

EQUIPMENT PROGRAM AGREEMENT

1. **EQUIPMENT.** MERCHANT agrees to use PAYMENT PROCESSING EQUIPMENT ("Equipment") as described on page 1 of this Agreement on the lines labeled "Equipment" and "Serial Number(s)" on the Premises, which are described on the Processing Agreement (the "Processing Agreement") which was agreed to in conjunction with this Agreement and which is incorporated herein.
2. **MERCHANT EQUIPMENT PROGRAM FEES.** MERCHANT will be charged the Monthly Program Fees as described on page 1 of this Agreement in connection with this Agreement, and fees related to the Processing Agreement. At its option, DIRECT CONNECT may debit MERCHANT's bank account or charge merchant's credit card for the monies due under this Agreement. In the event that MERCHANT should change its bank accounts to a new or different financial institution or change accounts within its current financial institution, DIRECT CONNECT shall be entitled to a \$25.00 change fee. If your Check or Electronic ACH Debit is returned for an R01 Not Sufficient Funds ("NSF"), or if your credit card is declined, it may be represented electronically, and you will be assessed a processing fee of either \$30.00 or the maximum amount allowed by law. MERCHANT will also be responsible for all other check recovery costs, including all attorney's fees, court cost, and taxes. The fees for Services set forth in this Agreement may be adjusted to reflect increases, or new fees imposed by the vendors used to provide said services, or to pass through increases or new fees charged to us by other Persons related to the Services. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change or addition is implemented as specified in our notice to you. We may also increase our fees or add new fees for Services for any reason at any time, by notifying you twenty (20) days' prior to the effective date of any such change or addition. In the event we provide notice to you of any new fees or increases in existing fees for Services, you may terminate this Agreement without further cause or penalty by notifying us in writing that you are terminating this Agreement prior to the effective date of such new fees or increases.
3. **LIMITATION OF LIABILITY.** DIRECT CONNECT's liability, if any, arising out of or not related to its performance under this Agreement, including, but not limited to, liability for operations of the Equipment, shall be limited to general money damages in an amount not to exceed the total transaction charges collected by DIRECT CONNECT under this Agreement during the six (6) months immediately preceding the date upon which MERCHANT's claim for such damages arose. Such general damages shall be the exclusive remedy of MERCHANT and DIRECT CONNECT shall have no liability for special, incidental or consequential damages or any damages or sums paid by MERCHANT to third parties. MERCHANT and DIRECT CONNECT agree that damage limitation provisions herein are reasonable in light of all present and predictable circumstances, including, but not limited to, the amount of fees charged by DIRECT CONNECT under this Agreement and the possible amount of actual damages to MERCHANT. No action arising out of this Agreement may be brought by either party more than one year after the cause of action has occurred. If DIRECT CONNECT is required to appear in, or is made a defendant in, any legal action with respect to the services provided pursuant to this Agreement, MERCHANT shall indemnify and hold DIRECT CONNECT harmless from all loss, liability and expense, except for any loss, liability or expenses arising out of DIRECT CONNECT's own lack of reasonable care, in which case DIRECT CONNECT's liability shall be limited as provided above. MERCHANT agrees that DIRECT CONNECT will not be liable for any loss, expense or cost incurred by MERCHANT, its customers or any other person or entity as a result of any cause beyond the reasonable control of DIRECT CONNECT including but not limited to, weather and all other Acts of God, war, fire explosions, power failures, government priorities, labor stoppage, supplier failure or delay, civil disorder, or breakdown or malfunctions of machinery, transportation facilities or other equipment of any nature. DIRECT CONNECT's performance shall be excused during the pendency of any such event, but DIRECT CONNECT shall use its best efforts to limit the duration of any such delay. DIRECT CONNECT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, NO ORAL OR WRITTEN REPRESENTATION OR STATEMENT MADE BY DIRECT CONNECT OR ANY OF ITS AGENTS OR EMPLOYEES INCLUDING, BUT NOT LIMITED TO, ANY SPECIFICATIONS, DESCRIPTIONS OR STATEMENTS CONTAINED IN USER GUIDES PROVIDED TO MERCHANT, SHALL BE BINDING UPON DIRECT CONNECT AS A WARRANTY PROMISE OR PERFORMANCE UNLESS EXPRESSLY CONTAINED IN THIS AGREEMENT.
4. **DISCLAIMER WITH REGARD TO EQUIPMENT.** MERCHANT UNDERSTANDS AND AGREES THAT DIRECT CONNECT MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE EQUIPMENT OR ANY RELATED EQUIPMENT, INCLUDING, BUT NOT LIMITED, AS TO ITS MARKETABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. DIRECT CONNECT SHALL IN NO EVENT BE RESPONSIBLE FOR ANY LOSS OF PROFITS OR DIRECT, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES THAT MERCHANT MAY INCUR WITH REGARD TO SUCH EQUIPMENT.
5. **OBLIGATIONS OF THE PARTIES.** The parties shall each comply with all applicable federal, state and local laws or ordinances and with the rules and regulations of the Networks or any provider of any affiliated service under this Agreement or the Processing Agreement.
6. **OBLIGATIONS OF MERCHANT.** In order to induce Direct Connect to provide its products and services to Merchant, Merchant's principals agree to personally, unconditionally, and absolutely guarantee to Direct Connect the prompt payment, when due, of each and every amount owed to Direct Connect and each and every claim asserted by Direct Connect which may hereafter arise against Merchant. Merchant's principals also personally guaranty all costs, including Direct Connect's reasonable attorney's fees and interest at the rate of 1.5 percent per month on any amount unpaid when due. This continuing guaranty of Merchant's principals shall remain in force during the period of this agreement or any extension thereof.
7. **TERM.** The term of this Agreement shall coincide with the greater of (a) the current term of the Merchant Agreement that accompanies this Agreement, or (b) 36 months from the date of this Agreement, unless amended or terminated by written agreement signed by both DIRECT CONNECT and MERCHANT or terminated by DIRECT CONNECT pursuant to paragraph 9, below.
8. **EXCLUSIVITY.** MERCHANT shall not permit the removal of the Equipment from the Premises, nor allow the placement of any other payment processing equipment on the Premises, nor subscribe to any other data processing service for processing the same transactions or any transactions similar to those identified in the Processing Agreement during the term of this Agreement without the prior written consent of DIRECT CONNECT. Such removal of the Equipment, placement of other equipments on the Premises, or the subscription to any data processing service for services similar to those identified in the Processing Agreement (other than service offered by Direct Connect) shall constitute a material breach of this Agreement. MERCHANT expressly understands and agrees that the basis for DIRECT CONNECT's damages as a result of such breach shall be the Monthly Terminal Fees paid by MERCHANT under this Agreement. MERCHANT agrees that Direct Connect's damages will necessarily include calculations of future damages for lost Terminal Fees. MERCHANT agrees that in any action regarding a breach of this Agreement, DIRECT CONNECT will, be immediately entitled to damages in the amount of the Monthly Terminal Fees multiplied by the months remaining on this Agreement at the time of the breach, pursuant to paragraph 9 below.
9. **CANCELLATION/BREACH.** In addition to any legal or equitable remedies available to Direct Connect upon a breach of this Agreement, Direct Connect shall be entitled to all Monthly Terminal Fees for the duration of the initial term of the Merchant Agreement as defined in paragraph 7 herein. Additionally, in the event that MERCHANT sells its business, this Agreement shall be accelerated and all amounts, which would be paid to Direct Connect through the remaining term of the Agreement shall become immediately due and payable. However, should the purchaser of MERCHANT's business enter into a new agreement with Direct Connect under the same terms as this Agreement, MERCHANT shall be relieved of liability.
10. **CARE OF EQUIPMENT.** MERCHANT agrees to protect the Equipment from damage, loss, theft or destruction. MERCHANT is solely responsible for providing security against theft at the Premises and Direct Connect shall have no liability to MERCHANT in the event of theft or damage. MERCHANT understands that the replacement program is intended to cover equipment defects and the effects of normal usage, if any, and not damage from lack of care (intentional or unintentional), theft, or other forms of loss. MERCHANT agrees it shall make no alternation or addition to the Equipment.
11. **ATTORNEY FEES.** If suit or action is instituted to enforce or interpret any of the terms of this Agreement, Direct Connect shall be entitled to recover, in addition to costs, such sums as the Court may adjudge reasonable for legal fees at trial and on any appeal there from. MERCHANT agrees to pay all costs of collection for sums due to DIRECT CONNECT under this Agreement, including reasonable attorney fees, whether or not suit or action is commenced. If suit or action is instituted to enforce or interpret any of the terms of this agreement, Direct Connect shall be entitled to recover in addition to its costs, its reasonable attorney's fees.
12. **NOT ASSIGNABLE.** MERCHANT shall not assign or in any way dispose of all or any part of its rights or obligations under this Agreement without the prior written consent of DIRECT CONNECT.
13. **SPECIAL STIPULATIONS.** "Schedule A" defines any special stipulations to be made part of this Agreement. If no "Schedule A" is attached, then this Agreement is fully integrated.
14. **PROVISIONS.** Although the restrictions contained in this Agreement are considered by the parties to be reasonable, services agreed upon, fees to be paid for said services and the overall legitimate business interests of the parties, if any such provision (i.e. sentence, subparagraph or paragraph) is found by a court of competent jurisdiction to be unenforceable, such unenforceable or invalid provision shall be deemed severed from the other provisions of the Agreement, and the remaining provisions shall nevertheless be valid and enforceable.
15. **INVESTIGATIVE CONSUMER REPORT.** MERCHANT authorizes DIRECT CONNECT upon its receipt of this Application/Agreement as well as any credit bureau or credit report agency contracted by DIRECT CONNECT, to investigate any statements or data obtained from MERCHANT or any of the principals of MERCHANT, for the purpose of evaluating the application.
16. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties, and any other representations, inducements, promises, or Agreements not embodied herein shall be of no force and effect. No amendments or modifications shall be effective unless in writing and signed by all parties hereto. Each party has had equal opportunity to be represented by counsel and have input into the drafting of this Agreement. Therefore, no provision of this Agreement, which is alleged to be ambiguous, shall be construed for or against any party upon the identity of the draftsman of that provision.
17. **APPLICABLE LAW.** This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia. Merchant's principals hereby waive the benefit of homestead exemption and hereby waive notice of non-payment. In the event a dispute arises with regard to this Agreement, MERCHANT consents to jurisdiction and venue in the Circuit Court of Fairfax County, Virginia and specifically agrees that signing this Agreement constitutes "transacting business" in the Commonwealth of Virginia within the meaning of Sect. 8.01-328.1(A)(1), Code of Virginia, 1950, as amended.

[DCPA_24022016]


Merchant Initials