

MERCHANT TERMINAL ACCESS PROGRAM AGREEMENT

This Merchant Terminal Access Program Agreement (“**Agreement**”) is by and among the merchant named below (“**Merchant**”) with offices at _____, the guarantor(s) named on Schedule A (each a “**Guarantor**”), and Merchant Industry, LLC with offices at 36-36 33rd St., Long Island City, NY 11106 (“**Merchant Industry**”) as of _____, 20____ (“**Effective Date**”). Merchant Industry wishes to permit the Merchant to participate in, and Merchant wishes to participate in, Merchant Industry’s Terminal Access Program that makes certain POS hardware (“**Equipment**”) available to Merchants (the “**Program**”) pursuant to this Agreement and any related equipment terms set forth in the agreement between Merchant, the acquiring bank, and Merchant Industry for Merchant’s receipt of card processing, payment, and equipment services (the “**Merchant Agreement**”). Therefore, for adequate consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. Term. This Agreement is effective as of the Effective Date and will continue for an initial term of two (2) years (“**Initial Term**”). Thereafter, this Agreement will automatically renew for additional periods of one (1) year each (each, a “**Renewal Term**”), unless a party provides written notice to the other party that it does not wish to renew this Agreement at least 60 days prior to the end of the Initial Term or any Renewal Term (the Initial Term, together with each Renewal Term, the “**Term**”). Notwithstanding the foregoing, the Term of this Agreement shall end no later than the end of the term of the Merchant Agreement.
2. Fees and Payment. Merchant will pay the fees for the Equipment as set forth in Schedule B attached hereto. Merchant will be billed via their monthly merchant processing statement in accordance with the Merchant Agreement.
3. Receipt of Equipment/Equipment Ownership. Merchant Industry will provide the Equipment set forth on Schedule B. Merchant agrees that the Equipment is, and will remain at all times, the exclusive property of Merchant Industry or its assigns, and that Merchant’s use of the Equipment confers no ownership rights of any kind on Merchant.
4. Support Services. At no charge, Merchant shall receive phone support between the hours of 8:00am until 5:00pm EST, Monday through Friday (“**Standard Service Hours**”) for customer service related to the Equipment. Any calls received outside of this time period will be returned the following business day. Any services provided outside of the Standard Service Hours, programming services, software version upgrades, onsite training of personnel and basic re-installation of Equipment shall be billed to Merchant in 15 minute increments at Merchant Industry’s current hourly rate.
5. Use/Term. Merchant will use the Equipment for business purposes only, solely to process credit and debit card transactions through Merchant Industry pursuant to the Merchant Agreement and with no other card processor and for no other purpose (“**Permitted Use**”). Merchant will not sell or lease the Equipment, and will not allow anyone else to use the Equipment for any reason. Merchant Industry has the right to change the terms of this Agreement at any time upon notice to Merchant. Merchant acknowledges that Merchant Industry is not the original equipment manufacturer (“**OEM**”) of the Equipment. In addition to the terms set forth in this Agreement, Merchant’s use of the Equipment will be governed by OEM’s standard terms and conditions.

6. Maintenance. Merchant acknowledges that it has been trained in the proper use of the Equipment. Merchant will maintain the Equipment in good condition and repair. Merchant will locate the Equipment on Merchant's premises, and will not remove it without Merchant Industry's prior written consent. Merchant will not change or remove any notices, lettering or numbering on the Equipment. Merchant shall supply power to the Equipment through a dedicated grounded circuit according to manufacturer's specifications. The Equipment shall only be repaired or serviced by Merchant Industry or its representatives. If Merchant attempts any repair or service of the Equipment, or otherwise makes any modification to the Equipment, Merchant will be fully responsible for the full value of the Equipment and will promptly pay Merchant Industry the full value of the Equipment.
7. Repair Service. If the Equipment breaks due to normal wear and tear, Merchant Industry will furnish a replacement at no cost to Merchant within 48 hours of receipt of notice, excluding weekends and holidays.
8. Loss or Damage to Equipment. Other than normal wear and tear, Merchant shall be responsible to and shall reimburse Merchant Industry for all loss and expense to Merchant Industry resulting from damage to or destruction, theft, seizure or loss of the Equipment, any unauthorized modification of the Equipment, from levy or attachment of any court process or lien thereon while in Merchant's possession. Merchant shall notify Merchant Industry in writing immediately upon the occurrence of any of the foregoing with respect to the Equipment or any other extraordinary event concerning the Equipment.
9. Return. Upon termination of this Agreement, or if Merchant ceases using the Equipment for the Permitted Use for any reason, including due to an expiration or termination of the Merchant Agreement, Merchant will return the Equipment to Merchant Industry in good working condition within ten (10) days. In addition to any amounts Merchant is required to reimburse Merchant under Section 8 above, and any early termination fee set forth in the Merchant Agreement, if applicable, if the Equipment is not returned within ten (10) days after Merchant ceases using the Equipment for the Permitted Use, Merchant agrees to pay the Equipment value as set forth on Schedule B to Merchant Industry. Merchant Industry reserves the right to replace the Equipment with comparable models and to add or discontinue models.
10. Termination. Merchant Industry reserves the right to terminate this Agreement upon ten (10) days written notice to Merchant. This Agreement will automatically terminate upon the expiration or termination of the Merchant Agreement.
11. Indemnification. Merchant agrees to indemnify and hold Merchant Industry harmless from and against any and all liabilities, losses, claims, counterclaims, damages, disputes, offsets, or expenses, including attorneys' fees, claimed by a third party, including any OEM, resulting from or pertaining to the use or operation of the Equipment.
12. Equipment Warranty; Disclaimer. Merchant understands that Merchant Industry is not the OEM. Merchant Industry will pass through to Merchant any warranty extended to Merchant Industry for end users by the OEM. AS BETWEEN MERCHANT AND MERCHANT INDUSTRY, EXCEPT WITH RESPECT TO MERCHANT INDUSTRY'S OBLIGATIONS TO PROVIDE MAINTENANCE OR REPAIR SERVICES AS EXPRESSLY SET FORTH IN THIS AGREEMENT THE EQUIPMENT IS PROVIDED "AS IS" AND MERCHANT INDUSTRY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE USE, OPERATION, INSTALLATION, OR SAFETY OF THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE,

USAGE OF TRADE, OR OTHERWISE. IN NO EVENT SHALL MERCHANT INDUSTRY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL) ARISING OUT OF OR RELATING TO ANY EQUIPMENT.

13. Miscellaneous. This Agreement, including the attached Schedules, sets forth the entire understanding of the parties relating to its subject matter and supersedes any other agreement between the parties relating to its subject matter. Except as otherwise provided herein, this Agreement may not be amended except in a writing executed by both parties. Merchant may not assign this Agreement without the prior written consent of Merchant Industry. All communications under this Agreement will be in writing and will be delivered in person or by mail courier, return receipt requested, to the address set forth in the first paragraph of this Agreement or to the email address set forth below such party's signature below. If any provision of this Agreement is illegal, the invalidity of such provision will not affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. No failure or delay on the part of any party in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right. This Agreement will inure to the benefit of and will be binding upon the parties and their permitted successors and assigns. This Agreement will not be deemed to be for the benefit of any third party. The Agreement will be deemed to be a contract made under the laws of the State of New York, and will be construed in accordance with the laws of New York without regard to principles of conflicts of law. The parties specifically waive the right to a jury trial in connection with any dispute arising out of this Agreement, or between the parties for any reason. If any court holds that a party has breached this Agreement, then the non-defaulting parties will be entitled to recover expenses incurred in enforcing the provisions of this Agreement, including reasonable attorneys' fees and costs. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and such counterparts shall together constitute one and the same instrument. The signatures to this Agreement may be evidenced by PDF copies or other electronic copies reflecting the party's signature, and any such copy shall be sufficient to evidence the signature of such party as if it were an original signature.
14. Survival. All agreements that by their context are intended to survive the termination of this Agreement including, but not limited to Sections 5, 8, 9, 11, 12, 13, 14 and the Schedules will survive termination of this Agreement.

Merchant Industry, LLC

Merchant

By: _____

By: _____

Its: _____

Its: _____

SCHEDULE A

Personal Guaranty

As a primary inducement to Merchant Industry to enter into the Merchant Terminal Access Program Agreement, the Guarantor(s) indicated below jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each if its duties and obligations to Merchant Industry pursuant to the Merchant Terminal Access Program Agreement, as it now exists or may be amended from time to time, with or without notice. This is a guaranty of payment and not of collection. Guarantor(s) understands further that Merchant Industry may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible to it or any security held by Merchant Industry or Merchant. This guaranty will not be discharged or affected by the death of the Guarantors, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of Merchant Industry. Guarantor(s) understand that the inducement to Merchant Industry to enter into the Merchant Terminal Access Program Agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

Personal Guarantor — Printed Name	Personal Guarantor Signature	Date
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Personal Guarantor — Printed Name	Personal Guarantor Signature	Date
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SCHEDULE B

Equipment

Merchant has accepted the following Equipment:

Equipment Manufacturer _____

Equipment Model _____

Equipment Value _____

Monthly Fee

Equipment Manufacturer _____

Equipment Model _____

Equipment Value _____

Monthly Fee

Equipment Manufacturer _____

Equipment Model _____

Equipment Value _____

Monthly Fee