of the Merchant at this Address, and the information stated below is correct to the best of my knowledge and belief. Please explain why a site inspection could not be performed. \_\_\_\_\_

Inspected By: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

### It is required that the following questions be completed.

Is business signage present  Yes  No Describe: \_\_\_\_\_

Is inventory sufficient to support business:  Yes  No Describe: \_\_\_\_\_

Number of Terminals: \_\_\_\_\_ Locations: \_\_\_\_\_ Are card acceptance logos displayed for easy view:  Yes  No

Merchant utilizes a Fulfillment house to ship customer orders outside DBA location:  Yes  No Site Inspected:  Yes  No

Location Name: \_\_\_\_\_ City: \_\_\_\_\_ ST: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone #: \_\_\_\_\_

If this is an additional location to an existing HPS merchant, was a site inspection performed on any of the locations?  Yes  No

If this is a referral from an HPS partner, please list individual's name and business affiliation that confirms site exists.

Name: \_\_\_\_\_ Business: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_





# Visa and MasterCard Registration Form

Please fill in the Merchant Information below, and then select one applicable program for registration. Next, initial/complete the corresponding detail section for that specific registration program. Lastly, the Merchant's signature is required in the Acknowledgement section. If the merchant is a chain, complete a separate form for each location. Registration and/or changes may take up to forty-five (45) days.

MERCHANT INFORMATION			
Merchant ID (if existing merchant):		Chain Name:	
DBA Name: Southern Wisconsin Regional Airport		Legal Name: Southern Wisconsin Regional Airport	
Address: 1716 W Airport Rd., Suite 100		City: Janesville	State: WI Zip: 56354
Contact Name/Title: Cynthia Hevel		Phone: 608-757-5768	Fax:
Email: HEVEL@co.rock.wi.us		Website: http://www.jvlairport.com/	
MCC (if known):		Date Signed with HPS:	
Number of Customers:		ABP Enabled: <input type="checkbox"/> Yes <input type="checkbox"/> No	
New Visa Acceptor: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			

**REGISTRATION PROGRAMS (Select one applicable program from the options below)**

- MC International Convenience Fee Program (Complete A)     
  Visa Government - to - Government Program (Complete B)  
 Visa Debit Debt Repayment Program (Complete C)     
  Visa Government & Higher Education Program (Complete D)

**DETAIL SECTION**

A.  **MasterCard International Convenience Fee Program** - Participants agree to clearly and conspicuously disclose to the cardholder the amount of the convenience fee at the time of payment and afford the cardholder an opportunity to provide another form of payment or to opt out of the sale.

Do you store MasterCard account data?  Yes  No      If Yes, are you SDP and PCI Compliant at this time?  Yes  No  
 If No, provide Third Party Payment Provider (TPP) that stores data on your behalf: \_\_\_\_\_

Is TPP Registered with MasterCard at this time?  Yes  No  
 If yes, what Pseudo ICA was assigned to the TPP at time of registration (if known): \_\_\_\_\_

Is TPP SDP Compliant at this time?  Yes  No

**Select appropriate MCC/Business Type by checking the correct box:**

MCC Code	Business Type
<input type="checkbox"/> 8211	Elementary and Secondary Schools
<input type="checkbox"/> 8220	Colleges, Universities, Professional Schools, and Junior Colleges
<input type="checkbox"/> 9211	Court Costs including Alimony and Child Support
<input type="checkbox"/> 9222	Fines
<input type="checkbox"/> 9311	Tax Payments – * Allowed for Face to Face and Non Face to Face for Debit only
<input type="checkbox"/> 9399	Government Services, not elsewhere classified

\*The Convenience Fee for Debit transactions can be different amounts from other competitive Schemes.

**Select category which most accurately describes your program:**

Merchant Category	
<input type="checkbox"/>	New Merchant
<input type="checkbox"/>	New Acceptance Program with Existing Merchant
<input type="checkbox"/>	Existing Acceptance Program with MasterCard already accepted
<input type="checkbox"/>	Existing Acceptance Program adding MasterCard

B.  **Visa Government - to - Government Program**

- Merchant must accept Visa as a means of payment regardless of payment channel including but not limited to Face to Face, Mail/Telephone and Online.
- Merchant must be eligible Government Services MCC 9399 or Government Postal Services MCC 9402 merchants.
- Merchant must comply with all Visa Operating Regulations including visual representation of the blue, white and gold Visa Flag Symbol or Visa Word Mark on the merchant website.
- Merchant must feature the opportunity to pay with Visa at least as prominently as all other payment methods.

**DETAIL SECTION (Continued)**

**C.  Visa Debit Debt Repayment Program**

- Merchant must be properly designated as MCC 6012 or 6051 (i.e., financial or non-financial institutions). Merchants providing debt collection services are not eligible; neither is any debt that has been charged off or sold to a collection agency for collection. Visa will conduct monitoring of both merchant registrations and ongoing transaction activity to ensure this and all other program requirements are followed.
- Merchant must accept Visa as a means of payment in all channels and NOT accept either US issued Visa credit or US issued Commercial cards for debt repayment transactions.
- Transaction must qualify as CPS/card not present or CPS/e-commerce.
- Merchant does not charge Cardholders fees of any type for Visa transactions.
- Merchant must feature the opportunity to pay with Visa at least as prominently as all other payment methods.
- In the authorization and clearing records of each transaction, the merchant must submit the existing debt and bill pay indicators.
- Merchant must comply with all Visa USA Inc. Operation Regulations including visual representation of the blue, white and gold Visa Flag Symbol or Visa Word Mark on merchant website.

**D.  Visa Government & Higher Education Program**

- Merchant must feature the opportunity to pay with Visa at least as prominently as all other payment methods.
- Merchant must accept Visa as a means of payment in all channels i.e., Face to Face, MOTO, Internet, as applicable.
- Merchant must work through their Acquirer to become registered. Merchant may not charge the fee until approved by Visa.
- Merchant must clearly disclose fees to the Visa Cardholder and meet Cardholder fee requirements. Qualified Visa Consumer Credit, Debit (including Prepaid) and Commercial Products may be charged a variable fee by participants in the program. Convenience Fees must be submitted as a separate transaction to Heartland Payment Systems. Both card present and card not present environments are eligible.
- Merchant must comply with all Visa Operating Regulations including the display of the Visa Logo.

**Types of Payments Processed (Check all that apply)**

<input type="checkbox"/>	Personal Income:	<input type="checkbox"/>	Federal	<input type="checkbox"/>	State	<input type="checkbox"/>	Local
<input type="checkbox"/>	Business Income:	<input type="checkbox"/>	Federal	<input type="checkbox"/>	State	<input type="checkbox"/>	Local
<input type="checkbox"/>	Payroll/Unemployment Taxes:	<input type="checkbox"/>	Federal	<input type="checkbox"/>	State	<input type="checkbox"/>	Local
<input type="checkbox"/>	Sales and Use:	<input type="checkbox"/>	Federal	<input type="checkbox"/>	State		
<input type="checkbox"/>	Real Estate Property:	<input type="checkbox"/>	Local				
<input type="checkbox"/>	Other Property Taxes (Specify):						
<input type="checkbox"/>	Higher Education, Business or Trade Schools						
<input type="checkbox"/>	Fines						
<input type="checkbox"/>	Court Costs						
<input checked="" type="checkbox"/>	Miscellaneous Government Services						

**Supported Channels for Visa Card Acceptance**

<input checked="" type="checkbox"/> Face to Face	<input checked="" type="checkbox"/> Internet – Website Address Required:
<input checked="" type="checkbox"/> Phone/IVR	<input type="checkbox"/> Other – Specify:

**Type of Products Accepted (Please specify)**

<input checked="" type="checkbox"/> Visa Debit Cards	*Per Item Fee of: \$	or 2.50%	*Note: This fee can be a flat or variable fee.
<input checked="" type="checkbox"/> Visa Commercial/ Credit Service Cards	*Per Item Fee of: \$	or 2.50%	

**ACKNOWLEDGEMENT**

I, the undersigned, hereby affirm that I have accurately represented my business and that it meets all of the qualifications necessary to be registered for the Visa and/or MasterCard Program I have indicated above. I additionally understand that if Visa and/or MasterCard determine that my business is not compliant; the Card Schemes may impose noncompliance assessments and fines for which I will be responsible. Visa/MasterCard reserve the right to modify or discontinue merchant participation as deemed necessary.

<b>Owner/Officer Signature*</b>	<b>Print Name/Title</b>	<b>Date</b>
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\*Signature must be that of the original Owner/Officer that signed the HPS Merchant Processing Agreement.

**Return Form to: 866-976-7222**

# Bolletta Merchant Boarding Addendum



Merchant Information			
<input checked="" type="checkbox"/> New Bolletta User Group <input type="checkbox"/> Existing Bolletta User Group (Indicate):			
DBA: Southern Wisconsin Regional Airport		RM:	100
Address: 1716 W Airport Rd., Suite 100		City: Janesville	State: WI Zip: 53546
Business Phone: 608-757-5768		Business Email: hevel@co.rock.wi.us	
Primary Contact Name: Cynthia Hevel		Phone: 608-757-5768	Email: hevel@co.rock.wi.us
Installation Contact:		Phone:	Email:
Go Live Date: 1/15/2014		Training Date: 1/5/2015	
Existing Merchant Website/URL:			
Merchant Admin User Name:		Phone:	Email:
Merchant Developer Name:		Phone:	Email:

Pricing Model (Consumer Retail Pricing Only)		
<input type="checkbox"/> Single Convenience Fee (One MID)	<input checked="" type="checkbox"/> Dual Convenience Fee (Two MIDs)	<input type="checkbox"/> Absorbed Convenience Fee (One MID) Merchant Absorbed
Fee Schedule (Additional IVR Fees listed on Page 2)		
Bolletta Platform One Time Setup Fee:		
Bolletta Platform Monthly Fee:		
Bolletta Platform Transaction Fee:		

Accepting ACH	Registered With
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Visa Utility
<input type="checkbox"/> No	<input checked="" type="checkbox"/> Visa Higher Education/Government
	<input type="checkbox"/> MasterCard Convenience Fee

Gateway Version	Auto Close (Required)	Time Zone
<input checked="" type="checkbox"/> Portico Version 2 (Default)	Auto Close Hour: _____ (Random Minute Generated)	<input type="checkbox"/> Alaska
	<input type="checkbox"/> AM <input type="checkbox"/> PM (Default is Midnight Central Time if left blank)	<input type="checkbox"/> Hawaii
Industry	Industry Type	Mobile Cashier
<input type="checkbox"/> Retail	<input type="checkbox"/> Government	<input type="checkbox"/> OS Version: _____
<input checked="" type="checkbox"/> MOTO	Specify: _____	<input type="checkbox"/> Device Model: _____
Device Type	<input type="checkbox"/> Utilities	<input type="checkbox"/> Model/Type: _____
<input type="checkbox"/> Normal	<input type="checkbox"/> Property Management	<input type="checkbox"/> Alaska
<input checked="" type="checkbox"/> E-commerce	<input type="checkbox"/> Other: _____	<input checked="" type="checkbox"/> Central
		<input type="checkbox"/> Mountain
		<input type="checkbox"/> Pacific
		<input type="checkbox"/> Eastern

Partners				
<input type="checkbox"/> None	<input type="checkbox"/> ATS	<input type="checkbox"/> Centurion	<input type="checkbox"/> First Billing	<input checked="" type="checkbox"/> GovTech
<input type="checkbox"/> Megabyte	<input type="checkbox"/> Manatron	<input type="checkbox"/> Tybera	<input type="checkbox"/> Other:	

**Note: Certification Required**

Product Types (Check all that applies)	
<input checked="" type="checkbox"/> Cashier	<input checked="" type="checkbox"/> SecurePay MOTO
<input checked="" type="checkbox"/> IVR	<input checked="" type="checkbox"/> Payment Portal
<input checked="" type="checkbox"/> SecurePay	<input type="checkbox"/> Bolletta API
<input type="checkbox"/> Bolletta Virtual Terminal	<input type="checkbox"/> Tokenization**
<input checked="" type="checkbox"/> Mobile Cashier	

**\*\*Only available with the API solution.**

Equipment
Hardware: <input checked="" type="checkbox"/> E3 PinPad <input type="checkbox"/> E3 Wedge <input type="checkbox"/> Blue Bamboo Printer/Card Reader
Is any other equipment used for card processing: <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Note: Please refer to Bolletta Matrix for compatibility.</b>

Bolletta Merchant Boarding Addendum (Continued)



Features (Indicate all fields merchant should capture)	If accepting multiple Bill Types, complete additional fields below if needed.
<input checked="" type="checkbox"/> Billing First Name <input checked="" type="checkbox"/> Billing Last Name	<input checked="" type="checkbox"/> Bill Type 2*:
<input type="checkbox"/> Billing Street Address <input type="checkbox"/> Billing City	<input checked="" type="checkbox"/> ID 1*:
<input type="checkbox"/> Billing State <input type="checkbox"/> Billing Zip	<input type="checkbox"/> ID 2:
<input checked="" type="checkbox"/> Billing Phone <input checked="" type="checkbox"/> Email Address	<input type="checkbox"/> ID 3:
<input checked="" type="checkbox"/> Digit Length of Account Number: 8	<input type="checkbox"/> ID 4:
<input checked="" type="checkbox"/> Bill Type 1*:AA140111	
<input checked="" type="checkbox"/> ID 1*:AL140111	<input checked="" type="checkbox"/> Bill Type 3*:
<input type="checkbox"/> ID 2:	<input checked="" type="checkbox"/> ID 1*:
<input type="checkbox"/> ID 3:	<input type="checkbox"/> ID 2:
<input type="checkbox"/> ID 4:	<input type="checkbox"/> ID 3:
*Required	<input type="checkbox"/> ID 4:

Dynamic Descriptor

Short DBA Name Length: \_\_\_\_\_ Short DBA: \_\_\_\_\_

Example: Bill Type 1 = Account Number & ID 1 = Parcel/Lot Number

Note: Multiple Bill Pay is supported only for merchants who want multiple Bill Pay utilizing Percentage Convenience or Absorbed Fee. If accepting more than two Bill Payment Types, please provide applicable information in Additional Notes.

**IVR (See Fee Schedule)**

IVR Transaction Fee: \$0.25

IVR Phone Script Recording: \$300.00

Bolletta API     Third Party:       Partner:

Merchant Customer Service Number: \_\_\_\_\_

Welcome Scripts:  Text to Speech     Recorded - Professional Recording Studio Fees Apply.

Provide Welcome Script – Maximum of 3 Sentences (Ex: Welcome to Heartland County Phone payment.):

Welcome to the Southern Wisconsin Regional Airport Invoice phone payment system. Using your telephone key pad, you can make an invoice payment by credit card or echeck. Be sure to have your Airport invoice, your 8 letter & digit invoice number, and your payment method readily available.

Thank you for your participation.

Provide Enter Account Number Script – Maximum of 3 Sentences (Ex: Enter your account number, ...followed by the # sign):

Please enter your 8 letter/ digit invoice number which can be found on your Airport Invoice that you recently received in the mail. Please enter that 8 position number including the AA or the AL in front of it and hit the # key.

**Reporting (Reference MerchantView User Guide for a description of Bolletta User Roles.)**

Bolletta MerchantView (Merchants are automatically setup with access.)

User Name	Email Address	User Role
Ex: JSmith	Ex: JSmith@email.com	Ex: Merchant Admin

**Additional Notes:**

**Acknowledgement**

By signing this Addendum, you agree with the pricing above and understand that this becomes a part of the Agreement and that all terms and conditions of the original agreement apply.

X

Owner/Officer Signature

Print Name and Title

Date

**COMMITTEE APPROVAL REPORT**

Pre-Approved Encumbrances

Account Number	Account Name	PO#	Inv Date	Vendor Name	Inv/Enc Amt
41-4300-4110-64911 ENC	CLEARING ACCT	R1501040	01/19/2015	JP MORGAN CHASE BANK NA	15,000.00
	Budget	YTD Exp	YTD Enc	Pending	Closing Balance
	0.00	0.00	0.00	15,000.00	(15,000.00)
<b>COUNTY HIGHWAY ADMINISTRATION PROG TOTAL</b>					<b>15,000.00</b>
41-4453-4110-63100 ENC	OFC SUPP & EXP	R1501022	01/15/2015	AMAZON.COM	126.03
	Budget	YTD Exp	YTD Enc	Pending	Closing Balance
	500.00	0.00	0.00	126.03	373.97
41-4453-4110-65103 ENC	PUBLIC LIABILITY	R1501057	01/21/2015	TRICOR INC	11,000.00
	Budget	YTD Exp	YTD Enc	Pending	Closing Balance
	11,000.00	0.00	0.00	11,000.00	0.00
<b>SO.WI.REGIONAL AIRPORT-ADMIN PROG TOTAL</b>					<b>11,126.03</b>

I have examined the preceding bills and encumbrances in the total amount of **\$26,126.03**

Claims covering the items are proper and have been previously funded. These items are to be treated as follows:

- A. Bills and encumbrances over \$10,000 referred to the Finance Committee and County Board.
- B. Bills under \$10,000 to be paid.
- C. Encumbrances under \$10,000 to be paid upon acceptance by the Department Head.

Date:

Dept Head \_\_\_\_\_

Committee Chair \_\_\_\_\_