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Merchant contract transparency should be the norm

By Alex Nouri
EFT Direct

A critical issue facing merchants and payments industry professionals is the full disclosure of all terms contained in merchant agreements at the time of sale. Nearly all merchant agreements today contain a supplementary terms and conditions document. Although merchants sign the merchant agreement, most are unaware of the terms and conditions section.

It's the responsibility of the acquiring banks, processors and ISOs to mandate that all merchant level salespeople (MLSs) provide copies of said terms and conditions to merchants before merchants sign their agreements. Unfortunately, acquirers that do so are rare. I believe this is because if merchants knew some of the most important terms, they would not sign their agreements. Many acquirers know this and do nothing about it.

Don't hide terms and conditions

Terms and conditions documents range from two to 60 pages. The shortest terms and conditions pages may be included in documents that must be signed before underwriting can occur; however, such documents often use a font size so small it takes a magnifier to read them. Also, many merchants aren't inclined to review them due to the high degree of trust they have in the agent in front of them. Indeed, the number one reason people buy products or services is that they like the individuals selling them.

The longest terms and conditions documents are never presented to merchants unless merchants request them. However, most merchants don't even know such documents exist. All they know is the claims made by their sales representatives and the pricing they are agreeing to, which they believe is the pricing set forth in the documents handed to them for signature.

Unsuspecting merchants sign agreements while placing their trust in their MLSs, and by extension, their acquirers. But if the signing process is flawed, it spells disaster from the onset. Acquirers must mandate their MLSs to disclose all terms and conditions. To ensure this is done, MLSs must provide complete copies of the terms and conditions documents to merchants and have merchants sign a separate page (not initial next to text in fine print inside the merchant application's signature box). The text should be in a large font; clearly spell out the terms, conditions and pricing structure; and attest to the merchant's acknowledgment of the document's receipt.

Verify verbally

To put any claims of impropriety to rest, acquirers should verbally verify (and preferably record) via phone each merchant's understanding of the terms and conditions before underwriting the application. These measures will ensure protection of all parties involved: the merchant, MLS and acquirer. They will also preserve the reputation of the acquirer.

Acquirers may complain that verbal verification is costly. However, it is more costly to have an unscrupulous MLS deceive a merchant, which may ultimately cause the merchant to switch to another acquirer, increasing attrition and draining revenue. There may also be a heavier toll on the acquirer's reputation locally and through negative reviews posted by the disgruntled merchant online. Implementing quality control checks acts as a self-correction mechanism in case an MLS doesn't adhere to this process.

MLSs must disclose the duration of their contracts. Most agreements are for three years, although a few have no length and no cancellation fee, or their terms may be determined at the sole discretion of MLSs. And termination fees should be disclosed.

Eliminate problematic language

Acquirers and merchants should not consummate merchant applications with cancellation fee text that states: "Merchant agrees that cancellation fee will be equivalent to the gross monthly costs to merchant times the number of months remaining on the contract." This could mean thousands of dollars if a merchant cancels on the second or even the third year of the processing term. This draconian language should have no place in any contract.

Other problematic language buried deep within the terms and conditions document, usually in a transactions section, gives the sponsoring bank the right to impose extra processing charges and/or terminate the merchant account if the merchant's monthly processing volume exceeds the amount

stated on the merchant application. Although most acquirers do not act on this right, they can do so if a merchant signs an agreement containing this language. But merchants often do so unwittingly because the language is not readily available to them, nor is there a reasonable effort to draw their attention to it.

It's unfair to terminate a merchant's processing account and potentially even report the merchant to the MATCH [Merchant Alert to Control High Risk] database just because the merchant's transaction volume exceeds a certain percentage. For most of us, doing this is counterintuitive when the business is showing signs of healthy growth and increased sales. Nonetheless, it can be done if the language is there.

Simplify merchant statements

Merchants have emphasized that a critical issue for them is straightforward monthly statements. Square Inc.'s gargantuan success lends credence to this. Acquirers should train MLSs thoroughly and require that they be specific and transparent during sales presentations.

MLSs should disclose rates on different card categories plus per-item fees, monthly and annual fees, per-call tech support fee (if any), Payment Card Industry Data Security Standard compliance fee (including explanation of its enormous, ongoing importance), and other fees. High-pressure sales tactics are outmoded. The Internet has made information on competition readily available to merchants.

Don't make false promises

MLSs should not promise savings to merchants without analyzing their monthly statements on a spreadsheet. Only a minority of very experienced MLSs can analyze statements on the spot. And most statements require further analysis.

In addition, MLSs should refrain from making assertions like, "I can save you $200 every month" on the phone before in-person meetings. Merchants who hear this claim should hang up the phone and save themselves future headaches. And if an acquirer finds out an MLS has engaged in such deception, it should investigate and act swiftly to ensure it will not happen again.

An MLS shouldn't rush a merchant into signing any document without explaining what the signature is for. This type of pressure happens all too often, especially with rookie MLSs. This most likely means the MLS is taking advantage of the trusting merchant and is (possibly also) signing the merchant onto a terminal lease without informing the merchant about it. If an acquirer hears of this pattern, it should investigate and do all it can make the affected merchants whole even if it means allowing the merchant to switch without any repercussion.

MLSs also must not make grandiose promises they or their acquirers cannot keep. And when they promise excellent customer service and tech support, if service and support do not measure up, merchants should have the right to take their business elsewhere, without penalty.

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In addition, MLSs should leave merchants a copy of everything merchants sign – no exceptions. This includes the merchant account agreement, complete terms and conditions, and any terminal lease, if applicable.

Do the right thing

People are liable to the terms of documents they sign. However, we must not hold merchants accountable just because they signed if they allege and then provide solid proof of MLS impropriety, and especially if it happens more than once by the same MLS or ISO.

We must march steadfastly on the right path. No one doubts what the right thing to do is. Acquirers with direct sales forces should be particularly cognizant of these issues. To clean up the industry's shady characters and practices, the card brands, acquirers and agents alike must police the industry against unscrupulous practices and unacceptable and deceptive written terms.

We must all adhere to strong moral, ethical and professional codes of conduct, as well as understand that many merchants sign not because they have been made aware of all the pertinent and important terms, but because they are severing their ties with their current acquirer or processor and are simply trusting the new MLS to deliver on the stated representations and promises. Anything less than ethical practices in our dealings with merchants is tantamount to shortchanging all parties to the agreement, including ourselves.

I propose establishing an independent body, funded primarily by the industry, with the direct involvement of the Department of Justice and the state attorneys general, and with support from the card brands, all merchants and merchant-based organizations. This body would act as a central agency to mandate that every MLS leave behind a complaint mechanism form so merchants can lodge complaints, and to investigate merchant and MLS complaints alike. The goal should be to hold sponsoring banks, merchant service providers, ISOs and MLSs accountable, with penalties ranging from sanctions and monetary fines to revoking membership and registration.

Alex Nouri has been in the President of EFT Direct, an acquiring and consulting firm based in Ann Arbor, Michigan, since 2000. He can be reached at alex@eft-direct.com *and at 734-477-7700.*