American Express[®] Card Acceptance Agreement



Card Acceptance Agreement • OnePoint Program



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® 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

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.

American Express Card Acceptance Agreement

Agreement for American Express® Card Acceptance American Express OnePoint Program

The Agreement is by and between **American Express Travel Related Services Company, Inc.**, a New York corporation, and **you**, **the Merchant.** By accepting the American Express® Card, you agree to be bound by the Agreement.

General Provisions

1. SCOPE AND OTHER PARTS OF AGREEMENT; DEFINITIONS

a. Scope of the Agreement. The Agreement governs your acceptance of American Express Cards in the United States (but not Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions) under our American Express OnePoint Program, which makes available to eligible merchants an integrated service through our agent Heartland Payment Systems, among other agents. Schedule A contains important provisions governing your acceptance of the Card under this program. The Agreement covers you alone. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

b. Other Parts of the Agreement

Merchant Regulations. The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We have the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 8.j of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request.

To order a copy, please call our agent, Heartland Payment Systems, (888) 963-3600. We may charge you a fee for each copy that you request.

- ii. Schedule A. Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.
- c. Definitions. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions are repeated here for ease of reference.

Affiliate means any Entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute "control" of the entity.

Agreement means these General Provisions, Schedule A and any other accompanying schedules and exhibits, and the Merchant Regulations, collectively.

American Express Card and Card mean (i) any card, account access device, or payment device or service bearing our or our Affiliates' Marks and issued by an Issuer or (ii) a Card Number.

Cardmember means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.

Charge means a payment or purchase made on the Card.

Chargeback (sometimes called "full recourse" or "Full Recourse" in our materials), when used as a verb, means (i) our reimbursement from you for the amount of a Charge subject to such right or (ii) our reversal of a Charge for which we have not paid you; when used as a noun, means the amount of a Charge subject to reimbursement from you or reversal.

Claim means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise) statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements or the relationship resulting therefrom, except for the validity, enforceability, or scope of Section 7.d of the General Provisions.

Credit means the amount of the Charge that you refund to Cardmembers for purchases or payments made on the Card.

Discount means the amount that we charge you for accepting the Card, which amount is: (i) a percentage (Discount Rate) of the face amount of the Charge that you submit; or a flat Transaction fee, or a combination of both; and/or (ii) a Monthly Flat Fee (if you meet our requirements).

Disputed Charge means a Charge about which a claim, complaint, or questions has been brought.

Entity means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

Establishments means any or all of your and your Affiliates' locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that you adopt in the future.

General Provisions means the provisions set out in the Agreement other than the provisions in any accompanying schedule or exhibit hereto.

Marks means names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.

Merchant Number (sometimes called the "Merchant ID" or "Establishment" or "SE" number in our materials) means a unique number we assign to your Establishment.

Merchant Regulations means the American Express Merchant Regulations — U.S., which are available from our agent.

Other Agreement means any agreement, other than the Agreement, between (i) you or any of your Affiliates and (ii) us or any of our Affiliates.

Other Payment Products mean any charge, credit, debit, stored value, prepaid, or smart cards, account access devices, or other payment cards, services, or products other than the card.

Reserve means a fund established and/or collateral held by us as security for your or any of your Affiliates' obligations to us or any of our Affiliates under the Agreement or any Other Agreement.

We, our, and us mean American Express Travel Related Services Company, Inc.

You and your (sometimes called the "Merchant", "Service Establishment," or "SE" in our materials) mean the individual or Entity accepting the Card under the Agreement, and (as applicable) its Affiliates conducting business in the same industry.

d. List of Affiliates. You must provide to our agent a complete list of your Affiliates in the region specified in section 1.a of the General Provisions that conduct business in your industry and notify our agent promptly of any subsequent changes in the list.

2. ACCEPTING THE CARD

- a. Acceptance. You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmembers choice of which Card to use. You are responsible and jointly and severally liable for the performance by your Establishments of all provisions of the Agreement and all obligations of your Establishments under the Agreement.
- b. Transaction Processing and Payments. Our Card acceptance, processing, and payment requirements are set forth in the Merchant Regulations. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Regulations.

- i. Format. You must create a Charge Record for every Charge and a Credit Record for every Credit must comply with our Technical Specifications, as described in the Merchant Regulations or otherwise provided by our agent. If the Cardmember wants to use different Cards for payment of a purchase, you may create a separate Charge Record for each Card used. However, if the Cardmember wants to use a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge nor shall you create more than one Charge Record unless the purchase qualifies for a Delayed Delivery Charge.
- ii. Authorization. For every Charge, you must obtain from and submit to us an Authorization Approval code. Authorization Approval does not guarantee that (i) the person making the Charge is the Cardmember, (ii) the Charge is in fact valid or bonafide, (iii) you will be paid for the Charge, or (iv) you will not be subject to Chargeback.
- iii. Submitting Charges and Credits. Your
 Establishments must submit Charges and Credits
 only in U.S. dollars. You must not issue a Credit
 when there is no corresponding Charge. You must
 issue Credits to the Card used to make the original
 purchase, except as otherwise expressly specified in
 the Merchant Regulations.
- iv. Payment for Charges. We will pay you, through our agent, according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks and (iv) any Credits you submit. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations. We may adjust any of these amounts and may change any other amount we charge you for accepting the Card.

- v. Chargeback. We and our agent have Chargeback rights, as described in the Merchant Regulations.

 We and our agent may Chargeback by (i) deducting, withholding, recouping from, or offsetting against our payments to you or debiting your Bank Account, or we or our agent may notify you of your obligation to pay us, which you must do promptly and fully; or (ii) reversing a Charge for which we have not paid you.

 Our or our agent's failure to demand payment does not waive our Chargeback rights.
- vi. Protecting Cardmember Information. You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI DSS.

3. PROTECTIVE ACTIONS

Creating a Reserve. Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to establish a Reserve. If we believe that we need to create a Reserve, we may immediately establish a Reserve or terminate the Agreement. We shall inform you if we establish a Reserve or terminate the Agreement. We may establish a Reserve by (i) withholding amounts from payment we otherwise would make to you under the Agreement or (ii) requiring you to deposit funds or other collateral with us. Any collateral provided pursuant to this Section 3 of the General Provisions is subject to our prior written approval. We may increase the amount of the Reserve at any time so long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under the Agreement (including Charges submitted by you for goods or services not yet received by Cardmembers and our cost of handling Disputed Charges) or to us or our Affiliates under any Other Agreement, or to Cardmembers. Upon the occurrence of an event described in Section 3.b.viii of the General Provisions, and during any continuation of such event, we may take immediate action to establish or increase the amount of any Reserve to an amount, in our reasonable judgment, proportional to the risk to us and our Affiliates arising from such event.

- **Trigger Events for Reserve.** Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties currently owning 25% or more of such interests, as of the effective date of the Agreement), through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business or a material adverse change occurs in your industry; (iv) your breach of Section 3.e of the General Provisions: (v) your becoming insolvent; (vi) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; or (vii) our reasonable belief that you will not be able to perform your obligations under the Agreement, any Other Agreement, or to Cardmembers; or (viii) the establishment of a reserve or other protective action taken by any Entity with whom you have entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to you, (B) requires you to make a direct payment into a reserve account or similar device, or (C) requires you to provide such Entity with a letter of credit or other third-party guaranty of payment.
- c. Application a Reserve. We may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts you or any of your Affiliates owe us or any of our Affiliates under the Agreement or any Other Agreement; (ii) any costs incurred by us in connection with the administration of the Reserve, including attorneys' fees; and (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including attorneys' fees and our cost of handling Disputed Charges.
- d. Other Protections. We may take other reasonable actions to protect our rights and rights of any of our Affiliates, including changing the speed or method of payment for Charges, exercising Chargeback under any of our Chargeback programs, or charging you fees for Disputed Charges.
- e. Providing Information. You must provide to us promptly, upon request, information about you and your Affiliates' finances, creditworthiness, and operations, including the most recent certified financial statements. You must notify us immediately of the occurrence of any event described in Section 3.b.viii of the General Provisions.

4. NOTICES

- **Delivery and Receipt.** Unless otherwise explicitly provided for herein, all notices hereunder must be in writing and sent by hand deliver; or by U.S. postal service, such as first class mail or third class mail, postage prepaid; or by expedited mail courier services; or by electronic mail (e-mail); or by facsimile transmission, to the addresses set out below. Notices are deemed received and effective as follows: If hand-delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail if mailed by first class postage or ten days after being deposited in the mail if mailed by third class postage. If the addressee provided for below rejects or otherwise refused to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver.
- **b. Our Notice Address.** Unless we notify you otherwise, you shall send notices to us, through our agent, at:

American Express Travel Related Services Company, Inc. c/o Heartland Payment Systems / Customer Care
One Heartland Way
Jeffersonville IN. 47130

c. Your Notice Address. Our agent shall send notice to you at the address, e-mail address, or facsimile number you indicated on your application to accept the Card. You must notify our agent immediately of any change in your notice address.

5. INDEMNIFICATION AND LIMITATION OF LIABILITY

a. Indemnity. You shall indemnify, defend, and hold harmless us and our Affiliates, agents, successors, assigns, and third party licensees, from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from your breach, negligent or wrongful act or omission, failure to perform under the Agreement, or failure in the provision of your goods or services.

b. Limitation of Liability. IN NO EVENT SHALL WE OR OUR AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT. EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NEITHER YOU NOR WE (AND OUR AGENT) WILL BE RESPONSIBLE TO THE OTHER FOR DAMAGES ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS OR THE BANKING SYSTEM, EXCEPT THAT OUR (AND **OUR AGENT'S) RIGHTS TO CREATE RESERVES** AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS.

6. TERM AND TERMINATION

- a. Effective Date / Termination Date. The Agreement begins as of the date (i) you first accept the Card after receipt of the Agreement or otherwise indicate your intention to be bound by the Agreement or (ii) we approve your application to accept the Card, whichever occurs first. Either party can terminate the Agreement without cause (and notwithstanding any other rights established under the Agreement) at any time by notifying the other party. Termination will take effect according to the notice period specified in section 4.a of the General Provisions.
- b. Grounds for Termination. In addition to our rights in sections 3.c and 6.a. of the General Provisions, we may terminate the Agreement at any time without notice to you and without waiving our other rights and remedies if you have not submitted a Charge within any twelve month period. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

- c. Post-Termination. If the Agreement terminates, without waiving our other rights and remedies, we and our agent may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove all displays of our Marks, return our materials and equipment immediately, and submit to our agent any Charges and Credits incurred prior to termination.
- d. Effect of Termination. Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 1, 3, 5, 6, 7, and 8 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our and our agent's right of direct access to the Bank Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

7. DISPUTE RESOLUTION

We value our Merchant relationships. Most Merchant concerns can be resolved by contacting out agent, Heartland Payment Systems at tel: 1-888- 963-3600. If our agent does not address all of your concerns to your satisfaction, you and we agree that any Claim will be resolved, upon the election by you or us, either through mediation or arbitration instead of litigation in court (except for Claims pursued in small claims court).

This Dispute Resolution provision sets forth the circumstances and procedures under which Claims may be resolved through our agent, mediated, or arbitrated instead of litigated in court. Mediation procedures and arbitration procedures are set forth below. Your agreement to this Dispute resolution provision does not preclude you from bringing your concerns to the attention of any appropriate governmental agencies.

- a. Merchant Services. For many of the concerns and problems you may encounter, you should first contact our agent, Heartland Payment Systems, at tel 1-888-963-3600 or by email: HeartlandServiceCenter@e-hps.com. Our agent's representatives are able to help resolve many of these matters. Please be prepared to provide them with any information you have about the matter, including any efforts you may have made to address or resolve the matter. Even if you believe the representative is unable to address or resolve the matter, we ask that you inform them before sending a Claim notice.
- Notice of Claim. Before filling a lawsuit or beginning a mediation or arbitration regarding a Claim, you and we agree to send a written notice (Claim notice) to each party against who, the Claim is asserted. This provides the parties an opportunity to resolve the Claim informally or through mediation. The Claim notice must describe the nature and basis of the Claim and state the specific amount or other relief demanded. Notice to us must include your name, you Merchant name, address, and Merchant number and be sent to our notice address set forth in Section 4.b of the General Provisions. If the Claim proceeds to arbitration, the amount of any relief demanded by you or us in a Claim notice shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or we are entitled on the Claim.
- c. Mediation. In mediation, a neutral mediator helps the parties to try to reach a mutually acceptable resolution of their Claim. The mediator does not decide how the Claim is to be resolved, only you and we do.
 - i. Initiation of Mediation. Before beginning mediation, you or we must first provide the Claim notice describe above. Within thirty days after sending or receiving a Claim notice, you or we may submit the Claim to mediation by either JAMS or the American Arbitration Association (AAA) or an alternative mediator mutually agreed upon in writing by you and us.
 - ii. Conduct of Mediation. You and we agree to cooperate in selecting a mediator from a panel of neutrals and in scheduling the mediation proceedings. We will pay the costs of the mediation.

- iii. Confidentiality/Tolling. All communications made for the purpose of, in the course of, or pursuant to the mediation shall be confidential for any purpose or subject to discovery. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled from thirty days following the sending of the Claims notice for sixty days or until termination of the mediation, whichever is earlier.
- iv. Termination. Either you or we may terminate the mediation at any time following the first mediation proceeding. You or our submission or failure to submit a Claim to mediation shall not affect your or our right to elect to resolve a Claim through arbitration.
- v. Additional information. Either you or we may terminate the mediation at any time following the first mediation proceeding. Your or our submission or failure to submit a Claim to mediation shall not affect your or our right to elect to resolve a Claim through arbitration.
- vi. Additional Information. For more information about JAMS and AAA mediation services, contact either JAMS (1920 Main Street, Suite 200, Irvine, CA. 92614 or www.jamsadr.com) or AAA (1633 Broadway, New York, NY. 10019 or www.adr.org).
- d. Arbitration. In arbitration, the Claim will be decided by a neutral arbitrator instead of a judge or jury. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The decisions of the arbitrator are as enforceable as any court order and are subject to very limited review by a court.
 - i. Initiation of Arbitration. Before beginning arbitration, you or we must first provide the Claim notice described above. Any Claim that is not resolved informally or through mediation shall be resolved, upon your or our election, through arbitration pursuant to this section rather than by litigation.
 - ii. Arbitration Rules/Organizations. The party asserting the Claim shall select one of the following arbitration organizations, which shall apply its rules in effect at the time the Claim is filed.

In the event of an inconsistency between this section and any rule or procedure of the arbitration organization, this section controls. They party asserting the Claim shall simultaneously notify the other party of its section. If our selection is not acceptable to you, then you may select another of the following organizations within thirty days after you receive notice or our initial selection. Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located or New York, NY, at your election.

- American Arbitration Association (AAA): 1633Broadway, New York NY 10019; (212) 716-5800; www.adr.org
- JAMS (JAMS): 1920 Main Street, Suites 300, Irvine, CA 92614; (949) 224-1810; www.jamsadr.com
 In addition to the arbitration organizations listed above, Claims may be referred to any other arbitration organization that is mutually agreed upon in writing by you and us, or to an arbitration organization that is arbitrators appointment pursuant to section 5 if the Federal Arbitration Act, 9 U.S.C. § 16et seq. (FAA) provided that the arbitration organization and arbitrators enforce the terms of the next two sections below.
- iii. Limitation of Rights. IF ARBITRATION IS CHOSEN BY A PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE SHALL HAVE THE RIGHT TO LITIGATE THATCLAIMIN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DESICOVERY EXCEPT AS PROVIDED IN THE RULES OR PREOCEDURES OF AAA OR JAMS, AS APPLICABLE. FURTHER, YOU SHALL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLEAA OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. OTHER RIGHTS THAT YOU WOULD HAVE IN COURT MAY ALSO NOT BE AVALIABLE IN ARBITRATION. Notwithstanding any other provision of the Agreement and without waiving either party's right to appeal such decisions, if any portion of this section 7.d.iii or section 7.d.iv below is deemed invalid or unenforceable, then the entire section 7 shall not apply.

- Individually Named parties Only. ALL PARTIES TO THE ARBITRATION MUST BE INDIVIDUALLY NAMES, THERE IS NO RIGHT OR AUTHORITY FIR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CALL-ACTION OR CONSOLIDATED BASIS, ON BEHALF OF THE GENERAL PUBLIC OR OTHER PARTIES, OR JOINED OR CONSOLIDATED WITH CLAIM OR OTHER PARTIES, AND YOU AND WE ARE SPECIFFICALLY BARRED FROM DOING SO. This prohibition is intended to, and does, preclude you from participating in any trade association or other organization against us. The arbitrator's authority to resolve Claims is limited to Claims between you and us alone, and the arbitrator's authority to make awards is limited to awards to you and us alone. No arbitration award or decision will have any preclusive effect as to issues or Claims in any dispute with anyone who is not names party to the arbitration.
- Previously Filed Claims/No Waiver. You or we may elect to arbitrate any Claim that has been filed in a court at any time before trail has begun or final judgment has been entered on the Claim. Either you or we may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "Non-discrimination," or "no steering" provisions of the Merchant Regulations, or any similar provisions of any prior Card acceptance agreement, that was filed against us prior to the effective date of the Agreement.
- vi. Arbitrator's Authority. The arbitrator shall have the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section not to determine any matter or make any award except as provided in this section.

vii. Split Proceedings for Equitable Relief.

Either you or we may seek equitable relief in arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction and the part seeking enforcement shall be entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered.

- viii. Small-Claims Court; Injunctive relief. We shall not elect to use arbitration under this section for any Claim that you properly file in a small claims court so long as the Claim seeks individual relief only and is pending only in that court. Injunctive relief sought to enforce the provisions of section 8.a and 8.b of the General Provisions is not subject to the requirements of this section. This section is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.
- **Governing Law/Arbitration Procedures/** Entry of Judgment. This section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statues of limitations and shall honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence provided that any party may request that the arbitrator expand that scope of discovery by doing so in writing and copying any other parties, who shall have fifteen days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty days of any objecting party's submission. If your Claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA.

- If the amount of the award exceeds \$100,000, either party can appeal that award to a three-arbitrator panel administered by the selected arbitration organization which shall reconsider de novo any aspect of the initial award and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA Judgment upon an award rendered by the arbitrator or by a panel of arbitrators on appeal may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.
- Confidential Proceeding. The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, premises, conduct, and statements, whether written or oral, made in the course of the Claim resolution, negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents, employees, experts, or attorneys, or by the arbitrator, including any arbitration aware or judgment related thereto, are confidential, privileged, and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation, mediation, or arbitration.
- xi. Severability. Except as otherwise provided in section 7.d.iii above, if any portion of this section (other than section 7.d.iv) is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this section, the Agreement, or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.
- xii. Costs of arbitration Proceedings. You will be responsible of paying your share, if any, of the arbitration fees (including filing, administrative, hearing and/or fees) but only up to the amount of the filing fees you would have incurred if you had brought a Claim in the state or federal court located in the federal judicial district where your headquarters is located that would have had jurisdiction.

We will be responsible for any additional arbitration fees. If you or we elect to arbitrate a Claim after you have filed the Claim in court, we also will pay your share, if any, of the arbitration fees up to the amount of any court filing fees paid by you and refund to you the remainder of any such fees, unless the arbitrator determines that your Claim was brought in bad faith. At your written request, we will consider in good faith making a temporary advance of all or part of your share of the arbitration fees for any Claim you initiate as to which you or we seem arbitration. You will not be assessed any arbitration fees in excess of your share if you do not prevail in any arbitration with us.

- xiii. Additional Arbitration Awards. If the arbitrator finds that you are the prevailing party on a Claim describe in your Claim notice, and if the award to you by the arbitrator is more favorable than any offer we made to you to resolve your Claim prior to the commencement of arbitration, the arbitrator's award shall include, in addition to any other relief awarded, any reasonable attorneys' fees, costs, and witness fees (including expert witness fees) to which you are entitled under Application Law or, if Applicable Law does not provide for recovery of these amounts, then the amount of reasonable attorneys' fees, costs, and witness fees (including expert witness fees) that your attorney, if any, reasonably incurred for investigating, preparing, and pursuing your claim in arbitration.
- e. Definitions. For purposes of the Section 7 of the General Provisions only, (i) we, our, and us include any of our Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) you and your include any of your Affiliates, licensees, predecessors, successors, or assigns, any purchaser of any receivables and all agents, directors, and representatives of any of the foregoing.

8. MISCELLANEOUS

a. Confidentiality. You must keep confidential and not disclose to any third party the provisions of the Agreement and any information that you receive from us that is not publicly available.

- b. Proprietary Rights and Permitted Uses. Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations, nor shall one party use the other party's Marks without its prior written consent, except that we may use your name, address (including your website addresses or URLs) and customer service telephone numbers in any media at any time.
- Your Representations and Warranties. You represent and warrant to us that: (i) you are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which you are organized; (ii) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business; (iii) you have full authority to enter into the Agreement and all necessary assets and liquidity to perform your obligations and pay your debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on your business or your ability to perform your obligations or pay your debts hereunder; (v) you are authorized to enter into this Agreement on behalf of your Establishments and Affiliates, including those indicated in this Agreement, and the individual who signs this Agreement or otherwise enters into it has authority to bind you and them to it; (vi) you are not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at www.treas. gov/ofac), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at www.state.gov), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as non cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (vii) you have not assigned to any third party any payments due to you under this Agreement and all indebtedness arising from Charges are for bona fide sales of goods or services (or both) at your Establishments and free of any liens, claims, or encumbrances other than ordinary sales taxes; (viii) all information that you provided in connection with this Agreement is true, accurate, and complete; and (ix) you have read this Agreement and kept a copy for your file. If any of your representations or warranties in this Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate this Agreement in our discretion.

- **d. Compliance with Laws.** You shall comply with all applicable laws and governmental regulations and rules.
- Governing Law; Jurisdiction; Venue. The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Notwithstanding the immediately preceding sentence, the parties agree that an electronic transmission affecting contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 1700 et seq. (E-Sign Act). The parties intend that the *E-Sign Act* apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein. Subject to section 7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.
- **Interpretation.** In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the term "including" means "including, but not limited to;" (iv) the term "day" means "calendar day;" (v) all amounts are stated in U.S. dollars; (vi) references to a "party" means us, on the one hand, and you, on the other hand (vii) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (viii) any reference to a website or URL (or both) refers to its successor website or URL; (ix) all captions, headings, and similar terms are for reference only; and (x) where specific language is used to illustrate by example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of Schedule A, and the provisions of the Merchant Regulations shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: Schedule A and any accompanying exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

- g. Assignment. You shall not assign the Agreement, or any of your rights, interests, or obligations hereunder, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign the Agreement, or any of our rights, interests, or obligations hereunder, without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.
- h. Waiver; Cumulative Rights. Either party's failure to exercise any of its rights under the Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.
- i. Savings Clause. Other than as set forth in the last sentence of section 7.c of the General Provision, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.
- j. Amendments. We reserve the right to change the Agreement at any time (including by amending any of its provisions, adding new provisions, or deleting or modifying existing provisions) on at least ten days' prior notice to you, provided that we shall change the Merchant Regulations pursuant to the following provisions. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card. We are not bound by any changes that you propose in the Agreement, unless we expressly agree in a writing signed by our authorized representative. An e-mail or other electronic communication does not constitute such a signed writing.
 - (1) Scheduled Changes. The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:

- a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations, and
- a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.

Where a change is to take effect during the period between two editions of the Merchant Regulations, we shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change herein.

- (2) Unscheduled Changes. We also have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to you (unless another effective date is specified in the notice).
- **k.** Entire Agreement. The Agreement is the complete and exclusive expression of the agreement between you and us regarding the subject matter hereof and supersedes any prior or contemporaneous agreements, understandings, or courses of dealing regarding the subject matter hereof.
- I. Disclaimer of Warranties. WE DO NOT MAKE
 AND HEREBY DISCLAIM ANY AND ALL
 REPRESENTATIONS, WARRANTIES, AND
 LIABILITIES, WHETHER EXPRESS, IMPLIED,
 OR ARISING BY LAW OR FROM A COURSE OF
 DEALING OR USAGE OF TRADE, INCLUDING
 IMPLIED WARRANTIES OF MERCHANTABILITY
 OR FITNESS FOR A PARTICULAR PURPOSE OR ANY
 WARRANTY OF TITLE OR NON-INFRINGEMENT.
- m. No Third-Party Beneficiaries. Except for the indemnitees specified in Section 5.a of the General Provisions, the Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto and none of the provisions of the Agreement shall be enforceable by any person other than the parties hereto, their successors and permitted assigns. The parties reserve the right to amend or terminate the Agreement without the consent of those indemnitees.

- n. Press Releases. You shall not issue any press release or make any public announcement (or both) in respect of the Agreement or us without prior written consent.
- o. Independent Contractors. You and we are independent contractors. No agency, partnership, joint-venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with this Agreement.

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By: Kim C. Goodman Executive Vice President Merchant Services, Americas

Schedule A Other Important Provisions for Card Acceptance American Express OnePoint Program

1. OVERVIEW OF AMERICAN EXPRESS ONEPOINT PROGRAM

- a. Eligibility; Transition to Our Standard Card
 Acceptance Program. Our American Express OnePoint
 Program provides integrated Card acceptance services to
 eligible Entities through our agents, including Heartland
 Payment Systems. If you do not qualify for this
 program, you may be enrolled in our standard American
 Express Card acceptance program, which has different
 servicing terms (e.g., different speeds of payment); you
 may terminate the Agreement if you do not wish to so
 be enrolled. If you become ineligible for our American
 Express OnePoint Program, we will transition you to our
 standard American Express Card acceptance program
 upon forty-five day's prior notice, unless you opt-out of
 that transition by notifying our agent in writing no later
 than fifteen days prior to the effective date of transition.
- b. Program Services. We may perform our obligations and exercise our rights under the Agreement directly or through our agents. Since we are acting through our agent in many instances under the Agreement, the terms we, our, or us also may refer to our agent above, as the context requires. Please direct all inquiries and notices under the American Express OnePoint Program to our agent:

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

c. Merchant Regulations. The Merchant Regulations set forth the policies and procedures of our standard American Express Card acceptance program. The provisions of this Schedule A describe the different terms that apply to you under the American Express OnePoint Program and take precedence over the corresponding provisions of the Merchant Regulations. For example, since Entities classified in certain industries do not qualify for or certain fees or assessments do not apply in the American Express OnePoint Program, references in the Merchant Regulations to those industries, fees or assessments may not apply to you. Please contact our agent for a copy of the Merchant Regulations and with any questions about its application under this program.

2. DOING BUSINESS WITH AMERICAN EXPRESS

- a. Certain American Express Terms Not Applicable.
 Our Online Merchant Services, the terms applicable to Corporate Purchasing Cards, and our Monthly Flat Fee option are not available to you under the American Express OnePoint Program. During your participation in the program, you are not required to configure your systems to communicate directly with our systems and you must not provide Payment Services or otherwise act as a Payment Service Provider.
- b. Merchant Number: Your Merchant Information. Under the American Express OnePoint Program, you will not receive a standard American Express Merchant Number. Our agent will instead assign a unique OnePoint Program "merchant" or "account" number to your Establishment; if you have more than one Establishment (or a sales channel for Internet Orders), it may assign to each a separate number. You will need that number each time you call our agent under the American Express OnePoint Program. (If you are enrolled in or transition to our standard Card acceptance program, we (not our agent) will assign you a standard American Express Merchant Number.) You must notify our agent of any changes in your business and banking information and any closings of your Establishments. Our agent may verify and disclose information about you, including by requesting reports about you and the person signing your application to accept the Card.

3. AUTHORIZATION

During your participation in the American Express OnePoint Program, you must initiate an Authorization for each Charge according to the Authorization procedures of our agent and contact our agent about all Authorization responses. You must obtain from and submit to our agent an Authorization Approval code for all Charges. Authorization does not guarantee that we or our agent will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

4. SUBMISSION

During your participation in the American Express OnePoint Program, you must submit Charges and Credits electronically to our agent according to its Submission procedures under the OnePoint Program "merchant" or "account" number of the Establishment where the Charge or credit originated. You must not submit Charges and Credits on paper.

5. SETTLEMENT

- a. Settlement Amount. Our agent will pay you according to your payment plan, as described below, in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Our agent will subtract the full amount of all applicable deductions, rejections, and withholdings, from this payment to you (or debit your Bank Account), but if it cannot, then you must pay it promptly upon demand.
- b. Discount. Your initial Discount and other fees and assessments are indicated in the Agreement or otherwise provided to you in writing by our agent. We or our agent may adjust any of these amounts and may change any other amount charged to you for accepting the Card. We or our agent may charge you different Discount Rates for Charges submitted by your Establishments that are in different industries. We or our agent will notify you of such fees, such adjustments and charges, and assessments and any different Discount Rates or Transactions fees that apply to you.
- c. Payment Plan. During your participation in the American Express OnePoint Program, the terms of your payment plan (e.g., speed of payment, payment and reconciliation options) with our agent govern settlement payments to you. Our agent will send payments for Charges from your Establishments according to your payment plan to your Bank Account that you designate to it. You must notify your bank that we, through our agent, will have access to your account for debiting and crediting the Bank Account.

6. PROTECTING CARDMEMBER INFORMATION

You must notify our agent immediately if you know or suspect that Cardmember Information has been accessed or used without authorization or used other than in accordance with the Agreement. You must promptly provide to us and our agent all Card Numbers related to the data incident and audit reports of the data incident, and you must work with us and our agent to rectify any issues arising from the data incident, as specified in the Merchant Regulations.

7. RISK EVALUATION

- a. Prohibited / High Risk Merchants and Activities.

 Entities classified in certain industries or accepting
 Transactions for certain prohibited activities do not
 qualify for the American Express OnePoint Program,
 but may qualify for our standard American Express
 Card acceptance program. Please contact our agent
 with any questions about those risk evaluation
 procedures under the program.
- **Protective Actions.** Our agent may take actions to protect our rights or those of any of our Affiliates by events identified by our agent and may include requiring you to deposit funds or other collateral with us or our agent, changing the speed of payment for Charges, exercising Chargeback under any of our Chargeback programs, and charging you fees for Disputed charges. Our agent may establish the Reserve; increase the Reserve from time to time; make deductions and withhold from and recoup and setoff against the Reserve any amounts owed under the Agreement; and terminate the Agreement on our behalf. Our agent will inform you if a Reserve is established. You must provide to our agent promptly, upon request, information about your finances, creditworthiness, and operations, including your most recent certified financial statements. You must notify our Agent immediately of the occurrence of any event described in Section 3.b.viii of the General Provisions.

8. INQUIRIES AND CHARGEBACKS

During your participation in the American Express OnePoint Program, our agent's procedures for Inquiries, Disputed Charges, and Chargebacks govern the Disputed Charge process, provided that nothing therein waives our Chargeback rights under the Agreement. Our agent may Chargeback by deducting, withholding, recouping from, or setting-off against our payments to you (or debiting your Account), or our agent may notify you of your obligation to pay us (through our agent), which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Chargeback rights.



Equipment

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 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, sublicense 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, twentyfour (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.

Heartland Payment Systems: The Highest Standards. The Most Trusted Transactions.

Heartland provides a full suite of payments solutions, including:

- Card Processing
- Payroll Services
- Check Management
- Online Payments
- Heartland's Give Something Back NetworkSM & OneCardTM
- MicroPayments
- Restaurant Management Systems & Lending
- Equipment

