



**Tooele County Council  
 Agenda Item Summary**

**Department Making Request:**

**Meeting Date:**

Auditor

5/3/2022

*b.c*

**Mark Options That Apply:**

**Grant**  
*1 time*

**Contract**  
*1 yr. or less*

**Purchase**

*Exp date: 6/30/2023*

**Grant**  
*With County Match*

**Contract**  
*More than 1 yr.*

*Exp date: \_\_\_\_\_*

**Budget Impact:**

**In Budget**

**Over Budget**

**Requested Amount: \$ \_\_\_\_\_**

**Item Title:** Approval of Countywide Merchant Service Agreement with Intellipay

*Please answer the who? what? when? why?*

An RFP for merchant/credit card provider services was posted on 12/27/2021 and Tooele County received proposals from 8 companies. Current provider, Secure Instant Payments (SIP) did not offer a proposal. A committee of 4 members scored Intellipay the highest and they have been awarded the bid.

Current provider, Secure Instant Payments does not accept American Express, or "chip" cards, and their processing fee is 2.5%. Intellipay accepts all card types and vendors, and the processing fee is 2.35%. Both vendors offer an ACH option. SIP charges \$0.49 while Intellipay charges \$1.00. Per their RFP, Intellipay is able to interface with all departments, and department specific software. Intellipay is prepared for implementation as soon as contract is approved.

**List who needs copies when approved:** Auditor's Office, Clerk's Office



## SERVICE FEE PROCESSING AGREEMENT

This Agreement is made by and between Convenient Payments LLC, d/b/a "IntelliPay" ("Company") located at 12884 S Frontrunner Blvd Ste 220, Draper, UT 84020 and "Merchant" whose name and address are shown on the Merchant ACH Processing Authorization Form attached to this Agreement.

### DEFINITIONS:

Agreement: Shall mean this agreement, all of its Exhibits, attachments and Amendments.

Card Brands: Shall mean all credit card companies including Visa, MasterCard, American Express, Discover, other credit cards and debit card issuing companies.

Card Brand Fees: Shall mean additional fees charged by Card Brands for access to their Networks and includes such fees as dues and assessments, FANF, and other fees.

Charge Backs: Shall mean Customer Transactions disputed by Customer directly with the Customer's card issuing financial institution. For each Charge Back of a Transaction, the TPP or Settlement Bank assess a fee to the Company or Merchant.

Company: Shall mean Convenient Payments LLC, d/b/a "IntelliPay"

Contractor: Shall mean Best Digital Solutions LLC

Customers: Shall mean the customers of Merchant that use the Software and Services provided by Company.

Industry Rules: Shall mean the rules determined by Card Brands that govern the activities of merchants, cardholders, Settlement Banks, Networks and cardholders that transact business on their respective platforms.

Interchange: Shall mean the system used by Card Brands to receive Transaction data, remit authorizations, declines or returns, and shall also mean the fees charged to Settlement Banks (including discount and per item fees) by Card Brands on behalf of card issuing financial institutions.

IVR: Shall mean Interactive Voice Response system- a system for conducting automated transactions by phone.

Merchant: Shall mean the recipient of Transactions and Settlement Amounts from transactions performed by Customers using the Company's Services, and a party to this Agreement along with Company.

Monthly Access Fee: Shall mean a fee charged each month to Merchant by Company for use of the Company's Software and Services.

NACHA: Shall mean the National Automated Clearing House Association that manages the development, administration, and governance of the ACH Network, the backbone for the electronic movement of money and data in the United States.

Networks: Shall mean the processing systems used by Card Brands and may be used interchangeably with the term Card Brands.

POS Device(s): Shall mean any device, credit card terminal or other hardware used to connect to the Software and transmit data from card present transactions.

Qualified Payment Options: Shall mean payments from cards such as signature-based debit, credit, stored value electronic cards, and electronic checks that are authorized by the Company and listed on Exhibit A.

Retrievals: Shall mean a formal request from Card Brands for data related to a specific Transaction.

Return Fees: Shall mean fees charged for the act of returning or refunding funds to a Customer's card and may also have the meaning of fees assessed to Merchant for rejecting billing Transactions to Merchant.

Service Fee: Shall mean a separate fee charged to Customers or Merchant for access and use of the Company's Software and Services.

Service (s): Shall mean the providing of the Software and access to the Networks, TPPs, and Settlement Bank providing Customers with the ability to pay Merchant.



Settlement Amount: Shall mean the amount of funds deposited as a result of a Transaction with Customer or an aggregate group of Transactions from multiple Customers

Settlement Bank: Shall mean the bank or financial institution authorized by Card Brands and other payment networks to receive funds from Networks and deposit Settlement Amounts into the Merchant's bank account.

Software: Shall mean the proprietary SAAS software provided by the Company as part of the Services

Third Party Processors (TPPs): Shall mean companies that provide data processing services and connectivity between the Company and Networks and shall include companies used by Company that are registered Independent Sales Organizations (ISOs-Visa) and Member Service Providers (MSPs-MasterCard) and which have similar relations with other Card Brands.

Transaction: Shall mean the sale or purchase payment transaction between Merchant and Customer

Virtual Terminal (s): Shall mean the Software interface that can be used on-line by Merchant to input Transactions.

**1. PURPOSE OF AGREEMENT.** This Agreement governs use of the Company's Software and Service to effectuate electronic payments for Merchant from Merchant's Customers.

**2. THE SERVICE.**

**a.** The Software provided pursuant to this Agreement is licensed for use by Merchant and its Customers and is not sold. The license is revocable by the Company at any time and will automatically terminate upon termination or expiration of this Agreement.

**b.** For use with POS Devices, the Software will be loaded onto a POS Device for use in card present Transactions and placed on premises of locations owned or controlled by Merchant. POS Devices may be used only at the locations identified on Exhibit C, which is incorporated herein by this reference, and which must be updated whenever Merchant adds new POS Devices to a location or add new locations. When provided online, the Software will be available to Merchant's Customers as a software-as-a-service (SaaS) application.

**c.** The Software will have access to debit, credit and public access Networks, Third Party Processors (TPPs), and a Settlement Bank, each of which shall be selected by Company.

**d.** The Software will facilitate (at Company's option) some or all of the following: acceptance of signature-based debit, credit and stored value electronic transactions; use of electronic funds transfer, including electronic transfers from Customers' banks, electronic checks, and the transfer of funds from the Settlement Bank to the Merchant's designated Merchant Account. The Software will calculate a separate Service Fee to be charged to Merchant's Customer at the same time Customer completes Transaction with Merchant.

**e.** The providing of the Software and access to the Networks, TPPs, and Settlement Bank is collectively referred to as the "Service". Merchant will indicate which aspects of the Service it will use.

**3. OBLIGATIONS OF THE PARTIES.**

**a.** Merchant may purchase POS Devices from Company (see Exhibit C). Company may reprogram equipment software as required by Networks, TPPs or Settlement Banks and Merchant will assist the Company when necessary. POS Device warranties are solely subject to manufacturer's warranty. Company shall not be subject to or obligated for coverage of warranty repairs or replacements or costs of repairs or replacement beyond any warranty parameters or warranty period. Merchant shall be responsible for costs of repair or replacement of lost or damaged POS Devices.

**b.** Merchant is responsible for integration to existing websites and/or phone systems. Merchant may choose to use Company's websites and or phone systems and Company will provide and allow for the use of Merchant's logos, trademarks and service marks in accordance with Company's policies.

**c.** Merchant is responsible for installation of POS Devices and interfaces designated by Company. Merchant must provide those resources necessary for POS Device (s) to interface to the Internet. Merchant will provide, pay for and allow Company access to all utility services required for use of the equipment.

**d.** Merchant shall immediately notify the Company of any interruptions of the functioning of the Services.

**e.** Merchant shall honor only those Qualified Payment Options such as signature-based debit, credit, stored value electronic cards, and electronic checks that are authorized by the Company and listed on Exhibit A, which is incorporated herein by this reference, as it may be amended from time to time. Merchant may not complete and Company shall not be liable for the settlement of any Transaction unless a Qualified Payment Option was used and the financial institution issuing the Qualified

Payment Option provided an authorization number. Merchant may not complete and Company shall not be liable for the settlement of any Transaction unless the Qualified Payment Option was swiped or dipped through the Company-provided POS Device (s), electronically transacted on the Company-provided website, or through the Company provided IVR system, or otherwise agreed to the Transactions according to Industry Rules. Merchant shall retain original signed card receipts as required by Card Brand Rules and make receipts promptly available to the Company on demand so Company can provide authorization on unrecognized or disputed transactions.

**f.** Company will provide links, phone numbers and code to enable Merchant to make the Software available to Customers online using a customized website or over the phone using a customized IVR system.

**g.** Company is not responsible for any Network or connectivity problems experienced by the Merchant or a Customer unless such connectivity problems are resulting from outages experienced by Company

**h.** Company will provide marketing materials and signage. Merchant shall properly display all signs and static advertisement required to be displayed by the applicable Card Brands. Merchant shall adequately display the proper symbols, service marks and names on promotional materials to inform the public that Merchant will honor Qualified Payment Options and that a Service Fee shall be charged. In exchange for the Services, Merchant agrees it shall, to the best of its ability, aggressively market the Services.

**i.** Company is responsible for ensuring that Settlement Bank settles transactions and deposits payments from Customers net of Service Fees. This net amount equals the whole payment made by cardholder to Merchant for goods or services rendered to Customer by Merchant. Company will make accessible to Merchant a daily transaction summary.

**j.** Each party will comply with all applicable laws and Industry Rules and with all regulations of the Card Brands.

**k.** Merchant hereby authorizes Company to execute on Merchant's behalf any agreements necessary for Merchant to receive Services from Settlement Bank.

**l.** Merchant shall review all daily transaction summaries and other data provided in statements of Merchant's Transactions. Merchant agrees that Company shall not be responsible or liable for any errors in Transactions or Settlement Amounts to Merchant for any Transactions or Settlement Amounts not brought to the Company's attention, in writing, within sixty (60) days following the month of the disputed Transaction or Settlement Amount.

#### **4. FEES.**

**a.** Company shall act on Merchant's behalf with the Third-Party Processor (TPP) and the Settlement Bank. As such, (i) card processing data will be received by Company and be made available to Merchant at <https://intellipay.cpteller.com>; (ii) transactions are split-settled by Company where the payment amount is directly settled into the Merchant Account by the Settlement Bank, and Service Fees are settled as separate Transactions with the Company.

**b.** Company may assess a Service Fee to Customers as described in Exhibit A. Such fees will be added to the amount a Customer pays for a product or service and shall be added as a separate transaction. Such Service Fees belong to the Company.

**i.** Company, in its sole discretion, reserves the right to modify the amount of the Service Fees charged, from time to time, for any of the following: a) increases in or additions to Card Brand and Interchange Fees; b) increased processing costs from TPP and/or Settlement Banks; c) changes in regulations resulting in greater costs to Company; d) increases in operational costs required to provide the Service, including, but not limited to, increased costs of connectivity or cyber security; and e) if Service Fees charged are not adequate to cover the Company's costs and reasonably expected operating margins.

**ii.** In the event Company determines that it must increase Service Fees, Company shall provide a minimum of ten (10) days' notice to Merchant of Company's intent to increase Service Fees. Merchant shall have the option, but not the obligation, to amend this Agreement in a way that enables Merchant to separately pay Company the increased amount of Services Fees to be billed.

**iii.** All Service Fees are non-refundable. Merchant shall post language on Merchant's payment site that Service Fees are non-refundable, and that any dispute of Service Fees shall result in loss of privileges by Customer to transact with Merchant. Merchant may, at its own discretion, elect to refund a Service Fee to its own Customer. In such instances, Merchant shall request Company refund a specific Service Fee, and such refunded amount shall be billed by Company to Merchant.

**c.** If Company or Merchant are assessed for a Chargeback Retrieval or Return, as out lined in Exhibit A, for either of the Transactions between Merchant and Customer, or the Service Fee Transaction, Merchant shall bare sole responsibility for the amounts of such Chargebacks or Returns and all associated fees as described in Exhibit A, including, but not limited to, any Chargeback, Retrieval or Return Fees billed by the TPP or Settlement Bank to Company. Company may immediately, and without notice, debit Merchant's designated bank account for the full amount of the Chargeback or Return and any associated fees.



d. All other fees that Company may assess for Services to Merchant shall be described in Exhibit B and incorporated herein by this reference.

## 5. TERM AND TERMINATION.

a. The initial term ("Initial Term") of this Agreement shall begin on the effective date of the Notice to Proceed, and shall remain in effect until June 30, 2023, unless extended by the Merchant for an additional one (1) year term not to exceed four (4) annual renewals, or otherwise terminated as hereinafter provided. The Merchant may elect to extend the contract by providing notice to the Contractor/Company at least thirty (30) days prior to the termination date.

b. Either Party may terminate this Agreement for cause in the event of a material breach by the other Party, which breach is not reasonably cured within thirty (30) days following receipt of written notice of such breach being received by the Party being notified of such breach.

c. Company may terminate this Agreement at any time upon written notice to the Merchant for the following: i) if the provision of the Services is determined by Company, in its sole discretion, to violate any statute, law, regulation, rule, Industry Rule, order or operating procedure existing or newly enacted by a governmental authority, judicial authority of competent jurisdiction, Card Brands, Settlement Banks, NACHA (or any similar industry organization with authority over the Services) or if such statute, law, regulation, rule, Industry Rule, order or operating procedure shall exist or be enacted which shall materially affect or reduce the Company's ability to provide the Services; ii) if there are excessive Charge Backs to either Merchant's Transactions or the Service Fees Transactions. Excessive Charge Backs shall be defined as having a number of disputed Transaction resulting in Charge Backs that exceeds three (3) month average of one percent (1%) of Visa Transactions and/or two percent (2%) of MasterCard Transactions; and iii) Company determines, in its sole discretion, that Merchant's business activity is a cause of undue risk and Charge Back exposure to Company.

6. **INDEMNIFICATION.** Each Party agrees to indemnify, hold harmless, and defend the other from and against any action, cause, claim, damage, debt, demand or liability, including reasonable costs and attorney's fees, asserted by any person, arising out of or relating to the indemnifying Party's breach of this Agreement or violation of applicable law, to the extent permitted by law. Merchant will indemnify, hold harmless, and defend Company from and against any action, cause, claim, damage, debt, demand or liability, including reasonable costs and attorney's fees relating to civil or regulatory actions connected with Merchant's Customers and the products and/or services provided by Merchant; and any and all activities related to Merchant's business practices, including, but not limited to, any damaging impact resulting to Company resulting from Merchant's lapse in cyber security customary best practices.

7. **LIMITATION OF LIABILITY.** Company shall not be liable to Merchant for any indirect, special, incidental, exemplary punitive, treble, or consequential damages (including, without limitation, loss of business, revenue, profits, goodwill, use, data, or other economic advantage), whether based on breach of contract, tort, product liability, or otherwise, and whether or not a party has previously been advised of the possibility of such damages. To the fullest extent permitted by law, Company's total liability to Merchant under this Agreement will not exceed the lesser of six (6) months of fees billed directly to Merchant or one thousand dollars (\$1,000).

8. **CONFLICT OF INTEREST.** Company warrants and declares that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the Services required under the provisions of this Agreement a violation of any applicable law. Company further declares that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. In the event that any conflict of interest should nevertheless hereinafter arise, Company shall promptly notify Merchant of the existence of such conflict of interest so that Merchant may determine whether to terminate this agreement. Company further warrants its compliance with the Political Reform Act (Government Code section 81000 et seq.) that apply to Company as the result of Company's performance of the work or services pursuant to the terms of this Agreement.

9. **GOVERNING LAW AND VENUE, JURY TRIAL WAIVER, ATTORNEY'S FEES.** The laws of State of Utah (without regard to its conflicts of law provisions) govern all matters arising out of or relating to this Agreement. The Parties each consent to the exclusive jurisdiction and venue of the federal or state courts located in Salt Lake County, State of Utah for any legal suit, action, or proceeding arising out of or relating to this Agreement. The parties waive any right to trial by jury in any action arising out of, in connection with, or in any way related to this Agreement. The prevailing party in an action brought against the other to enforce the terms of this Agreement or any rights or obligations hereunder, will be entitled to receive its reasonable costs and expenses of bringing such action including its reasonable attorney's fees in addition to any other recoverable damages.

10. **LICENSES.** If a license of any kind, which term is intended to include evidence of registration, is required of Company, its representatives, agents or subcontractors by law, Company warrants that such license has been obtained, is valid and in good standing, and that any applicable bond has been posted in accordance with applicable laws and regulations.



## 11. CONFIDENTIAL INFORMATION.

a. The Parties agree that they may exchange confidential, proprietary information related to this Agreement, including email addresses, trade secrets, know-how and confidential information (collectively "Confidential Information"). Each Party agrees to use the other Party's Confidential Information solely for the purposes contemplated by this Agreement. Confidential Information shall include the terms and existence of this Agreement. During the Term of this Agreement and at all times after its termination, each Party and its employees and agents shall maintain the confidentiality of the Confidential Information of the other Party and not sell, license, publish, display, distribute, disclose or otherwise make available such Confidential Information to any third party nor use such Confidential Information except as authorized by this Agreement. Neither Party shall disclose any such Confidential Information other than to employees, agents and permitted contractors of such party who reasonably need to know such Confidential Information in connection with the exercise of rights or the performance of obligations under this Agreement without the prior written consent of the other Party. For purposes of this Agreement, the identity of Company's service providers, clients and business partners and relationships is Company's Confidential Information and shall be treated in accordance with this section.

b. Notwithstanding the foregoing, provided that the receiving Party uses reasonable efforts to give the disclosing Party reasonable advance notice thereof so as to afford the disclosing party an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure, either Party may disclose Confidential Information: (i) as required by a properly authorized and authenticated governmental request; (ii) in response to a subpoena or court order; (iii) to comply with applicable laws, rules or regulations; or (iv) in response to an investigation of fraud regarding a specific consumer. The obligations of the Parties set forth herein shall not apply to any information that: (a) is in the public domain at or after the time it was disclosed by the disclosing Party to the receiving Party through no fault of the receiving Party; (b) was rightfully in the receiving Party's possession free of any obligation of confidentiality at or after the time it was communicated to by the disclosing Party; (c) is disclosed with the prior written approval of the disclosing Party; (d) is independently developed by the receiving Party without reference to or use of the Confidential Information; (e) is or becomes available to the receiving Party from a person other than the disclosing Party or any of its Representatives who is not bound by an obligation to maintain the confidentiality of such information; (f) is necessary to disclose in order to establish the rights of either Party under this Agreement; or (g) is required to be disclosed pursuant to an order or requirement of a court, administrative agency or governmental body, provided that the receiving Party shall promptly notify the disclosing Party of the facts thereof to enable the disclosing Party to seek a protective order or otherwise prevent or restrict disclosure of such information, and upon request of the disclosing Party, shall reasonably cooperate with the disclosing Party (at the disclosing Party's sole cost and expense) to obtain such protective order or other appropriate remedy. In the event that no such protective order or other remedy is obtained, or the disclosing Party waives compliance (in whole or in part) with the terms and conditions of this Agreement, the receiving Party shall disclose only that portion of the Confidential Information that is required to be disclosed and shall use all reasonable efforts to ensure that all Confidential Information that is disclosed, shall be accorded confidential treatment.

**12. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTY.** Except as expressly set forth in this Agreement, Company makes no warranties and expressly disclaims all warranties, express or implied, as to the subject matter of this Agreement, including implied warranties of merchantability and fitness for a particular purpose. Company shall not be liable for any Services provided, including but not limited to the content thereof. COMPANY, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, CONTRACTORS AND SUPPLIERS PROVIDE THE SERVICES "AS IS" AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. COMPANY, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, CONTRACTORS AND SUPPLIERS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Some states do not allow the disclaimer of implied warranties, so the foregoing disclaimer may not apply to Client. This warranty gives Client specific legal rights and you may also have other legal rights that vary from state to state.

IN ADDITION, COMPANY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, AND DISCLAIMS ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF COMPANY. NOTWITHSTANDING COMPANY WILL EMPLOY CURRENT "BEST PRACTICES."

IN NO EVENT SHALL COMPANY, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, CONTRACTORS AND SUPPLIERS, BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES RESULTING FROM ANY CLAIM ARISING OUT OF, OR RELATED TO, THIS AGREEMENT AND/OR USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE. COMPANY'S LIABILITY IS LIMITED TO THE LESSER OF (A) THE PAYMENTS MADE BY MERCHANT TO COMPANY IN THE 6 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR (B) ONE-THOUSAND DOLLARS (\$1,000.00).



**13. RELATIONSHIP BETWEEN THE PARTIES.** This Agreement does not create an agency, joint venture, partnership, fiduciary relationship, or any similar relationship between the Parties, and neither Party has the right or authority to act for, or on behalf of, the other Party.

**14. PROPRIETARY RIGHTS.** Any and all inventions, discoveries, patent applications, patents, copyrights, trademarks and tradenames, commercial symbols, trade secrets, and information embodying proprietary data existing and owned by Company as of the date of this Agreement shall be and remain the sole and exclusive property of Company. Merchant acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Merchant further acknowledges and agrees that the content or information presented to the Customer through the Service may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except where expressly provided otherwise by Company, nothing in the Service or the Agreement shall be construed to confer any license Merchant or any of Merchant's Customers, intellectual property rights, whether by estoppel, implication, or otherwise. Without limiting the generality of the foregoing, any names or trademarks of the Software and Services, Company service marks, logos and product service names are marks of Company. Merchant agrees not to display or use the Company marks except in accordance to the provisions of this Agreement.

**15. NON-COMPETITION.** In consideration of the terms of this Agreement, Merchant agrees that during the one (1) year immediately after the end of the termination of this Agreement, Merchant shall not engage in any business or practice that competes with the business of Company. For the purposes of this Agreement, the phrase "engage in any business or practice that competes with the business of Company" means and includes Merchant engaging in the Company's business: (a) as an individual anywhere in the Restricted Area, or (b) directly or indirectly as a proprietor, owner, partner, principal, agent, member, director, manager, employee, independent contractor of any entity, group or person that comprises or engages in the Company's business anywhere in the Restricted Area. The term "Restricted Area" means the United States of America.

**16. NO SOLICITATION.** Merchant shall not, directly or indirectly, during any portion of the Term or during one (1) year period immediately after the end of the Term and termination of this Agreement, call on, solicit, or transfer any of Company's Customers, vendors, clients, employees, independent contractors, resources, personnel, Settlement Banks, other downline referred business entities or otherwise to any office of Company which is engaged in a business or practice that competes with the business of Company. In the event Merchant violates this section of the Agreement, Company has the right to obtain injunctive relief and any financial gain made by Merchant from the breach of this section.

**17. SURVIVAL.** Any term or provision of this Agreement, the survival of which is necessary in order that such terms and provisions are given full force and effect and afforded any and all remedies set forth herein or therein, or templated thereby, including not limited to Confidentiality and Proprietary Rights, will survive the termination of this Agreement, regardless of the date, cause, or manner of such termination.

**18. NOTICES.** All notices provided for in this Agreement shall be given in writing and shall be effective as follows: (a) when served by personal delivery; (b) three (3) days following deposit, postage prepaid by United States registered or certified mail addressed as provided herein; (c) one (1) day following dispatch via an overnight delivery service such as UPS, Federal Express or similar carrier; or (d) when dispatched via facsimile or other electronic transmission provided that the means of delivery requires a signature or other confirmation of delivery.

Notice shall be given at the following addresses:

Convenient Payments LLC  
d/b/a "IntelliPay"  
12884 S Fronrunner Blvd Ste 220  
Draper, UT 84020

Merchant Name:  
TOOELE COUNTY AUDITOR  
47 S. Main Street  
TOOELE, Utah 84074

**19. GENERAL.** No delay or failure by either party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of fact or any other right, unless otherwise expressly provided herein. Merchant may not assign, delegate, or subcontract any rights, obligations or duties hereunder without Company's prior written consent. With the exception of the exhibit A which may be modified by Company in its sole discretion, this Agreement may only be amended or modified by a written agreement between the parties; provided however, notwithstanding the foregoing, this agreement may be unilaterally amended by Company if such amendment is mandated by a Card Brand, NACHA, or by law. If any portion of this Agreement may be held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability shall not affect

the remainder of this Agreement and the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of this agreement so as to render it valid, reasonable and enforceable. The obligations the incurred prior to the termination date of this Agreement shall survive the termination of this Agreement. Neither party is liable or responsible for any failure or delay in performance caused by acts of God, strikes, flood, fire, war, public enemy, electrical or equipment failure, failures by third parties, or other events beyond its control. This Agreement contains the entire understanding of the parties and supersedes all previous verbal and written agreements. There are no other agreements, representations or warranties not set forth herein. The parties are deemed independent contractors and will not be considered agents, joint ventures, or partners of the other. Nothing in this Agreement or in the course of the dealing of the parties will be construed as authorizing either party to obligate or bind contractually, in liability, or otherwise, the other party with the exception of the obligations of this Agreement. Any notice or other communication given under this agreement will be sent via hand-delivery or nationally-recognized courier and addressed and sent to that party at its address as specified in this agreement. Notices and communications will be will be effective on the date of actual receipt.

The parties have executed this agreement as of the dates set forth below:

<b>Convenient Payments, LLC, d/b/a "IntelliPay"</b>	<b>Merchant:</b>
Signed:	Signed: <i>James A. Welch</i>
Name:	Name: <i>James A. Welch</i>
Title:	Title: <i>County Manager</i>
Date:	Date: <i>5/4/22</i>

APPROVED AS TO FORM:

*Colin R. Winchester 04/28/2022*

**Colin R. Winchester**  
**Deputy Tooele County Attorney**



**Merchant ACH Processing Authorization Form**

The undersigned hereby authorizes the Company to credit or debit the following bank account(s) during the term of this authorization for cash receipts, adjustments, chargebacks, returns, rejects, processor fees, damaged, lost, or stolen equipment provided by the Company to Merchant, communication expenses and or other miscellaneous fees and expenses from the operation of an electronic data capture device (ATM/POS/EBT/Currency/Stored Value/eCheck or other items of value). These credits and debits will be facilitated by use of the Automated Clearing House (ACH). Point of Service (POS) transactions are settled by Company where the payment amount is directly settled into the Merchant's business checking account (DDA) by the Settlement Bank. This authorization is valid from the effective date hereof until such time as this authorization is terminated in writing by the undersigned and shall remain effective after termination with respect to amounts owed by Merchant to the Company on the date of termination. The entity whose merchant name appears below hereby indemnifies the named financial institution harmless of any and all such claims made or asserted by either party hereto. This authorization may be assigned in whole to a third party to this agreement.

The undersigned hereby represents and warrants the following signature(s) have been authorized to execute and deliver bank drafts from the following bank account.

Agreed to on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**Merchant Information**

Merchant Legal Name: \_\_\_\_\_

Tax ID #: \_\_\_\_\_

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

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

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

**ACH/DDA Information: Financial Institution**

Financial Institution Name: \_\_\_\_\_

ABA/RT#: \_\_\_\_\_

Account #: \_\_\_\_\_

Authorized Signature on above Bank Account

Second Authorized Signature on above Bank Account (if applicable)

X \_\_\_\_\_

X \_\_\_\_\_

Please attach Voided Check or Bank Letter (Signed by Bank Rep)

## Exhibit A: Payment Types and Fees

Check the box for the payment options Company is requesting:

### Chargeback/Return Fees

Credit card, debit card, electronic check, and IVR fees are those fees incurred by the Company on each transaction which are comprised of interchange, assessments, and transaction fees levied collectively by the Card Brands, Settlement Bank and Third-Party Processor. Company agrees to substantially defray these third party-processing fees with Merchant only being responsible to pay

Company that portion of these fees as shown below, "Fees Paid by Merchant per Transaction."

Fees Paid by Merchant			
Fee Description	ACH or eCheck	Visa/Mastercard	All Other Card Types
Insufficient Funds (per occurrence)	N/A		
ACH Reject Fee (per occurrence)	N/A		
Card Retrievals (per occurrence)		N/A	N/A
Card Chargebacks (per occurrence)		N/A	N/A

### Payment Type Selection & Service Fee Schedule

The amount of the consumer fees (Service Fees) that are charged separately to Customer from amounts due to Merchant and may change from time to time. However, if a change is necessary, the Company will provide notification to the Merchant in no less than ten (10) business days prior to any such changes to consumer fees.

Check the box for the payment options Company is requesting

Payment Type Selection		Service Fee Per Transaction	
		Below \$60.00	Above \$60.00
<b>X</b>	Visa Debit/Credit	\$1.50	2.35%
<b>X</b>	Mastercard Debit/Credit	\$1.50	2.35%
<b>X</b>	Discover Card	\$1.50	2.35%
<b>X</b>	American Express	\$1.50	2.35%
<b>X</b>	ACH / eCheck	\$1.00	\$1.00

### Exhibit B: Software Access Fee

Company will provide payment applications to the Merchant for a monthly fee. These applications may include in-person, over-the-phone, virtual, online or interactive payment options.

- Software Fee per Merchant Account:
\$0 /Mo.



## Exhibit C: Equipment & Terminal Configuration

Equipment: Please complete the appropriate data fields for the equipment Merchant will purchase.

Product	Quantity	\$Amount/each	Total
IDTech USB Swiper			
Augusta EMV Reader			
	Shipping		
		Total	

### Terminal Configuration:

Special Instructions:

### APPLICATION INSTRUCTIONS

Welcome to IntelliPay. We look forward to working with you. Please review the following instructions to ensure that your application is processed on a timely basis.

#### CREDIT CARD UNDERWRITING

While we will not perform a credit check for merchants that want to use our payment processing system for credit cards only, we will need to comply with our Know Your Customer, Patriot Act, Anti-Money Laundering and Anti-Terrorist Policies and perform a background check. This includes checking the authorized individual's SS# and Driver's License number against a series of data bases that provide us with the necessary information. This will not affect the authorized individual's credit.

#### ACH and E-Check

Merchants who wish to process eCheck payments through our payment processing system must apply for a Merchant Account by completing the following Merchant Application and submitting the application with the supplementary documentation listed below. Federal law requires that all financial services companies obtain, verify, and record information that identifies each person and business entity that opens a merchant account. The information requested will be used to process the application and will be kept confidential.

#### ADDITIONAL DOCUMENTATION

**IMPORTANT** Please make sure that the authorized individual's contact information is the same person that signs the application.

Please provide the following information:

- Authorized Individual's Signature (please make sure that the authorized individual's contact information is the same person that signs Copy of
- the Authorized Individual's Driver's License
- Please include a copy of a voided check or bank letter that clearly identifies the bank name, account holder, routing number, and account number. Starter checks are not allowed.

#### PRODUCT USAGE DEFINITIONS

- Online Payment Page – Allows merchant to accept payment from its customers via the Internet.
- Customer Portal – Enables merchant to setup and manage installment or recurring payments.
- The One Terminal – Allows merchants to accept payments over-the-phone or set-up recurring payment plans.
- Payment Wizard – Permits online registration and shopping cart features for event scheduling and ticketing, and class registration.
- Batch Upload Terminal – Provides merchants with batch file-based reports on Card transactions
- Light Box - Allows developers to manage customers and their payments online.
- Donation Page – Enables organization donors to choose to donate by adding the fee to donation or not.
- API/Web Services - Public interface which allows developers to manage customers and their payments online.

Completed applications and supplemental information may be faxed to IntelliPay 888-387-6631 or email the application to [apps@intellipay.com](mailto:apps@intellipay.com). For assistance on the Merchant Application, contact IntelliPay at 855-872-6632 or [apps@intellipay.com](mailto:apps@intellipay.com).





855-872-6632

### Credit Card and ACH Set-up Form

RESELLER INFORMATION				
Reseller ID	Reseller Name		Date	
Sales Agent		Business Phone	Email	
COMPANY INFORMATION				
Company Name (EXACT Legal Name)			Doing Business As (if applicable)	
Taxpayer ID Number	Annual Sales (\$000s)	In Business Since (MM/YYYY)	Website URL	General Phone
Business Street Address			City	State ZIP Code
Billing Address (if different from above)			City	State ZIP Code
Legal Status of Business: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Government <input type="checkbox"/> Non-Profit <input type="checkbox"/> Other:				
Description of Business or Service, Markets Served, and Types of Business Location (e.g., retail, commercial, industrial)				
PRIMARY CONTACT INFORMATION				
According to the Patriot Act, we must have an Authorized Individual that is responsible for a payment processing account. Please identify the authorized individual who can speak about this application on behalf of the company. For single proprietorships, privately-held partnerships, limited liability companies and corporations, please identify the principal owner, partner, member or corporate office.				
Name and Title		Email	Work Phone	
Home Address		City	State	Zip Code
Drivers License		Date of Birth	SS#	Home Phone
SIGNATURE AND AUTHORIZATION				
The signature below represents and warrants that: (a) the individual signing below is the authorized representative of Merchant; (b) that the information provided herein is a complete and accurate representation of Merchant's and authorized individual's data as of the date hereof; and (c) that the individual has read and understood the Terms and Conditions below. Additionally, I hereby authorize IntelliPay and its affiliates to initiate debit and credit entries to our Depository and Fee Account(s) indicated at the depository financial institution(s) named below, according to the terms stated herein. This authorization shall remain in full force and in effect until IntelliPay receives written notification from Merchant of any intent to terminate this account and at such time and in such manner as to afford IntelliPay a reasonable opportunity to act (minimum of one week). I acknowledge that the origination of ACH transactions to my account(s) must comply with the provisions of U.S. Law. I also understand that I will be liable to pay the NSF fees that will be charged by my bank in the event debits are returned. I represent and warrant that I am authorized as an authorized representative, principal owner, member, or corporate officer to execute this payment authorization for the purpose of enrolling in the IntelliPay Payment Processing Service. I hereby agree to indemnify and hold IntelliPay harmless from damage, loss, or claim resulting from all authorized actions hereunder.				
Signature		Print Name and Title		Date
PERSONAL GUARANTY (If necessary)				
The principal owner, partner, member, or corporate officer below hereby guarantees to IntelliPay the full, prompt, and complete performance of Merchant and of Merchant's obligations under this Application, including but not limited to all monetary obligations arising out of Merchant's performance or non-performance hereunder, whether arising before or after termination of the Application, bankruptcy, or dissolution of the business. This guaranty shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variation of terms of this guaranty, notice of non-payment, or non-performance of a provision of an agreement by Merchant, and all other notices or demands regarding the this Application. I have read, understood, and agreed to be bound by the terms of this guaranty.				
As the Authorized Contact above, I HEREBY AUTHORIZE A CREDIT CHECK AND RELEASE OF ANY AND ALL INFORMATION REQUESTED BY INTELLIPAY AND ITS AFFILIATES. Any misrepresentation or fraudulent information provided will be the basis of default under this agreement and grounds for immediate termination.				
Signature		Print Name and Title		Date

### PRODUCT USAGE INFORMATION (select which services you wish to use.)

Describe how you intend to use this service (Example: "Going to use Online Payment Page to accept payments from customers.")

Select the Products you wish to use:(check all that apply)

- Online Payment Page     The One Terminal     Customer Portal     Donation Page  
 API/Web Services     Light Box     Batch Upload Terminal     Payment Wizard

### ECHECK INFORMATION

Transactions/Month	Transaction Volume/Month (\$)	Ave Transaction Amount (\$)	Largest One-time Amount (\$)
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Descriptor (Name to appear on customer's bank statement. Max 16 characters)

Transaction Types:  PPD (prearranged consumer payments)     CCD (corporate credit or debit)     TEL (received via the phone)     WEB (received via the Internet)

Notes/Instructions:

### CARD INFORMATION

Existing Merchant Card Account – A tear sheet from the card processor is required to set up the merchant on the card gateway.     New Merchant Card Account – A separate merchant card application must be completed.

Cards Accepted:  Visa     MasterCard     American Express     Discover    Merchant Account Type:  Retail     Mail/Telephone Order     E-Commerce

### SERVICE USER INFORMATION

Please identify the person who will be set up as the administrative user. This user will be able to setup additional users, process payments, view reports and receive service-related emails. The answers to the security questions for the user are used to authenticate the user when contacting Customer Support.

Name	Phone	Email
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### DEPOSITORY ACCOUNT INFORMATION (The following account will be used by IntelliPay to deposit received funds.)

Bank Name	Name on Account	Route/Transit Number	Account Number
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### FEE ACCOUNT INFORMATION (The following account will be used by IntelliPay to collect any service fees (blank if same as the depository account))

Bank Name	Name on Account	Route/Transit Number	Account Number
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### PRICING

Setup Fee	ACH Monthly Fee	ACH Credit or Debit (per Item)	ACH Returns (per Item)	Unauthorized Returns (per Item)
\$0.00	\$0.00	\$0.20	\$3.00	\$15.00
Card Gateway Fee (per Item)	Gateway Monthly Fee	Notes		
\$0.00	\$0.00			



**ADDENDUM A: CREDIT CARD GATEWAY TERMS AND CONDITIONS**

**AGREEMENT:** By signing this document, MERCHANT agrees that the services and charges associated with this agreement are as follows: MERCHANT will incur charges in addition to those owing to Convenient Payments, LLC d/b/a IntelliPay ("IP") hereunder from merchant's credit card processor (the "Processor") for the servicing of its credit card merchant account (the "Merchant Account") as documented in the Merchant Agreement between MERCHANT and the Processor (the "Merchant Agreement"). MERCHANT understands that this Gateway Setup Agreement is not a part of the Merchant Agreement, and that the rates, fees, and charges associated with the Merchant Account are strictly between MERCHANT and the Processor. This agreement covers credit card gateway processing.

Additionally, in the event that MERCHANT enters into lease or financing arrangements, MERCHANT understands that CONVENIENT PAYMENTS is not a party to any such arrangement, and that the terms and conditions of the lease or financing are strictly between or among MERCHANT, the lease/finance company and any other parties thereto, acting independently of IP.

FURTHER, ISO/AGENT/PROCESSOR agrees to pay the IP Gateway Transaction and Monthly Fees specified above in the "Pricing Section." These fees will be billed to ISO/AGENT/PROCESSOR directly and are separate from, and in addition to, any fees charged by the Processor IP agrees to perform Internet transaction processing services for MERCHANT. This includes the (a) authorization of credit card transactions forwarded from MERCHANT in a timely manner through MERCHANT's Merchant Account and (b) detailed reporting of those transactions as well as the associated batch settlement. Electronic Customer Service Email to and from the IP Internet site) is covered throughout the term of this Agreement.

Except for instances in which IP (including without limitation its officers, directors, employees and agents) commits an act of gross negligence or intentional misconduct, it shall not be liable to MERCHANT for any errors, omissions, delays, or other mishaps directly or indirectly involving its performance of services under this Agreement. It is expressly understood and agreed that IP has not made any guarantees or promises with regard to the exact date on which MERCHANT will be able to make use of the Internet processing services contemplated hereby or as to when they will be fully installed and operational, as that may depend on the finalization and configuration of the MERCHANT's Merchant Account, to which IP is not be party.

MERCHANT understands and agrees that it is required to notify IP promptly of any changes in such MERCHANT's bank account numbers, correct email addresses and the Internet addresses (URL) of the Merchant site using IP services and/or products under this Agreement. Failure to provide and/or update this information to IP within a reasonable period of time, before they occur may result in the interruption of services deliverable to MERCHANT hereunder, and/or cause deactivation of MERCHANT'S account with IP.

MERCHANT understands that, unless earlier or otherwise terminated as provided herein (a) the relationship contemplated hereby has an initial term of one (1) year commencing on the date this Agreement is executed and delivered by MERCHANT and (b) such term will renew for successive one (1) year periods unless and until either party hereto notifies the other of its desire to terminate the relationship contemplated hereby at least thirty (30) calendar days prior to the expiration of any such one (1) year period. Notwithstanding anything to the contrary contained herein, this Agreement and the relationship contemplated hereby may be terminated with or without cause by either party upon its delivery to the other party of no fewer than thirty (30) calendar days' prior written notice thereof.

IP shall not be liable to MERCHANT for any delays in the performance of services hereunder or for any failure to perform if such delays or failures to perform are demonstrably due to war, riots, embargos, strikes, inclement weather, acts of God, or other causes beyond IP's reasonable control. MERCHANT shall enter into a Merchant Agreement with the Processor and, throughout the term of this Agreement, shall maintain that or a similar relationship with a processor that is reasonably compatible with the IP network. IP shall not be liable for the individual merit and legitimacy of orders forwarded to it from MERCHANT. As between MERCHANT and IP this liability shall remain solely and exclusively with the MERCHANT.

Neither party hereto shall in any event be liable to the other party for any indirect, special or consequential damages or lost profits arising out of or related to this Agreement, the performance or breach hereof, or the accuracy or correctness of the data being passed to and from MERCHANT, even if IP and/or MERCHANT, as applicable, has been advised of the possibility thereof. The liability of one party to the other under this Agreement shall never exceed the total amount MERCHANT has paid to IP hereunder. The state and county of jurisdiction for any legal proceeding arising hereunder shall be the State of Utah, County of Salt Lake.

Each party hereto (the "Indemnifying Party") shall indemnify, defend and hold harmless the other party, its affiliates, directors, officers, agents and employees (each, an "Indemnified Party") from and against any and all losses, claims, liabilities, damages, costs or expenses (including reasonable legal fees and costs) arising directly from third party allegations that (a) the Indemnifying Party has breached any warranty, representation, covenant or obligation binding upon it under this Agreement or (b) in connection with its obligations under this Agreement, the Indemnifying Party has committed a grossly negligent act or omission or has acted or failed to act in a manner constituting willful misconduct.

MERCHANT agrees that it shall use the services of IP provided hereunder solely for lawful purposes. Any transaction or transmission that violates any Federal, State, or local laws and regulations is expressly prohibited. A substantial change in MERCHANT's business type, products, services, policies or practices requires advance notice in writing from MERCHANT TO IP.

MERCHANT agrees that it its sole responsibility to comply with all Visa, MasterCard and other card association requirements, including their security regulations and programs. MERCHANT and IP each also agrees to keep confidential all cardholder account information coming into its possession.

MERCHANT understands that it will be required to change its IP password every ninety (90) days during the term hereof. MERCHANT understands that, in using IP services, it may not process credit card orders on behalf of any other company or person and that its use of the IP services contemplated by this Agreement is for a single merchant account. Any attempt to use the IP services provided hereunder for more than one merchant account without the agreement of IP may result in additional fees and charges and/or the termination of this Agreement by IP.

IP reserves the right to change its policies, rates and prices by notifying MERCHANT thereof in writing no fewer than thirty (30) calendar days prior to the proposed effective date of any such change. MERCHANT will have the right, in such a case, to terminate this Agreement and the services contemplated hereby by delivering to IP notice thereof no more than twenty (20) calendar days following its receipt of the notification referred to in the first sentence of this paragraph, which termination thereupon shall occur automatically and without a requirement that MERCHANT pay any termination fee or incur any additional cost whatsoever. If MERCHANT does not deliver the notice described in the immediately preceding sentence, it shall be deemed to have consented to the proposed change(s) in policies, rates and/or prices and shall be billed at the new rate as of the effective date thereof.

The monthly charges required to be paid by ISO/AGENT/PROCESSOR to IP shall be directly debited from ISO/AGENT/PROCESSOR'S business checking account named herein during the first week of the month following that in which the applicable services are rendered, regardless of the number of days in which such services were actually performed for that month. In the event that presentment of such charges to ISO/AGENT/PROCESSOR'S business checking account results in a denial for lack of funds or any other reason, ISO/AGENT/PROCESSOR'S authorizes the direct debiting of its DDA checking account for the total invoice amount. ISO/AGENT/PROCESSOR'S further understands and agrees that, in the event undisputed fees are not timely paid, the processing services subject to provision by IP hereunder may be suspended until such time as the applicable payment is made in full. Service will be restored immediately upon payment in full of past due charges. As applicable, MERCHANT agrees to pay a \$25 non-sufficient fund fee.

**ADDENDUM A: CREDIT CARD GATEWAY TERMS AND CONDITIONS**

IP is not affiliated with, receives no compensation from, and is not responsible for, any offers, promises, or business opportunities presented by another entity unaffiliated with IP.

IP is an independent entity providing the services contemplated by this Agreement through its own contracting organization and procedures. The services subject to performance by IP hereunder are in no way to be construed as a part of, or operating in conjunction with, any present or future product or service of any other entity. Any and all complaints not involving products or services subject to performance by IP hereunder shall be addressed directly to the vendor or entity from which ISO/AGENT/PROCESSOR made the applicable purchase.

MERCHANT understands and agrees that IP and its affiliates are not responsible for the success or failure of MERCHANT'S business. ISO/AGENT/PROCESSOR and its subsequent MERCHANTS will be considered in default of its payment obligations hereunder when undisputed charges arising hereunder have not been paid thirty (30) calendar days after their due date. Each party hereto reserves the right to terminate this Agreement for cause, including for any breach hereof. Both parties hereto agree to abide by all individual software licenses, copyright, trademark and/or any applicable international, federal, state and local laws as they apply to any component, product or service, or the use thereof, subject to delivery or performance, as applicable, hereunder.

Merchant shall comply with, and will ensure that all of its vendors, terminals, software, third party service providers ("TPSPs"), and systems comply with, all applicable and then-current: legal obligations, including without limitation all laws and regulations regarding data protection, anti-bribery, and anti-money laundering; card brand rules, requirements, procedures, and guidelines; security standards, processes, and procedures issued by the PCI Security Standards Council LLC, including without limitation the Payment Card Industry Data Security Standard and the Payment Application Data Security Standard (accessible at <https://www.pcisecuritystandards.org/>); and all IntelliPay's security protocols, policies, notices, and safeguards, as they may be updated from time to time. Without limiting the foregoing, in order to comply with PCI PIN security requirements, Merchant shall implement, document and follow PCI security requirements designed to prevent PIN entry devices (PEDs) from being manipulated, exchanged or used in an unintended way. Merchant will only use appropriately qualified and registered professionals to integrate, install, and/or configure Merchant's hardware, software, the gateway services described hereunder, any other aspect of Merchant's payment ecosystem in accordance with the applicable card brand rules. IntelliPay will under no circumstances be held liable for any damages resulting from Merchant's (or Merchant's employees, contractors, agents, third party service providers, or vendors) noncompliance with any of the above, and Merchant will defend, hold harmless, and indemnify IntelliPay against all losses contemplated herein resulting from such non-compliance by Merchant or its employees, contractors, TPSPs, or agents. Conversely, IntelliPay will defend, hold harmless and indemnify Merchant against all losses resulting from IntelliPay acts or omissions causing a data breach of the applicable above-mentioned obligations contemplated herein.



## ADDENDUM B: ACH ACCOUNT TERMS AND CONDITIONS

THIS PROCESSING/SERVICE AGREEMENT (this "Agreement") is entered into, by and between the above signed Merchant ("Merchant") and Convenient Payments, LLC, d/b/a IntelliPay ("IP"). This Agreement is entered into and accepted by Merchant as of the date set forth below.

WHEREAS, IP is willing to provide certain services to Merchant, as set forth herein, to enable Merchant to accept electronic checks as payment for goods and services sold by Merchant, all in accordance with the terms and conditions set forth in this Agreement. IP also agrees to truncate items (account information) tendered to Merchant from its customer's accounts as authorized by the customer and as directed by the Merchant through the Automated Clearing House ("ACH"). IP may initiate credit and/or debit entries and initiate, if necessary, reversing entries and adjustments for any original entries made in error to the customer's checking account from the Merchant's Account indicated below.

1. **Laws, Rules, and Regulations.** Merchant agrees to comply with all existing and future rules and regulations issued by NACHA for processing transactions, all of which rules and operating regulations are expressly incorporated herein by reference and made a part of this Agreement as if they were set forth herein. Merchant further agrees to comply with all applicable state or federal laws, rules and regulations affecting the use of checks, drafts and ACH transactions, including but not limited to rules and procedural guidelines established by the Federal Trade Commission (FTC) and the National Automated Clearing House Association (NACHA).

2. **Merchant Account.** It is necessary that Merchant maintain a commercial checking account ("Merchant's Account") with a financial institution. This account will be used to deposit amounts owed to Merchant and to pay amounts due IP.

3. **Fees.** Merchant agrees to pay IP fees for IP's services in accordance with the Pricing Section mentioned herein and or any other schedule promulgated by IP. IP will bill Merchant at the beginning of the month for the previous month's transactions and other fees as agreed to in accordance to the Pricing Section. Merchant authorizes IP to electronically debit Merchant's Account through the ACH system for fees or other amounts due IP from Merchant.

4. **Payment of Collected Funds.** Merchant shall receive collected funds in accordance with their approval for disbursement from underwriting. These funds will be sent via ACH to the Merchant's Account.

5. **Price Changes.** IP may change any price by giving 30 days prior written notice to Merchant.

6. **Term of Contract.** The term of this Agreement will be thirty-six (36) months beginning on the date IP accepts this Agreement. The term will automatically extend for additional twelve (12) month periods unless canceled by either party.

7. **Cancellation.** This Agreement may be canceled for any reason with a 30-day notice in writing. Merchant is responsible for the fees for all draft/ACH transactions requested prior to said notice, if such draft/ACH transactions are processed by IP. In the event that either party materially breaches any provision of this Agreement, the non-breaching party may terminate this Agreement in writing. If this Agreement is canceled prior to the end of the initial or renewal periods for any reason other than a material breach by IP, the merchant is subject to a \$150 early termination fee. The merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by the early termination.

8. **Authority.** Each party to this Agreement hereby represents and warrants to the other that it has the full right, power, and authority to enter into and to perform this Agreement in accordance with all of the terms, provisions, covenants and conditions hereof, and that the execution and delivery of this Agreement has been duly authorized by requisite corporate action.

9. **Special Events.** In the event a party to this Agreement shall cease to conduct business, becomes insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets; or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Laws of any statute of any state relating to insolvency or the protection of the rights of creditors, then (at the option of the other party hereto), this Agreement shall terminate and be of no further force and effect, and any property or rights of such other parties, tangible or intangible, shall forthwith be returned to them.

10. **Debit/Credit Authorizations and Payment Agreement.** Merchant hereby authorizes IP, in accordance with this Processing/Service Agreement, to initiate debit/credit entries to Merchant's business checking account as indicated herein. The authority is to remain in full force and effect until (i) IP has received written notification from Merchant of its termination in such manner as to afford IP reasonable opportunity to act on it; and (ii) all obligations of Merchant to IP that have arisen under this Agreement have been paid in full.

11. **Audit.** IP shall have the right to audit Merchant's authorizations and or Merchant's records regarding all ACH transactions handled pursuant to this Agreement. If IP discovers that Merchant is not complying with IP's rules or procedures, or any state, federal or other rules, then IP may terminate this Agreement immediately.

12. **Force Majeure.** Each party hereto will be excused from performance hereunder when and to the extent that it is prevented from performance by, but not limited to, the following: computer failure, utility or communications breakdown; inability to operate or obtain service for its equipment; fire; and acts of God; or any act of a third party beyond its control provided that it takes all steps reasonably practical and necessary to effect prompt resumption of its respective inability to operate or obtain service for its equipment; fire; and acts of God; or any act of a third party beyond its control provided that it takes all steps reasonably practical and necessary to effect prompt resumption of its respective responsibilities set forth hereunder in full or in part.

13. **Benefit.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereunder and their representatives, successors and assigns.

14. **Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, County of Salt Lake.

15. **Severability.** Should any of the provisions of this Agreement be invalid, such invalidity shall not affect the validity of the remaining provisions.

16. **Representations and Warranties.** Merchant represents and warrants to IP that all information and statements contained in this Agreement are true, correct and complete. Merchant further agrees to notify IP promptly of any and all changes which may occur from time to time regarding any information contained in this Agreement, including but not limited to the identity of principal owners, and changes in the bank for Merchant's commercial checking account. Merchant shall be and remain fully liable to IP for any and all losses, costs and expenses suffered or incurred by IP arising out of or resulting from Merchant's failure to report all such changes to IP in accordance herewith. Merchant further represents and warrants that it will deliver, if requested, all truncated items (checks) to IP on a weekly basis and that it will not present any truncated item to any financial institution for payment.

17. **Offset.** Merchant authorizes IP to offset fees and amounts due IP from funds held by IP for Merchant should Merchant fail to pay their fees or amounts due.

18. **Assignment.** This Agreement may not be assigned, directly or by operation of law, without the prior written consent of IP.

19. **Attorney's Fees and Costs.** Merchant shall be liable for and shall indemnify and reimburse IP for any and all attorney's fees and other costs and expenses paid or incurred by IP in the enforcement hereof, or in collecting any amounts due to IP by Merchant or resulting from any breach by Merchant of any of the terms or conditions contained in this Agreement.

20. **Performance by IP.** Merchant agrees that it will not have any claim against or right to receive payment from IP other than those amounts actually collected on behalf of the Merchant after deduction of all return items, credits and fees. Merchant further acknowledges that use of this service carries no guarantees, either implied or actual. IP agrees to use reasonable care in processing transactions under this Agreement.

21. **Indemnification of IP.** All disputes between Merchant and its customer's relating to any draft/ACH transaction shall be settled between Merchant and said customer. Merchant agrees to indemnify and hold IP harmless from any claim, liability, loss or expenditure relating to any such transaction or from Merchant's breach of any of its representations or warranties under this Agreement

22. **Compliance with Rules; Non-Disclosure and Confidentiality.** Merchant agrees both (i) to comply with and (ii) cooperate and assist IP in complying in a complete and timely manner with all applicable laws, rules, and regulations now or hereafter applicable to any draft/ACH transaction under this Agreement. Merchant agrees to execute and deliver to IP all such instruments, as IP may from time to time reasonably deem necessary. Merchant shall not disclose confidential information to any third party. Merchant, in an area limited to selected personnel, and prior to discarding, shall destroy in a manner rendering data unreadable all material containing account information after it has been retained for a period specified by all applicable rules and regulations specified in this Agreement.





# MERCHANT PROCESSING APPLICATION AND AGREEMENT

Relationship \_\_\_\_\_ Association \_\_\_\_\_  
 Sales Rep Name Jenny Run Application Date \_\_\_\_\_

1. GENERAL INFORMATION	2. BUSINESS LOCATION INFORMATION	3. BUSINESS STRUCTURE	Page 1 of 4
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Client's Business Name (Doing Business As)		Client's Corporate/Legal Name (Must match IRS income tax filing)	
Location Address		Corporate Address (if Different Than Location)	
City	State	Zip	
City	State	Zip	
Location Phone	Location Fax	Contact Name	Contact Phone
Customer Service Phone	Prior Security Breach? <input type="checkbox"/> Yes <input type="checkbox"/> No	Business Email	D&B#
Business Website Address		Fed Tax ID # (Must match IRS income tax filing)	Tax Type
Multiple locations? <input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, enter # of locations <input type="checkbox"/>	Tax Filing Name	
Additional location to existing MID _____		Date Business Started	Length Current Ownership
Send retrieval/chargeback requests to <input type="checkbox"/> Corporate Address <input type="checkbox"/> Location Address			
Send monthly merchant statements to <input type="checkbox"/> Corporate Address <input type="checkbox"/> Location Address <input type="checkbox"/> Do Not Mail			
<input type="checkbox"/> Sole Prop <input type="checkbox"/> Partnership <input type="checkbox"/> LLC/LLP <input type="checkbox"/> C Corp <input type="checkbox"/> S Corp <input type="checkbox"/> Govt. (Local/State/Federal) <input type="checkbox"/> 501c/Tax Ex. State Filing: <input type="checkbox"/>			
I certify that I am a foreign entity / nonresident alien. <input type="checkbox"/> (If checked, please attach IRS Form W-8.)		NOTE: Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations. (See Part IV, Section A.3 of your Program Guide for further information.)	

4. OWNERS/PARTNERS/OFFICERS	5. TRADE REFERENCE
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OWNER/PARTNER/OFFICER 1	OWNER/PARTNER/OFFICER 2	TRADE REFERENCE
Name	Name	Business Name
Title % Ownership	Title % Ownership	Business Address
Home Address	Home Address	City State Zip
City State Zip	City State Zip	Contact
Telephone DL/ID# Issued State Exp Date	Telephone DL/ID# Issued State Exp Date	Telephone
Social Security # Date of Birth	Social Security # Date of Birth	Prior Bankruptcies? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Business and/or <input type="checkbox"/> Personal Date Discharged _____
Email Address	Email Address	

Patriot Act Notice: To fight the funding of terrorism and money laundering, we are required to obtain, verify and record information that identifies each person (including business entities) who opens an account. To allow us to identify you, we will ask for your name, physical address, date of birth and tax payer ID and may ask for other information, such as your driver's license or other documents.

6. NATURE OF BUSINESS	7. TRANSACTION INFORMATION (see Section 9 American Express)
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Business Type: <input type="checkbox"/> Retail <input type="checkbox"/> Restaurant <input type="checkbox"/> Internet <input type="checkbox"/> Government <input type="checkbox"/> Lodging <input type="checkbox"/> Supermarket <input type="checkbox"/> Mail/Telephone Order <input type="checkbox"/> Petroleum <input type="checkbox"/> Utilities <input type="checkbox"/> Healthcare <input type="checkbox"/> Education <input type="checkbox"/> QSR <input type="checkbox"/> Charity/Non Profit <input type="checkbox"/> B2B <input type="checkbox"/> Other		
Requested Monthly Payment Card Volume _____	Card Present Swiped _____	Sales to Consumers _____
Requested Average Payment Card Ticket _____	Card Present Not Swiped _____	Sales to Business _____
Requested Highest Payment Card Ticket _____	MOTO _____	Sales to Govt. _____
Seasonal Merchant? <input type="checkbox"/> Yes <input type="checkbox"/> No (circle open months if yes)	Internet (Ecommerce) _____	Days to Delivery _____
J F M A M J J A S O N D	Previous Processor _____	
	Reason For Leaving _____	
Description of products or services sold		
Describe your return policy		

### 8. BANKING ACCOUNT INFORMATION

Deposit Bank Name	Routing#	Account#	ACH Method:
Fees Bank Name	Routing#	Account#	<input type="checkbox"/> Combined <input type="checkbox"/> Individual



9. SERVICE ACCEPTANCE AND FEE SCHEDULE

Select all card types you wish to accept (See Section 1.9 of the Program Guide for details regarding limited acceptance)

Visa Credit  Visa Non-PIN Debit  MasterCard Credit  MasterCard Non-PIN Debit  Discover Network  American Express  PIN Debit

Select VI/MC/Discover Network Discount Plan: (Based on Gross Sales Volume)  
 Tiered Basic  Flat Rate  
 Pass Through I/C

Discount Payment Method: \_\_\_\_\_ Daily \_\_\_\_\_ Monthly  
 Assessments: \_\_\_\_\_ Included \_\_\_\_\_ Bill Separately  
 (If Pass Through I/C - Assessments MUST Bill Separately)  
 Brand Fees: \_\_\_\_\_ Included \_\_\_\_\_ Bill Separately  
 (If Pass Through I/C - Brand Fees MUST Bill Separately)

Select PinDebit Discount Plan:  
 \_\_\_\_\_ Pin Debit Network Fee Pass-through + \_\_\_\_\_ % Markup

Discount Fees

QUALIFICATION	DISC. FEE (%)	PER ITEM (\$)	QUALIFICATION	DISC. FEE (%)	PER ITEM (\$)	QUALIFICATION	DISC. FEE (%)	PER ITEM (\$)
MasterCard			Visa			Discover Network		
Credit Qual			Credit Qual			Credit Qual		
Credit Mid-Qual			Credit Mid-Qual			Credit Mid-Qual		
Credit Non-Qual			Credit Non-Qual			Credit Non-Qual		
CheckCard Qual			CheckCard Qual			CheckCard Qual		
CheckCard Mid-Qual			CheckCard Mid-Qual			CheckCard Mid-Qual		
CheckCard Non-Qual			CheckCard Non-Qual			CheckCard Non-Qual		
Credit Pass Through IC			Credit Pass Through IC			Credit Pass Through IC		
CheckCard Pass Through IC	0.00		CheckCard Pass Through IC	0.00		CheckCard Pass Through IC	0.00	0.00
ERR			ERR			ERR		

Voyager All applicable Association fees will be passed through to the merchant at the applicable costs assigned by the Association. Fees include, but are not limited to, Visa's APF, Misuse of Authorization Fee, Zero Floor Limit Fee, Acquirer ISA Fee, and MasterCard's NABU Fee, Acquirer Support Fee, Cross Border Fee, and Discover IPF, ISF, Data Usage fee, Amex Net Work Fee et al.

American Express

			OptBlue <sup>SM</sup>		Amex Direct	
QUALIFICATION	DISC. FEE (%)	PER ITEM (\$)	OptBlue <sup>SM</sup> Monthly Card Volume _____	_____ Order New	_____ Use Existing	
Credit Qual			OptBlue <sup>SM</sup> Average Card Ticket _____	CAP # _____		
Credit Mid-Qual			OptBlue <sup>SM</sup> Highest Card Ticket _____	Existing SE # _____		
Credit Non-Qual			SE # _____	Monthly flat fee of \$7.95 or Discount Rate may apply		
Credit Pass Through IC	0.00		Select OptBlue <sup>SM</sup> Discount Plan:			
ERR			<input type="checkbox"/> Tiered Basic <input type="checkbox"/> Flat Rate			
			<input type="checkbox"/> Pass Through I/C			
			<input type="checkbox"/> Enhanced Recover Reduction (ERR)			

Fee applies to all American Express Programs.  
 \*0.30% downgrade will be charged by American Express for transactions whenever a CNP or Card Not Present Charge occurs. CNP means a Charge for which the Card is not presented at the point of purchase (e.g., Charges by mail, telephone, fax or the Internet). Note: The CNP Fee is applicable to transactions made on all American Express Cards, including Prepaid Cards.  
 An Inbound fee of 0.40% will be applied on any Charge made using a Card, including Prepaid Cards, that was issued outside the United States (as used herein, the United States does not include Puerto Rico, the U.S. Virgin Islands and other U.S. territories and possessions). This fee is applicable to all industries listed in Appendix B, except Education in the following categories: Sporting & Recreation Camps (MCC 7032), Elementary & Secondary Schools (MCC 821), Colleges, Universities, Professional Schools (MCC 8220), and Child Care Services (MCC 8351).  
 By checking this box, you opt out of receiving future commercial marketing communications from American Express.  
 Note that you may continue to receive marketing communications while American Express updates its records to reflect your choice. Opting out of commercial marketing communications will not preclude you from receiving important transactional or relationship messages from American Express.

Authorization Fees

Monthly Fees

Visa/MC/Discover Network	0.00	Electronic AVS	0.00	Monthly Minimum	0.00	Industry Compliance	0.00
Amex/Fleet/Other	0.00	Voice Authorization	0.00	Wireless Fee	0.00	Monthly Service Fee	0.00
Pin Debit Authorization	0.00	Voice AVS	0.00	PIN Debit Fee	0.00	Misc Monthly Fee	0.00
EBT Authorization	0.00			Industry Non-Compliance (Up \$24.95)		(if applicable per Section 4.8 of the Merchant Program Guide)	

Miscellaneous Fees

MX Merchant Fees

Sales Transaction Fee (All card types)	0.00 (per item)	Chargeback Fee	0.00 (per occurrence)	MX Merchant Monthly Fee	
Retrieval Fee (All card types)	0.00 (per occurrence)	Return Transaction Fee	0.00 (per item)	MX Merchant Plan	<input type="checkbox"/> Reporting <input type="checkbox"/> Basic <input type="checkbox"/> Plus
Batch Fee	0.00 (per item)	Annual Fee	0.00	MX Gateway Transaction Fee	<input type="checkbox"/> Premium <input type="checkbox"/> Enterprise
ACH Reject	0.00 (per occurrence)	Annual Fee Bill Month	0.00	Bill to	<input type="checkbox"/> Statement <input type="checkbox"/> Separate

In the event that this Agreement is terminated early, Merchant will be responsible for the payment of a \_\_\_\_\_ early termination fee in accordance with Part III, Section A.3 of the Merchant Program Guide.

**10. OTHER CARD TYPES**

Accept EBT <input type="checkbox"/> Yes <input type="checkbox"/> No Accept EBT Cash Benefit <input type="checkbox"/> Yes <input type="checkbox"/> No	Order Voyager <input type="checkbox"/> Yes <input type="checkbox"/> No Order Wright Express <input type="checkbox"/> Yes <input type="checkbox"/> No (Must attach Wright Express application and Debranding letter with app copy)	Order ACH/Check Services <input type="checkbox"/> Yes <input type="checkbox"/> No (Must attach addendum with app copy) Order Gift Card <input type="checkbox"/> Yes <input type="checkbox"/> No (Must attach addendum with app copy)
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**11a. EQUIPMENT / PROCESSING METHOD**

Application Type    Retail     Retail w/ Tip     MOTO     Restaurant w/ Tip     Quick Serve Restaurant (no tip)     Hotel     Auto Rental

Terminal Features	Yes	No	Purchasing Card	Yes	No	Invoice/Purchase Order #	Yes	No
Fraud Check (last 4-digits)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AVS + CVV2	<input type="checkbox"/>	<input type="checkbox"/>	Server/Clerk #	<input type="checkbox"/>	<input type="checkbox"/>	Auto Close	Y <input type="checkbox"/>	N <input type="checkbox"/>

IP Connection?    Yes     No     If yes, Terminal Serial \_\_\_\_\_    Special Requests (Multi-Mid, Dial 9, etc): \_\_\_\_\_

Wireless?    Yes     No     Wireless Info: MAN/Serial \_\_\_\_\_    SIM Card Number \_\_\_\_\_

TYPE OF EQUIPMENT	PRODUCT NAME	QUANTITY	DEPLOYMENT
Terminal <input type="checkbox"/> Pinpad <input type="checkbox"/> Printer <input type="checkbox"/> VAR* <input type="checkbox"/>			Existing <input type="checkbox"/> Agent <input type="checkbox"/> New Order (attach order form) <input type="checkbox"/>
Terminal <input type="checkbox"/> Pinpad <input type="checkbox"/> Printer <input type="checkbox"/> VAR* <input type="checkbox"/>			Existing <input type="checkbox"/> Agent <input type="checkbox"/> New Order (attach order form) <input type="checkbox"/>
Terminal <input type="checkbox"/> Pinpad <input type="checkbox"/> Printer <input type="checkbox"/> VAR* <input type="checkbox"/>			Existing <input type="checkbox"/> Agent <input type="checkbox"/> New Order (attach order form) <input type="checkbox"/>
Terminal <input type="checkbox"/> Pinpad <input type="checkbox"/> Printer <input type="checkbox"/> VAR* <input type="checkbox"/>			Existing <input type="checkbox"/> Agent <input type="checkbox"/> New Order (attach order form) <input type="checkbox"/>

**\*Manufacturer/product/version of PC/Internet Software** \_\_\_\_\_

Do you use any third party to store, process, or transmit cardholder data?  Yes  No

If yes, give name/address: \_\_\_\_\_

**ORDER LEASE** \_\_\_\_\_    Lease Company \_\_\_\_\_    Lease Term \_\_\_\_\_ Mos. \_\_\_\_\_    Annual Tax Handling Fee    \$10.20

Total Monthly Lease Charge \_\_\_\_\_ w/o taxes, lates fees, or other charges that may apply - See Lease Agreement for details.

This is a NON-CANCELLABLE lease for the full term indicated    Client's initials: \_\_\_\_\_

**11b. CARD NOT PRESENT INFORMATION**

**If you process more than 30% of your bankcard transactions, or volume, without swiping and/or examining the credit card, please complete this section and provide the information requested.**

1. Please submit your Product catalog; brochures; promotional materials; a current price list; and a copy of your service agreement with card holder if applicable. If on the Internet, please include screen-prints of your website address if your site is not yet active.

2. If Internet, please check your type of business:

Web Hosting     Domain Registration     Web page Design     Auction     Internet Service Gateway

Selling Digital Service     Advertisement     Selling Hard Goods     Other: \_\_\_\_\_

If using the Internet, list encryption method, vendor, and controls used to secure transaction information \_\_\_\_\_

3. How will the product be advertised or promoted? \_\_\_\_\_

4. Billing Methods: (Check all that apply)

\_\_\_\_\_ Monthly - \_\_\_\_\_%    \_\_\_\_\_ Yearly - \_\_\_\_\_%    \_\_\_\_\_ Quarterly - \_\_\_\_\_%    \_\_\_\_\_ One Time - \_\_\_\_\_%    \_\_\_\_\_ Hourly - \_\_\_\_\_%

5. List the name(s) and address(es) of the vendor(s) from which supplies are purchased.  
\_\_\_\_\_

6. Who performs product/service fulfillment? If direct from vendor, please provide Vendor Name, address and phone number in full:  
\_\_\_\_\_

7. Please describe how a sale takes place from beginning of order until completion of fulfillment:  
\_\_\_\_\_



I have personally conducted a Site Inspection for this merchant, visually inspected the merchant's inventory (if applicable), verified the merchant's payment application is PABP (Payment Application Best Practices) validated (if applicable), and represent that the information in this merchant application is accurate, as to the best of my knowledge. I am subject to criminal penalties and/or financial losses for false or misleading information.

Sales Agent Name (printed) \_\_\_\_\_ Signature X \_\_\_\_\_

13. SIGNATURES

Client certifies that all information set forth in this completed Merchant Processing Application is true and correct and that Client has received a copy of the Program Guide (Version PPS0714) and Confirmation Page, which is part of this Merchant Processing Application (consisting of Sections 1-13) and by this reference incorporated herein. Client acknowledges and agrees that we, our Affiliates and our third party subcontractors and/or agents may use automatic telephone dialing systems to contact Client at the telephone number(s) Client has provided in this Merchant Processing Application and/or may leave a detailed voice message in the event that Client is unable to be reached, even if the number provided is a cellular or wireless number or if Client has previously registered on a Do Not Call list or requested not to be contacted Client for solicitation purposes. Client hereby consents to receiving commercial electronic mail messages from us, our Affiliates and our third party subcontractors and/or agents from time to time. Client further agrees that Client will not accept more than 20% of its card transactions via mail, telephone or Internet order. However, if your Application is approved based upon contrary information stated in Section 7, Transaction Information section and Section 9, American Express above, you are authorized to accept transactions in accordance with the percentages indicated in that section. This signature page also serves as a signature page to the Equipment Lease Agreement appearing in the Third Party Section of the Program Guide, if selected, the undersigned Client being the "Lessee" for purposes of such Equipment Lease Agreement. Client authorizes PRIORITY PAYMENT SYSTEMS ("PRIORITY") and SYNOVUS Bank ("BANK") and their respective agents to investigate the references, statements and other data contained herein and to obtain additional information from credit bureaus and other lawful sources, including persons and companies names in this Merchant Processing Application. Client authorizes PRIORITY and BANK and their respective agents (a) to procure information from any consumer reporting agency bearing his/her personal credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and (b) to contact all previous employers, personal references and educational institutions. Each of the undersigned also authorizes us and our Affiliates to provide amongst each other the information contained in this Merchant Processing Application and Agreement and any information received from all references, including banks and consumer reporting agencies. It is our policy to obtain certain information in order to verify your identity while processing your account application. If the Application is approved, each of the undersigned also authorizes us to obtain subsequent consumer reports in connection with the maintenance, updating, renewal or extension of the Agreement.

Client authorizes PRIORITY and BANK and their affiliates to debit Client's designated bank account via Automated Clearing House (ACH) for costs associated with the equipment hardware, software and shipping.

You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq, and other laws enforced by the Office of Foreign Assets Control (OFAC).

Client certifies, under penalties of perjury, that the federal taxpayer identification number and corresponding filing name provided herein are correct.

Social Security numbers are classified as "Confidential" information under the PRIORITY Data Classification Retention and Disposal Policy. As such, Social Security numbers may only be accessed by and disclosed to PRIORITY team members and others with a legitimate business "need to know" in accordance with applicable laws and regulations. Social Security numbers, whether in paper or electronic form, are subject to physical, electronic and procedural safeguards, and must be stored, transmitted and disposed of in accordance with the provision of the information applicable to Confidential information. These restrictions apply to all Social Security numbers collected or retained by PRIORITY.

Client agrees to all the terms of this Merchant Processing Application and Agreement. This Merchant Processing Application and Agreement shall not take effect until Client has been approved and this Agreement has been accepted by PRIORITY and BANK.

Client's Business Principal / Officer

Signature X \_\_\_\_\_ Title \_\_\_\_\_

Print Name of Signer \_\_\_\_\_ Date \_\_\_\_\_

Signature X \_\_\_\_\_ Title \_\_\_\_\_

Print Name of Signer \_\_\_\_\_ Date \_\_\_\_\_

Personal Guarantee: In exchange for PRIORITY and Synovus Bank (the Guaranteed Parties) acceptance of, as applicable, the Agreement, and/or the Equipment Lease Agreement, the undersigned unconditionally and irrevocably guarantees the full payment and performance of Client's obligations under the foregoing agreements, as applicable, as they now exist or as modified from time to time, whether before or after termination or expiration of such agreements and whether or not the undersigned has received notice of any amendment of such agreements. The undersigned waives notice of default by Client and agrees to indemnify the Guaranteed Parties for any and all amounts due from Client under the foregoing agreements. The Guaranteed Parties shall not be required to first proceed against Client to enforce any remedy before proceeding against the undersigned. This is a continuing personal guaranty and shall not be discharged or affected for any reason. The undersigned understands that this is a Personal Guaranty of payment and not of collection and that the Guaranteed Parties are relying upon this Personal Guaranty in entering into the foregoing agreements, as applicable.

Personal Guarantee Signature X \_\_\_\_\_ N/A \_\_\_\_\_ Print Name: N/A \_\_\_\_\_ Date \_\_\_\_\_

Personal Guarantee Signature X \_\_\_\_\_ N/A \_\_\_\_\_ Print Name: N/A \_\_\_\_\_ Date \_\_\_\_\_

Accepted By Priority Payment Systems, LLC P.O. BOX 246, Alpharetta, GA 30009-0246

Synovus Bank 1111 Bay Ave, Columbus, GA 31901

Signature X \_\_\_\_\_ Signature X \_\_\_\_\_

PROCESSOR Name: Priority Payment Systems  
 INFORMATION: Address: P.O. Box 246, Alpharetta, GA 30009-0246  
 URL: https://www.prioritypaymentsystems.com/manuals/programguide.2.6.1.pdf Customer Service #: 1-855-813-5293

Please read the Program Guide in its entirety. It describes the terms under which we will provide merchant processing Services to you.

From time to time you may have questions regarding the contents of your Agreement with Bank and/or Processor. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. **Your Discount Rates are assessed** on transactions that qualify for certain reduced interchange rates imposed by MasterCard and Visa. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 19 of the Program Guide).
2. **We may debit your bank account** from time to time for amounts owed to us under the Agreement.
3. **There are many reasons why a Chargeback may occur.** When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks see Section 10 of Card Processing Operating Guide.
4. **If you dispute any charge or funding,** you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 21 of the Card Processing General Terms.
6. **We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card Processing General Terms, Events of Default Section 24 and, Reserve Account; Security Interest 25), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us and our Affiliates to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us and our Affiliates are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement early, you will be responsible for the payment of an early termination fee as set forth in Part III, Section A.3 of the Merchant Program Guide.
9. **If you lease equipment from Processor,** it is important that you review Section 1 in Third Party Agreements. Bank is not a party to this Agreement. **THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.**
10. **For questions regarding your Merchant Processing Application and Agreement,** please contact Customer Service at 1-855-813-5293, and / or refer to Important Phone Numbers on the Additional Important Information Page, Part III, Section A.4.

#### 11. Card Organization Disclosure

**Visa and MasterCard Member Bank Information: Synovus Bank**

The Bank's mailing address is 1111 Bay Avenue, Columbus, Georgia 31901, and its phone number is (706) 649-4900.

#### Important Member Bank Responsibilities:

- a) The Bank is the only entity approved to extend acceptance of Card Organization products directly to a Merchant.
- b) The Bank must be a principal (signer) to the Merchant Agreement.
- c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard rules with which Merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the Merchant.
- e) The Bank is responsible for all funds held in reserves that are derived from settlement.

#### Important Merchant Responsibilities:

- a) Ensure compliance with Cardholder data security and storage requirements. b) Maintain fraud and Chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization rules.
- e) Retain assigned copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at: <https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>
- g) You may download "MasterCard Regulations" from MasterCard's website at: <https://www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf>

#### Print Client's Business Legal Name:

By its signature below, Client acknowledges that it has received (either in person, by facsimile, or by electronic transmission) the complete Program Guide [version PPS0714(1a)] consisting of 34 pages (including this confirmation).

Client further acknowledges reading and agreeing to all terms in the Program Guide, which shall be incorporated into Client's Agreement. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

Client understands that a copy of the Program Guide is also available for downloading from the Internet at:

<https://prioritypaymentsystems.com/manuals/programguide.2.6.1.pdf>

**NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM GUIDE WILL BE ACCEPTED.**

Client's Business Principal:

Signature (Please sign below):

X \_\_\_\_\_

\_\_\_\_\_  
Please Print Name of Signer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**Merchant Beneficial Ownership and Management Information Certification:** The following information and certifications concerning beneficial ownership, and the identification of beneficial owner(s), of the Merchant identified in the Merchant Application referenced below, must be provided for the Merchant if a legal entity (legal entity includes a corporation, limited liability company or other entity that is formed by filing of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed in the United States). (This form need not be used for a Merchant identified in the Merchant Application as a "sole proprietor" or "sole proprietorship", provided the prescribed forms of Merchant Application including any Patriot Act/customer identification forms and taxpayer identification/withholding forms included therein or prescribed for use therewith reflect such sole proprietorship status and are completed and executed by such sole proprietor and the Processor's representative.) The beneficial ownership/management information and certification in this form is in addition to, not a substitute for, the information and certifications regarding the Merchant legal entity required elsewhere in the prescribed form of Merchant Application including any other Patriot Act/customer identification forms and taxpayer identification/withholding forms included therein or prescribed for use therewith. **Notice:** To help the government fight the funding of terrorism and money laundering activities, the USA Patriot Act requires all financial institutions to obtain, verify and record information that identifies each person (including business entities) who opens an account. What this means for you: When you open an account we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents. In some instances we may use outside sources to confirm the information. Priority Payment System's privacy policy can be found at [www.prioritypaymentsystems.com](http://www.prioritypaymentsystems.com).

**Section 1: Merchant Application Information (Must match information in Merchant Application):** Date Application Signed (by Authorized Signer named below): \_\_\_\_\_

Merchant Legal Name: \_\_\_\_\_ Merchant Federal Tax ID (as it appears on income tax return): \_\_\_\_\_ Merchant State of formation/Incorporation: \_\_\_\_\_  
 Merchant Address: \_\_\_\_\_ Merchant Entity Type \_\_\_\_\_

**Section 2: Beneficial Ownership and Management Information.** Provide the information below on each individual who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% or more of the equity interests of the Merchant legal entity identified above. If the total ownership of those individuals does not exceed 50% of the equity interests of the Merchant, provide the information below on additional beneficial owners so that the total ownership interests of individuals for which information is provided below exceeds 50%. (Use extra copies if needed.) Information must be provided for one individual with significant responsibility for managing the legal entity listed in Section 1, a "Control Prong". Examples of a Control Prong include, but are not limited to: Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President or Treasurer. If no other Beneficial Owner identified below is identified in the right column as the Control Prong, the Control Prong section below must be completed.

<b>Beneficial Owner Legal Name</b>	<b>Title</b>			<b>% of Legal Entity Ownership: ___%</b>
Individual's Home (Street) Address (No P.O. Box)	City, State, Zip			Date of Birth
Individual has a Social Security Number or Individual Taxpayer Identification Number issued by US Government? <input type="checkbox"/> Yes <input type="checkbox"/> No	Social Security No. (SSN)/Individual Taxpayer Identification No. (ITIN):			Control Prong? <input type="checkbox"/> Yes
ID Type:* <input type="checkbox"/> Driver's License <input type="checkbox"/> Other State photo ID showing residence <input type="checkbox"/> Passport <input type="checkbox"/> Resident Alien ID <input type="checkbox"/> Other ID± _____	State/Country of Issuance	Date Issued	Expiration Date	Number on ID:
<b>Beneficial Owner Legal Name</b>	<b>Title</b>			<b>% of Legal Entity Ownership: ___%</b>
Individual's Home (Street) Address (No P.O. Box)	City, State, Zip			Date of Birth
Individual has a Social Security Number or Individual Taxpayer Identification Number issued by US Government? <input type="checkbox"/> Yes <input type="checkbox"/> No	Social Security No. (SSN)/Individual Taxpayer Identification No. (ITIN):			Control Prong? <input type="checkbox"/> Yes
ID Type:* <input type="checkbox"/> Driver's License <input type="checkbox"/> Other State photo ID showing residence <input type="checkbox"/> Passport <input type="checkbox"/> Resident Alien ID <input type="checkbox"/> Other ID± _____	State/Country of Issuance	Date Issued	Expiration Date	Number on ID:
<b>Beneficial Owner Legal Name</b>	<b>Title</b>			<b>% of Legal Entity Ownership: ___%</b>
Individual's Home (Street) Address (No P.O. Box)	City, State, Zip			Date of Birth
Individual has a Social Security Number or Individual Taxpayer Identification Number issued by US Government? <input type="checkbox"/> Yes <input type="checkbox"/> No	Social Security No. (SSN)/Individual Taxpayer Identification No. (ITIN):			Control Prong? <input type="checkbox"/> Yes
ID Type:* <input type="checkbox"/> Driver's License <input type="checkbox"/> Other State photo ID showing residence <input type="checkbox"/> Passport <input type="checkbox"/> Resident Alien ID <input type="checkbox"/> Other ID± _____	State/Country of Issuance	Date Issued	Expiration Date	Number on ID:
<b>Beneficial Owner Legal Name</b>	<b>Title</b>			<b>% of Legal Entity Ownership: ___%</b>
Individual's Home (Street) Address (No P.O. Box)	City, State, Zip			Date of Birth
Individual has a Social Security Number or Individual Taxpayer Identification Number issued by US Government? <input type="checkbox"/> Yes <input type="checkbox"/> No	Social Security No. (SSN)/Individual Taxpayer Identification No. (ITIN):			Control Prong? <input type="checkbox"/> Yes
ID Type:* <input type="checkbox"/> Driver's License <input type="checkbox"/> Other State photo ID showing residence <input type="checkbox"/> Passport <input type="checkbox"/> Resident Alien ID <input type="checkbox"/> Other ID± _____	State/Country of Issuance	Date Issued	Expiration Date	Number on ID:
<b>Control Prong (and/or additional Beneficial Owner) Legal Name</b>	<b>Title</b>			<b>% of Legal Entity Ownership: ___%</b>
Individual's Home (Street) Address (No P.O. Box)	City, State, Zip			Date of Birth
Individual has a Social Security Number or Individual Taxpayer Identification Number issued by US Government? <input type="checkbox"/> Yes <input type="checkbox"/> No	Social Security No. (SSN)/Individual Taxpayer Identification No. (ITIN):			
ID Type:* <input type="checkbox"/> Driver's License <input type="checkbox"/> Other State photo ID showing residence <input type="checkbox"/> Passport <input type="checkbox"/> Resident Alien ID <input type="checkbox"/> Other ID± _____	State/Country of Issuance	Date Issued	Expiration Date	Number on ID:

\* For US persons provide unexpired Driver's License unless there is none; for non-US persons ID Type may be unexpired Resident Alien ID, or Passport/Other ID± and Country of issuance. ± Specify type of "Other ID", which may be any other unexpired government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

**Certifications and Signatures:**

The undersigned Authorized Signer, listed above as a Beneficial Owner or Control Prong, who has signed the Merchant Application on behalf of the Merchant, hereby certifies that he/she is authorized to open accounts for the Merchant at financial institutions, that all information provided above about the Merchant legal entity is complete and correct and that, to the best of his/her knowledge, all information provided above about each individual listed above is complete and correct and there is no individual who directly or indirectly owns 25% or more of the Merchant legal entity's equity interests whose information is not provided above. The Authorized Signer and the Processor's Representative, each hereby certify that the information listed above regarding the identity and the identification document of each individual listed above, is complete and correct and was personally observed on the indicated document.

Authorized Signer Signature \_\_\_\_\_ Date Signed \_\_\_\_\_ Authorized Signer Printed Name \_\_\_\_\_ Processor's Rep. Signature \_\_\_\_\_ Date Signed \_\_\_\_\_ Processor's Rep. Printed Name \_\_\_\_\_