

*Merchant Services*

# Program Guide

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Together we'll go far



# PREFACE

Thank you for selecting us for your payment processing needs. Accepting numerous payment options provides a convenience to your customers, increases your customers' ability to make purchases at your establishment, and helps speed payment to your account.

Your Merchant Processing Application will indicate the types of payments and Services you have elected to accept. These Program Terms and Conditions (the "Program Guide") present terms governing such payments and Services, including, as applicable, terms governing the acceptance of Visa®, Mastercard® and Discover®, PayPal in-store payments Credit Card, Non-PIN Debit Card payments and American Express® transactions and applicable Non-Bank Services.

**This Program Guide, together with your Merchant Processing Application and the schedules thereto (collectively, the "Agreement"), including, without limitation, the Interchange Qualification Matrix, American Express Program Pricing and the Interchange Schedules applicable to your pricing method as set forth in the Merchant Processing Application, contains the terms and conditions under which Processor and/or Bank and/or other third parties, will provide services to you. We will not accept any alterations or strike-outs to the Agreement and, if made, any such alterations or strike-outs shall not apply. Please read this booklet completely.**

## **IMPORTANT INFORMATION ABOUT BANK'S RESPONSIBILITIES:**

**For certain Card transactions Bank does not provide services to you, but rather they are provided by Processor and/or third parties. For example, you may elect to participate in the Discover EDC program, and/or the American Express EDC program, for each of which you must enter into a direct agreement with Discover and/or American Express.**

**The provisions of this Agreement regarding such non-Bank Discover Card and American Express transactions and other Non-Bank Services constitute an agreement solely between you and Processor and/or third parties. Bank is not a party to any such agreements, and further Bank is not responsible, and shall have no liability, to you in any way with respect to such Discover Card and American Express Card transactions and Non-Bank Services.**

## **OTHER IMPORTANT INFORMATION:**

Cards present risks of loss and non-payment that are different than those with other payment systems. In deciding to accept Credit Cards, you should be aware that you are also accepting these risks.

Visa U.S.A., Inc. ("**Visa**") and Mastercard Worldwide ("**Mastercard**"), Discover Financial Services LLC ("**Discover**"), PayPal, Inc. ("**PayPal**") and American Express Company, Inc. ("**American Express**") are payment card networks that electronically exchange Sales Drafts and Chargebacks for Card sales and Credits. Sales Drafts are electronically transferred from banks (in the case of Visa and Mastercard transactions) or network Acquirers (in the case of Discover and PayPal in-store Card transactions) that acquire them from merchants such as yourself (these banks and network acquirers are referred to as "Acquirers") through the appropriate Card Organization, to the Issuers. These Issuers then bill their Cardholders for the transactions. The Card Organizations charge the Acquirers interchange, fees and/ or assessments for submitting transactions into their systems.

In order to speed up the payment process, the Issuer transfers the funds back through the Card Organization to the Acquirer at approximately the same time that the Issuer receives the electronic Sales Drafts. Even though the payments under this system are made simultaneously, all payments made through the Card Organizations are conditional and subject to reversals and adjustments.

Each Card Organization has developed Card Organizations Rules that govern each of their Acquirers and Issuers and the procedures, responsibilities and allocation of risk for this process. Merchants are also bound by Card Organization Rules and applicable laws and regulations. The Card Organization Rules and applicable laws and regulations give Cardholders and Issuers certain rights to dispute transactions, long after payment has been made to the merchant, including Chargeback rights.

We do not decide what transactions are charged back and we do not control the ultimate resolution of the Chargeback. While we can attempt to reverse a Chargeback to the Issuer, we can only do so if the Issuer agrees to accept it or the Card Organization requires the Issuer to do so after a formal appeal process. Sometimes, your customer may be able to successfully charge back a Credit Card transaction even though you have provided your goods or services and are otherwise legally entitled to payment from your customer. While you may still be able to pursue claims directly against that customer, neither we nor the Issuer will be responsible for such transactions.

You will be responsible for all Chargebacks and adjustments associated with the transactions that you submit for processing.

Please refer to the Glossary for capitalized terms used in the Agreement, including this Preface (if not defined above).

# PART I: CONFIRMATION PAGE

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 (which includes your Merchant Processing Application, the foregoing Program Guide, and the schedules thereto and documents incorporated herein) 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 fees for certain Services** set forth in this Agreement are based on the interchange rates set by the Card Organization. Any transactions that fail to qualify at your Anticipated Interchange Levels will be charged an additional fee (See Section 5 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 36 of the Program 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 7 of the Card 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 General Terms in Section 10, Term; Events of Default and Section 11, Reserve Account; Security Interest), under certain circumstances.

7. **By executing this Agreement with us** you are authorizing us to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us are satisfied.

8. **The Agreement contains a provision** that in the event you terminate the Agreement prior to the expiration of the applicable term, you may be responsible for the payment of an early termination fee as set forth in Section 42.3 under "Additional Important Information".

9. **Third Party Services.** To the extent you have elected to obtain any third party services package, please ensure that you review and understand the terms and conditions contained in Part III (Third Party Agreements) relevant to such third party services.

## 10. Card Organization Disclosure

Member Bank Information: Wells Fargo Bank

The Bank's mailing address is Wells Fargo Bank, PO Box 6079, Concord, CA 94524 and its phone number is 1-800-451-5817.

### 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 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 reserve 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 Agreement.

(d) Comply with Card Organization Rules and applicable law and regulations.

(e) Retain a signed copy of this Confirmation Page.

(f) You may download "Visa Regulations" from Visa's website at: <https://usa.visa.com/support/merchant.html>

(g) You may download "Mastercard Regulations" from Mastercard's website at: <http://www.mastercard.com/us/merchant/support/rules/html>.

Print Client's IRS Filing Name: \_\_\_\_\_

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) Merchant Processing Application, and read the complete Program Guide (version WFB2210) consisting of 68 pages (including this Confirmation Page and the applicable Third Party Agreement(s)), Interchange Qualification Matrix and American Express Program Pricing and Interchange Schedule which is incorporated into its Agreement, and agrees to comply with all terms set forth therein.

Upon receipt of a signed original of this Confirmation Page by us, your Application for merchant processing services will be reviewed. Client understands that its Application is subject to approval by us. Client understands that a copy of the Program Guide is also available for downloading from the internet at: [www.wellsfargo.com/biz/programguide](http://www.wellsfargo.com/biz/programguide)

CLIENT'S BUSINESS PRINCIPAL

X \_\_\_\_\_

Signature (Please sign above)

Title

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

\_\_\_\_\_  
Date



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8. **The Agreement contains a provision** that in the event you terminate the Agreement prior to the expiration of the applicable term, you may be responsible for the payment of an early termination fee as set forth in Section 42.3 under "Additional Important Information".

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- (e) The Bank is responsible for all funds held in reserve that are derived from settlement.

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- (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 Agreement.
- (d) Comply with Card Organization Rules and applicable law and regulations.
- (e) Retain a signed copy of this Confirmation Page.
- (f) You may download "Visa Regulations" from Visa's website at: <https://usa.visa.com/support/merchant.html>
- (g) You may download "Mastercard Regulations" from Mastercard's website at: <http://www.mastercard.com/us/merchant/support/rules/html>.

Print Client's IRS Filing Name: \_\_\_\_\_

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) Merchant Processing Application, and read the complete Program Guide (version WFB2210) consisting of 68 pages (including this Confirmation Page and the applicable Third Party Agreement(s)), Interchange Qualification Matrix and American Express Program Pricing and Interchange Schedule which is incorporated into its Agreement, and agrees to comply with all terms set forth therein.

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CLIENT'S BUSINESS PRINCIPAL

X \_\_\_\_\_  
Signature (Please sign above) Title

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

# PART II: CARD SERVICES

<b>A. Card General Terms.....</b>	<b>8</b>	26.9. Certain Rules and Requirements.....	38
1. Services.....	8	26.10. Card Acceptance.....	39
2. Operating Procedures; Card Organization Rules and Compliance.....	8	26.11. Deposits of Principals.....	39
3. Settlement of Card Transactions.....	8	26.12. Merchants in the Lodging Industry.....	39
4. Exclusivity.....	8	26.13. Customer Activated Terminals and Self-Service Terminals.....	40
5. Fees; Adjustments; Collection of Amounts Due.....	8	26.14. Displays and Advertising.....	40
6. Chargebacks.....	9	26.15. Cash Payments by and Cash Disbursements to Cardholders.....	40
7. Representations; Warranties; Covenants; Limitations on Liability; Exclusion of Consequential Damages.....	10	26.16. Discover Cash Over Transactions.....	41
8. Confidentiality.....	10	26.17. Telecommunication Transactions.....	41
9. Assignments.....	11	27. Suspect Transactions.....	41
10. Term; Events of Default.....	12	28. Completion of Sales Drafts and Credit Drafts.....	42
11. Reserve Account; Security Interest.....	13	28.1. Information Required.....	42
12. Financial and Other Information.....	14	28.2. Mail/Telephone/ Internet(Ecommerce) Orders and Other Card Not Present Sales.....	43
13. Indemnification.....	14	28.3. Customer Service Telephone Numbers.....	44
14. Special Provisions Regarding Non-Bank Services.....	14	29. Data Security.....	44
15. Special Provisions for Debit Card.....	15	29.1. Payment Card Industry Data Security Standards (PCI DSS).....	44
16. Special Provisions Regarding Electronic Benefit Transfer (EBT).....	16	29.2. Data Security Requirements.....	45
17. Special Provisions Regarding Wireless Services.....	18	29.3. Compliance Audits.....	45
18. Terms of Equipment Purchase or Rental.....	20	29.4. Immediate Notice Required.....	45
19. Special Provisions Regarding Gift Card Services.....	22	29.5. Investigation.....	45
20. Special Provisions Regarding TransArmor Solution.....	25	29.6. Required Information for Discover Network and PayPal Security Breaches.....	45
21. Special Provisions Regarding Fraud Detection Services.....	28	29.7. Merchant Providers.....	45
22. Special Provisions Regarding Buyer Initiated Payments.....	29	29.8. Reserved.....	46
23. Special Provisions Regarding Payeezy <sup>SM</sup> Gateway Services.....	29	29.9. Costs.....	46
24. Choice of Law, Venue; Waiver of Jury Trial; Limitation on Claims.....	32	30. Authorizations.....	46
25. Other Terms.....	32	30.1. Card Not Present Transactions.....	46
<b>B. Operating Procedures.....</b>	<b>34</b>	30.2. Authorization via Telephone (Other Than Terminal / Electronic Device Users).....	47
26. Mastercard, Visa, Discover, PayPal and American Express Card Acceptance.....	34	30.3. Authorization via Electronic Devices.....	47
26.1. Card Descriptions.....	34	30.4. Third Party Authorization System.....	47
26.2. Effective/Expiration Dates.....	36	30.5. Automated Dispensing Machines.....	47
26.3. Valid Signature.....	36	30.6. Pre-Authorization for T&E (Travel & Entertainment) and Restaurant Merchants.....	48
26.4. Users Other Than Cardholders.....	36	30.7. Discover and PayPal Procedure for Request for Cancellation of Authorization.....	48
26.5. Special Terms.....	36	30.8. Partial Authorization and Authorization Reversal.....	48
26.6. Delayed Delivery Transactions or Deposit Balance.....	36	31. Submission/Deposit of Sales Drafts and Credit Drafts.....	48
26.7. Recurring Transaction and Preauthorized Order Regulations.....	37	31.1. Submission of Sales for Merchants Other Than Your Business.....	48
26.8. Payments by Installments.....	38	31.2. Timeliness.....	48

31.3. Electronic Merchants: Daily Batching Requirements & Media Submission .....	49
32. Settlement.....	49
33. Refunds / Exchanges (Credits).....	49
33.1. Refunds .....	49
33.2. Exchanges .....	50
34. Retention of Records for Retrievals and Chargebacks.....	50
34.1. Retain Legible Copies.....	50
34.2. Provide Sales and Credit Drafts.....	50
35. Lost/Recovered Cards.....	50
36. Chargebacks, Retrievals and Other Debits .....	50
36.1. Chargebacks.....	50
36.2. Summary (Deposit) Adjustments/Electronic Rejects.....	54
36.3. Disputing Other Debits and Summary Adjustments .....	54
37. Account Maintenance.....	54
37.1. Change of Settlement Account Number .....	54
37.2. Change in Your Legal Name or Structure.....	54
37.3. Change in Company DBA Name, Address or Telephone / Facsimile Number.....	54
37.4. Other Changes in Merchant Profile.....	54
37.5. Charges for Changes to Account Maintenance.....	54
38. Card Organization Monitoring.....	54
39. Supplies.....	54
40. Special Provisions for American Express .....	54
40.1. Treatment of the American Express Brand.....	54
40.2. Treatment of American Express Marks .....	55
40.3. Treatment of the American Express Card Member Information.....	55
40.4. American Express Transaction Data .....	55
40.5. Treatment of American Express Cardholder Information .....	55
40.6. Disclosure and Use of Data Collected Under Agreement.....	55
40.6.1. Consent for American Express to Contact You by Phone, eMail, Text or Facsimile .....	55
40.6.2. Opt-Out.....	55
40.7. Conversion to a Direct Relationship with American Express.....	55
40.8. Reserved.....	55
40.9. Third Party Beneficiary Rights .....	55
4.10. Your Right to Opt Out of American Express Card Acceptance.....	56
40.11. Collections from American Express Cardholder.....	56
40.12. American Express Key-Entered Charges.....	56
40.13. Keyed No Imprint for American Express Transactions .....	56

40.14. Merchant Website Information Display Guidelines .....	56
40.15. Aggregated Charges .....	56
40.16. American Express Excessive Disputes .....	56
40.17. American Express Right to Modify or Terminate Agreement.....	56
40.18. Acceptance Procedures for American Express Travelers and Gift Cheques.....	56
41. Glossary.....	56
42. Additional Important Information Pertaining to this Entire Agreement .....	60
42.1. Electronic Funding Authorization.....	60
42.2. Funding Acknowledgement Automated Clearing House (ACH).....	60
42.3. Additional Fees and Early Termination.....	60
42.4. Addresses For Notices.....	61
<b>Part III: Third Party Agreements .....</b>	<b>62</b>
1.0. TeleCheck Solutions Agreement .....	62

# PART II: CARD SERVICES

## A. Card General Terms

### 1. Services

Subject to Card Organization Rules, Services may be performed by us or our agents, including, without limitation, our respective Affiliates, including the provision of terminals or other equipment and local support functions in connection with this Agreement.

### 2. Operating Procedures; Card Organization Rules and Compliance

You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Card Organization Rules, including, without limitation, the data security requirements described in Section 29. From time to time, we may amend the Operating Procedures, by providing you with at least twenty (20) days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the Card Organization Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there are any inconsistencies between the General Terms and the Operating Procedures, the Card General Terms will govern. You are responsible for staying apprised of all applicable changes to the Card Organization Rules and maintaining compliance with the Card Organization Rules. Card Organization Rules may be available on websites such as <https://usa.visa.com> [www.mastercard.us/en-us/merchants.html](http://www.mastercard.us/en-us/merchants.html), [www.discovernetwork.com/en-us/](http://www.discovernetwork.com/en-us/) and <https://www.paypal.com/us/webapps/mpp/accept-payments-online>.

The above links may change from time to time.

### 3. Settlement of Card Transactions

**3.1.** We will only be required to settle Card transactions for Card types specified in your Application. Promptly after presentment of Sales Drafts pursuant to the Operating Procedures, we will initiate a transfer of the applicable settlement funds to you.

**3.2.** Unless otherwise agreed to in writing to the contrary, all fees for Services are deducted as disclosed in accordance to your pricing disclosures or subsequent communications. All settlements for Visa, Mastercard Discover, PayPal and American Express Card transactions will be net of Credits, Summary Adjustments, applicable discount fees when due, Chargebacks and any other amounts then due from you. We may also set off from any payments otherwise due, any amounts owed to any of our respective Affiliates, whether or not arising out of or related to this Agreement.

**3.3.** All credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our right to deduct fees, our final audit, Chargebacks (including our related losses), fees and fines imposed on us by the Card Organizations as a result of your acts or omissions. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees and pending Chargebacks and any other amounts owed to us or any of our respective Affiliates, or we may deduct such amounts from settlement funds or other amounts due to you from us, or our respective Affiliates. You further agree we can offset any amounts owed to us or our Affiliates related to activity in other accounts maintained in your name or accounts guaranteed by you, any of your principals, guarantors or authorized signors.

**3.4.** We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by you or any other Person.

**3.5.** In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 10.4) occur, we may, with or without notice, change processing or payment terms and/or suspend credits or other payments of any and all funds, money and amounts now due or hereafter to become due to you pursuant to the terms of this Agreement, until we have had reasonable opportunity to investigate such event.

**3.6.** You acknowledge and agree that transfers to and from the Settlement Account shall be based on the account number and routing number supplied by you. We are not responsible for detecting errors in any Settlement Account information you provide, including the account numbers and routing numbers, even if any of those numbers do not correspond to the actual account or financial institution identified by name.

**3.7.** This Agreement is a contract whereby we are extending financial accommodations to you within the meaning of Section 365(c) of the U.S. bankruptcy code. Your right to receive any amounts due or to become due from us is expressly subject and subordinate to Chargeback, setoff, lien, security interest and our rights to withhold settlement funds under this Agreement, without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

### 4. Exclusivity

During the term of this Agreement, you shall use us as your exclusive provider of all Services.

### 5. Fees; Adjustments; Collection of Amounts Due

**5.1.** In consideration of the Services provided by us, you shall be charged, and hereby agree to pay us any and all fees set forth in this Agreement (for purposes of clarity, this includes the Application and any additional pricing disclosures or subsequent communications), all of which will be calculated and payable pursuant to the terms of this Agreement and any additional pricing disclosures or subsequent communications.

If a transaction fails to qualify for your anticipated interchange programs or you inadvertently or intentionally accept a transaction other than anticipated for your account (including a different Card type), then, as applicable to your pricing method, you may be charged higher fees as disclosed in your pricing disclosures or subsequent communications, as well as any applicable surcharge for that transaction, all as further described in Section 42.3 of this Agreement and in the Application. With respect to inadvertent or intentional acceptance of a transaction other than the type anticipated for your account (including a different Card type), you will also be subject to payment to us of our then-current transaction fee(s) with respect to such Card and/or transaction and be liable, obligated and responsible under this Agreement for any such transaction to the same extent as you would be if it was of a Card type elected and approved. For more information on Visa's and Mastercard's interchange rates, please go to [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com).

**5.2. Should you have questions regarding any Non-Qualified fees (including Non-Qualified Interchange Fees or Non-Qualified Surcharge), submit a Non-Qualified Fee Inquiry (NFI) request in writing (either letter, fax or email) within 60 days from the mail date (post mark) of the monthly statement in question. Note that NFI requests received after the 60 day limit may not be considered for refund review. The subject line or reference at the top of your NFI request must state "Non-Qualified Fee Inquiry." Your NFI request must include your merchant name, merchant number, billing address, and the month of the processing statement on which the non-qualified fees appeared. When possible, also include a copy of the statement on which the fees in question appear. Written fee inquiries should be submitted by email to [nfirequest@wellsfargomERCHANTSERVICESLLC.COM](mailto:nfirequest@wellsfargomERCHANTSERVICESLLC.COM); via fax to (954) 509-1822; or if mailed, sent to: Wells Fargo Merchant, Services, LLC, P.O. Box 6699, Hagerstown, MD 21740, Attn: NFI Investigations Unit.**

**We will provide a written response to your NFI with an explanation. If through our research, we find that a refund is due, we will credit your account within 30 days from the date our research was completed. NFI requests not received in accordance with the foregoing shall not be subject to the response times set forth in this Section.**

**5.3.** All Authorization fees will be charged for each transaction that you attempt to authorize. All capture fees will be charged for each transaction that you transmit to us for settlement. If you are billed a combined fee



for both the authorization and capture of a transaction, the authorization and capture must be submitted as a single transaction, otherwise the authorization and the capture will each be charged separately. You are responsible for utilizing software or services that will correctly submit these transactions to achieve the indicated billing.

**5.4.** The fees for Services set forth in this Agreement are based upon assumptions associated with the anticipated annual volume and average transaction size for all Services as set forth in this Agreement and your method of doing business. If the actual volume or average transaction size are not as expected or if you significantly alter your method of doing business, we may adjust your fees for Services without prior notice.

**5.5.** The fees for Services set forth in this Agreement may be adjusted to reflect increases or new fees imposed by Card Organizations, including without limitation, interchange, assessments and other Card Organization fees, or to pass through increases or new fees charged to us by third parties 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 by the applicable Card Organization or third party as specified in our notice to you.

**5.6.** Subject to Section 10.3, we may also increase our fees or add new fees for Services for any other reason at any time by notifying you thirty (30) days prior to the effective date of any such change or addition.

**5.7.** If you receive settlement funds by wire transfer, we may charge a wire transfer fee per wire.

**5.8.** To the extent the Automated Clearing House (ACH) settlement process is used to effect debits or credits to your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association, as in effect from time to time. You hereby authorize us to initiate credit and debit entries and adjustments to your account through the ACH network and/or through direct instructions to the financial institution where your Settlement Account is maintained for amounts due under this Agreement and under any agreements with us or our respective Affiliates for any products or services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to effect all such debits and credits to your account. This authority will remain in full force and effect until we have given written notice to the financial institution where your Settlement Account is maintained that all monies due under this Agreement and under any other agreements with us or our respective Affiliates for any products or services have been paid in full.

**5.9.** You agree to pay any fines imposed on us by any Card Organization resulting from Chargebacks and any other fees or fines imposed by a Card Organization with respect to your acts or omissions. You are responsible for any fines or fees imposed on us as a result of acts or omissions by your agents or third parties.

**5.10.** If your Chargeback percentage for any line of business exceeds the estimated industry Chargeback percentage, you shall, in addition to the Chargeback fees and any applicable Chargeback handling fees or fines, pay us an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry Chargeback percentage is subject to change from time to time by us in order to reflect changes in the industry Chargeback percentages reported by Visa, Mastercard, American Express, Discover or PayPal. Your Chargeback percentage will be calculated as the larger of (a) the total Visa, Mastercard, American Express, Discover and PayPal Chargeback items in any line of business in any calendar month divided by the number of Visa, Mastercard, American Express, Discover and PayPal transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, Mastercard, American Express, Discover and PayPal Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, Mastercard, American Express, Discover and PayPal transactions in that line of business submitted in that month.

**5.11.** You agree to promptly and carefully review your merchant statements or other documents provided or made available to you

(physically, electronically or otherwise provided by Us or others) reflecting Card transaction activity, including activity in your Settlement Account. If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within sixty (60) days after any debit or credit is, or should have been effected or such shorter period as provided in the terms and conditions that govern such account. If you notify us after sixty (60) days, we shall have no obligation to investigate or effect any adjustments. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

**5.12.** If you do not pay us all fees and any other amounts due under this Agreement within thirty (30) days of the date of our merchant statement or other statement setting forth the amount due, then we may, in our sole discretion, charge you interest, for such time that the amount and all accrued interest remain outstanding at the lesser of (i) the per annum rate equal to Bank's then current prime rate plus two percent (2%), based on a 360 day year, or (ii) the maximum rate permitted by applicable law.

**5.13.** Other Debits. We may also debit your Settlement Account or your settlement funds in the event we are required to pay Card Organization fees, charges, fines, penalties or other assessments as a consequence of your sales activities. Such debits shall not be subject to any limitations of time specified elsewhere in the Agreement, including, without limitation the following, which we may add to or delete from this list as changes occur in the Card Organization Rules or our Operating Procedures pursuant to Section 2:

- Card Organization fees, charges, fines, penalties, registration fees, or other assessments including any fees levied against us or any amount for which you are obligated to indemnify us.
- Currency conversion was incorrectly calculated. NOTE: For Discover Network transactions, you are not permitted to convert from your local Discover Network approved currency into another currency, nor may you quote the price of a transaction in U.S. Dollars if completed in another approved currency.
- Fees for Services not previously charged.
- Reversal of deposit posted to your account in error.
- Debit for Summary Adjustment not previously posted.
- Reversal of Credit for deposit previously posted.
- Debit for Chargeback never posted to your account.
- Debit for EDC batch error fee.
- Card Organization Merchant Chargeback/fraud monitoring fees – excessive Chargeback handling fees.
- Failure of transaction to meet Member Controller Authorization Service (“MCAS”) – Cardholder account number on exception file.
- Original transaction currency (foreign) not provided.
- Travel voucher exceeds maximum value.
- Debit and/or fee for investigation and/or Chargeback costs related to this Agreement, or for costs related to our collection activities in an amount no less than \$100.00.
- Costs arising from replacement or damage to equipment rented.
- Payment of current or past due amounts for any equipment purchase, rental or lease.
- Incorrect merchant descriptor (name and/or city, state) submitted.
- Incorrect transaction date submitted.
- Shipping and handling fees.
- Costs or expenses associated with responding to any subpoena, garnishment, levy or other legal process associated with your account in an amount no less than \$150.00.

## **6. Chargebacks**

**6.1.** You shall be responsible for reimbursing us for all transactions you

submit that are charged back. See the Operating Procedures for additional information regarding Chargebacks and Chargeback procedures.

**6.2.** You shall reimburse us for any Chargebacks, return items, or other losses resulting from your failure to produce a Card transaction record requested by us within the applicable time limits.

**7. Representations; Warranties; Covenants; Limitations on Liability; Exclusion of Consequential Damages**

**7.1.** Without limiting any other warranties, representations or covenants hereunder, you represent, warrant and covenant to us, and with the submission of each sales Draft reaffirm, the following representations, warranties and/or covenants:

**7.1.1.** each Card transaction is genuine and arises from a bona fide transaction permissible under the Card Organization Rules by the Cardholder directly with you, represents a valid obligation for the amount shown on the Sales Draft, preauthorized order, or Credit Draft, and does not involve the use of a Card for any other purpose;

**7.1.2.** each Card transaction represents an obligation of the related Cardholder for the amount of the Card transaction;

**7.1.3.** the amount charged for the Card transaction is not subject to any dispute, setoff or counterclaim;

**7.1.4.** each Card transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased or rented by you pursuant to your business as indicated on the Application and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Agreement, the merchandise or service was actually delivered to or performed for the person entering into the Card transaction simultaneously upon your accepting and submitting the Card transaction for processing;

**7.1.5.** with respect to each Card transaction, you have no knowledge or notice of any fact, circumstances or defense which would indicate that such Card transaction is fraudulent or not authorized by the related Cardholder or which would otherwise impair the validity or collectibility of the Cardholder's obligation arising from such Card transaction or relieve the Cardholder from liability with respect thereto;

**7.1.6.** each Card transaction is made in accordance with these Card General Terms, Card Organization Rules and the Operating Procedures;

**7.1.7.** each Sales Draft is free of any alteration not authorized by the related Cardholder;

**7.1.8.** you have completed one Card transaction per sale; or one Card transaction per shipment of goods for which the Cardholder has agreed to partial shipments;

**7.1.9.** you are validly existing, in good standing and free to enter into this Agreement;

**7.1.10.** each statement made on the Application or other information provided to us in support of this Agreement is true and correct;

**7.1.11.** you are not doing business under a name or style not previously disclosed to us;

**7.1.12.** you have not changed the nature of your business, Card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different Merchant Category Code ("MCC") under Card Organization Rules, in a way not previously disclosed to us;

**7.1.13.** you will use the Services only for your own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Person;

**7.1.14.** you have not filed a bankruptcy petition not previously disclosed to us;

**7.1.15.** you own and control the Settlement Account, and no third party security interest or lien of any type exists regarding the Settlement Account or any Card transaction.

**7.1.16.** you will not at any time during the term of this Agreement, or until all amounts due under this Agreement have been paid in full, grant or pledge any security interest or lien in the Reserve Account, Settlement Account or transaction proceeds to any Person without our consent;

**7.1.17.** the Card transaction is not a payment for a product or service that violates federal, state or local law in any jurisdiction that may be applicable.

**7.2.** THIS AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.

**7.3.** IN NO EVENT SHALL EITHER PARTY, OR THEIR AFFILIATES OR ANY OF OUR OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY EARLY TERMINATION FEE OR LIQUIDATED DAMAGES AS PROVIDED ELSEWHERE IN THIS AGREEMENT SHALL NOT BE PROHIBITED BY THIS PARAGRAPH.

**7.4.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 13 or 7.5), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.

**7.5.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 13), OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 3.4, 3.6 OR 22.1, WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS, AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK FROM TIME TO TIME.

**7.6.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BANK IS NOT RESPONSIBLE, AND SHALL HAVE NO LIABILITY, TO YOU IN ANY WAY WITH RESPECT TO NON-BANK SERVICES.

**8. Confidentiality**

**8.1.** Unless you obtain consents from us and each applicable Card Organization, Issuer and Cardholder, you must not use, disclose, store, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, Retrieval Requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. You shall

use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. You may not retain or store Magnetic Stripe data or Card Validation Codes after a transaction has been authorized. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature except upon our specific request.

**8.2.** You acknowledge that you will not obtain ownership rights in any information relating to and derived from Card transactions. Cardholder account numbers, personal information and other Card transaction information, including any databases containing such information, may not be sold or disclosed to a third party as an asset upon a bankruptcy, insolvency or failure of Client's business. Upon a bankruptcy, insolvency or failure of Client's business all Card transaction information must be returned to Servicers or acceptable proof of the destruction of all Card transaction information must be provided to Servicers.

**8.3.** You will treat this Agreement, the Card Organization Rules and any information supplied or otherwise made accessible by us or our agents as confidential, including without limitation, (i) information about the products, services, operations, procedures, customers, suppliers, sales, pricing, business plans and marketing strategies of Servicers, their respective Affiliates and the customers, clients and suppliers of any of them; (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords Servicers a competitive advantage over its competitors; and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable and will not disclose the same to any third parties, provided, however, that these restrictions do not apply to information: (a) rightfully obtained on a non-confidential basis from a Person and your agents and representatives, which Person was not subject to a duty of confidentiality, (b) rightfully and independently known by you on a non-confidential basis prior to its disclosure or (c) generally available to the public other than through any disclosure by or fault of you, your agents or representatives.

**8.3.1.** Our confidential information shall be used by you only to exercise your rights and to perform your obligations hereunder. Client shall receive our confidential information in confidence and not disclose the confidential information to any third party, except as may be agreed upon in writing by us. Client shall safeguard all of our confidential information using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material. Upon request by us or upon termination of this Agreement, Client shall return to us or destroy all of our confidential information in its possession or control.

**8.3.2.** The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the date of the Agreement or subsequently came into the public domain through no fault of Client; (ii) was received from a third party free of any obligation of confidence of Client to the third party and which third party, to Client's knowledge, was not under an obligation to keep the information confidential; (iii) was already in Client's possession prior to receipt from us; (iv) is required to be disclosed by law, regulation or court order after giving us as much advance notice as practical of the possibility of disclosure; or (v) is subsequently and independently developed by Client's employees, consultants or agents without use of or reference to our confidential information.

**8.3.3.** Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under our confidential information to Client. Except as specifically provided for herein, no license is hereby granted to Client under any patent, trademark, copyright, trade secret or other proprietary rights of ours.

**8.3.4.** Client acknowledges that breach of the restrictions on use or disclosure of any of our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to seek equitable relief, in

addition to all other available remedies, to redress any breach.

**8.4.** We will keep confidential any information we receive from Client via its use of the Services. Exceptions are that we may disclose such information (a) to third parties as appropriate to provide the Services (b) to our internal and external auditors, attorneys and regulators (c) as required or permitted by law, regulation or court order (d) to our respective Affiliates as appropriate. In addition, we may use data collected as part of performing payment processing or other transaction-related services for you for the purpose of providing additional products and services to you ("Transaction Data"), other merchants, or third parties. This includes collecting, using, and de-identifying cardholder information, dates, amounts, and other Transaction Data to provide you with analytic products and services as well as collecting and using Transaction Data anonymized and aggregated with other merchants' transaction data to provide you, other merchants, and third parties with analytic products and services.

**8.5.** You shall not assign to any Person, the rights to use the Marks of Servicers, our agents or the Card Organizations.

**8.6.** All rights, title, and interest in and to all intellectual property related to the Services (including without limitation, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods), owned, developed or licensed by us prior to, during the term of, or after the Agreement, or employed by us in connection with the Services and any updates, changes, alterations, or modifications to or derivative works from such intellectual property, shall be and remain, as among the Parties, our exclusive property.

**8.7.** Client agrees that we may obtain relevant information from any applicable telecommunications provider utilized by Client, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by Client in connection with the Services.

**8.8.** Client will not: (a) use the Services in any way other than in accordance with this Agreement, any supplied documentation, or as otherwise instructed by us in writing; (b) use the Services, either directly or indirectly, to develop any service or product that competes with the Services; (c) disassemble, decompile, decrypt, extract, reverse engineer, or otherwise attempt to access, ascertain, reconstruct, derive, or appropriate for any reason or purpose (i) the source code for any software, or (ii) any algorithm, process, procedure, idea, or other information contained in the Services; (d) modify, translate, or alter the Services in any manner; (e) create derivative works of or based on the Services; (f) disclose or provide the Services to, or permit the Services to be accessed or used (in any format or by any means) by, any third party other than your authorized employees and contractors who are subject to written confidentiality obligations binding upon such employees and contractors that are no less restrictive than the confidentiality provisions hereunder; (g) directly or indirectly make any copies of the Services, except for (i) backup/archival purposes, or (ii) only with respect to any supplied documentation, as reasonably necessary to facilitate use of the Services as long as any such copies contain all appropriate proprietary notices; (h) remove, relocate, or modify any proprietary rights notices relating to the Services; (i) attempt to access, or actually access, portions of the Services not authorized by us for use; (j) rent, lease, sell, assign, sublicense, or otherwise transfer to any third party, whether by operation of law or otherwise, any of the rights granted hereunder; (k) use the Services for any unlawful purpose; (l) use, access, transfer, move, relocate, ship, or transship the Services outside of the United States without obtaining our advance written consent; or (m) circumvent, or attempt to circumvent, any applicable security measures of the Services.

## 9. Assignments

**9.1.** Any transfer or assignment of this Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable by us. Any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Agreement. Furthermore, you shall indemnify and hold us harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's Submission

of Card transactions to us for processing. For purposes of this Section 9, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

**9.2.** The payment services provided by us require access to a single bank account in which we may initiate both credits and debits. You may not enter into any agreement that would require, in any circumstance or event, the transfer of any payments or proceeds from Card transactions covered by this Agreement to the custody or control of any third party. You may not assign any rights, including the right of payment under this Agreement, to any other person. In the event that you make an assignment of (or provide a security interest in) of receivables covered by this Agreement, then we may, at our option, elect to (a) refuse to acknowledge such assignment unless accompanied by an authorization to both initiate debits or credits to the bank account of the assignee, (b) terminate this Agreement immediately, or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of \$100 per transfer.

**9.3.** Another Visa and Mastercard member may be substituted for Bank under whose sponsorship this Agreement is performed with respect to Visa and Mastercard transactions. Upon substitution, such other Visa and Mastercard member shall be responsible for all obligations required of Bank for Visa and Mastercard transactions, including without limitation, full responsibility for its Card program and such other obligations as may be expressly required by applicable Card Organization Rules. Subject to Card Organization Rules, we may assign or transfer this Agreement and our rights, duties and obligations hereunder and/or may delegate or subcontract our rights, duties and obligations hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding paragraph, or otherwise, without notice to you or your consent.

**9.4.** Except as set forth elsewhere in this Section and as provided in the following sentence, this Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, or other person charged with taking custody of a party's assets or business, shall have any right to continue, assume or assign this Agreement.

## **10. Term; Events of Default**

**10.1.** This Agreement shall become effective upon the date this Agreement is approved by our Credit Department.

**10.2.** The initial term of this Agreement shall commence as of the date of the first transaction submitted for processing to us and shall continue in force for three years. Thereafter, it shall renew for successive one year terms unless and until you provide written notice at least ninety (90) days prior to the end of the then current term or we provide you with notice in accordance with the Agreement. Should you fail to notify us in writing of your request to terminate you acknowledge and agree you will continue to be charged fees pursuant to this Agreement notwithstanding non-use of your account. If you have an equipment lease, termination of the Agreement will not terminate your lease or change any of your obligations under that lease (including your obligation to make monthly lease payments).

**10.3.** Notwithstanding the above or any other provisions of this Agreement, we may terminate this Agreement at any time and for any reason by providing 20 days' advance notice to you. We may terminate this Agreement immediately or with shorter notice upon Event of Default as provided under Section 10.4 of this Agreement. You may terminate this Agreement without penalty in the event of a material breach of this Agreement by Servicers. In the event we provide notice to you of any new fees or increases in existing fees for Services, pursuant to Section 5.6, you may terminate this Agreement without further cause or penalty by notifying us that you are terminating this Agreement prior to the effective date of such new fees or increases. However, maintaining your merchant account or your continued use of the Services after the effective date of any such fee changes shall be deemed your acceptance of such fee changes for

the Services, throughout the term of this Agreement.

**10.4.** If any of the following events shall occur (each an "Event of Default"):

**10.4.1.** a material adverse or other change in your business, financial condition or business prospects; or

**10.4.2.** any assignment or transfer of voting control of you or your parent; or

**10.4.3.** a sale of all or a substantial portion of your assets; or

**10.4.4.** irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, or any Card Organization, or any other Person, or an actual or suspected data security breach, nonconformance with any applicable data security standards, as determined by Servicers, any Card Organization, or any other entity, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us (including your processing transactions for a business type we have designated as unqualified for processing with us); or

**10.4.5.** any of your representations, warranties or covenants in this Agreement are breached in any respect; or

**10.4.6.** you default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 11; or

**10.4.7.** you default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our respective Affiliates;

**10.4.8.** you default in the payment when due, of any material indebtedness for borrowed money; or

**10.4.9.** you file a petition or have a petition filed by another party under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against you in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of you or of a substantial part of your property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or

**10.4.10.** your independent certified accountants shall refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries; or

**10.4.11.** a violation by you of any applicable law or Card Organization Rule or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury or your breach, as determined by Servicers, of Section 25.2 ("Compliance with Laws"); then, upon the occurrence of (1) an Event of Default specified in subsections 10.4.4, 10.4.9 or 10.4.11, we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

**10.5.** Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by you to pay or reimburse us for any obligations associated with transactions you have submitted to us will survive termination of this Agreement until finally and

irrevocably paid in full and settled.

**10.6.** If any Event of Default occurs and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law and this Agreement, including, without limitation, exercising our rights under Section 11.

**10.7.** In the event you file for protection under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our Services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting supporting any adjustments that you may claim.

**10.8.** The Card Organizations often maintain lists of merchants who have had their merchant agreements or Card Acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Card Organizations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa, Mastercard, Discover, PayPal or American Express. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

**10.9.** After termination of this Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, Card Organization fines imposed on us as a result of your acts or omissions, Credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

**10.10.** After the initial term of this Agreement, if your merchant account is determined to be inactive as determined in our sole discretion, we may cancel this Agreement without further notice. Inactivity will be determined by an extended period of time with no transactions processed by us on your behalf.

In the event we close this Agreement for inactivity, the early termination fee will not apply.

## **11. Reserve Account; Security Interest**

**11.1.** You expressly authorize us to establish a Reserve Account to help mitigate our risk exposure under this Agreement. The decision to establish a Reserve Account (and the amount thereof) lies exclusively with us, and you understand that you are obligated to fund such account pursuant to the terms and conditions set forth in this Section 11. The amount of such Reserve Account shall be set by us, in our sole discretion, based upon your processing history (where applicable) and the potential risk of loss to us as we may determine from time to time.

**11.2.** The Reserve Account shall be fully funded upon three (3) days' notice to you, or in instances of fraud or suspected fraud or an Event of Default, Reserve Account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to your Settlement Account or any other accounts held by Bank or any of its Affiliates at any financial institution maintained in the name of Client, any of its principals, or any of its guarantors, or if any of the same are authorized signers on such account; (ii) any payments otherwise due to you, including any amount due from TeleCheck; (iii) your delivery to us of a letter of credit; or (iv) if we so agree, your pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination of this Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination of this Agreement or for such longer period of time as is

consistent with our liability for your Card transactions and Chargebacks in accordance with Card Organization Rules. We will hold funds pursuant to this Section 11 in master account(s) with your funds allocated to separate subaccounts. Unless specifically required by law, you shall not be entitled to interest on funds held by us in a Reserve Account.

**11.3.** If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges and amounts due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request.

**11.4.1.** To secure your obligations to us and our respective Affiliates under this Agreement and any other agreement for the provision of equipment products or services (including any obligations for which payments on account of such obligations are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause), you grant to us a first priority lien and security interest in and to (i) the Reserve Account and (ii) any of your funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in our possession, whether now or hereafter due or to become due to you from us. Any such funds, money or amounts now or hereafter in our possession may be commingled with other funds of ours, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of ours. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, we are hereby authorized by you at any time and from time to time, without notice or demand to you or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of your obligations to us and our respective Affiliates under this Agreement and any other agreement with us or any of our respective Affiliates for any related equipment or related services (including any check warranty and check verification services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to us such instruments and documents as we may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

**11.4.2.** To the extent funds are held in a separate Reserve Account, the Reserve Account shall be subject to (i) Servicers' security interest pursuant to this subsection 11.4, and (ii) an account control agreement (as defined by the applicable sections of the Uniform Commercial Code, hereinafter referred to as "Control Agreement") among you, the institution at which the Reserve Account is held (such institution hereinafter referred to as "Settlement Account Bank") and Servicers (such investment account hereinafter referred to as the "Control Account"). The Control Agreement shall be in form and substance satisfactory to Servicers. The Settlement Account Bank shall be a national bank which is mutually acceptable to you and Servicers.

**11.4.3.** For sake of clarification and notwithstanding anything in the Agreement to the contrary, in the event Servicers deduct, holdback, suspend, off set or set off any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement (collectively, Set Off Funds), you acknowledge that such Set Off Funds will be held in a commingled Reserve Account(s) of Servicers unless such Set Off Funds are wired or deposited by Servicers into any Control Account, pursuant to a Control Agreement in which case Servicers will transfer Set Off Funds from their commingled Reserve Account(s) to the Control Account as soon as practicable using commercially reasonable efforts.

**11.4.4.** In replacement of or in addition to the first priority lien and security interest in the Reserve Account, you grant to Servicers a first priority lien and security interest in and to one or more certificates of deposit, the certificates of deposit shall be uncertificated and shall be subject to an Acknowledgement of Pledge of Certificate of Deposit and Control Agreement (the "Certificate of Deposit Control Agreement") by, between and among Customers, Servicers and the financial institution that has established and issued the certificate of deposit. The form of the

Certificate of Deposit Control Agreement and the financial institution that will establish and issue the certificate of deposit shall be satisfactory and acceptable to Servicers.

## 12. Financial and Other Information

**12.1.** Upon request, you will provide us and our Affiliates, quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us and our Affiliates to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide, and/or cause to be provided, to us and our Affiliates, or our representatives or regulators (as well as those of the Card Organizations) reasonable access to your or your providers' facilities and records for the purpose of performing any inspection and/or copying of your books and/or records deemed appropriate. In such event, you shall pay the costs incurred by us or our Affiliates for such inspection, including, but not limited to, costs incurred for airfare and hotel accommodations. Section 12.1 shall not be in force as long as you provide Wells Fargo Bank, N.A. with your current financial statements (e.g., as a requirement of your lending or other commercial relationship with Wells Fargo Bank, N.A. or its Affiliate) and Wells Fargo Bank, N.A. is permitted to disclose your financial statements to Wells Fargo Merchant Services upon request. In the event you terminate your commercial lending relationship with Wells Fargo Bank, N.A., you shall be obligated to satisfy the requirements of this Section 12.1.

**12.2.** You will provide us with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three (3) days after you become aware of same.

## 13. Indemnification

**13.1.** You agree to indemnify and hold us and the Card Organizations harmless from and against all losses, liabilities, damages and expenses:

(a) resulting from the inaccuracy or untruthfulness of any representation or warranty, breach of any covenant or agreement or any misrepresentation by you under this Agreement;

(b) arising out of your or your employees' or your agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders;

(c) arising out of your use of the Services; or

(d) arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Card Organization or Issuer).

**13.2.** We agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall not apply to Bank with respect to Non-Bank Services.

## 14. Special Provisions Regarding Non-Bank Services

**14.1.** Certain Card transactions may be provided to you by Processor and not by Bank. These are considered "Non-Bank Services", and may include certain Discover, American Express, Voyager and WEX Card transactions. This Section 14 applies to such Non-Bank Services. Services provided, transactions processed and other matters contemplated under this Section 14 are subject to the rest of the Agreement, as applicable, except to the extent the terms of this Section 14 directly conflict with another provision

of this Agreement, in which case the terms of this Section 14 will control for purposes of Non-Bank Services; provided, however, that (i) Bank is not a party to this Agreement insofar as it relates to Non-Bank Card transactions, and Bank is not liable in any way with respect to such Non-Bank Services and related services and (ii) you agree to pay Processor any per item processing, authorization and other fees described in the application for any Non-Bank Services you receive from Processor. For the purposes of this Section 14, the words "we", "our" and "us" refer only to Processor and not to the Bank. You authorize us to share information from your Application with American Express and any other Non-Bank Services related organization.

**14.2.** If you accept American Express under the American Express EDC Program, you understand that if, based upon your anticipated Card transaction volume you do not qualify for our full service program but have otherwise been approved for accepting American Express transactions, then (a) your authorizations will be obtained from and funded by American Express, (b) American Express will provide you with its own agreement that governs those transactions, and (c) you understand and agree that (i) we are not responsible and assume absolutely no liability with regard to any such transactions, including but not limited to the funding and settlement of American Express transactions, and (ii) American Express will charge additional fees for the services they provide. If, based on your anticipated Card transaction volume, you do qualify for our full service program, then your acceptance of American Express will be governed exclusively by this Agreement.

**14.3.** If you accept JCB, Diners Club International, UnionPay, BCard, and Dinacard cards, you agree to be bound by the Discover provisions of this Agreement. You also acknowledge and agree that JCB, Diners Club International, UnionPay, BCard, and Dinacard transactions will be processed under and will be subject to Discover Card Organization Rules.

**14.4.** If you accept Voyager and/or WEX Cards, you agree to be bound by the WEX and/or Voyager rules. You also agree to be bound by all other provisions of this Agreement which are applicable to WEX and/or Voyager.

**14.5.** If you execute a separate WEX Merchant Agreement, (WEX Non Full Service Program), you understand that we will provide such agreement to WEX, but that neither we nor WEX shall have any obligation whatsoever to you with respect to processing WEX Cards unless and until WEX executes your WEX Merchant Agreement. If WEX executes your WEX Merchant Agreement and you accept WEX Cards, you understand that WEX transactions are processed, authorized and funded by WEX. You understand that WEX is solely responsible for all agreements that govern WEX transactions and that we are not responsible and assume absolutely no liability with regard to any such agreements or WEX transactions, including but not limited to the funding and settlement of WEX transactions. You understand that WEX will charge additional fees for the services that it provides.

**14.6.** If you elect to participate in the WEX Full Service Program, the following terms and conditions shall apply:

a) You shall provide, at your own expense, all equipment necessary to permit the electronic acceptance of the WEX Cards, including the operation and maintenance of the equipment, telecommunication link, and provision of all networking services;

b) All authorization request data for WEX Card sales must include WEX Cardholder account number, vehicle number, Card expiration date, driver identification number; and the amount of the transaction, date and time of the transaction, quantity of goods sold, unit price, and product code (the "Authorization Request Data"). All manual WEX

Card sales (i.e., sales facilitated by a card imprinter) must include an Authorization number or other approval code from WEX along with the aforementioned Authorization Request Data;

c) You shall not submit a WEX Card sale for processing when a WEX Card is not presented at the time of the WEX Card sale;

d) You shall complete a WEX Card sale only upon the receipt of an Authorization approval message and not accept a WEX Card when an

expired Card/decline message is received;

e) You shall not submit a WEX Card sale for processing until the goods have been delivered or services performed;

f) You shall not accept a WEX Card where the WEX Card appears to be invalid or expired or there is reasonable belief that the WEX Card is counterfeit or stolen;

g) You shall provide a copy of the receipt for a WEX Card sale, upon the request of the Cardholder, to the extent permitted by applicable law, which shall not include the full account number or driver identification number;

h) You shall require the Cardholder to sign a receipt when a WEX Card sale is not completed by an island Card reader;

i) You shall take all commercially reasonable efforts to protect manual WEX Card sales data from fraud or misuse;

j) You shall not divide the price of goods and services purchased in a single WEX Card sale among two or more sales receipts or permit a WEX Card sale when only partial payment is made by use of the WEX Card and the balance is made with another bank Card;

k) You shall securely maintain a record of all WEX Card sales, including the Authorization Request Data, for a period of one year and produce such records upon the reasonable request of WEX;

l) You shall notify Processor of any errors contained within a settlement report within forty five (45) days of receipt of such report. Processor will not accept reprocessing requests for WEX transactions older than 90 days;

m) You shall allow WEX to audit records, upon reasonable advance notice, related to the WEX Full Service; and

n) You shall retransmit WEX Card sales data when reasonably requested to do so.

o) Client acknowledges and agrees that its sole remedies with respect to the WEX Full Acquiring services shall be against Processor for the WEX Full Acquiring Services and not WEX, except to the extent that WEX knows of any fraud related to the WEX Cards and fails to provide notice of such fraud or WEX commits fraud in respect to the WEX Full Acquiring Services.

#### **14.7. If you accept Voyager Cards:**

• In addition to the information stated in Section 26 (Mastercard, Visa and Discover, PayPal and American Express Acceptance) of the Operating Procedures, you should check Fleet Cards for any printed restrictions at the point of sale.

• In addition to the information provided under Section 26.5 (Special Terms) of the Operating Procedures, you shall establish a fair policy for the exchange and return of merchandise. You shall promptly submit Credits to us for any returns that are to be credited to a Voyager Card holder's account. Unless required by law, you shall not give any cash refunds to any Voyager Card holder in connection with a sale.

• In addition to the information required under Section 28.1 (Information Required) of the Operating Procedures, the following information must be contained on the single page document constituting the Sales Draft for Voyager transactions:

- Time of transaction.

- Type of fuel sold.

- As permitted by the applicable POS device, odometer reading.

- For all cashier-assisted Sales Drafts and Credit Drafts processed manually using a card Imprinter if required, the identification number from the source credentials provided by Cardholder to validate Cardholder's identity (e.g., Driver's License number).

• If an increase in the number of Voyager transaction authorization calls from you not due to our or Voyager system outages in excess of 15% for a given month as compared to the previous month occurs, we may, in our discretion, deduct telephone charges, not to exceed \$.25 (25 cents) per call, for the increased calls, from your settlement of your Voyager transactions.

• In addition to the information provided under Section 32 (Settlement) of the Operating Procedures, settlement of Voyager transactions will generally occur by the fourth banking day after we process the applicable card transactions. We shall reimburse you for the dollar amount of sales submitted for a given day by you, reduced by the amount of Chargebacks, tax exemptions, discounts, Credits, and the fees set forth in the Application. Neither we nor Voyager shall be required to reimburse you for sales submitted more than sixty (60) days from the date of purchase.

• For daily transmission of sales data, you shall securely maintain true and complete records in connection with the information required to be provided under this paragraph for a period of not less than thirty-six (36) months from the date of the generation of the data. You may store records on electronic media, if secure. You are responsible for the expense of retaining sales data records and Sales Drafts.

• In addition to the scenarios identified in Section 36.1.4 of the Operating Procedures that could cause an authorization related Chargeback to occur with respect to Voyager transactions, Chargebacks shall be made in accordance with any other Voyager rules. Notwithstanding termination or expiration of this paragraph or the Agreement, you shall remain liable for all outstanding Chargebacks on Voyager transactions.

• In addition to the information provided under Section 7 (Representations; Warranties; Covenants; Limitations of Liability; Exclusion of Consequential Damages) of the Card General Terms, in no event shall our cumulative liability to you for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions exceed the lesser of \$10,000.00 or the Voyager Transaction Fees paid by you to us for the two months prior to the action giving rise to the claim.

• Notwithstanding anything in this Agreement to the contrary, our obligation to provide services to you relating to any Fleet Card will terminate automatically without penalty to us or the related Card Organization upon the earlier of (i) the termination or expiration of our agreement with such Card Organization, (ii) at least twenty (20) days prior written notice by us to you; (iii) your failure to comply with material terms relating to such Fleet Card transactions, or (iv) written notice, if an Card Organization discontinues its Card.

**14.8.** If you accept PayPal Cards you understand that the following requirements apply to PayPal Card transactions in addition to the information required in this Agreement:

• Only PayPal's in-store, Card present transactions are eligible for processing under this Agreement. Online, cash over, cash advance, quasi cash transactions, international transactions or manually entered transactions may not be processed (you must contact us or PayPal for information related to services that are not covered in this Agreement).

• You will provide us with information about the Card transactions you conduct including data related to your Authorization requests, Card transactions, and transaction dispute responses.

• You will provide us with aggregate and individual information about the Card transactions you accept; including, the number, type and kind of transactions you conduct, your disputes, your business operations, your merchant category code information, and any other information you are required to provide under this Agreement.

• You will not use, store, retain or otherwise disclose any of PayPal's confidential information, Cardholder data, magnetic stripe track data, or PayPal Card transaction data (other than as necessary to complete a transaction).

• You will not use a PayPal Cardholder's personal information for marketing and/or other purposes without explicit consent from the Cardholder.

#### **15. Special Provisions for Debit Card**

The special provisions outlined in this Section 15 apply only to those Debit Card transactions that are processed by a Cardholder entering a PIN unless the transaction is a debit network supported PINless Transaction.

A PINless transaction is a Debit card transaction that a merchant submits to us for settlement/ funding transactions with neither a PIN nor Signature. The Services provided, transactions processed and other matters contemplated under this Section 15 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 15 directly conflict with another provision of this Agreement, in which case the terms of this Section 15 will control.

**15.1. Debit Card Acceptance.** Most, but not all, Debit Cards can be accepted at the point of sale at participating locations. Examine the back of the Debit Card to determine if the Card participates in a network that you are authorized to accept. The Network mark(s) will usually be printed on the back of the Card. If the Debit Card is valid and issued by a participating network, you must comply with the following general requirements for all participating networks, in addition to any specific requirements of the network.

- You must honor all valid Debit Cards when presented that bear authorized network marks.
- You must treat transactions by Cardholders from all Issuers in the same manner.
- You may not establish a minimum or maximum transaction amount for Debit Card acceptance.
- You may process cash back or store credit on PIN Debit Cards on a merchandise return according to your store policy.
- You may not require additional information, beside the PIN, for the completion of the transaction unless the circumstances appear suspicious. A signature is not required for Debit Card transactions.
- You shall not disclose transaction related information to any party other than your agent, a network, or issuing institution and then only for the purpose of settlement or error resolution.
- You may not process a Credit Card transaction in order to provide a refund on a Debit Card transaction.

**15.2. Transaction Processing.** The following general requirements apply to all Debit Card transactions.

- All Debit Card transactions must be authorized and processed electronically. There is no voice authorization or Imprinter procedure for Debit Card transactions.
- You may not complete a Debit Card transaction that has not been authorized. The Cardholder should be instructed to contact the Issuer to find out why a transaction received a Referral or decline response. If you cannot obtain an authorization at the time of sale, you should request another form of payment from the customer or process the transaction as a Store and Forward or Resubmission, in which case you assume the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuing Bank to find out why a transaction has been declined.
- Unless the transaction is a network supported PINless Transaction you may not complete a Debit Card transaction without entry of the Personal Identification Number (PIN) by the Cardholder (and no one else) or signature by the Cardholder (and no one else).
- The PIN must be entered into the PIN pad only by the Cardholder. You cannot accept the PIN from the Cardholder verbally or in written form.
- The Debit Network used to process your debit transaction will depend upon, among other things, our own business considerations, the availability of Debit network at the time of the transaction and whether a particular Debit Card is enabled for a particular Debit network. The Debit network used to route your transaction may or may not be the lowest cost network available. We may, in our sole discretion (i) use any Debit network available to us for a given transaction (including any of our affiliated PIN Debit networks) and (ii) add and/or remove Debit networks available to you based on a variety of factors including availability, features, functionality and our own business considerations.

- You must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN Truncation on it.

- You may not manually enter the account number for PIN Debit transactions. Signature Debit transaction may be key entered if you are unable to swipe the Card. The account number must be read electronically from the Magnetic Stripe/chip for transactions authenticated with a PIN. If the Magnetic Stripe/chip is unreadable, you must request another form of payment from the Cardholder. Do not obtain a signature if PIN authentication is not supported or available.

- Any applicable tax must be included in the total transaction amount for which authorization is requested. Tax may not be collected separately in cash.

**• YOU ARE RESPONSIBLE FOR SECURING YOUR POS DEVICES AND FOR IMPLEMENTING APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING REFUNDS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

**15.3. Cash Back From Purchase.** You may offer cash back to your customers when they make a PIN Debit Card purchase, if cash back is supported by the PIN Debit Network associated with the PIN Debit Card presented by your customer. You may set a minimum and maximum amount of cash back that you will allow. If you are not currently offering this service, your POS device may require additional programming to begin offering cash back as long as it is supported by the Debit network.

**15.4. Settlement.** You must reconcile your accounts for each location daily and notify us within 24 hours of any issues.

**15.5. Adjustments.** An adjustment is a transaction that is initiated to correct a Debit Card transaction that has been processed in error. For Signature Debit transactions (including “no signature” signature debit transactions), both the Cardholder and the Card Issuer have the right to question or dispute a transaction. If these questions or disputes are not resolved, a Chargeback may occur. You are responsible for all adjustment and Chargeback fees that may be charged by a Debit network. Some PIN networks may have established minimum amounts for adjustments.

**There are several reasons for adjustments being initiated:**

- The Cardholder was charged an incorrect amount, whether too little or too much.
- The Cardholder was charged more than once for the same transaction.
- A processing error may have occurred that caused the Cardholder to be charged even though the transaction did not complete normally at the point of sale.
- A Cardholder is disputing the goods or services provided.
- All parties involved in processing adjustments and Chargebacks are regulated by time frames that are specified in the operating rules of the applicable Debit Card network, The Electronic Funds Transfer Act, Regulation E, and other applicable law.

**16. Special Provisions Regarding Electronic Benefit Transfer (“EBT”)**

If you elect to engage in EBT transactions, the terms and conditions of this Section 16 shall apply.

EBT transactions are provided to you by Processor and not by Bank. The Services provided, transactions processed and other matters contemplated under this Section 16 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 16 directly conflict with another section of this Agreement, in which case the terms of this Section 16 will control for purposes of EBT transactions; provided, however, that Bank is not a party to this Agreement insofar as it relates to EBT transactions, and Bank is not liable to you in any way with respect to such Services. For the purposes of this section, the words “we,” “our” and “us” refer only to the Processor and not to the Bank.

We offer electronic interfaces to EBT networks for the processing, settlement and switching of EBT transactions initiated through the use



of a state-issued EBT card ("EBT Card") at your POS Terminal(s) for the provision of United States Department of Agriculture, Food and Nutrition Service ("FNS"), Supplemental Nutrition Assistance Program ("SNAP") and Women, Infants and Children Benefits ("WIC Benefits") and/ or government delivered Cash Benefits (Cash Benefits, together with FNS, SNAP and WIC Benefits, collectively are referred to as the "EBT benefits") to EBT benefit recipients ("EBT customers"), subject to the terms below.

**16.1. Acceptance of EBT Benefits.** You agree to accept EBT Cards and provide EBT benefits to EBT customers through the use of POS Terminals, PIN pad and printer or other equipment that meet required standards set forth in the EBT Rules (including those set out in the Quest Rules) ("Authorized Terminal") during your normal business hours, in a manner consistent with your normal business practices.

The "EBT Rules" means (i) all procedures that we establish and provide to you from time-to-time regarding your acceptance of EBT Cards and provision of EBT benefits to EBT customers; (ii) the Quest Rules, as amended from time-to-time, issued by the National Automated Clearing House Association and as approved by the Financial

Management Service of the U.S. Treasury Department, as necessary (and any rules that succeed or replace the Quest Rules); and (iii) other such laws, rules, regulations and procedures that are applicable to the acceptance of EBT Cards and the provision of EBT benefits by you under this Section 16, including without limitation, laws pertaining to delivery of services to EBT customers and EBT customer confidentiality, the federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, regulations issued by the Department of Agriculture pertaining to Food Stamp Program, and, any additional procedures specified by the state regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by providing EBT customers with information such as telephone numbers and addresses of the state or other appropriate agencies. The "Food Stamp Program" is the government benefits program operated under the authority of the Food Stamp Act of 1964.

You will provide EBT benefits to EBT customers, in accordance with applicable law and the procedures set out in the EBT Rules, in the amount authorized through your Authorized Terminal upon presentation by an EBT customer of an EBT Card and such EBT customer's entry of a valid PIN. If the Authorized Terminal fails to print EBT benefit issuance information as approved and validated as a legitimate transaction, you will comply with the procedures set forth in the EBT Rules for authorization of EBT benefits in such instance. You are solely responsible for your provision of EBT benefits other than in accordance with authorizations timely received from EBT service provider. You will not resubmit any EBT Card transaction except as specifically permitted by the applicable EBT Rules and procedures. You must provide a receipt for each EBT transaction to the applicable EBT customer.

You will not accept any EBT Card for any purpose other than providing EBT Benefits, including without limitation accepting an EBT Card as security for repayment of any EBT customer obligation to you. In the event of any violation of this provision, you will be obligated to reimburse the state or us for any EBT benefits unlawfully received by either you or an EBT customer to the extent permitted by law. Cash should never be dispensed for FNS, SNAP and WIC Benefits.

**16.2. Manual EBT Vouchers.** In accordance with the procedures set forth in this Section 16 and the EBT Rules, you will manually accept EBT Cards during periods of time when your Authorized Terminal is not working or the EBT system is not available; you will manually provide EBT benefits in the amount authorized through the applicable EBT service provider to the EBT customers at no cost to the EBT customers upon presentation by an EBT customer of his/her EBT Card. All manual voucher authorizations must be cleared on your POS terminal for payment of voucher to be made to you. In addition to any procedures set forth in the EBT Rules, the following limitations will apply to manual issuance of FS Benefits by merchant:

i. An authorization number for the amount of the purchase must be received by you from the applicable EBT service provider while the respective EBT customer is present and before you provide such EBT customer with any FNS, SNAP and WIC Benefits, or Cash Benefits, as applicable. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to sign the voucher.

The EBT customer must sign the voucher. A copy of the voucher should be given to the EBT customer at the time of authorization and you should retain one copy for your records.

ii. Specified EBT customer, clerk and sales information, including the telephone authorization number, must be entered properly and legibly on the manual sales draft.

iii. All manual voucher authorizations must be cleared on your Authorized Terminal within 14 days after the date of applicable voice authorization. Vouchers cannot be cleared by any manner except by your Authorized Terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your Authorized Terminal for payment, no further action can be taken to obtain payment for the voucher.

iv. In the event that, due to EBT host failure, EBT benefit availability for an EBT customer cannot be determined at the time you request authorization, the maximum authorized manual transaction and benefit encumbrance will be \$40.00 or such other state specific floor limit as set forth in the most current version of the applicable EBT Rules.

v. Except as specifically provided in the applicable EBT Rules, you will not be reimbursed and will be solely responsible for a manual transaction if you fail to obtain an authorization number from the applicable EBT service provider as set forth in this Section 16 or otherwise fail to process the manual transaction in accordance with the EBT Rules.

vi. If you have not received an authorization number in accordance with paragraph 16.1 above, you may not "re-submit" a manual sales draft for payment for the transaction.

**16.3. Acceptance of EBT Cash Benefits.** If you agree to accept EBT Cards and to provide Cash Benefits, you agree to maintain adequate cash on hand to issue EBT service provider authorized Cash Benefits and will issue such Cash Benefits to EBT customers in the same manner and to the same extent cash is provided to your other customers. You may not require, and may not in your advertising suggest, that any EBT customers must purchase goods or services from you as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate and direct EBT customers to special checkout lanes restricted to use by EBT customers unless you also designate and direct other customers to special checkout lanes for Debit Cards or Credit Cards and/or other payment methods such as checks other than cash.

**16.4. Interoperability.** If you accept Cards and provide EBT benefits (FNS, SNAP and WIC Benefits and/or Cash Benefits), you must do so for EBT customers from all states.

**16.5. Required Licenses.** If you provide FNS, SNAP and WIC Benefits under this Agreement, you represent and warrant to us that you are a FNS authorized merchant and are not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS. You agree to secure and maintain at your own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of EBT benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenant that you will not accept EBT Cards or provide EBT benefits at any time during which you are not in compliance with the requirements of any EBT Rules.

**16.6. Term and Termination.** If you are disqualified or withdrawn from the Food Stamp Program, your authority to issue benefits will be terminated concurrently therewith. Such disqualification or withdrawal will be deemed a breach of this Agreement with respect to your authority to issue Cash Benefits and, in the event of such disqualification; we have the

right to immediately terminate the provision of service under this Section 16 or the Agreement in its entirety. With respect to the issuance of Cash Benefits only, your authority to issue Cash Benefits may be suspended or terminated immediately at the sole discretion of us, the state or its EBT service provider, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination if there shall be (i) any suspension, injunction, cessation, or termination of the EBT service provider's authority to provide EBT services to the state; (ii) failure by you, upon not less than thirty (30) days prior written notice, to cure any breach by you of the provisions of these terms and conditions, including without limitation, your failure to support the issuance of EBT benefits during your normal business hours consistent with your normal business practices, your failure to comply with EBT issuance procedures, your impermissible acceptance of an EBT Card, or your disqualification or withdrawal from the Food Stamp Program; or (iii) based on a state's or its EBT service provider's investigation of the relevant facts, evidence that you or any of your agents or employees are committing, participating in, or have knowledge of fraud or theft in connection with the dispensing of EBT benefits. If you fail to cure any breach as set forth above, you may appeal such suspension or termination to the applicable state for determination in its sole discretion.

In the event that your authority to accept benefits is suspended or terminated by a state or its EBT service provider, and you successfully appeal such suspension or termination to the state or its EBT service provider, we shall be under no obligation to reinstate the services previously provided under this Section 16 or the Agreement, as applicable.

The provision of services under this Section 16 shall terminate automatically if our Agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

You will give prompt notice to us if you plan to stop accepting EBT Cards and providing EBT benefits or if you are unable to comply with the terms of this Section 16.

**16.7. Confidentiality of EBT System Information.** All information related to EBT customers and/or the issuance of EBT benefits shall be considered confidential information.

Individually identifiable information relating to an EBT customer or applicant for EBT benefits will be held confidential and will not be disclosed by you or your directors, officers, employees or agents, without prior written approval of the applicable state.

You will: (a) implement appropriate measures designed to: (1) ensure the security and confidentiality of all non-public personal information or materials regarding customers ("NPPI"); (2) protect against any anticipated threats or hazards to the security or integrity of NPPI; (3) protect against unauthorized access to or use of NPPI that could result in substantial harm or inconvenience to any customer and (4) ensure the proper disposal of NPPI; and (b) take appropriate actions to address incidents of unauthorized access to NPPI, including notification to us as soon as possible.

The use of information obtained by you in the performance of your duties under this Section 16 will be limited to purposes directly connected with such duties.

**16.8. EBT Service Marks.** You will adequately display any applicable state's service marks or other licensed marks, including the Quest Marks, and other materials supplied by us, (collectively the "Protected Marks") in accordance with the standards set by the applicable state. You will use the Protected Marks only to indicate that EBT benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider endorse your goods or services. Your right to use such Protected Marks pursuant to this Agreement will continue only so long as this Section 16 remains in effect or until you are notified by us, any state or its EBT service provider to cease their use or display. You will not use the Marks of any EBT service provider without prior written approval from such EBT service provider.

## **16.9. Miscellaneous.**

**16.9.1. Errors.** You will fully cooperate with us and any other participants in the EBT system in the resolution of errors and disputes regarding EBT transactions processed pursuant to this Section 16. You will promptly notify us of any such errors or disputes.

### **16.9.2. Issuance Records.**

i. You agree to make available such informational materials as may be required by the state, its EBT service provider or any applicable regulations pertaining to the issuance of Benefits.

ii. You will retain all EBT-related records (including but not limited to manual sales drafts or vouchers) in the manner required by the EBT Rules or otherwise reasonably requested by us for three (3) years following the date of the applicable EBT transaction, or for such additional period as may be required by the EBT Rules. Records involving matters in litigation will be kept by you for a period of not less than three (3) years following the termination of the applicable litigation. Copies of any documents in media other than paper (e.g. microfilm, etc.) related to this Section 16 may be substituted for the originals to the extent permitted under applicable EBT Rules and provided that legible paper copies can be reproduced within a reasonable time after such records are requested.

iii. You will make all EBT-related records available for audit upon request to representatives of the state or its EBT service provider, or other authorized state or federal government agency during normal business hours.

iv. To assure compliance with this Agreement, including without limitation this Section 16, the state, its EBT service provider, or other authorized state or federal government agency, will at all times, upon advance notice except in the case of suspected fraud or other similar activity, have the right to enter, during normal business hours, your premises to inspect or evaluate any work performed under this Agreement, or to obtain any other information required to be provided by you or otherwise related to this Agreement.

**16.9.3. Training.** You will train and permit your employees to receive training regarding the issuance of EBT benefits.

**16.9.4. Amendments.** Notwithstanding anything to the contrary in this Agreement, if any of these terms and conditions are found to conflict with the EBT Rules or federal or state policy, these terms and conditions are subject to reasonable amendment by us, a state or its EBT service provider to address such conflict upon written notice to you and such amendment shall become effective upon such notice.

**16.9.5. State Action.** Nothing contained herein shall preclude a state from commencing appropriate administrative or legal action against you or for making any referral for such action to any appropriate federal, state, or local agency.

**16.9.6. Reference to State** Any references to state herein will mean the state in which you accept EBT benefits pursuant to this Section 16. If you accept EBT benefit in more than one state pursuant this Section 16, then the reference will mean each such state severally, not jointly.

**16.9.7. Third Party Beneficiaries.** These terms and conditions, do not create, and will not be construed as creating, any rights enforceable by any person not having any rights directly under this Agreement, except that the state and its Issuer, as defined in the Quest Rules, will be deemed third party beneficiaries of the representations, warranties, covenants and agreements made by you under the Agreement, including without limitation this Section 16.

## **17. Special Provisions Regarding Wireless Service**

If you elect to purchase the Wireless Services from us, then the following terms and conditions of this Section 17, referred to as the "Wireless Services Terms," shall apply. THE WIRELESS SERVICES ARE BEING SOLD TO YOU FOR USE IN BUSINESS AND ARE NOT BEING SOLD TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank. The Services provided, transactions

processed and other matters contemplated under this Section 17 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 17 directly conflict with another section of this Agreement, in which case the terms of this Section 17 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Wireless Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words “we,” “our” and “us” refer only to the Processor and not to the Bank.

Through one or more third party vendors (“Wireless Vendor(s)”) selected by us in our sole discretion, we have acquired the right to resell certain wireless data communication services that use radio base stations and switching offered by certain cellular telephone and data networks throughout the country (the “Wireless Networks”) in order to allow you to capture and transmit to Processor and Bank certain wireless Card Authorization transactions or to transmit other communications to our system (“Wireless Services”).

If you elect to purchase voice and/or data services directly from a third party provider for use with the Wireless Equipment as permitted by Processor, you acknowledge and agree that this Agreement does not address or govern those voice and/or data services or your relationship with that third party provider, and Servicers are in no way responsible for providing, maintaining, servicing or supporting such third party voice and/or data services.

**17.1. Purchase of Wireless Services.** The prices that you will pay for the Wireless Services are set forth on the Application. In connection with your purchase of Wireless Services, you will receive access to a certain Wireless Network(s).

- **Licenses.** You agree to obtain any and all licenses, permits or other authorizations required by the Federal Communications Commission (“FCC”) or any other regulatory authority, if any, for the lawful operation of Wireless Equipment used by you in connection with your receipt of Wireless Services.

- **Wireless Equipment.** You agree that in order to access the Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by Processor from time to time in its sole discretion (the “Wireless Equipment”). If Wireless Equipment is purchased by you from us as indicated on the Application, then the terms of this Agreement, including without limitation Section 18 of this Agreement, apply to your use of such Wireless Equipment.

- **Improvements / General Administration.** We and the Wireless Vendor(s) reserve the right to make changes, from time to time, in the configuration of the Wireless Services, Wireless Networks, Wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms and designation of the control center serving you at the particular address. In addition, we reserve the right to schedule, from time to time, interruptions of service for maintenance activities.

- **Suspension of Wireless Services.** We or a Wireless Network may suspend the Wireless Services to: (a) prevent damages to, or degradation of, our or a Wireless Network’s network integrity that may be caused by a third party; (b) comply with any law, regulation, court order or other governmental request which requires immediate action; or (c) otherwise protect us or a Wireless Network from potential legal liability. To the extent commercially reasonable, we shall give notice to you before suspending the Wireless Services to you. If not commercially reasonable to give prior notice, we will give notice to you as soon as commercially practicable thereafter. Availability of the Wireless Services may vary due to events beyond the control of us or our Wireless Vendors. In the event of a suspension of the Wireless Services, we or the applicable Wireless Vendor will promptly restore the Wireless Services after the event giving rise to the suspension has been resolved.

**17.2. Software Licenses.** Processor hereby grants to you a non-exclusive, nontransferable, revocable limited sublicense to use any wireless software

(including any documentation relating to or describing the wireless software) downloaded by you or your designee from Processor’s systems onto the Wireless Equipment in connection with your purchase and use of the Wireless Services in accordance with the terms of this Agreement, including this Section 17 and Section 18 (“Wireless Software”). Anything in this Agreement to the contrary notwithstanding, we or certain third parties retain all ownership and copyright interest in and to all Wireless Software, related documentation, technology, know-how and processes embodied in or provided in connection with the Wireless Software, and you shall have only a nonexclusive, non-transferable license to use the Wireless Software in your operation of the Wireless Equipment for the purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Wireless Software to you or shall be construed as a sale of any rights in any such Wireless Software to you. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Wireless Software. You shall not reverse engineer, disassemble or decompile the Wireless Software. You shall not give any Person access to the Wireless Software without our prior written consent. Your obligations under this Section 17.2 shall survive the termination of this Agreement. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this Section.

**17.3. Limitation on Liability.** We shall have no liability for any warranties by any party with respect to uninterrupted Wireless Services, as set forth in Section 17.10, or for any Person’s unauthorized access to Client’s data transmitted through either the Wireless Equipment or Wireless Services (including the Wireless software), or Wireless Networks, regardless of the form of action (whether in contract, tort (including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services Terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor’s, Bank’s, and Wireless Vendor(s)’ liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the lesser of the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services or \$50,000.00. In no event shall Servicers, Wireless Vendor(s) or our respective Affiliates be liable for any indirect incidental, special consequential or punitive damages. The remedies available to you under these Wireless Services Terms will be your sole and exclusive remedies with respect to the Wireless Services.

**17.4. Indemnification.** In addition to any other indemnifications as set forth in this Agreement, you will indemnify and hold Servicers, Wireless Vendor(s) and us and our respective officers, directors, employees, and Affiliates harmless from and against any and all losses, claims, liabilities, damages, costs or expenses arising from or related to:

- (a) the purchase, delivery, acceptance, rejection, ownership, possession, use condition, liens against, or return of the Wireless Equipment or the Wireless Equipment (including the Wireless Software), as applicable;

- (b) your negligent acts or omissions;

- (c) any breach by you of any of your obligations under this Section 17; or

- (d) any Person’s unauthorized access to Client’s data and/or unauthorized financial activity occurring on your Merchant Identification Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

**17.5. Confidentiality.** All information or materials which could reasonably be considered confidential or competitively sensitive that you access from or relate to either Wireless Vendor(s) or Servicers related to the subject matter of these Wireless Services Terms will be considered confidential information. You will safeguard our confidential information with at least the same degree of care and security that you use for your confidential information, but not less than reasonable care.

**17.6. Termination.** In addition to any other provision in this Agreement,

the Wireless Services being provided under this Section 17 may terminate:

(a) Immediately upon termination of the agreement between us (or our Affiliates) and Wireless Vendor(s), provided that we will notify you promptly upon our notice or knowledge of termination of such agreement, provided further that if Wireless Vendor(s) loses its authority to operate less than all of the Wireless Services or if the suspension of any authority or non-renewal of any license relates to less than all of the Wireless Services, then these Wireless Services Terms will terminate only as to the portion of the Wireless Services affected by such loss of authority, suspension or non-renewal; or

(b) Immediately if either we or our Affiliates or Wireless Vendor(s) are prevented from providing the Wireless Services by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority (including without limitation the FCC).

**17.7. Effect of Termination.** Upon termination of these Wireless Services Terms for any reason, you will immediately pay to us all fees due and owing to us hereunder. If these Wireless Services Terms terminate due to a termination of the agreement between us or our Affiliates and Wireless Vendor(s), then we may, in our sole discretion, continue to provide the Wireless Services through Wireless Vendor(s) to you for a period of time to be determined as long as you continue to make timely payment of fees due under these Wireless Services Terms.

**17.8. Third Party Beneficiaries.** Wireless Vendor(s) are third party beneficiaries of these Wireless Services Terms and may enforce its provisions as if a party hereto.

**17.9. Other Applicable Provisions.** You also agree to be bound by all other terms and conditions of this Agreement.

**17.10. Disclaimer.** Wireless Services use radio transmissions, so Wireless Services can't be provided unless your Wireless Equipment is in the range of one of the available Wireless Networks' transmission sites and there is sufficient network capacity available at that moment. There are places, particularly in remote areas, with no service at all. Weather, topography, buildings, your Wireless Equipment, and other conditions that we do not control may also cause failed transmissions or other problems. PROCESSOR, BANK, AND WIRELESS VENDOR(S) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATING TO WIRELESS SERVICES. WE CANNOT PROMISE UNINTERRUPTED OR ERROR FREE WIRELESS SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF.

## **18. Terms of Equipment Purchase or Rental**

This Section 18 governs any equipment that is rented to you on a month to month basis or that is sold to you by Processor under the Merchant Processing Application, subsequent purchase or rental agreements and/or other documentation provided in connection with the purchase or rental of Equipment ("Equipment Documents"). Equipment rented to or purchased by you under the Equipment Documents is referred to in this Section 18 as the "Equipment." THE EQUIPMENT IS BEING SOLD TO YOU FOR USE IN YOUR BUSINESS AND IS NOT BEING SOLD OR RENTED TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sales and rentals of equipment are made by Processor. The Services provided, Equipment, Equipment Documents and other matters contemplated under this Section 18 are subject to the rest of the Agreement as, applicable except to the extent the terms of this Section 18 directly conflict with any other provision of the Agreement, in which case the terms of this Section 18 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to sales and rental of Equipment and Bank is not liable to you in any way with respect to such services. For purposes of this section the words "we," "our," and "us" refer only to Processor and not to Bank.

Warranties, if any, for the Equipment or any related Software originate from the applicable third party provider or manufacturer ("Vendor"). Materials or documents, if any, setting forth warranty terms, conditions, exceptions, exclusions and disclaimers will be contained within the packaging shipped from the Vendor.

We or third parties designated by us will only provide help desk support for Equipment purchased or rented from us under the Equipment Documents, and we will not provide any such support or related services for any other products or equipment.

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASED OR RENT FROM US OR SUBSEQUENTLY PURCHASE OR RENT FROM US, MAY NOT BE COMPATIBLE WITH ANY OTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE RENTED OR PURCHASED UNDER THIS AGREEMENT.

**18.1. Purchased Equipment; Supplies.** We will sell to you, and you will buy from us the Equipment identified in the Equipment Documents throughout the term of this Agreement as being purchased by you (individually and collectively the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 18.7), except that any "Software" (as defined in Section 18.8) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 18.8 of this Agreement. You shall pay the purchase price specified for the Purchased Equipment and the related software license(s), including all applicable tax and shipping and handling charges, prior to the effective date of this Agreement or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 18.5. We will provide you supplies as requested by you from time to time. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 18.5. (Maintenance and repair of merchant-owned equipment is your responsibility). Should your terminal become inoperable, we can provide you with equipment at a monthly rental fee. There will also be a nominal shipping and handling fee. For such rental equipment contact the POS Help Desk.)

**18.2. Rental Equipment.** We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Equipment Documents as being rented to you (individually and collectively the "Rental Equipment"), according to the terms and conditions of this Section 18. In addition, any Equipment ordered by and rented to you during the term of this Agreement shall constitute Rental Equipment and be governed by the terms of this Section 18.

**18.3. Effective Date and Term of Section 18.** This Section 18 shall become effective on the first date you receive any piece of Equipment covered by this Section 18. This Section 18 will remain in effect until all of your obligations and all of our obligations under this Agreement have been satisfied. We will deliver the Equipment to the site designated by you. You shall be deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation, (b) delivery to you if your site is not prepared and ready for installation or (c) for Equipment that we have not agreed to install for you, seven (7) days after shipment of each such piece of Equipment. The rental period with respect to each piece of Equipment shall commence on the date such Equipment is deemed accepted and shall terminate at the scheduled termination date (but not upon any early termination) of this Agreement and/or any other agreement then in effect with us for Card services. The provisions of this Section 18 shall survive the termination or expiration of this Agreement and continue until all Rental Equipment is returned or paid for.

**18.4. Site Preparation; Installation & Maintenance.** You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date. You will support the installation in accordance with our requirements.

- Upon request, you must allow us (or our agents) reasonable access to the premises where authorization terminals or other communications equipment (e.g., printers) are or will be located.
- Any alterations required for installation of authorization terminal(s) or other communications equipment will be done at your expense.
- Only we or our agents can alter or modify authorization terminal(s) or other communications Equipment owned by us.
- If a terminal or printer appears to be defective, you must immediately call the POS Help Desk.
- You are responsible for safeguarding authorization terminals or other Equipment from loss, damage, unauthorized use, misuse or theft. We should be notified immediately regarding any damage to or loss of communications equipment.
- If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.
- You are responsible for keeping all communication Equipment free of any claims, liens and legal processes initiated by creditors.
- Equipment may not be subleased at any time. The cost of comparable new Equipment, as well as any associated legal and/or collection costs incurred by us or the owner of the Equipment, will be assessed to you for each piece of equipment not returned upon termination of the Agreement by either party, or upon request for the return of the Equipment for any reason.
- You may not relocate, remove, disconnect, modify or in any way alter any Equipment used in connection with the services we are providing to you without first obtaining our permission.
- You must provide us with thirty (30) days prior written notice to request the relocation of any Equipment.
- Should you require additional Equipment, you must contact Relationship Management or Customer Service (there may be additional costs or fees charged to you in connection with any new Equipment ordered, including download fees).

**18.5. Payment of Amounts Due.**

- a) You agree to pay the monthly rental charge specified in the Equipment Documents which shall be due and payable on the first day of each month of the rental period for each piece of Rental Equipment, except that the first payment of the monthly rental charge for each piece of Rental Equipment shall be due and payable upon acceptance of such Equipment by you at the location designated in the Equipment Documents or, upon delivery if the site is not prepared for installation (as provided in Section 18.3). The monthly rental charge for fractions of a calendar month shall be prorated based on a thirty (30) day month.
- b) You hereby authorize us to collect all amounts due from you under this Section 18 by initiating debit entries for such amounts to your account designated pursuant to the Merchant Agreement to be debited and credited for amounts due from and to the Settlement Account or by deducting such amounts from amounts due to you from TeleCheck or Servicers.
- c) In addition to the purchase price or monthly rental charge due hereunder, you shall pay, or reimburse us for, amounts equal to any taxes, levies, shipping fees, duties or assessments, however designated, levied or based on such charges, or on this Agreement or the Equipment and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income.
- d) Separate charges will apply for supplies; they are not included in monthly rental charges.

**18.6. Use and Return of Equipment; Insurance.**

- a) You shall cause the Equipment to be operated by competent and

qualified personnel in accordance with any operating instructions furnished by us or the manufacturer and in connection with the Services. You shall not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.

- b) You shall not permit any physical alteration or modification of the Equipment without our prior written consent.
- c) You shall not change the installation site of the Equipment without our prior written consent, which consent we will not unreasonably withhold.
- d) You shall not assign your rights or obligations under this Agreement, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Rental Equipment to any other person, firm or organization without our prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of such consent shall be void.
- e) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all legally required permits for the Equipment.
- f) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.
- g) Promptly upon termination of all applicable rental periods or promptly following any action by us pursuant to Section 18.11(b), you shall deliver possession of the Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, reasonable wear and tear excepted.
- h) For each item of Rental Equipment that you fail to return to us at your cost in the same operating order, repair, condition and appearance that it had at the time of delivery to you, reasonable wear and tear excepted, by the 10th Business Day after (i) termination of the applicable rental period, or (ii) any action by us pursuant to Section 18.11(b), you agree to pay us the greater of \$250 or the fair market value of such item of Equipment if it were in the condition described above, as determined by us. We may collect such amounts in the manner provided in Section 18.5 and to the extent we are unable to do so, you agree to pay us the amounts owed promptly.
- i) Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.
- j) You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the Rental Equipment shall not relieve you from your obligation to pay the full purchase price or rent payable hereunder.
- k) Except for Purchased Equipment that has been paid in full, the Equipment shall be kept at the address indicated in the Equipment Documents and shall not be removed from there without our prior written consent (except where normal use of the Equipment requires temporary removal).
- l) In order to return equipment, you should:
  - Call Customer Service for the address of the location to send the equipment.
  - The following information must be included within the shipping box:
    1. Client name, complete address and phone number.
    2. Name of person to contact if there are any questions.
    3. Your Merchant Account Number.
    4. Serial number of the terminal (found on the underside of the terminal).
  - Please maintain proof of delivery documents for your records, and the

serial number from the bottom of the terminal.

- Rental fees may be continued until equipment is returned.

Payment acquisition and processing equipment and software sourced from Servicers or from a third party, is subject to obsolescence due to factors such as inability to accommodate required security and functional updates or due to model discontinuation by the manufacturer and unavailability of spare parts. Client acknowledges and understands that obsolete point of sale equipment will need to be replaced by non-obsolete and compliant point of sale equipment in the event of equipment failure, or as requested by Servicers to bring the Client into compliance with card network mandates and regulations. Client will be responsible for any costs associated with upgrading to non-obsolete and compliant equipment.

**18.7. Security Interest; Financing Statements.** You hereby grant to us a security interest in (a) all Purchased Equipment and the related Software to secure payment of the purchase price, and (b) all Rental Equipment and the related Software to secure payment of the monthly payments therefore and authorize us to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.

**18.8. Software License.** Anything in this Agreement to the contrary notwithstanding, we or certain parties retain all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment (collectively "Software"), and you shall have only a nonexclusive, non-transferable, revocable license to use the Software in your operation of the Equipment for purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Software to you or shall be construed as a sale of any rights in any such Software to you. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Software. You shall not reverse engineer, disassemble or decompile the Software. You shall not give any third party access to the Software without our prior written consent. Your obligations under this Section 18.8 shall survive the termination of this Equipment Agreement.

**18.9. Limitation on Liability.** Notwithstanding any provision of this Agreement to the contrary and in addition to the limitations and disclaimers set forth in Section 7 of this Agreement (including without limitation the disclaimers in Section 7.2 of this Agreement), our liability arising out of or in any way connected with the Equipment or related software shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved.

**18.10. Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, resulting from (a) the purchase, delivery, installation, acceptance, rejection, ownership, leasing, possession, use, operation, condition, liens against, or return of the Equipment, or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

In addition to your other obligations hereunder, You acknowledge and agree that the "use" and "operation" of the Equipment for which you will indemnify and hold us harmless shall include, but not be limited to, You loading additional software onto Equipment or using such software, or using Equipment or Software to access the Internet.

**18.11. Default; Remedies.**

a) If any debit of your Settlement Account initiated by us for rent and/or other charges due hereunder is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision in this Section 18, or if any other default occurs under this Agreement, any such event shall be a default hereunder.

b) Upon the occurrence of any Event of Default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Section 18, repossess the

Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, in which case this Section 18 shall terminate as soon as your obligations to us are satisfied, or (ii) accelerate and declare immediately due and payable all monthly rental charges for the remainder of the applicable rental period and proceed in any lawful manner to obtain satisfaction of the same.

**19. Special Provisions Regarding Gift Card Services**

If you elect to engage in Gift Card Services, the terms and conditions of this Section 19 shall apply for purposes of such Gift Card Services.

Gift Card Services are provided to you by Processor and not by Bank. The Services provided, transactions processed and other matters contemplated under this Section 19 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 19 directly conflict with another section of this Agreement, in which case the terms of this Section 19 will control for purposes of such Gift Card Services; provided, however, that Bank is not a party to this Agreement insofar as it relates to Gift Card Services, and Bank is not liable to you in any way with respect to such Services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank. Gift Card Services will be renamed Gift Solutions around Q1-2018.

**19.1. Definitions.** Capitalized terms used in this Section 19 shall have the meanings given to such terms as set forth in this Section or as defined in the Glossary or elsewhere in this Agreement.

(a) "ACH" means the Automated Clearing House system.

(b) "Affiliated Issuer(s)" means each Client Affiliate and/or franchisee that enters into an Affiliated Issuer Agreement, in the form required and provided by Processor.

(c) "Database" means the database on which Gift Card Data for each Gift Card issued under the Program is processed and maintained.

(d) "Designated Location" means any store, retail location or other place of business (including a direct marketing program or Internet site), located in the U.S.A., and at or through which Client issues Gift Cards and/or processes transactions using Gift Cards issued under the Program. Designated Location may also include any help desk or IVR through which transactions are processed under the Program.

(e) "Enhanced Features" means the additional program functionality offered to Client pursuant to the Enhanced Features set-up form.

(f) "Gift Card" means an encoded device that accesses Gift Card Data maintained in the Database.

(g) "Gift Card Data" means the current value and record of transactions corresponding to each Gift Card issued under the Program.

(h) "Gift Card Equipment" means any POS Terminal, software or other similar telecommunications equipment that has been programmed and certified to Processor's specifications in order to transmit Gift Card Data and process online transactions under the Program.

(i) "Gift Card Holder" means any person in possession of or that uses a Gift Card.

(j) "Gift Card Number" means the identifying number of a Gift Card.

(k) "Gift Card Production Company" means a company selected and retained by Processor to produce Gift Cards and provide related products or services for the Program.

(l) "IVR" means an automated Interactive Voice Response system accessed via a toll-free telephone number.

(m) "POS Terminal" means an electronic Point-Of-Sale terminal placed in a Designated Location which is connected to Processor's system via telephone lines and is designed to swipe Gift Cards.

(n) "Program" means Client's program pursuant to which Client issues Gift Cards to Gift Card Holders and Processor provides the Services to enable such Gift Card Holders to use such Gift Cards to purchase goods and services at Designated Locations.

(o) "Services" means the services provided by Processor in connection with the Program as further described in this Section.

**19.2. Services.** Processor agrees to provide the Services set forth below in connection with the Program.

(a) Processor will arrange for the production of all Gift Cards and all other services related thereto by the Gift Card Production Company for the Program in accordance with the specifications and fees set forth on the Gift Card Set-Up Form (the "Gift Card Set-Up Form"), which is incorporated by reference herein.

(b) Processor shall establish, process and maintain Gift Card Data on the Database.

(c) Processor shall provide Client and its Affiliated Issuers with the capability to process selected transactions under the Program through Gift Card Equipment at Designated Locations.

(d) Upon receipt of transaction information from a Designated Location by the Database, Processor will compare the proposed transaction amount with the account balance maintained on the Database corresponding to the Gift Card or Gift Card Number that was presented at the Designated Location. If the account balance is greater than or equal to the amount of the proposed transaction, Processor will authorize the transaction. If the account balance is less than the amount of the proposed transaction, Processor will decline the transaction. If Client's Gift Card Equipment supports "split tender," and the account balance is less than the amount of the proposed transaction, Processor will authorize the transaction for the amount of the account balance, and return a message and/or receipt to the Gift Card Equipment showing the remaining amount of the transaction to be collected by Client. Client understands and agrees that an Authorization by Processor only indicates the availability of sufficient value on a Gift Card account at the time of Authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number.

(e) Processor shall provide an IVR, twenty-four (24) hours per day, seven (7) days per week, through which Client and Gift Card Holders may obtain Gift Card balances.

(f) Processor shall provide a Gift Card product support help desk through which Client may process selected non-financial transactions under the Program. Support is currently available Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern Time (excluding holidays). The hours and days of support are subject to change at any time; provided that (i) Processor will provide advance notice of any change in the hours and days; and (ii) the total number of hours shall not be less than 40 in any regular work week (excluding holidays).

(g) Processor will provide Client with Gift Card transaction reports, accessible by Client through a designated Internet site. Processor will maintain reports on the Internet site for Client's use for a period of six (6) months. Processor may, in its discretion, provide additional or custom reports or report formats, as may be requested by Client from time to time, at a fee to be determined by Processor.

(h) Client will at all times own all right, title and interest in and to all Gift Card Data generated under the Program. During the term, Processor will retain the Gift Card Data for each Gift Card on the Database for a period of twenty-four (24) months following the date that the account -balance reaches zero. Thereafter, during the term, Processor may remove the Gift Card Data from the Database and archive such Gift Card Data in any manner determined by Processor in its reasonable business judgment. Notwithstanding the foregoing, within ninety (90) days of Client's written request, during the first twelve (12) months following the expiration or termination of the Gift Card Services, Processor will compile a data report of the Gift Card Data stored in the Database, in Processor's standard format, at a fee to be determined by Processor. Processor shall deliver Client's Gift Card Data to Client in a mutually agreeable format. Processor shall have no obligations with respect to Client's Gift Card Data following delivery to Client.

(i) Client may choose additional Enhanced Features from time to time pursuant to the Enhanced Features set-up form and Client expressly Processor, and Processor agrees, to provide Services with respect to Gift Cards sold and activated by third party distributors. As between Processor and Client, Client shall be responsible for any acts or omissions of each third party distributor in connection with the sale or activation of any Cards. Client and Processor agree that Processor shall not be deemed to have failed to provide Services outlined herein with respect to any Card sold and activated by any third party distributor, including through any Designated Location, to the extent any such failure by Processor is caused in whole or in part by any failure of any third party distributor or Client to provide to Processor information regarding the sale and activation of such Card that is accurate, complete, timely and formatted in accordance with Processor's instructions and specifications in all respects. Additional fees and charges may apply, including separate third party fees, for any Enhanced Features chosen by Client.

Client may only work with Processor approved third party distributors.

**19.3. Responsibilities of Client.** The responsibilities of Client are set forth below and elsewhere in this Section.

(a) Client will accept for processing any transaction initiated by one of its customers using a Gift Card pursuant to the Services without discrimination with regard to the customer who initiated the transaction.

(b) Client will securely maintain all transaction records and other records required by law or regulation to be maintained in connection with the operation of the Gift Card Equipment or the Program. Client will download and securely store any and all Gift Card transaction reports for future reference. In the event that Client needs a report for a period past such six (6) months, Processor may provide such requested report to Client at a fee to be determined by Processor.

(c) Client will make its personnel and records available to Processor, its agents and contractors, all within such time and in such forms or manner as may be reasonably necessary to enable Processor to perform the Services promptly and in an efficient manner.

(d) Client shall be responsible, at its sole cost and expense, for the sale and other distribution of Gift Cards to Gift Card Holders and for any marketing or advertising of the Program.

(e) Client shall obtain, operate and maintain, at its sole cost and expense, all Gift Card Equipment required to enable Client and Affiliated Issuers to electronically transmit Gift Card Data in accordance with Processor's specifications from all Designated Locations to the Database.

(f) Client is solely responsible for obtaining Authorization in advance of each transaction.

Client is solely responsible for any losses it may incur in conducting transactions when an Authorization is not obtained, including, without limitation, transactions conducted when the Database or the Gift Card Equipment is not in service. Client assumes all risk of erroneous or fraudulently obtained Authorizations, unless such erroneous or fraudulently obtained Authorization is caused directly by Processor. Client understands and agrees that an Authorization by Processor only indicates the availability of sufficient value on a Gift Card account at the time of Authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number. Client is responsible for the accuracy of all data transmitted by it for processing by Processor.

(g) Client shall be responsible for accessing and comparing the reports supplied by Processor to its own records and promptly notifying Processor of any necessary adjustments to Gift Card accounts. Client acknowledges that Processor will make adjustments to Gift Card accounts pursuant to Client's instructions, and Processor shall have no liability for any errors to Gift Card accounts that are made in accordance with Client's instructions.

(h) Client shall comply and shall ensure that all Affiliated Issuers comply with all laws and regulations applicable to the Program. Client acknowledges and agrees that it is solely responsible for interpreting all

laws and regulations applicable to the Program, for monitoring changes in laws and regulations applicable to the Program, and for determining the requirements for compliance with laws and regulations applicable to the Program. Processor shall be entitled to rely upon and use any and all information and instructions provided by Client for use in performing the Services and Processor shall have no liability whatsoever for any noncompliance of such information or instructions with laws or regulations.

(i) As between Client and Processor, Client shall bear all risk related to the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number or PIN: (i) in the case of Gift Cards ordered through Processor, upon delivery of such Gift Cards to Client or Client's Designated Location, as applicable, and (ii) in the case of Gift Cards obtained by Client from a Person or Gift Cards which Client requests to be delivered in a pre-activated state, whether such loss occurs before or after delivery of such Gift Cards to Client or Client's Designated Location.

(j) Processor and Client agree that during the term: (i) Processor will be the sole and exclusive provider of the Services to Client and its Affiliated Issuers; and (ii) Client will not directly or indirectly either itself or through a Person, offer or promote any other proprietary, closed network, online Gift Card or similar access device.

(k) Client may allow Affiliated Issuers to participate in the Program; provided, however that (i) Client shall be responsible for ensuring that all Affiliated Issuers comply with the terms and conditions of this Section and the separate Affiliated Issuer Agreement, and (ii) Client shall be jointly and severally liable for all fees and other amounts payable to Processor in connection with any activities of Affiliated Issuers related to this Section, including but not limited to Gift Card transactions.

(l) Client is responsible for any settlement of funds among Affiliated Issuers and Designated Locations.

(m) Client acknowledges and agrees that Client will not use the Gift Cards or the Services provided under this Agreement for illegal transactions including, for example, those prohibited by the Unlawful Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., as may be amended from time to time.

#### **19.4. Fees and Payment.**

a. In addition to all other rights we have under the Agreement, Client shall pay Processor the fees set forth on the Gift Card Set-Up Form. Client shall also be responsible for the payment of any taxes imposed by any applicable governmental authority in connection with any products or services covered by this Section (other than those taxes based solely on the net income of Processor). All fees for the Services shall be paid via an ACH transfer of funds from a bank account designated by Client. To authorize the ACH transfers, Client agrees to execute the ACH Authorization on the Gift Card Set-Up Form. In the event that fees cannot be collected from Client as set forth above, Processor reserves and may exercise all other rights to collect any fees due.

#### **19.5. Termination.**

(a) The provision of Gift Card Services may be terminated at any time: (i) by either party in the event that the other materially breaches any term or condition of this Section and fails to cure such breach within thirty (30) days of written notice of such breach from the non-breaching party; (ii) by Processor if Client fails to pay any amount due within ten (10) Business Days after written notice to Client of its failure to pay such amount; (iii) by Processor upon written notice to Client in the event that Client's operation of the Program results in a violation of law or regulation (by Client, an Affiliated Issuer or Processor); (iv) by Client if Processor increases its rates under Section 19.4(c) above and Client provides thirty (30) days written notice of termination within thirty (30) days of receiving notice of said increase; or (v) by either party upon written notice to the other after the filing by the other of any petition in bankruptcy or for reorganization or debt consolidation under the federal bankruptcy laws or under any comparable law, or upon the other party's making of an assignment of its

assets for the benefit of creditors, or upon the application of the other party for the appointment of a receiver or trustee of its assets.

(b) If (i) the Gift Card Services are terminated for any reason other than Processor's material breach prior to the expiration of the initial term, or (ii) Client suspends or terminates the Program prior to the expiration of the initial term except as provided for in Section 19.5(a) (iv). Nothing in this subsection shall prohibit or limit Processor's right to recover damages or any other amounts due and owing Processor in the event that the Gift Card Services are terminated by Processor due to a breach by Client or shall be deemed to waive or otherwise limit Client's obligations pursuant to Section 19.6(a).

(c) If requested by Client, Processor may, in its sole and absolute discretion, continue to provide the Services for all previously issued and unexpired (if applicable) Gift Cards for up to twelve (12) months following the termination of the Gift Card Services; provided, however, that Processor shall not activate any new Gift Cards after the effective date of termination. Processor's obligation to provide continuing Services after termination is contingent upon Client's agreement to pay for such Services and to conduct its operations in accordance with the terms of this Section, and Processor may require advance payment for some portion or all of the estimated cost of such Services to be provided after termination.

(d) Termination of the Gift Card Services shall not affect Client's obligation (including any obligation incurred by an Affiliated Issuer) to pay for services rendered or obligations due or owing under this Section prior to termination.

(e) The provisions of Sections 19.3 (f), (g), (h), (i),(k) and (l), and Sections 19.4, 19.5(b), 19.5(c), 19.5(d), 19.6 and 19.7 hereof shall survive any termination of this Agreement.

#### **19.6. Indemnification.**

(a) Client shall indemnify and hold harmless Servicers, their directors, officers, employees, agents and their respective Affiliates from and against any and all third party claims, losses, liabilities, damages and expenses, including reasonable attorneys' fees, (collectively "Claims") to the extent that any such Claim is caused by or arises out of: (i) any failure of Client or an Affiliated Issuer to comply with any law or regulation applicable to the Program; (ii) any dispute between Client and any Affiliated Issuer, or Client and any Gift Card Holder, or an Affiliated Issuer and any Gift Card Holder, including, without limitation, any dispute regarding the goods or services purchased using a Gift Card or the payment of any amounts owed or alleged to be owed by one or more such persons to any other such persons; (iii) any instructions or procedures that Client may provide to Processor in connection with the Program and Processor's compliance therewith; (iv) any actual or alleged loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number or PIN; (v) use or operation of Gift Card Equipment by Client or an Affiliated Issuer; and (vi) any Claim or action against Servicers for actual or alleged infringement of any patent, copyright, trademark, trade secret or other proprietary right of any person arising in connection with the production of Gift Cards or related products for Client using artwork, designs, specifications or concepts provided by Client.

(b) Processor shall indemnify and hold harmless Client and its directors, officers, employees, agents and Affiliates Issuers from and against any and all third party Claims to the extent that any such Claim is caused by or arises out of: (i) any failure of Processor to comply with any law or regulation applicable to the Program; or (ii) any error in the Database, unless the error is caused by incorrect information submitted by Client or is otherwise made in accordance with Client's instructions.

**19.7. Patents, Copyrights, Intellectual Property, etc.** Client shall have no interest whatsoever, including copyright interests, franchise interests, license interests, patent rights, property rights or other interest in the Services provided hereunder. These provisions are not to be construed as granting to Client any patent rights or patent license in any patent, which may be obtained in respect of the Services. Artwork created by Processor on behalf of Client remains the property of Processor. Client retains



ownership of any artwork supplied to Processor.

**19.8. Limitation of Liability; Disclaimer of Warranties.**

NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, SERVICERS' CUMULATIVE AGGREGATE LIABILITY FOR ANY LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES ARISING OUT OF RELATED TO THIS SECTION FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED BY CLIENT AND, IN ANY EVENT, SHALL NOT EXCEED THE LESSER OF (I) THE AMOUNT OF FEES PAID TO PROCESSOR BY CLIENT UNDER THIS SECTION DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THAT THE LIABILITY ARISES, OR (II) TWENTY THOUSAND DOLLARS (\$20,000).

**20. Special Provisions Regarding TransArmor<sup>SM</sup> Solution**

This Section 20 and the benefits described shall apply only if you subscribe to the TransArmor Solution and pay the applicable fees.

**20.1. Scanning Authority; Scanning Obligations.** You represent and warrant that you have full right, power, and authority to consent for TransArmor Solution to scan for vulnerabilities in the IP address and/or URL and/or domain names identified to us by you for scanning, whether electronically or by any other means, whether during initial enrollment or thereafter. If applicable, you shall obtain all consents and authorizations from any third parties necessary for us or our vendors to perform the TransArmor Solution services, including, without limitation, third party data centers, co-locations and hosts. We will not be required to execute agreements with any such third parties. You agree to defend, indemnify and hold us and our vendors harmless from any third party claim that such access was not authorized. You may use TransArmor Solution and portals only to scan IP addresses, URLs and domain names owned by and registered to you. You understand that your failure to provide a complete list of and complete access to your IP addresses will significantly impair the scanning services and may result in incomplete or inaccurate results. You agree that the TransArmor Solution services hereunder, including without limitation their functionality and contents, constitute confidential information, and your use and/or access to the TransArmor Solution is subject to the terms of confidentiality set forth in this Agreement.

**20.2. Data Collection.** In the course of providing the TransArmor Solution, we may collect information relating to activities on your network (the "Data") including, but not limited to: network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horses. We retain the right to use the Data or aggregations thereof for any reasonable purpose.

**20.3. Data Protection; Responsibilities of Client.** Data Protection applies only to card transactions sent from you to us for authorization and settlement pursuant to the Agreement, and specifically excludes electronic check transactions. You are responsible to comply with the following regarding your use of Data Protection:

(a) Data Protection can only be used with a point of sale device, gateway and/or VAR that is certified by us with the Data Protection solution. If you are uncertain whether your equipment is compliant, please contact us. It is your responsibility to ensure that you have eligible equipment in order to use Data Protection.

(b) You must demonstrate and maintain your current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), as applicable, and if applicable to your business, passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with card organization rules and PCI DSS. Use of the Data Protection will not, on its own, cause you to be compliant or eliminate your obligations to comply with PCI DSS or any other Card Organization Rule. You must also ensure that all third parties and software that you use for payment processing

comply with the PCI DSS.

(c) You must deploy Data Protection solution (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your systems including replacing existing Card numbers on your systems with Tokens. Full Card numbers must never be retained, whether in electronic form or hard copy.

(d) You must use the Token in lieu of the Card number for ALL activities subsequent to receipt of the authorization response including, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.

(e) If you send or receive batch files containing completed Card transaction information to/from us, do use the service provided by us to enable such files to contain only Tokens or truncated information.

(f) You must use truncated report viewing and data extract creation within reporting tools provided by us.

(g) You are required to follow rules or procedures we may provide to you from time to time regarding to your use of the Data Protection solution. We will provide you with advance written notice of any such rules or procedures or changes to such rules or procedures.

(h) You will use only unaltered version(s) of Data Protection solution and will not use, operate or combine Data Protection or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this section.

(i) You will promptly notify us of a breach of any these terms.

**20.4. Tokenization Limited Warranty.** Subject to the terms of this Agreement, we (i) warrant that each token returned to you through Data Protection cannot be used to initiate a financial sale transaction by an unauthorized entity/person outside your point of sale systems and facilities where you process and/or store transaction data (the "Limited Warranty"); and (ii) agree to indemnify and hold you harmless from direct damages, including third party claims, resulting from our breach of the Limited Warranty. This express remedy for our breach of the Limited Warranty constitutes our entire liability and your sole and exclusive remedy for our breach of the Limited Warranty.

The Limited Warranty is void if (a) you use Data Protection in a manner not contemplated by, or you are otherwise in violation of, this Agreement or any other agreement relating to Cards eligible for Data Protection; (b) you are grossly negligent or engage in intentional misconduct; or (c) you no longer have a processing relationship with us.

**20.5. Disclaimer; TransArmor Solution Does Not Guarantee Compliance or Security.**

**20.5.1. USE OF TRANSARMOR SOLUTION, SOFTWARE OR ANY EQUIPMENT (INCLUDING ANY SERVICES, SOFTWARE OR EQUIPMENT PROVIDED BY OR THROUGH A THIRD PARTY) IS AT YOUR OWN RISK AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW THE TRANSARMOR SOLUTION, EQUIPMENT AND ANY SOFTWARE IS PROVIDED "AS IS" AND WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT THE TRANSARMOR SOLUTION, EQUIPMENT OR ANY SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT THE TRANSARMOR SOLUTION, EQUIPMENT OR SOFTWARE ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR DO NOT INFRINGE THE RIGHTS OF ANY PERSON.**

**20.5.2. USE OF THE TRANSARMOR SOLUTION DOES NOT (A) GUARANTEE COMPLIANCE WITH ANY OF THE RULES OR SECURITY STANDARDS ESTABLISHED BY THE CARD ORGANIZATIONS, INCLUDING PCI DSS; (B) ELIMINATE YOUR OBLIGATION TO COMPLY WITH SUCH REQUIREMENTS; OR**

(C) GUARANTEE SECURITY OR PREVENT A SECURITY BREACH OR COMPROMISE. WE MAKE NO WARRANTIES; EITHER EXPRESSED OR IMPLIED THAT PARTICIPATION AND/OR USE OF TRANSARMOR SOLUTION WILL DETECT EVERY VULNERABILITY ON YOUR SYSTEM, IF ANY, OR THAT OUR VULNERABILITY ASSESSMENTS, SUGGESTED SOLUTIONS OR ADVICE WILL BE ERROR-FREE OR COMPLETE. YOU AGREE THAT WE SHALL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY OR USEFULNESS OF ANY INFORMATION PROVIDED BY US, OR FOR ANY USE OF SUCH INFORMATION.

**20.5.3.** You acknowledge and understand that accessing, retrieving, transmitting, and scanning IP addresses and other data in the manner undertaken by the TransArmor Solution involves inherent risks, including risks related to system or network performance and availability, and data corruption. You assume full responsibility to backup and/or otherwise protect your data against loss, damage or destruction, and to take appropriate measures to respond to any potential adverse impact of the systems or disruption of service.

#### **20.6. Intellectual Property Rights.**

**20.6.1.** All right, title, and interest in and to all confidential information and intellectual property related to the TransArmor Solution (including the Marks, all Software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms and methods and any updates, changes, alterations, or modifications to or, derivative works from such intellectual property), owned, developed or licensed by us prior to, during the term of, or after this Agreement, or employed by us in connection with the TransArmor Solution, shall be and remain, as among the Parties or our Affiliates', our vendors' or our licensors' (as applicable) sole and exclusive property, and all right, title and interest associated with the TransArmor Solution, Equipment and Software not expressly granted by us in this Agreement are deemed withheld. You may not use our Marks in any manner, including in any advertisements, displays, or press releases, without our prior written consent.

**20.6.2.** You may not, nor may you permit any third party to do any of the following: (a) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the TransArmor Solution, Software or Equipment (or any part), except to the extent that such restriction is expressly prohibited by law; (b) modify, translate, or alter in any manner, the TransArmor Solution, Software or Equipment (or any part) or the Marks; (c) create derivative works of or based on the TransArmor Solution (or any part), Software or the Marks; (d) except for backup and archival purposes, directly or indirectly copy the TransArmor Solution or any Software (or any part); (e) republish, upload, post, transmit, disclose, or distribute (in any format) the TransArmor Solution or Software (or any part) except as permitted in this Agreement; or (f) remove, relocate, or otherwise alter any proprietary rights notices from the TransArmor Solution, Software or Documentation (or any part) or the Marks.

**20.6.3.** If we provide you with copies of or access to any Software or Documentation, unless otherwise expressly stated in writing, that Software and Documentation is provided on a personal, non-exclusive, non-transferable, non-assignable, revocable limited license for the period of your subscription to the applicable TransArmor Solution service and solely for you to access and use the Software and Documentation to receive the relevant TransArmor Solution service for its intended purpose on systems owned or licensed by you. Software can only be used with certain computer operating systems and it is your responsibility to ensure that you have the appropriate hardware and software to use the Software.

**20.6.4.** You shall not take any action inconsistent with the stated title and ownership in this Section 20. You will not file any action, in any forum that challenges the ownership of any part of the TransArmor Solution or any software, materials or Documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the TransArmor Solution in the event of a challenge by you.

**20.6.5.** If you are acquiring any of the TransArmor Solution services on behalf of any part of the United States Government (Government): any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement; (b) we are the contractor/manufacturer, with the address set forth in this Agreement; and (c) any use, modification, reproduction, release, performance, display or disclosure of TransArmor Solution and/or the accompanying documentation by the Government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by this Agreement.

#### **20.7. Software Updates, Maintenance and Changes.**

**20.7.1.** We may perform maintenance on Software or TransArmor Solution which may result in service interruptions, delays, or errors. We will not be liable for any such interruptions, delays, errors, or bugs. You agree that we may contact you in order to assist you with the Software or Services and obtain information needed to identify and fix any errors. We may, at our discretion, release enhancements, improvements or other updates to any Software, or otherwise make any changes to the TransArmor Solution (or any part).

**20.7.2.** You acknowledge and understand that certain Software can automatically install, download, and/or deploy updated and/or new components, which may include a new version of the Software itself. You shall not, in any event or in any manner, impede the update process. You agree to assume full responsibility and indemnify us for all damages and losses, of any nature, for all adverse results or third party claims arising from your impeding the update process.

**20.8.** Accessing Services via the Internet or third parties. You agree that we shall not be liable to you for any claims, damages, losses, obligations, costs or expenses or other liability arising directly or indirectly from or otherwise concerning (a) any termination, suspension, delay or disruption of service (including billing for a service) by the internet, any common carrier or any third party service provider; (b) any failure, disruption or malfunction of the TransArmor Solution, the Internet, or any communications network, facility or equipment beyond our or a third party's reasonable control, whether or not attributable to one or more common carriers; or (d) any failure to transmit, obtain or collect data or for human, machine or software errors or faulty or erroneous input by you.

#### **20.9. Access and Use of Services.**

**20.9.1.** Unless we otherwise agree in writing, the TransArmor Solution shall be for your internal business use in the United States and US territories or possessions only.

**20.9.2.** You shall not and shall not permit any third party to: (a) access or attempt to access any of the TransArmor Solution service that is not intended to be available to you; (b) access or use (in any format) the TransArmor Solution (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (c) without our advanced written consent, use, ship or access TransArmor (or any part) outside or from outside of the United States; (d) perform or attempt to perform any actions that would interfere with the proper working of any part of the TransArmor Solution, prevent access to or use of any of the TransArmor Solution by other users, or in our reasonable judgment, impose a large load on our infrastructure, network capability or bandwidth; or (e) use the TransArmor Solution (or any part) except as permitted in this Agreement.

**20.9.3.** We have the right to rely on user names, password and other sign on credentials/access controls for the TransArmor Solution or any Software (including Federated Single Sign-on credentials) provided or approved by us to authenticate access to, and use of, the Services and any Software.

**20.10.** Indemnification. In addition to other indemnifications provided in this Agreement, you agree to indemnify and hold us, our Affiliates and third party service providers harmless from and against all losses,

liabilities, damages and expenses arising from (a) your use of the TransArmor Solution, including any Software or Equipment provided under this Agreement; or (b) any other person's authorized or unauthorized access and/or use of the TransArmor Solution (or any part), Software or Equipment, whether or not using your unique username, password, or other security features.

#### **20.11. Liability Waiver.**

**20.11.1.** Subject to your subscribing to the entire TransArmor Solution bundle and to the terms of this Agreement, we agree to waive liability that you have to us under this Agreement for Security Event Expenses resulting from a Data Security Event first discovered by you or us while you are receiving and utilizing the TransArmor Solution (the "Liability Waiver").

**20.11.2.** The maximum amount of Liability Waiver for all Security Event Expenses arising out of or relating to your Data Security Events first discovered during any TransArmor Program Year regardless of the number of such Data Security Events is as follows:

- a) \$100,000.00 maximum per each MID you have; and
- b) \$500,000 aggregate maximum for all of your MID's.

**20.11.3.** In addition to Section 20.11.2, the maximum amount of Liability Waiver during any TransArmor Program Year for EMV Upgrade Costs is further limited as follows:

- a) \$10,000 maximum per each MID you have; and
- b) \$25,000.00 aggregate maximum for all of your MID's.

**20.11.4.** Security Event Expenses resulting from the same, continuous, related or repeated event or facts will be deemed to arise out of one Data Security Event.

**20.11.5.** The Liability Waiver shall not apply in relation to:

- a) your failure to comply with the terms of this Agreement;
- b) any Data Security Event occurring before you started receiving the TransArmor Solution;
- c) any fines or assessment levied against you that are not the direct result of a Data Security Event;
- d) any Data Security Event relating to you where you have experienced a prior Data Security Event, unless you were later certified as PCI compliant by a qualified security assessor;
- e) any expenses incurred for, or as a result of, regularly scheduled, recurring or routine security assessments, regulatory examinations, inquiries or compliance activities;
- f) any Data Security Event if you: (i) are categorized by any Card Organization as "Level 1" or (ii) processes more than six million (6,000,000) Card transactions during the twelve month period prior to the date this Section became effective;
- g) any expenses, other than Security Event Expenses, incurred by you arising out of or resulting, directly or indirectly, from a Data Security Event, including expenses incurred to bring you into compliance with the PCI Data Security Standard or any similar security standard;
- h) any Security Event Expenses arising out of or resulting, directly or indirectly, from an event of force majeure, any dishonest, fraudulent, criminal or malicious act, error or omission, or any violation of the law including any claim, suit, action or proceeding against you that is brought by or on behalf of any federal, state or local government agency; or
- i) any Data Security Event arising out of (i) any software not within your control; provided, however, this exclusion shall not apply to a Data Security Event arising out of a virus, Trojan horse or other software used by a third party to obtain fraudulent access to data to your computer system or to collect data in transit to or from your computer system; (ii) a breach in a computer system in which you and other merchants, with no legal relationship to one another, have hosted accounts or share a common database, operating system or software applications; or (iii) your allowing

any party (other than its employees or us) to hold or access Cardholder Information.

**20.11.6.** Notwithstanding the Liability Waiver: (a) you must continue to perform all obligations under this Agreement, including your obligation to comply with data security requirements; and (b) we waive no rights or remedies under this Agreement including our right to terminate or suspend this Agreement if a Data Security Event occurs.

#### **20.12. Export Compliance**

**20.12.1.** You agree not to export or re-export any Software or Equipment or any underlying information except in full compliance with all applicable laws and regulations.

**20.12.2.** None of the Software or Equipment or any underlying information may be downloaded or otherwise exported or re-exported (a) to any country to which the United States has embargoed goods (or any national or resident thereof); (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders; or (c) in any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable Export Administration Regulations.

**20.12.3.** If you have rightfully obtained Software or Equipment or any underlying information outside of the United States, you agree not to re-export the same except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which you obtained it. You warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

#### **20.13. Definitions:**

**(a) Card Organization Assessment** means a monetary assessment, fee, fine or penalty levied against you or us by a Card Organization as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event; provided, that The Card Organization Assessment shall not exceed the maximum monetary assessment, fee, fine or penalty permitted upon the occurrence of a Data Security Event by the applicable rules or agreement in effect as of the inception date of this Agreement for such Card Organization; **(b) Cardholder Information** means the data contained on a Card, or otherwise provided to Client, that is required by the Card Organization or us in order to process, approve and/or settle a Card transaction; **(c) Card Replacement Expenses** means the costs that the we or you are required to pay by the Card Organization to replace compromised Cards as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event; **(d) Data Protection** is a TransArmor Solution service that provides encryption of cardholder data at your payment environment and replaces the data with a token or randomly generated number; **(e) Data Security Event** means the actual or suspected unauthorized access to or use of Cardholder Information, arising out of your possession of or access to such Cardholder Information, which has been reported (i) to a Card Organization by you or us or (ii) to you or us by a Card Organization. All Security Event Expenses and Post Event Services Expenses resulting from the same, continuous, related or repeated event or which arise from the same, related or common nexus of facts, will be deemed to arise out of one Data Security Event; **(f) Documentation** means any documents, instructions, web screen, layouts or any other materials provided by us relating to the Software or the TransArmor Solution; **(g) Equipment** means equipment rented to or purchased by you under this Agreement and any documents setting out additional terms on which Equipment is rented to or purchased by you; **(h) EMV Upgrade Costs** means cost to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled Card in a manner compliant with PCI Data Security Standards; **(i) Forensic Audit Expenses** means the costs of a security assessment conducted by a qualified security assessor approved by a Card Organization or PCI Security Standards Council to determine the cause and extent of a Data Security Event; **(g) Liability Waiver** has the meaning as set forth in **Section 20.11.1** above; **(j) Marks** means the names,

logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations; **(k) Post Event Services Expenses** means reasonable fees and expenses incurred by us or you with our prior written consent, for any service specifically approved by us in writing, including, without limitation, identity theft education and assistance and credit file monitoring. Such services must be provided by or on behalf of us or you within one (1) year following discovery of a Data Security Event to a Cardholder whose Cardholder Information is the subject of that Data Security Event for the primary purpose of mitigating the effects of such Data Security Event; **(l) Program Year** means the period from November 1st through October 31st of each year; **(m) Security Event Expenses** means Card Organization Assessments, Forensic Audit Expenses and Card Replacement Expenses. Security Event Expenses also includes EMV Upgrade Costs you agree to incur in lieu of a Card Organization Assessment; **(n) Software** means all software, computer programs, related documentation, technology, know-how and processes embodied in the Equipment (i.e. firmware) or otherwise provided to you under this Agreement. For the avoidance of doubt, the term Software shall not include any third party software available as part of a service provided from someone other than us or our vendors or which may be obtained by you separately from the TransArmor Solution (e.g. any applications downloaded by you through an application marketplace); (o) TransArmor PCI is a TransArmor Solution service that provides access to online PCI DSS Self-Assessment Questionnaires (SAQ) to validate PCI data standards; and (p) TransArmor Solution is the suite of security services provided by us and known as TransArmor.

## 21. Special Provisions Regarding Fraud Detection Services

If you elect to receive Fraud Services from us, then the following terms and conditions of this Section, referred to as the Fraud Services Terms, shall apply.

The Fraud Detection Services is provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the Fraud Detection Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words “we”, “our” and “us” refer only to the Processor and not the Bank.

Through our strategic agreement with Accertify, Inc. we have acquired the right to sublicense the access and use of Interceptas, InterceptNOW and InterceptSHARE, which are software systems and related services that will help you efficiently reduce your exposure to fraudulent transactions (the “Fraud Services”). The Fraud Services are proprietary products and services of Accertify, Inc., and may include specific data and services from third party service providers for things like geolocation or device identification, which are specific tools used together with Accertify’s software. For all purposes of the Fraud Services Terms, the term Fraud Services includes any such third party data or service providers accessed through any of Accertify’s proprietary software described above.

**21.1. Software Licenses.** We hereby grant you a non-exclusive, non-transferable, limited sublicense to use the Fraud Services for the duration of this Agreement, or until otherwise terminated, solely in connection with your use of the payment and processing services otherwise described in this Program Guide. You acknowledge that the only right you obtain to the Fraud Services is the right to use the Fraud Services for the screening and review of your own transactions in accordance with the terms in this Section.

The Fraud Services and related materials include confidential, competitively sensitive and trade secret information, processes, software, user interfaces and other elements. You are not permitted to allow any third party service provider access to these materials or to the output generated by the Fraud Services, nor use or demonstrate the Fraud Services or related materials for, or on behalf of, any third party service provider without the prior written permission of the Fraud Services provider.

**21.2. Reservation of Rights.** Subject only to the limited sublicense granted herein, we and the Fraud Services provider(s) reserve all

ownership rights to our and their respective intellectual property related in any way to the Fraud Services. We reserve the right to alter or suspend the Fraud Services in the event of (i) a violation of Fraud Services Terms or (ii) the termination of the agreement with our Fraud Services provider or other inability to continue to provide the Fraud Services.

**21.3. Transaction Data.** Your transaction data will be processed by the Fraud Services. As part of this processing, the transaction data may be retained for statistical analysis, and elements of data from fraudulent transactions may be captured, retained and shared with others to help improve the Fraud Services and prevent further fraud. In no event will the source of any such retained data be disclosed to a third party. You hereby agree to the transmission and use of the data in this manner.

**21.4. Disclaimer of Warranties. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS MAY BE EXPRESSLY PROVIDED HEREIN, THE FRAUD SERVICES ARE PROVIDED TO YOU “AS IS,” WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND. INCLUDED IN THIS DISCLAIMER ARE BOTH EXPRESS AND IMPLIED WARRANTIES, AND WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES THAT THE FRAUD SERVICES WILL BE COMPLETELY ACCURATE, ERROR-FREE OR WILL BE AVAILABLE WITHOUT INTERRUPTION.**

**21.5. Limitation of Liability.** The Fraud Services provide a tool for you to efficiently make better informed decisions whether to accept or reject transactions that may be fraudulent. There is no assurance that the Fraud Services will accurately identify every instance of fraud, nor that every transaction that may appear fraudulent is in fact so. **BY YOUR ACCEPTANCE OF THE TERMS OF THIS PROGRAM GUIDE, AND YOUR USE OF THE FRAUD SERVICES, YOU AGREE THAT, UNDER ANY THEORY OF LAW OR EQUITY, WITH RESPECT TO YOUR USE OF THE FRAUD SERVICES (i) OUR LIABILITY AND THAT OF ANY FRAUD SERVICES PROVIDER SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED TWELVE (12) MONTHS OF FRAUD SERVICES FEES, AND (ii) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER WE NOR ANY**

**FRAUD SERVICES PROVIDER SHALL HAVE ANY LIABILITY FOR ANY SUBSEQUENT CHARGEBACKS OR LOSS OF REVENUE FROM FALSE POSITIVE FRAUD SCORES OR IN ANY OTHER WAY RELATED TO THE USE OF THE FRAUD SERVICES.**

**21.6. Termination.** Upon termination of the Fraud Services for any reason, you agree to pay any remaining fees or expenses related to your use of the Fraud Services, to cease attempts to access the Fraud Services and to return all user manuals or other materials received in connection with the Fraud Services.

**21.7. Third Party Beneficiaries.** The Fraud Services provider(s) is (are) an intended third party beneficiary of this Section of the Program Guide, and may enforce the terms of this Section directly against you as if it were a party hereto.

**21.8. Your Privacy Policy.** Your privacy policy should reflect the fact that you will subject transactions to fraud screening. You and your privacy legal counsel should consider your specific circumstances and what disclosures will best fit your needs and provide your customers with a clear picture of how customer and transaction data is being used. Example language is set forth below, but is only a suggestion, which you should not adopt without careful consideration and advice of counsel.

**Any information you provide to Merchant may be combined with information from other sources and used by Merchant, or a third party retained by Merchant, to help detect and prevent fraud, misuse of [Merchant]’s website or other illegal activity. Parts or all of this information may be retained by us or the third parties involved in fraud detection and used for future fraud prevention efforts. Information believed to be fraudulent may be shared with other merchants, banks and law enforcement officials to help prevent further misuse. [Merchant] may also use “device identification” technology to**

recognize specific computers or other internet devices each time they access the website, and associate historical data with that computer or device as part of its efforts to prevent fraud or other misuse.

## 22. Special Provisions Regarding Buyer Initiated Payments

The terms and conditions set forth in this Section 22 govern the provision of Buyer Initiated Payment services and apply only to Card payments that originate from a business certified into a Card Organization approved gateway for Buyer Initiated Payments. These provisions do not apply to any transactions originating from a terminal or software at your business.

**22.1. Description of Buyer Initiated Payments.** Buyer Initiated Payments (“BIP”) allow invoices that have been electronically entered at the cardholding buyer’s location to be processed by us for settlement to you (the seller of goods and services in B2B transactions) without you manually re-entering the same pieces of card and invoice information.

Use of this service only changes the method of payment between you and your Buyer (your customer). All other processes between you and the Buyer as it pertains to invoicing, approvals and exceptions will remain as is for each Buyer paying you through this service.

### 22.2. Acceptance of Buyer Initiated Payments.

- a) There is no hardware, software, or supplies required to accept Buyer Initiated Payments
- b) All transactions submitted through a BIP account must be Buyer initiated. You cannot request a terminal or initiate transactions in any way through the Merchant ID established by these terms. Merchant processing must be done through a separate Merchant ID.
- c) No credits are permitted on BIP accounts. In the event of a dispute regarding a Buyer Initiated Payment, all refunds, discounts, or other remedies must be handled between you and your customer, the Buyer, without the involvement of Servicers.
- d) It is your responsibility to ensure that only customers that you authorize to submit payments on this account do so. We will not disclose the fact that you are enrolled to receive BIP to other businesses unless you authorize us to do so.
- e) If a business does process a payment on the account without your consent, you must handle the matter directly with your customer, the Buyer, without the involvement of Servicers.
- f) Servicers are responsible for processing the BIP. Any concessions given by your customers such as accelerating payment terms or changing early payment discounts are not administered or enforced by Servicer. Such agreements are strictly part of the relationships between your business and those of your buyers and the resolution to issues arising from those arrangements are to be handled outside of this Agreement.

**22.3. Chargebacks related to Buyer Initiated Payments.** In BIP processing, the Buyer has control over the payment, and is therefore prohibited from initiating most charge back types. In the event your buyer initiates a charge back on this Merchant ID, please contact Servicers.

**22.4. Limitation on Liability/Indemnification.** NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, SERVICER’S CUMULATIVE AGGREGATE LIABILITY FOR ANY LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES ARISING OUT OF RELATED TO THIS SECTION FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED BY CLIENT AND, IN ANY EVENT, SHALL NOT EXCEED THE LESSER OF (I) THE AMOUNT OF FEES PAID TO SERVICERS BY CLIENT UNDER THIS SECTION DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THAT THE LIABILITY ARISES, OR (II) TWENTY THOUSAND DOLLARS (\$20,000), WHICHEVER IS LESS.

**22.5. Indemnification.** Client shall indemnify and hold harmless Servicers, its directors, officers, employees, agents and Affiliates from

and against any and all third party claims, losses, liabilities, damages and expenses, including reasonable attorneys’ fees, (collectively “Claims”) to the extent that any such Claim is caused by or arises out of: (i) any failure of Client to comply with this Agreement or any law or regulation applicable to BIP; (ii) any dispute between Client and Buyer; or (iii) any instructions or procedures that Client may provide to Servicers in connection with the Buyer Initiated Payments and Processor’s compliance therewith.

**22.6. Processing Specifications.** The following details apply to how Servicers transfers monies between parties.

a) Unless otherwise specified by you on the Application, amounts deposited into your account will be in the whole amount of the payment from your customer. After a payment is made by the Buyer, it typically takes one to three business days for the funds to be deposited into your checking account.

b) Unless otherwise specified by you on the Application, the fees applied to your transactions will be debited from your Settlement Account on or about the first business day of the month following when the transactions occurred. It is your responsibility to ensure that there are no settings on your account prohibiting a debit entry. You must ensure there are adequate funds available in your Settlement Account.

**22.7. Authorization.** Authorization will occur at the Servicers or relevant Card Organization.

**22.8. Termination.** As stated on your Application, there is no early termination fee associated with BIP accounts. At any time, you are able to terminate service by calling the customer service number listed on your statement. It is your responsibility to contact your Buyers to inform them that a different payment option will be needed on future invoices. We can terminate BIP services upon 30 days’ notice to you or immediately in the event of your breach of the Agreement.

## 23. Special Provisions Regarding Payeezy<sup>SM</sup> Gateway Services

If you elect to utilize the Payeezy Gateway Services, the following additional terms and conditions of this Section 23 shall apply.

The Payeezy Gateway Services are provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the Payeezy Gateway Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this Section 23, the words “we,” “our” and “us” refer only to the Processor and not the Bank.

The Payeezy Gateway Services and Software provided and other matters contemplated under this Section 23 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 23 directly conflict with another provision of this Agreement, in which case the terms of this Section 23 will control.

**23.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 23.1 or as defined in the Glossary or elsewhere in this Section 23.

“**Claim**” means any arbitration award, assessment, charge, citation, claim, damage, demand, directive, expense, fine, interest, joint or several liability, lawsuit or other litigation, notice, infringement or misappropriation of any Intellectual Property Right or violation of any law, and any consequential, indirect, special, incidental or punitive damages and any attorney’s fees and expenses incurred in connection therewith. For purposes of the foregoing Claim definition, a Claim shall be considered to exist even though it may be conditional, contingent, indirect, potential, secondary, unaccrued, unasserted, unknown, unliquidated, or unmatured.

“**Confidential Information**” means the Software, Documentation, Operational Procedures, the terms and conditions of this Section 23 (including any schedule, exhibit or addendum), pricing or other proprietary business information, and any other information provided to you by us, whether or not such information is marked as confidential; provided, however, that Confidential Information will not include information that: (a) is or becomes generally known to the public through no fault of yours; (b) was lawfully obtained by you from a third party free of any obligation of confidentiality; (c) was already in your lawful possession

prior to receipt thereof, directly or indirectly, from the disclosing party; (d) is independently developed by you without the use of the Confidential Information; (e) is disclosed with our express written permission; or (f) is disclosed pursuant to a lawful court or governmental order, provided you provide us with prompt prior written notice of any proceeding that may involve such an order, and an opportunity to contest any disclosure at such proceeding.

“**Customer**” means your customer who would like to provide payment for your goods or services.

“**Documentation**” means any and all manuals and other written materials in any form provided for use with the Software, as amended by us from time to time, the terms of which are incorporated in this Section 23 as if fully set forth herein.

“**Intellectual Property Rights**” means any and all patents, copyrights, trademarks, trade secrets, service marks, and any other intellectual property rights, and any applications for any of the foregoing, in all countries in the world.

“**Merchant Account**” shall mean an account set up for a merchant that requires a card processor, bank, merchant ID., terminal ID., merchant identification number, or otherwise named unique merchant number. Multiple physical or virtual storefronts that process transactions under the same unique merchant number shall be deemed as one (1) Merchant Account.

“**Operational Procedures**” means our published policies and procedures contained in the various documents provided to you, as amended from time to time, concerning the Services provided pursuant to this Section, the terms of which are incorporated in this Section as if fully set forth herein.

“**Payeezy Gateway Services**” or “**Service**” means the products or services offered through Payeezy Gateway (including, but, not limited to payment processing services such as authorization of transactions, routing transactions to the appropriate payment processing network or third party service provider, transaction responses (approved, declined), and the detailed reporting of those transactions) and Software, as applicable. Payeezy Gateway Services do not include alternative payment products or services that are supported by or may be accessed through the Payeezy Gateway and with respect to which you enter into an agreement: (i) with us (which agreement may consist of an amendment to this Agreement or specific terms in this Agreement expressly covering such alternative payment products or services) (such alternative payment products or services, “**Separate Products**”), or (ii) a third party service provider regarding your participation in such alternative payment products or services (together with **Separate Products**, the “**Excluded Products**”).

“**Platform**” means our operated, or approved, electronic payment platform(s) and/or gateway(s) (also referred to as the “**Payeezy Gateway**”) through which the payment services contemplated under this Section 23 are provided.

“**Services**” means the products or services offered the Platform (including, but, not limited to payment processing services such as authorization of transactions to the appropriate payment processing network or third party service provider, transaction responses (approved, declined), and the detailed reporting of those transactions, and all related and applicable Software.

“**Software**” means all applications, protocols, software components and other interfaces and software provided by us to you pursuant to this Section 23, and any and all Updates.

“**Updates**” means an embodiment of the Software that provides enhancements and/or improvements.

“**Your Systems**” means any web site(s) or interfaces to the Services operated or maintained by you or on your behalf through which transactions are submitted for processing, and all of your other associated systems.

**23.2. Fees.** Client shall pay Processor the fees for the Payeezy Gateway Services as set forth on the Application. A separate account with us for

Payeezy Gateway Services shall be required for each separate Merchant Account held by you.

**23.3. Term; Termination.** The Payeezy Gateway Services shall commence as of the effective date of this Agreement and shall remain in effect until terminated by either party as provided herein. Either party may terminate the Payeezy Gateway Services upon giving the other party at least thirty (30) days prior written notice. We may suspend or terminate your access to Payeezy Gateway Services without prior notice, with or without cause. Regardless of the reason for termination, you shall be responsible for the payment of all fees due up to and including the effective date of termination.

#### **23.4. License Grant.**

**23.4.1. Software License.** Subject to the terms and conditions of this Agreement, Processor grants to you a royalty free, non-exclusive, nontransferable, revocable limited license to use the Services, during the term of this Agreement for the sole and limited purpose of submitting payment transactions to us for processing, and otherwise using our Services as set forth herein.

**23.4.2. Documentation License.** Subject to the terms and conditions of this Agreement, Processor grants to you, and you hereby accept, a royalty free, non-exclusive, non-transferable limited license, without right of sublicense, to use the Documentation during the term of this Agreement for the sole and limited purpose of supporting your use of the Services. You shall strictly follow all Documentation provided to you, as it may be amended from time to time by us, in our discretion. To the extent that there is any conflict between the Documentation and the terms of this Agreement, the terms of this Section 23 shall govern and control.

**23.4.3. Use Restrictions.** You shall not, and shall not cause or permit any third party to: (i) use the Services in any way, other than in accordance with this Agreement, the Documentation or as otherwise instructed by us in writing; (ii) use the Software or Documentation, either directly or indirectly, for benchmarking or to develop any product or service that competes with the products and services provided under this Section 23; (iii) disassemble, decompile, decrypt, extract, reverse engineer or modify the Services, or otherwise apply any procedure or process to the Services in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Services or any algorithm, process, procedure or other information contained in the Services, except as otherwise specifically authorized in accordance with this Section 23; (iv) provide the Services or Documentation to any third party, other than to your authorized employees and contractors who are subject to a written confidentiality agreement, the terms of which are no less restrictive than the confidentiality provisions of this Section 23; (v) use, modify, adapt, reformat, copy or reproduce the Services or Documentation, except as is incidental to the purposes of this Section 23, or for archival purposes (any copies made hereunder shall contain all appropriate proprietary notices); (vi) rent, lease, assign, sublicense, transfer, distribute, allow access to, or timeshare the Services or Documentation; (vii) circumvent or attempt to circumvent any applicable security measures of the Services; (viii) attempt to access or actually access portions of the Platform or Services not authorized for your use; or (ix) use the Services or Documentation in any unlawful manner or for any unlawful purpose.

**23.4.4. Updates.** From time to time we may, at our discretion, release Updates or modify the Software. In the event we notify you of any such Update, you shall integrate and install such Update into Your Systems within thirty (30) days of your receipt of such notice. You acknowledge that failure to install Updates in a timely fashion may impair the functionality of the Platform or any of the Services provided hereunder. We will have no liability for your failure to properly install the most current version of the Software or any Update, and we will have no obligation to provide support or services for any outdated versions.

**23.4.5. Licensors.** The licenses granted hereunder may be subject to other licenses currently held by us. Should any license held by us or our subcontractors to certain technology or software be terminated or

suspended, the corresponding license(s) granted to you hereunder may also be terminated or suspended in our sole and absolute discretion. You acknowledge and agree to such potential termination or suspension and hereby waive any and all damages, whether actual, incidental or consequential resulting therefrom.

**23.4.6. Export Compliance.** You agree not to export or re-export the Software or any underlying information or technology except in full compliance with all applicable laws and regulations. In particular, but without limitation, none of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) to any country to which the United States has embargoed goods (or any national or resident thereof); (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders; or (iii) in any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable Export Administration Regulations. If you have rightfully obtained the Software outside of the United States, you agree not to re-export the Software except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which you obtained the Software. You warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

**23.4.7. Federal Acquisition Regulations.** If you are acquiring the Software on behalf of any part of the United States Government (the "Government"), the following provisions apply: Any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. We are the contractor/manufacturer, with the address set forth below. Any use, modification, reproduction, release, performance, display or disclosure of the Software and/or the accompanying documentation by the Government or any of its agencies shall be governed solely by the terms of this Addendum and shall be prohibited except to the extent expressly permitted by the terms of this Section 23.

**23.4.8. Return / Destruction.** Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate, and within five (5) days thereof, you shall either return to us or destroy or delete from Your Systems, as applicable, the Software, Operational procedures, Documentation, and any copies thereof, and shall so certify to us in writing.

**23.4.9. No other Licenses.** Except as expressly provided above, no license for any patents, copyrights, trademarks, trade secrets or any other intellectual property rights, express or implied, are granted hereunder.

**23.4.10. Use of Transaction Data.** As permitted by applicable law and regulations, we reserve the right to copy and distribute to third parties, any information associated with your use of the Services or your activities on the Platform to the extent necessary to provide Services to you.

### **23.5. Platform Matters**

**23.5.1. Integration with Your Systems.** While we provide Software to you, you acknowledge that the Software itself is insufficient to allow Your Systems to function with the Platform. Programming, development and maintenance of Your Systems and their functionality are your sole responsibility. You have the sole responsibility to select and employ any competent programming agent(s) to accomplish the programming required to make Your Systems function correctly with the Platform and the payment services contemplated hereunder ("Integration"). You shall be responsible for all technical support for Your Systems and Integration related issues. You agree that you will use commercially reasonable efforts to complete the Integration as soon as possible. You will be responsible for all of your own development and implementation costs associated with such Integration. Notwithstanding any other provision of this Section 23, you acknowledge that unless and until you complete the Integration,

no Services need be provided by us to you pursuant to Section, except as otherwise specifically provided in Section 23.5.2 below. In addition, you acknowledge and agree that, even if you have completed Integration, if you have not entered into a valid merchant processing agreement with an authorized bank card processor, you cannot receive the Services through the Platform.

**23.5.2. Set-Up Assistance Services.** Subject to Section 23.5.1 above, upon your request to us, and upon payment of any applicable fees, we will provide you with set-up services to assist with the Integration.

**23.5.3. Shut Downs.** We reserve the right, from time to time, without prior notice, to shut down and restart the Platform for maintenance and/or software upgrades for reasonable time periods of one minute or more.

**23.5.4. Orders by Customers.** You are solely responsible for accepting, processing, and filling any orders for purchases by your Customers, and for handling any inquiries arising therefrom. You shall use the highest standards in the industry in responding to complaints by Customers. We are not responsible or liable for any unauthorized access to your data or Your Systems by any means or device.

**23.6. Security of Information.** We will use commercially reasonable efforts to maintain the security of the Services and the Platform. You will use commercially reasonable efforts to maintain the security of Your Systems. Such steps by you will be taken at your sole cost and expense, and shall include, without limitation: (i) creating firewalls to protect against unauthorized access to Your Systems by your employees, contractors, Customers, or by any other person; and (ii) implementing reasonable protective techniques suggested by us. You further agree that you will be bound by and comply with all of our and all Card Organization security rules and regulations as they now exist or as each may be amended or supplemented from time to time. Notwithstanding the foregoing, the parties recognize that there is no guarantee or absolute security of information that is communicated over the internet.

**23.7. Privacy.** We have adopted an online Privacy Statement for the Services to inform individuals as to our online collection and use of personal information. You agree that, during the term of this Agreement, you will adequately communicate and comply with an appropriate privacy policy explaining your online collection and use of the personal information of your Customers. Unless required by law, Card Organization Rules, or done pursuant to this Agreement, you shall not, under any circumstances, sell, purchase, provide, or otherwise disclose any customer's account information, transaction information, or other personal information to any third party. You shall store all data securely. We may advise potential users of the services that we have a relationship with you.

**23.8. Audit Rights.** Upon notice to you, we may audit your usage, records and security of the Services, your Customer's payment processing information, and the services provided hereunder to ensure (i) that you are using the Platform and Services in full compliance with the provisions of this Section 23; (ii) that all applicable fees have been paid; (iii) that you are adhering to your Privacy Policy; and; (iv) that you are in full compliance with all applicable laws, regulations and rules (including but not limited to Card Organization Rules). Any such audit shall be conducted during regular business hours at your offices and shall not interfere unreasonably with your business.

### **23.9. Reserved**

**23.10. Indemnification.** You shall indemnify, defend, and hold us, our subsidiaries and affiliates and our and their officers, directors, employees, shareholders, agents and attorneys from any Claim(s) arising from the conduct of your business, any transactions submitted through the Payeezy Gateway hereunder for payment processing, any false or inaccurate representation made by you or the negligence, fraud, dishonesty or willful behavior of any of your employees or agents, or from your failure to strictly comply, in whole or in part, with any: (i) terms and conditions pursuant to this Agreement and any addenda hereto or Documentation; or (ii) applicable law, regulations or Card Organization Rules. Upon written notice from us to you, you shall immediately undertake the defense of such

Claim by representatives of your own choosing, subject to our reasonable approval.

### **23.11. Limitation of Liability.**

**23.11.1. General Limitations.** Processor is not liable for the merit and legitimacy of the orders forwarded by you. All liability for validity of orders remains with you. We are not responsible for any data entry errors, Customer misrepresentations, or reporting errors resulting from your actions. We shall not be liable to you or your Customer for the accuracy of the information provided by the Services.

**23.11.2. Special Damages.** In no event shall we be liable to you, or to any other person or entity, under this Section 23, or otherwise, for any punitive, exemplary, special, incidental or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill.

**23.11.3. Maximum Liability.** Notwithstanding any provision in this Agreement to the contrary, in no event shall our liability under this Section 23 for all Claims arising under, or related to, this Section 23 exceed, in the aggregate (inclusive of any and all Claims made by you against us, whether related or unrelated), the lesser of: (i) the total amount of fees paid by you for the our Services during the 12-month period immediately preceding the date the event giving rise to such Claim(s) occurred; or (ii) \$10,000.00.

**23.11.4. Other Damages.** Notwithstanding provisions set forth herein, we will not be liable for any Claims under this Agreement arising directly or indirectly from or otherwise concerning: (a) any termination, suspension, delay or disruption of service (including billing for a service) by the Internet, any common carrier or any third party service provider; (b) any failure, disruption or malfunction of the Services provided hereunder or the internet, or any communications network, facility or equipment beyond our reasonable control, whether or not attributable to one or more common carriers or third party service providers; (c) any failed attempts by you or your Customers to access any Systems or to complete processing transactions; or (d) any failure to transmit, obtain or collect data from Customers or for human, machine or software errors or faulty or your or your Customer's; or (e) human, machine or software errors or faulty or your or your Customer's erroneous input.

**23.12. DISCLAIMER OF WARRANTIES.** YOU ACKNOWLEDGE AND AGREE THAT THE USE OF THE SERVICES AND DOCUMENTATION ARE AT YOUR SOLE RISK WE MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT THE SERVICES, DOCUMENTATION, OUR PROCEDURES, THE SERVICES PROVIDED HEREUNDER, OR FROM PERFORMANCE BY US, INCLUDING, WITHOUT LIMITATION: (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (B) ANY WARRANTIES OF NONINTERFERENCE OR NON-INFRINGEMENT; OR (C) ANY WARRANTIES THAT ANY PRODUCT OR SERVICE PROVIDED HEREUNDER (INCLUDING BUT NOT LIMITED TO THE SOFTWARE) WILL (1) MEET YOUR REQUIREMENTS; (2) OPERATE ACCORDING TO YOUR EXPECTATIONS; (3) PROVIDE ACCURATE DATA; OR (4) OPERATE UNINTERRUPTED OR ERROR FREE. ANY AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED BY US AND WAIVED BY YOU. WE DO NOT WARRANT THAT ANY ERRORS WILL BE CORRECTED. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, THE SERVICES, (INCLUDING THE SOFTWARE) AND OTHER SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS-IS, WITH ALL FAULTS" BASIS. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. All decisions to reject any processing transaction or payment for your products or services are solely your responsibility.

**23.13. Notices.** You agree to notify us of any change in your name, type of business, or any other information required on your Merchant Processing Application at least thirty (30) business days prior to the effective date of change. Any notice or other communication required or permitted to be given hereunder shall be in writing, addressed or

transmitted to the party to be notified at such party's address or number at such party's last known address or number, and shall be: (i) if sent by us, hand delivered or delivered by facsimile transmission, overnight courier or certified, registered, regular mail or e-mail; or (ii) if sent by you, certified or registered mail, postage prepaid return receipt requested to 6101 Condor Drive, Moorpark, CA 93021. Any notice delivered hereunder shall be deemed effective, as applicable, upon delivery, if hand delivered or sent by overnight courier; upon receipt as evidenced by the date of transmission indicated on the transmitted material, if by facsimile transmission or e-mail; on the date of delivery indicated on the return receipt, if mailed by certified or registered mail; or ten (10) days after mailing, if by regular mail (or as otherwise required by applicable law). The parties' addresses may be changed by written notice to the other party as provided herein.

**23.14. Subcontractors.** Processor may subcontract all or part of the Services using a variety of providers globally, but, notwithstanding any such subcontract, Processor shall remain fully responsible for performance of the Services, including ensuring the compliance of subcontractors with the terms of this Agreement applicable to such subcontractors. Each of our subcontractors for the Services is a third party beneficiary of Sections 23.4, 23.5, 23.7, 23.8, 23.9, 23.10, 29.11, 23.14 and 23.15 of this Section with rights to enforce the applicable terms of this Section against you.

**23.14. Survival.** Upon termination or expiration of this Section 29 or the Agreement, a party's obligations shall cease except for those remaining or required to be performed following such termination. For the avoidance of doubt, the parties agree that those provisions of this Section that logically should survive its termination or expiration in order to accomplish its fundamental purposes will do so. All representations, warranties, indemnities and covenants made herein shall survive the termination of this Section and shall remain enforceable after such termination.

### **24. Choice of Law; Venue; Waiver of Jury Trial; Limitation on Claims**

**24.1. Choice of Law.** Our Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions).

**24.2. Venue.** We have substantial facilities in the State of New York and many of the services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in Suffolk County, New York.

**24.3. Waiver of Jury Trial.** ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.

**24.4.** Without limiting any other terms or conditions contained in this Agreement, you agree that any lawsuit or other action you may wish to bring against us to adjudicate claims arising under this Agreement must be commenced and filed by you within one (1) year of the date on which your claim first accrued, without regard to the date on which your claim was discovered. Any action that is not commenced and filed by you within such one (1) year time period shall be barred, without regard to any other limitations period set forth by law or statute.

**24.5.** You understand and agree that any additional secondary location(s) that you request to be added shall be subject to this Merchant Processing Agreement.

### **25. Other Terms**

**25.1. Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a Person for any similar cause beyond the reasonable



control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment of funds from a Person shall not excuse the performance of your obligations to us under this Agreement.

**25.2. Compliance with Laws.** In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it. You further agree to cooperate and provide information requested by Servicers, as Servicers determine necessary, to facilitate Servicers compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury. Without limiting the foregoing, you acknowledge and agree that “restricted transactions” as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulations GG (“Restricted Transactions”) issued thereunder are prohibited from being processed through your Account or any relationship between you and the Bank. You represent and warrant that you will not submit such Restricted Transactions for processing through your Account. 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 those involving any Person listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)) or the U.S. Department of State’s Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)) or the 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”) or in connection with illegal activity of any kind.

In the event we identify a suspected restricted transaction, we may block or otherwise prevent or prohibit such transaction, we may close the Account or end the relationship, and we may seek any other remedies available to us under this Agreement or otherwise.

**25.3. Notices.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, to you at your address appearing in the Application, or via Electronic Communications (as further described in Section 25.13), including but not limited to the e-mail address you have provided on the Application. If to us at our address appearing in Section 41.4 of this Agreement, with a copy to Attention: General Counsel’s Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065. Notices shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing of when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to your last known address (including e-mail address), as indicated in our records, shall constitute effective notice to the Merchant under this Agreement.

Notwithstanding the above, all bankruptcy or collection related, notices must be sent to the following address – Merchant Services Dept., 5251 Westheimer Road, Fourth Floor Houston, Texas 77056 Attn: Bankruptcy, and Collection Notifications. All such notices must include the related merchant name and merchant number. Failure to provide Notice to this address or include this pertinent merchant information will be deemed ineffective. All notices must include your merchant name(s) and merchant number(s). Failure to provide notice in the manner described in this Section will be deemed ineffective.

**25.4. Headings.** The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement.

**25.5. Severability.** The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

**25.6. Entire Agreement; Waiver.** This Agreement constitutes the entire Agreement between the parties with respect to the subject matter thereof and supersedes any previous agreements and understandings. A party’s waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

**25.7. Amendment.** We may modify any provision of this Agreement by providing written notice to you. You may choose not to accept the requirements of any such change by terminating the Agreement within twenty (20) days of receiving notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any early termination fee that might otherwise apply. For purposes of this section, in addition to Electronic Communications (as further described in Section 25.13) an electronic or “click-wrap” notice intended to modify or amend this Agreement and which you check “I Accept” or “I Agree” or otherwise accept through an electronic process, shall constitute a writing as required herein. This section 25.7 does not apply to fee changes, which are governed by Sections 5.5 and 5.6.

**25.8. Third Party Beneficiaries.** Our respective Affiliates and any Persons we use in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as it was a party hereto. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any Person or entity other than the parties any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Agreement.

**25.9. Card Organization Rules.** The parties acknowledge that the Visa, Mastercard, American Express, Discover and PayPal Card Organization Rules give Visa, Mastercard, Discover and PayPal, certain rights to require termination or modification of this Agreement with respect to transactions involving Visa, Mastercard, Discover and PayPal Cards and the Visa, Mastercard, Discover and PayPal Card systems and to investigate you. The parties also acknowledge that issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable Card Organization Rules with respect to this Agreement’s applicability to transactions involving such other Cards.

**25.10. Publicity.** Client may not use our logo, name, trademark, or service mark of Processor and/or Bank in any manner, including without limitation, in any advertisements, displays, or press releases without the prior written consent of Processor and Bank.

#### **25.11. Electronic Communications and E-Sign Consent Agreement.**

##### **1. Consent.**

By signing the Confirmation Page, you consent and agree that:

a. Servicers can provide disclosures required by law and other information about your legal rights and duties to you electronically (rather than in paper form).

b. Where required or requested, your electronic signature (via “click-through” or other method) on agreements and documents relating to the Clover Service or the Services has the same effect as if you signed them in ink.

c. Servicers can send all communications, billing statements, amendments, notices, documents, and other disclosures or communications, or other information regarding the Clover Service or the Services, or your use of the Clover Service or the Services as defined in the Agreement (collectively, the “Disclosures”) to you electronically (1) via e-mail at the last known e-mail address that you provide to us, which will be the e-mail address identified on your Application, unless you subsequently notify us that you have a new e-mail address, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.

d. If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.

e. This consent applies to all future Disclosures sent to you in connection with the Clover Service, the Services, the Agreement, or your use of the Clover Service or the Services as defined in the Agreement.

f. You agree to maintain a valid email address and keep your email address current with us at all times. You understand and acknowledge that access to the Internet, e-mail and the worldwide web are required for you to access Disclosures, and you confirm that you have such access. You understand that there may be costs related to accessing Disclosures (e.g. you may have to purchase internet services, software or hardware), and you agree that you are responsible for any such related access costs. At our discretion, we may choose to discontinue or resume sending Disclosures at any time provided that if we elect not to send a document, notice or communication electronically, we will instead send the same in paper form. You acknowledge that if for any reason you are not able to open a readable version of Disclosures that we send to you, it is your responsibility to contact us to notify us of the same and to request a copy in paper form.

## 2. Legal Effect.

By consenting, you agree that electronic Disclosures have the same meaning and effect as if Servicers provided paper Disclosures to you. When Servicers send you an email or other electronic notification alerting you that the Disclosure is available electronically and makes it available online, that shall have the same meaning and effect as if Servicers provided a paper Disclosure to you, whether or not you choose to view or print or download the Disclosure.

**25.12. IRS Reporting.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return with the IRS for each calendar year beginning January 1, 2011, reporting all payment card transactions and third party network transactions with merchants occurring in that calendar year. Accordingly, you will receive a Form 1099K reporting your gross transaction amounts for each calendar year beginning with transactions processed in calendar year 2011.

In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. We are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) you fail to provide your taxpayer identification number (TIN) to us, or (b) the IRS notifies us that the TIN (when matched with the name) provided by you is incorrect. Accordingly, to avoid backup withholding from your daily merchant funding amount, it is very important that you provide us with the correct name and TIN that you use when filing the tax return that includes the transactions for your business.

## PLEASE NOTE THAT VARIOUS STATES MAY HAVE ADDITIONAL REPORTING/WITHHOLDING REQUIREMENTS

### B. Operating Procedures

This part of the Program Guide (through Section 39) describes the procedures and methods for submitting Credit Card transactions for payment, obtaining Authorizations, responding to Chargebacks and Media Retrieval Requests, and other aspects of the operations of our services.

Processor is a full-service financial transaction processor dedicated, among other processing services, to facilitating the passage of your Sales Drafts back to the thousands of institutions who issue the Mastercard®, Visa®, Discover and American Express Cards carried by your customers, as well as to the independent Card Issuers of American Express® and Optima. The Operating Procedures contained in this part focus primarily on the Mastercard, Visa and Discover and PayPal and American Express Card Organization Rules, and seek to provide you with the principles for a sound Card program; however, you should consult the Card Organization Rules for complete information and to ensure full compliance with them. They are designed to help you decrease your chargeback liability and train your employees. (In the event we provide Authorization, processing or settlement of transactions involving Cards other than Mastercard, Visa

, Discover, PayPal and American Express you should also consult those independent Card Issuers' proprietary rules and regulations.)

The requirements set forth in these Operating Procedures will apply unless prohibited by law. You are responsible for following any additional or conflicting requirements imposed by your state or local jurisdiction.

## 26. Mastercard, Visa, Discover, PayPal and American Express Acceptance

**26.1. Card Descriptions.** At the point of sale, the Card must be carefully examined to determine whether it is a legitimate and valid Card and not visibly altered or mutilated. The name of the Card (e.g., Visa, Mastercard, Discover, PayPal or American Express) should appear in bold letters on the Card. For all Mastercard and Visa Cards and some Discover Cards, the Card Issuer (e.g., XYZ Bank, etc.) should also appear in bold letters on the Card. The following is a description of the authorized Visa, Mastercard, Discover, PayPal and American Express Card designs:

**Visa:** The Visa Brand Mark must appear in blue and gold on a white background in either the bottom right, top left, or top right corner. Embossed/Unembossed or Printed Account Number on valid cards begins with "4." All digits must be even, straight, and the same size. The Four to Six Digit Bank Identification Number (BIN) must be printed directly below the account number. This number must match exactly with the first four digits of the account number. The Expiration or "Good Thru" date should appear below the account number. The Mini-Dove Design Hologram may appear on the back of the card. The three-dimensional dove hologram should appear to move as you tilt the card. The Magnetic-Stripe is encoded with the card's identifying information. The Card Verification Value 2 (CVV2) is a three-digit code that appears either in a white box to the right of the signature panel, or directly on the signature panel. Portions of the account number may also be present on the signature panel. CVV2 is used primarily in card-absent transactions to verify that customer is in possession of a valid Visa card at the time of the sale. The Signature Panel must appear on the back of the card and contain an ultraviolet element that repeats the word "Visa®." It may vary in length. The words "Authorized Signature" and "Not Valid Unless Signed" must appear above, below, or beside the signature panel. If someone tried to erase the signature panel; the word "VOID" will be displayed. Chip cards contain a small embedded microchip that is virtually impossible to copy or counterfeit. Chip Antenna for contactless cards, the interface can be an antenna embedded into the back of the card and connected to the chip. A contactless transaction works at terminals through the radio frequency wave between the card and the terminal. You are required to familiarize yourself with the new design by consulting the document entitled "Card Acceptance Guidelines for Visa Merchants" and Chargeback Management Guidelines for Visa Merchants. You may download the document from Visa's website at <http://www.visa.com/merchant>.

**Mastercard:** The Mastercard symbol appears on the front or back of the Card. The Mastercard hologram is a 3 dimensional with a repeat "Mastercard" printed in the background. In addition, the words Classic, Preferred, Gold or Business may appear. When rotated, the hologram will reflect light and appear to move. Mastercard account numbers are sixteen (16) digits, and the first digit is always a two (2) or five (5). The first four digits of the account must be printed directly below the embossed number. The signature panel is tamper evident with the word "Mastercard" printed in multiple colors at a 45° angle. For magnetic swiped transactions, remember to compare the signature on the back of the card with the cardholder's signature on the receipt. The 4 digits printed on the signature panel must match the last 4 digits of the account number, followed by the 3 digit indent printed CVC2 number. A Chip may be present on the card. The cardholder will be prompted to enter a unique personal identification number or PIN when the card is inserted into a chip capable payment terminal. PayPass® contactless payment technology may be present on card. A signature is not required for PayPass® "tapped" transactions below a specified limit. You are required to familiarize yourself with the new design by consulting a document "Mastercard Card Identification Features." You

may download the document from Mastercard's website at <http://www.mastercardmerchant.com/us/merchant>.

**Discover:** The Discover Network includes Discover, Diners Club International, JCB, UnionPay, BCCard and Dinacard. Valid standard rectangular plastic Cards bearing a Discover® Acceptance Mark include the following common characteristics and distinctive features.

- The Discover Acceptance Mark may appear on the lower right corner of the front, back, or both sides of the Card.
- Cards display either a three-dimensional hologram on the front or back of the Card or a three-dimensional holographic magnetic stripe on the back of the Card. Valid Cards do not display holograms on both front and back.
- Card Numbers may be embossed or unembossed and will appear on either the front or back of a Card. Card Numbers begin with the number "6" and are composed of 16 digits that should be clear and uniform in size and spacing.
- The Cardholder name, and if applicable, business name, may be embossed or unembossed and will appear on either the front or back of the Card.
- The "Valid Thru" date may be embossed or unembossed and will appear on either the front or back of a Card in mm/yy format that indicates the last month in which the Card is valid.
- The words "DISCOVER" or "DISCOVER NETWORK" appears on the front of the Card under an ultraviolet light.
- The signature panel displays the words "DISCOVER" or "DISCOVER NETWORK" and may vary in size. Cards may contain a panel that includes an ultraviolet image of the word "DISCOVER." An underprint of "void" on the signature panel becomes visible if erasure of the signature is attempted.
- The last four digits of the Card Number may be displayed on the back of the Card and are commonly printed in reverse indent printing on the signature panel.
- On embossed Cards, a security character, displayed as an embossed stylized "D" may appear on the front of the Card.
- The 3-digit CID is printed on the back of the Card in a separate box to the right of the signature panel.

**NOTE:** Valid Cards may not always be rectangular in shape (e.g., Discover 2GO Cards). Certain valid unembossed Cards or Contactless Payment Devices approved by us for use in accessing Card Accounts (e.g., contactless stickers, key fobs, and Mobile Commerce Devices) and to conduct Contactless Card Transactions may not display the some features described above. Card expiration date and other features listed above are not displayed on such Contactless Payment Devices.

**NOTE:** For unembossed Cards used to conduct a Card Present Card Sales, Merchants must obtain an Authorization Response electronically using a POS Device. A Card Sale involving an unembossed Card may be subject to Dispute if the Merchant "key enters" Card information into a POS Device and does not use the electronic Authorization procedures.

The features indicated below are found on valid Contactless Chip Payment Devices approved for use in accessing Card Accounts and to conduct Contactless Card Transactions:

- Standard, plastic rectangular Cards that are also Contactless Chip Payment Devices bear the security features described above.
- Contactless Chip Payment Devices other than Mobile Payment Devices bear the Contactless Indicator.
- Contactless Magnetic Stripe Payment Devices bear the Discover Zip Indicator
- Other Acceptance Mark as described below for Diners Club International, JCB, and UnionPay.

#### **Diners Club International:**

- A Diners Club International Acceptance Mark in upper left corner.
- Two-character alphanumeric code printed in the lower right corner.
- Embossed 14 – digit Account Number (begins with 36).
- Embossed 16 – digit Account Number (begins with 30).
- Embossed digits on the card must be clear and uniform in size and spacing within groupings.
- Embossed expiration data appears in mm/yy format and indicates the last month in which the Card is valid.

**Note:** Some valid Cards bearing a Diners Club International Acceptance Mark display a printed, unembossed Card number. If a Card sale involving a Diners Club International Card with an unembossed Card number cannot be completed by swiping the card through the POS Device, the card should not be accepted. If submitted, such card sale may be subject to Dispute.

#### **Union Pay:**

- A 16 – digit Card number starting with "622," "624," "625," "626," or "628" is embossed on the front of the Card.
- Embossed digits on the Card should be clear and uniform in size and spacing.
- The embossed expiration date appears in mm/yy format and indicates the last month in which the Card is valid.
- The Card contains a magnetic stripe.
- A three-dimensional hologram image of Heaven Temple in the foreground with Chinese characters in the background appears on the front of all such Cards. The hologram reflects light as it is rotated.
- "Valid Thru" and the Cardholder name (which may not be in English) are embossed on the front of the Card.
- The CID appears on the upper right corner of the signature panel.

**Note:** Text on Cards bearing a China UnionPay Acceptance Mark may not be printed in English.

#### **JCB:**

- Card Numbers are made up of 16 digits, starting with "35" embossed or printed on the front of the Card.
- Embossed digits on the Card should be clear and uniform in size and spacing within groupings.
- The Cardholder name and, if applicable, business name embossed on the front of the Card.
- A JCB Acceptance Mark appears on the front of the Card.
- A three-dimensional hologram image of rising sun, rainbow, and "JCB" in micro lettering appears on either the front or the back of the Card. The hologram reflects light as it is rotated.
- The embossed expiration date appears in mm/yy or mm/dd/yy format on the front of the Card and indicates the last month in which the Card is valid.
- The Card contains a magnetic stripe on the back of the Card.
- The name "JCB" appears in ultraviolet ink on the left bottom of the front of the Card when held under an ultraviolet light.
- The first four digits of the Card number match the 4-digit number pre-printed just below the embossed Card number of the front of the Card.
- The first four digits of the Card number displayed on the signature panel on the back of the Card match the last four digits of the Card number that appears on the front of the Card.
- The last four digits of the Card number on the back of the Card followed by the 3-digit CID.

- An overprint on the signature panel reads “JCB” in two colors, blue and green.
- Some Cards have an embedded integrated circuit chip on the front of the Card.
- The words “Good Thru,” “Valid Dates,” “Valid Thru,” or “Expiration Date” must be printed near the expiration date. The corresponding words in the language of the country where the JCB Card is issued may also be printed. The words “Month/Year” or the corresponding words in the language of the country where the JCB Card is issued may be printed above or below the expiration date.

Note: Some valid Cards bearing the JCB Acceptance Mark will have a printed, unembossed Card number on the Card. If a Card sale involving a valid, JCB Card with an unembossed Card number cannot be completed by swiping the Card through the POS Device, the Card should not be accepted. If submitted, such Card sale may be subject to dispute.

#### PayPal Tokens:

- PayPal logo appears on the front of the card with all remaining features appearing on the back of the card
- The following features appear on the back of the card:
  - i. PayPal Account Holder name
  - ii. Last 4 digits of the Account Number printed on the PayPal Card Token
  - iii. Valid thru mm/yy date
  - iv. Tamper proof signature panel followed by a 3 digit CID value
- The full token card number does not appear anywhere on the card.
- Transactions processed using PayPal Card Tokens that do not have all of these features may be subject to Dispute under the Dispute Rules.

#### American Express:

- All American Express Card Numbers start with “37” or “34.” The Card number appears embossed on the front of the Card. Embossing must be clear, and uniform in sizing and spacing. Some Cards also have the Card Number printed on the back of the Card in the signature panel. These numbers, plus the last four digits printed on the Sales Draft, must match.
- Pre-printed Card Identification (CID) Numbers must always appear above the Card Number on either the right or left edge of the Card.
- Only the person whose name appears on an American Express Card is entitled to use it. Cards are not transferable.
- Some Cards contain a holographic image on the front or the back of the plastic to determine authenticity. Not all American Express Cards have a holographic image.
- Some Cards have a chip on which data is stored and used to conduct a transaction.
- The signature on the back of the Card must match the Cardholder’s signature on the Sales Draft, and must be the same name that appears on the front of the Card. The signature panel must not be taped over, mutilated, erased or painted over.
- Some Cards also have a three digit Card Security Code (3CSC) number printed on the signature panel.

**26.2. Effective/Expiration Dates.** At the point of sale, the Card should be carefully examined for the effective (valid from) (if present) and expiration (valid thru) dates which are located on the face of the Card. The sale date must fall on or between these dates. Do not accept a Card prior to the effective date or after the expiration date. If the Card has expired, you cannot accept it for a Card sale unless you have verified through your Authorization Center that the Card is in good standing, otherwise, you are subject to a Chargeback and could be debited for the transaction.

**26.3. Valid Signature.** Check the back of the Card. Make sure that the signature panel has not been disfigured or tampered with in any fashion (an altered signature panel may appear discolored, glued or painted, or show erasure marks on the surface). The signature on the back of the

Card must compare favorably with the signature on the Sales Draft. The Sales Draft must be signed by the Card presenter in the presence of your authorized representative (unless a Card Not Present Sale) and in the same format as the signature panel on the Card; e.g., Harry E. Jones should not be signed H.E. Jones. The signature panels of Visa, Mastercard, Discover and PayPal Cards have a 3-digit number (CVV 2/CVC 2/CID) printed on the panel known as the Card Validation Code.

Visa, Mastercard, Discover, PayPal and American Express: If the signature panel on the Card is blank, in addition to requesting an Authorization, you must do all the following:

- Review positive identification bearing the Cardholder’s signature (such as a passport or driver’s license that has not expired) to validate the Cardholder’s identity.
- Require the Cardholder to sign the signature panel of the Card prior to completing the Transaction.

**26.4. Users Other Than Cardholders.** A Cardholder may not authorize another individual to use his/her Card for purchases. Be sure the signature on the Card matches with the one on the Sales Draft. Furthermore, any Card having two signatures on the back panel is invalid and any sale made with this Card can result in a Chargeback. For Cards bearing a photograph of the Cardholder, ensure that the Cardholder appears to be the person depicted in the picture which appears on the Card. If you have any questions, call the Voice Authorization Center and request to speak to a Code 10 operator.

**26.5. Special Terms.** If you limit refund/exchange terms or impose other specific conditions for Card sales, you must provide proper disclosure to the Cardholder at the time of transaction in accordance with applicable law. If applicable, the words “No Exchange, No Refund,” etc. must be clearly printed on the Sales Draft near or above the Cardholder’s signature. The Cardholder’s copy, as well as your copy, must clearly display this information near or above the Cardholder’s signature. Applicable disclosures will vary by transaction type.

During a liquidation and/or closure of any of your outlets, locations and/or businesses, you must post signs clearly visible to customers stating that “All Sales Are Final,” and stamp the Sales Draft with a notice that “All Sales Are Final.”

Generally do not give cash, check or in store credit refunds for Card sales. Visa allows for the following exclusions: a cash refund to the Cardholder for a Visa Easy Payment Transaction, a cash refund, Credit, or other appropriate form of Credit to the recipient of a gift purchased as a Mail/Phone Order transaction, or a cash refund or in-store Credit for a Visa prepaid card transaction if the Cardholder states that the Visa prepaid card has been discarded. NOTE: A disclosure does not eliminate your liability for a Chargeback. Consumer protection laws and Card Organization Rules frequently allow the Cardholder to dispute these items notwithstanding such disclosures.

**26.6. Delayed Delivery Transactions or Deposit Balance.** In a delayed delivery transaction where a Cardholder makes a deposit toward the full amount of the sale, you should execute two separate Sales Drafts (each completed fully as described in Section 28.1.), the first for a deposit and the second for payment of the balance upon delivery of the merchandise or the performance of the services.

Visa: You must obtain an Authorization for each Sales Draft on each transaction date. You must assign the separate Authorization numbers to each Sales Draft, respectively. You must note on such Sales Drafts the words “delayed delivery,” “deposit” or “balance,” as appropriate, and the authorization dates and approval codes.

Mastercard: For Mastercard transactions, you must obtain an Authorization for each Sales Draft on each transaction date. You must note on both Sales Drafts the words “delayed delivery,” “deposit” or “balance,” as appropriate, and the authorization date and approval code.

**NOTE:** For Visa and Mastercard transactions, If delivery is more than twenty-five (25) days after the original transaction date and the initial

Authorization request, you should reauthorize the unprocessed portion of the transaction prior to delivery. For Discover transactions, the same rules apply if delivery is more than ninety (90) days after original transaction date and initial Authorization request. If the transaction is declined, contact the Cardholder and request another form of payment. For example: On January 1, a Cardholder orders \$2,200 worth of furniture and you receive an Authorization for the full amount; however, only a \$200 deposit is processed. The above procedures are followed, with a \$2,000 balance remaining on the furniture; the \$2,000 transaction balance should be reauthorized.

**Discover:** For Discover transactions, you must label one Sales Draft “deposit” and the other “balance,” as appropriate.

You shall submit Authorization requests you receive and await receipt of the Authorization Response prior to completing the Card sale. A positive Authorization Response will remain valid for thirty (30) calendar days from the date of the Authorization response for Card sales in the car rental industry, airline and passenger railway industries, the lodging industry and other travel MCCs including passenger transport and **all International Card sales**. A positive Authorization response will remain valid for ten (10) calendar days from the date of the Authorization response for Card sales in all other industries and MCCs.

In addition, you must complete Address Verification at the time of the “balance” authorization, and you must obtain proof of delivery upon delivery of the services/merchandise purchased. You may not submit sales data relating to the “balance” to us for processing until the merchandise/service purchased has been completely delivered.

**American Express:** For American Express Card transactions, you must clearly disclose your intent and obtain written consent from the Cardholder to perform a delayed delivery transaction before you request an Authorization. You must obtain a separate Authorization Approval for each delayed delivery transaction on their respective Charge dates and clearly indicate on each record that the Charge is either for the deposit or for the balance of the transaction. You must submit the delayed delivery transaction record for the balance of the purchase only after the items have been shipped, provided or services rendered. For deposits, submission must be on the date the Cardholder agreed to pay for the deposit for the purchase. For balances, submission must be on the date the items are shipped, provided or services rendered. You must submit and

Authorize each delayed delivery transaction under the same Merchant Identification Number and treat deposits on the Card no differently than you treat deposits on all other payment products.

#### **Advance Payment Charges.**

Please follow the procedures set out in this section if you permit or require cardholders to make advance payment charges for:

- custom orders (for example, orders for goods to be manufactured to a customer’s specifications);
- ticketing for events or entertainment (for example, sporting events or concerts);
- tuition, room, board, and other mandatory fees (for example, library or other students services fees at universities);
- tickets for airlines, rail lines, cruise lines, lodging, and other travel-related services (for example, tours or guided expeditions);
- vehicle rentals; or
- in-store merchandise not immediately available (for example, merchandise pre-purchased for an upcoming sale event or merchandise on layaway).

#### **For all advance payment transactions:**

- do state your full cancellation and refund policies;
- do clearly disclose your intention to receive advance payment;
- before you request an authorization, do obtain written consent from the cardholder to bill the card for an advance payment charge; the

Cardholder’s consent must include (1) a detailed description of the goods or services to be provided, and (2) his or her agreement to all of the terms of the sale, including price, any cancellation or refund policies, and the expected delivery date of the goods or services;

- do obtain an authorization approval;
- do complete a Sales Draft; and
- if you cannot deliver the goods or services (for example, because custom-ordered merchandise cannot be fulfilled) and cannot make other arrangements, do immediately issue a credit for the full amount of the advance payment charge.

#### **For Card Not Present transactions involving an advance payment:**

- do ensure that the Sales Draft contains the words “Advance Payment”; and
- within twenty-four (24) hours of the advance charge being authorized, do provide the cardholder with written confirmation (for example, by email or facsimile) that advance payment charge has been made the written confirmation must include (1) a detailed description of the goods or services to be provided; (2) the amount of the charge; (3) the confirmation number (if applicable); (4) the details of any cancellation or refund policies; and (5) the expected delivery date of the goods or services.

#### **26.7. Recurring Transaction and Preauthorized Order Regulations.**

If you process recurring transactions and Charge a Cardholder’s account periodically for recurring goods or services (e.g., yearly subscriptions and annual membership fees, etc.), the Cardholder shall complete and deliver to you a Cardholder approval for such goods or services to be charged to his account. The approval must at least specify the Cardholder’s name, address, account number and expiration date, the transaction amounts, the frequency of recurring Charges and the duration of time for which the Cardholder’s permission is granted. For Discover transactions, the approval must also include the total amount of recurring Charges to be billed to the Cardholder’s account, including taxes and tips and your Merchant Number.

If the recurring transaction is renewed, the Cardholder must complete and deliver to you a subsequent written request for the continuation of such goods or services to be charged to the Cardholder’s account. You may not complete a recurring transaction after receiving a cancellation notice from the Cardholder or Issuer or after a request for Authorization has been denied.

If we or you have terminated this Agreement, you may not submit authorization requests or sales data for recurring transactions that are due after the termination date of this Agreement, and you must inform Cardholders for which you have submitted the recurring transactions that you no longer accept the Card.

You must obtain an Authorization for each transaction and write “Recurring Transaction” (or “P.O.” for Mastercard transactions/ “Signature on File” for American Express) on the Sales Draft in lieu of the Cardholder’s signature. A positive authorization response for one recurring transaction Card Sale is not a guarantee that any future recurring transaction authorization request will be approved or paid.

For all recurring transactions, you should submit the 3-digit CID with the first authorization request, but not subsequent authorization requests. Discover Card Organization Rules specifically require that you follow this CID procedure for Discover recurring transactions.

Also, for Discover recurring transactions, the Sales Draft must include a general description of the transaction, your merchant name and a toll-free customer service number that the Cardholder may call to obtain customer assistance from you or to cancel the written approval for the recurring transaction.

For American Express recurring transactions you should periodically verify with Cardholder that their information (e.g., Card Number, expiration date, billing address) is still accurate. This will improve the likelihood of obtaining an approval to an Authorization request.

The method to secure consent for recurring Charges must contain a

disclosure that you may receive updated Card account information from the Issuer. You must retain evidence of consent to receive updated Card account information from the Issuer for twenty-four (24) months from the date you submit the last recurring billing Charge. If you offer Cardholders the option to make recurring billing Charges, you must:

- Ensure that your process for cancellation of recurring billing is simple and expeditious;
- Clearly and conspicuously disclose all material terms of the option, including, if applicable, the fact that recurring billing will continue until the option is cancelled by the Cardholder;
- Within twenty-four (24) hours of incurring the first recurring billing Charge, provide the Cardholder written confirmation (e.g., email or facsimile) of such Charge, including all material terms of the option and details of your cancellation/refund policy; and
- Where the material terms of the option change after submission of the first recurring billing Charge, promptly notify the Cardholder in writing of such change and obtain the Cardholder's express written consent to the new terms prior to submitting another recurring billing Charge.

The cancellation of an American Express Card constitutes immediate cancellation of that Cardholder's consent for recurring Charges. American Express will not have any liability from such cancellation. If an American Express Card is cancelled or a Cardholder withdraws consent to recurring Charges, you are responsible for arranging another form of payment with the Cardholder.

All recurring transactions or preauthorized orders may not include partial payments for goods or services purchased in a single transaction.

You may not impose a finance charge in connection with a Recurring Transaction or Preauthorized Order.

If you process recurring payment transactions, the Recurring Payment Indicator must be included in each Authorization request, and as applicable, each Batch submission entry. Penalties can be assessed by the Card Organizations for failure to use the Recurring Payment Indicator.

#### **26.8. Payments By Installments.**

If you process multiple payments for a single purchase of goods or services over a period of time based on an agreement between a Cardholder and a merchant (for example a car payment or furniture purchase) please follow the procedures set out in this section:

- Do obtain written Cardholder approval for goods or services to be charged on an installment basis to the Cardholder's account at the time of the first transaction. Approval must at least specify:

- Terms of service.
- Timing of delivery to Cardholder.
- Transaction amount.
- Total purchase price.
- Terms of future payments, including dates, amounts, currency, cancellation and refund policies.
- Any associated charges, including shipping and handling charges and any applicable tax.

- Installment transaction amount must be less than the total price of the merchandise or services purchased (may include interest charges, except in the US Region) and must be applied to the total obligation.

- Do obtain authorization for each transaction.
- Contact Cardholder in writing if authorization is declined, and allow at least 7 days for payment by other means.
- Provide the following to the Cardholder within 3 business days if they cancel within the terms of the cancellation policy.
  - Cancellation or refund confirmation in writing.
  - Credit transaction receipt for the amount specified in the cancellation policy.

- Process a refund for the full amount paid if unable to adhere to the terms of the sale or service.

- Do include the installment payment indicator in the authorization request.

- Don't impose a convenience fee in connection with an installment payment.

- 7 calendar days.

- Monthly anniversary of the shipment date for the U.S. region.

**26.9. Certain Rules and Requirements.** The following rules are requirements strictly enforced by Visa, Mastercard and Discover and PayPal:

- Your minimum Credit Card acceptance amount cannot exceed \$10.00. Such minimum amount must be established to all Credit Cards regardless of Card Issuer or Card brands. Unless you are a federal government entity or institution of higher learning, you may not establish a maximum amount as a condition for accepting a Card, except that for Discover transactions, you may limit the maximum amount a Discover Cardholder may spend if, and only if, you have not received a positive authorization response from the Issuer. Setting a minimum transaction amount limit for Debit Cards (PIN Debit or Non-PIN Debit) is prohibited.

- You cannot impose a surcharge or fee for accepting a Debit Card or PayPal Cards.

- You cannot establish any special conditions for accepting a Card.

- You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address including zip code; or driver's license number) unless instructed by the Authorization Center. The exception to this is for a mail/telephone/Internet order or delivery-required transactions, or as otherwise permitted by applicable law. Any information that is supplied by the Cardholder must not be in plain view when mailed.

- Any tax required to be collected must be included in the total transaction amount and not collected in cash.

- You cannot submit any transaction representing the refinance or transfer of an existing Cardholder obligation deemed uncollectible, for example, a transaction that has been previously charged back, or to cover a dishonored check.

- You cannot accept a Visa Consumer Credit Card or commercial Visa Product, issued by a U.S. Issuer to collect or refinance an existing debt.

- You must create a Sales Draft or Credit Draft for each Card transaction and deliver at least one copy of the Sales Draft or Credit Draft to the Cardholder.

- If you accept Card checks, your Card check acceptance policy must treat the acceptance of checks from all payment card brands that you accept equally. (e.g., if you accept Mastercard, Visa and Discover, your check acceptance policy must treat checks for all three payment card brands equally). You should handle these Card checks like any other personal check drawn upon a bank in the United States.

- Failure to comply with any of the Card Organization Rules may result in fines or penalties.

#### **U.S. merchants may engage in any of the following:**

- You may direct customers to a particular brand or type of general purpose card or a particular form of payment. U.S. merchants may also encourage customers who initially present a Visa Card to use a payment card with a different network brand, a different type of payment card or a different form of payment.

- You may provide a discount/incentive for a consumer to pay with cash, check, Credit Card, Debit Card, etc., however, you must clearly and conspicuously disclose the discount to consumers. Also, you must offer the

discount to all consumers and you cannot discriminate based upon Card brand or Card Issuer. However, you may choose not to accept either U.S. issued Debit Cards or U.S. issued Credit Cards under the terms described in Section 26.10.

- You may offer a discount or rebate, including an immediate discount or rebate at the point of sale;
- You may offer a free or discounted product, service or enhanced service;
- You may offer an incentive, encouragement, or benefit;
- You may express a preference for the use of a particular brand or type of general purpose card or a particular form of payment;
- You may communicate to a customer the reasonably estimated or actual costs incurred by the merchant when a customer uses a particular brand or type of general purpose card or a particular form of payment or the relative costs of using different brands or types of general purpose cards or different forms of payment. NOTE: Visa Consumer Debit and Visa Business Debit Card products including prepaid card type can be accepted to collect or refinance an existing debt; or
- You may engage in any other practices substantially equivalent to the above.
- You will inform the Cardholder that you are responsible for the Card transaction including your goods and services and for related customer service, dispute resolution and performance of the terms and conditions of the transaction.

**26.10. Card Acceptance.** If you have indicated either in the Merchant Processing Application or by registering with us at least thirty (30) days in advance that, as between Non-PIN Debit Card transactions and Credit Card transactions, you will limit your acceptance to either (i) only accept Non-PIN Debit transactions; or (ii) only accept Credit Card transactions, then the following terms in this Section 26.10 will apply:

**26.10.1.** You will be authorized to refuse to accept for payment either Non-PIN Debit Cards or Credit Cards that are issued within the United States. You will, however, continue to be obligated to accept all foreign issued Credit or Debit Cards issued by Mastercard, Visa or Discover so long as you accept any type of Mastercard, Visa or Discover branded Card.

**26.10.2.** While many Debit Cards include markings indicating debit (such as "Visa Checkcard, Visa Buxx, Gift Card, DEBIT, or Mastermoney), many Debit Cards may not include such markings. It will be your responsibility to determine at the point of sale whether a Card is of a type that you have indicated that you will accept. You agree to institute appropriate systems and controls to limit your acceptance to the Card types indicated. You may purchase a table of ranges of numbers currently associated with Debit Card transactions upon execution of confidentiality/non-disclosure agreements required by the Card Organizations. You will be responsible for updating your systems to utilize such tables and to obtain updated tables. You must safeguard BIN information provided by us. If you share our provided BIN information with a third party to use on your behalf, you must require they safeguard it also and use it only for card type identification at the POS.

**26.10.3.** To the extent that you inadvertently or intentionally accept a transaction other than the type anticipated for your account, such transaction will downgrade to a higher cost interchange and you will be billed the difference in interchange (a Non-Qualified Interchange Fee), plus a Non-Qualified Surcharge (see Section 5.1 and Glossary).

**26.10.4.** Based upon your choice to accept only the Card types indicated in the Application, you must remove from your premises any existing signage indicating that you accept all Visa, Mastercard or Discover Cards and use approved specific signage reflecting your policy of accepting only Non-PIN Debit or Credit Cards.

**26.10.5.** Even if you elect not to accept Non-PIN Debit Card transactions as provided above, you may still accept PIN Debit Card transactions if you have signed up for PIN Debit Services.

**26.10.6.** If a Mastercard Card is presented, you must use your best

efforts, by reasonable and peaceful means to retain the Card while making an Authorization request. In a face-to-face environment, you must give a Mastercard Cardholder the option of a signature based transaction. Unless the Cardholder uses a PIN, the Cardholder must sign the transaction receipt.

**26.10.7. Mastercard revised standards related to the use of Mobile POS ("MPOS") terminals.**

Merchants with less than \$100,000 in annual Mastercard transaction volume may use Chip only MPOS terminals;

- That do not support magnetic stripe capture and cannot print a paper Transaction receipt.
- Have a contact chip reader and magnetic stripe- reading capability but does not support PIN as a Cardholder Verification Method ("CVM") for Contact Chip Transactions.
- Chip-only MPOS Terminal.

Merchants with less than \$100,000 in annual Mastercard transaction volume may use MPOS terminals or Chip-only MPOS solutions that do not support electronic signature capture to complete a transaction without obtaining a CVM.

Please Note: Merchants with more than \$100,000 in annual transactions may use MPOS terminals if the MPOS terminal complies with Mastercard's requirements for POS terminals or hybrid POS terminals (if chip cards are accepted).

**26.11. Deposits of Principals.** Owners, partners, officers and employees of your business establishment, and the guarantors who signed the Application, are prohibited from submitting Sales Drafts or Credit Drafts transacted on their own personal Cards, other than transactions arising from bona fide purchases of goods or services in the ordinary course of your business. Such use in violation of this Section 26.11 is deemed a cash advance, and cash advances are prohibited.

**26.12. Merchants in the Lodging Industry.**

**26.12.1. Generally.** There are additional rules and requirements that apply to merchants in the lodging industry for practices including, but not limited to, Guaranteed Reservations and Charges for no shows, advance deposits, overbookings, and priority checkout. If you are a merchant a lodging merchant and wish to participate in the Card Organization lodging services programs, please, **contact your sales representative or account manager for detail and the appropriate Card Organization Requirements. Failure to do so could result in additional charges or termination of this Agreement.**

**26.12.2. Lodging Service Services Programs.** In the event you are a lodging merchant and wish to participate in Visa's and/or Mastercard's lodging services programs, please contact your sales representative or account manager for details and the appropriate Mastercard and Visa requirements.

**26.12.3. Written Confirmation of Guaranteed Reservations.** You must provide the Cardholder with written confirmation of a guaranteed reservation. The confirmation must contain:

- Cardholder's name as it appears on the Card, if present.
- Card Number, truncated where required by applicable law to you or us and Card expiration date if present, unless prohibited by applicable law to you or us.
- Reservation confirmation number.
- Anticipated arrival date and length of stay.
- The cancellation policy in its entirety, inclusive of the date and time the cancellation privileges expire.
- Any other pertinent details related to the reserved accommodations.

**26.12.4. Cancellation of Guaranteed Reservations.** If a Cardholder requests a cancellation in accordance with Merchant's cancellation policy

and specified time frames, Merchant must provide the Cardholder with a cancellation number and instructions to retain a record of it. If a Cardholder requests a written confirmation of the cancellation, Merchant must forward this confirmation within three (3) Business Days of the Cardholder's request. The cancellation confirmation must contain: Cardholder's reference that Charges were placed on the Card, if applicable, or a guarantee that a "no-show" Charge will not be placed on the Card.

- Cardholder's name as it appears on the Card, if present.
- Card Number, truncated as required by applicable law to you or us.
- Card expiration date, if present, unless prohibited by applicable law to you or us.
- Reservation cancellation number.
- Date of cancellation.
- The name of the Merchant's employee that processed the cancellation.
- Any other pertinent information related to the reserved accommodations.

#### **26.13. Customer Activated Terminals and Self-Service Terminals.**

Transactions are processed at customer-activated terminals and self-service terminals have specific requirements for processing. Prior to conducting Customer Activated Terminal ("CAT") transactions or Self-Service Terminal transactions for Mastercard, Visa, Discover or PayPal **you must contact us for approval and further instructions, rules and requirements that apply to CAT and Self-Service Terminal transactions. Failure to do so could result in additional charges or termination of this Agreement.**

#### **Customer Activated Terminals for American Express Transactions**

Charges for purchases at your Customer Activated Terminals (CATs) must meet the requirements for Sales Draft as detailed below:

You must include:

- Full Magnetic Stripe data stream or chip Card data in all Authorization requests, and;
- CAT indicator on all Authorization requests and Submissions.

American Express will not be liable for actual or alleged fraudulent Charges occurring through Customer Activated Terminals (CAT) and will have the right to Chargeback for those Charges.

**26.14. Displays and Advertising.** You must prominently display appropriate Visa, Mastercard, Discover, PayPal, American Express, and, if applicable, other Card Organization decals and program Marks at each of your locations, in catalogs, on websites and on other promotional materials as required by Card Organization Rules, if you elected to accept such Card payments on your Application. You may not indicate that Visa, Mastercard, Discover, PayPal or any other Card Organization endorses your goods or services.

Your right to use the program Marks of the Card Organizations terminates upon the earlier of (i) if and when your right to accept the Cards of the respective Card Organization terminates (e.g., if your right to accept Discover Cards terminates, you are no longer permitted to use Discover Program Marks), (ii) delivery of notice by us or the respective Card Organization to you of the termination of the right to use the program Mark(s) for that Card Organization, or (iii) termination of the license to use the program marks by the respective Card Organization to us.

**American Express:** If you elected to accept the American Express Card on your Application, whenever payment methods are communicated to customers, or when customers ask what payments are accepted, you must indicate your acceptance of the American Express Card and display the American Express Marks (including any Card application forms provided to you) as prominently and in the same manner as you do for any other Card or payment products. You must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the American Express Marks, nor (without prior written consent from us) indicate that American Express endorse your goods or services. You shall

only use the American Express Marks as permitted by the Agreement and shall cease using the American Express Marks upon termination of the Agreement.

**26.14.1. Discover Sublicense to Use Discover Program Marks.** You are prohibited from using the Discover Program Marks, as defined below, other than as expressly authorized in writing by us. "Discover Program Marks" means the brands, emblems, trademarks and/or logos that identify Discover Cards, including, without limitation, Diners Club International Cards, JCB, UnionPay, BCard, and Dinacard. Additionally, you shall not use the Discover Program Marks other than as a part of the display of decals, signage, advertising and other forms depicting the Discover Program Marks that are provided to you by us or otherwise approved in advance in writing by us.

You may use the Discover Program Marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by us in writing.

You shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Program Marks. You recognize that you have no ownership rights in the Discover Program Marks. You shall not assign to any third party any of the rights to use the Discover Program Marks.

**26.14.2. American Express sublicense to Use American Express Marks.** You shall only use the American Express Marks as reasonably necessary to perform your obligations under the Agreement. The guidelines listed below apply to the Merchant's use of the American Express "Blue Box" logo.

- The "Blue Box" logo must always be shown in the pre-approved "American Express blue" or, in one or two color communications, or black.
- The space around the "Blue Box" must equal at least 1/3 the size of the box.
- The "Blue Box" logo minimum size is 3/8" and 1/2" is the preferred size.
- A minimum distance of 1-1/2 times the size of the "Blue Box" must be allowed between the "Blue Box" logo and another Mark.
- For additional guidelines on the use of the American Express Marks, you can visit the American Express website at [www.americanexpress.com/decals](http://www.americanexpress.com/decals).

• You must remove American Express Marks from your website and wherever else they are displayed upon termination of the Agreement or if do not elect to accept or are not authorized to accept American Express Cards.

**26.14.3. PayPal Sublicense to Use PayPal Marks.** You are prohibited from using the PayPal Marks, as defined below, other than as expressly authorized in writing by us. "PayPal Marks" mean the brands, emblems, trademarks, and/or logos that identify PayPal acceptance. You may use the PayPal Marks only to promote PayPal products, offers, services, processing and/or acceptance. Your use of the PayPal Marks is restricted to the display of decals, signage, advertising, and marketing materials provided or approved by PayPal in writing pursuant to the process set forth in the PayPal Card Organization Rules. You shall not use the PayPal Marks in such a way that PayPal Account Holders could believe that the products or services offered by you are sponsored or guaranteed by the owners of the PayPal Marks. You recognize that you have no ownership rights in the PayPal Marks. You shall not assign to any third party any of the rights to use the PayPal Marks. You are prohibited from using the PayPal Marks, not permitted above, unless expressly authorized in writing by PayPal.

**26.15. Cash Payments by and Cash Disbursements to Cardholders.** You must not accept any direct payments from Cardholders for Charges of merchandise or services which have been included on a Sales Draft; it is the right of the Issuer to receive such payments. You may not make any cash disbursements or cash advances to a Cardholder as part of a Card



transaction unless you are a financial institution with express authorization in writing in advance by Servicers. For Discover, cash advances in authorized jurisdictions other than the United States may be conducted in an originating currency provided that cash advances may be subject to dispute and/or Acquirer fees.

**26.16. Discover Cash Over Transactions.** Cash Over transactions are not available for Mastercard or Visa transactions. You may issue Cash Over in connection with a Discover Card sale provided that you comply with the provisions of this Agreement including the following requirements:

- You must deliver to us a single authorization request for the aggregate total of the goods/services purchase amount and the Cash Over amount of the Card sale. You may not submit separate authorization requests for the purchase amount and the Cash Over amount.

- The Sales Draft must include both the purchase amount and the Cash Over amount, and you may not use separate Sales Drafts for the purchase amount and Cash Over amount.

- Cash Over may only be offered with a Card Present Card Sale that includes a purchase of goods or services by the Cardholder. You must not issue Cash Over as a stand-alone transaction. Merchants that offer Cash Over may require the total amount of a Card Sale with a Credit product, including Cash Over, to meet a minimum transaction amount of up to \$10.00.

- You shall not assess or charge fees of any type or amount, including any surcharges, on Cash Over transactions. None of the fees or charges applicable to Cash Advances shall be applied to Cash Over transactions.

- Cash Over may not be dispensed in connection with Credits, Cash Advances, or any Card Sale for which you are unable to electronically capture Track Data using the POS Device.

- The maximum amount of cash that you may issue as Cash Over is \$100.00.

(Cash Over may not be available in certain markets. Contact us for further information.)

**26.17. Telecommunication Transactions.** Telecommunication Card Sales occur when a telephone service provider is paid directly using a Card for individual local or long-distance telephone calls. (**NOTE:** pre-paid telephone service cards are not and do not give rise to Telecommunication Card Sales). **Prior to conducting Telecommunication transactions you must contact us for approval and further instructions, rules and requirements. Failure to do so could result in additional charges or termination of this Agreement.**

## 27. Suspect Transactions

If the appearance of the Card being presented or the person presenting the Card appears to be suspicious or you otherwise suspect fraud, you must immediately call the Voice Authorization Center and ask to speak to a Code 10 operator. Answer all their questions and follow their instructions. While not proof that a transaction is fraudulent, the following are some suggestions to assist you in preventing fraudulent transactions that could result in a Chargeback:

### Ask yourself, does the Customer:

- appear nervous/agitated/hurried?
- appear to be making indiscriminate purchases (e.g., does not care how much an item costs, the size, etc.)?
- make purchases substantially greater than your usual customer (e.g., your average transaction is \$60, but this transaction is for \$360)?
- insist on taking the merchandise immediately (e.g., no matter how difficult it is to handle, is not interested in free delivery, alterations, etc.)?
- appear to be purchasing an unusual amount of expensive items or the same items?
- take an unusual amount of time to sign the Sales Draft, or look at the back of the Card as he signs?

- talk fast or carry on a conversation to distract you from checking the signature?

- take the Card from a pocket instead of a wallet?

- repeatedly come back, in a short amount of time or right before closing time, to make additional purchases?

- cause an unusual, sudden increase in the number and average sales transactions over a one- to three-day period?

- tell you he has been having some problems with his Issuer and request that you call a number (that he provides) for a “special” handling or Authorization?

- have a previous history of disputed Charges?

- place orders to be shipped to an address other than the billing address, or use anonymous/free email domains?

- place orders sent to zip codes or countries where you show a history of fraudulent claims?

- frequently make purchases and then return goods for cash?

- use a prepaid Card to purchase other prepaid Cards?

- use a large numbers of prepaid Cards to make purchases?

### Does the Card:

- have characters the same size, height, style and all within alignment?

- appear to be re-embossed (the original numbers or letters may be detected on the back of the Card)?

- have a damaged hologram?

- have a Magnetic Stripe on the back on the Card?

- have an altered Magnetic Stripe?

- have an altered signature panel (e.g., appear discolored, glued or painted, or show erasure marks on the surface)?

- have “valid from” (effective) and “valid thru” (expiration) dates consistent with the sale date?

If you use an electronic terminal and swipe the Card, make sure the account number displayed on the terminal and/or the Sales Draft matches the number on the Card. If you cannot or do not verify the account number and accept the sale, you are subject to a Chargeback and could be debited for the amount of the transaction. **IF THE NUMBERS DO NOT MATCH, DO NOT ACCEPT THE CARD AS A FORM OF PAYMENT, EVEN THOUGH AN AUTHORIZATION CODE FOR THE MAGNETICALLY SWIPED CARD NUMBER MAY BE RECEIVED.**

### Fraud-Prone Merchandise Tips:

- Gift Cards, jewelry, video, stereo, computer and camera equipment, shoes and men’s clothing are typically fraud-prone because they can easily be resold.

- Be suspicious of high dollar amounts and transactions with more than one fraud-prone item, e.g., two VCRs, three gold chains, etc.

### If you suspect fraud:

- Call the Voice Authorization Center and ask to speak to a Code 10 operator.

- If the terminal does not display the Card number, call the POS Help Desk for terminal assistance.

**REMEMBER: AN AUTHORIZATION CODE ONLY INDICATES THE AVAILABILITY OF A CARDHOLDER’S CREDIT AT THE TIME OF THE TRANSACTION. IT DOES NOT WARRANT THAT THE PERSON PRESENTING THE CARD IS THE RIGHTFUL CARDHOLDER. IF PROPER PROCEDURES ARE NOT FOLLOWED AT THE TIME OF THE TRANSACTION, YOU ARE SUBJECT TO A CHARGEBACK AND YOUR ACCOUNT MAY BE DEBITED FOR THE AMOUNT OF THE TRANSACTION.**

## 28. Completion of Sales Drafts and Credit Drafts

You must prepare a Sales Draft or Credit Draft, as applicable, for each Card transaction and provide a copy of it or a transaction receipt or copy of the Draft to the Cardholder at the time the Card transaction is completed.

**28.1. Information Required.** All of the following information must be contained on a single page document constituting a Sales Draft or Credit Draft:

- Cardholder's account number must appear on the Sales Draft or Credit Draft in the manner required by applicable law and Card Organization Rules. NOTE: The copy of the Sales Draft or Credit Draft you provide to a Cardholder must not include the Cardholder's expiration date or any more than the last four digits of the Cardholder's Card number. Some states have similar requirements that also apply to the Sales Drafts or Credit Drafts you retain. Mastercard requires that Card expiration dates be excluded from the Sales Drafts or Credit Drafts your business retains. You are solely responsible to determine the Card account number truncation requirements and Card expiration date exclusion requirements for your state/ jurisdiction;

- Clear imprint of the Card. Whenever the term "imprint" is used it refers to the process of using a manual imprinting machine to make an impression of the Card on a Sales Draft; it does not include the printout from a printer attached to an electronic device. If you use a device (e.g., authorization/draft capture terminal, cash register, POS Device, etc.) to electronically capture the card information (magnetic swipe, chip or contactless data), you do not have to imprint the Card. HOWEVER, IF THE CARD HAS A CHIP OR MAGNETIC STRIPE AND THE POS DEVICE FAILS TO READ THE CHIP OR MAGNETIC STRIPE OR IF YOU ARE REQUIRED TO OBTAIN A VOICE AUTHORIZATION, YOU MUST ALSO USE A MANUAL INPRINTING MACHINE TO MAKE A CLEAR IMPRESSION OF THE CARD ON THE SAME SIDE OF THE SIGNED SALES DRAFT. IF YOU WORK IN THE FACE-TO-FACE SALES ENVIRONMENT, YOU MAY INCLUDE THE CARD VERIFICATION CODE IN THE AUTHORIZATION REQUEST FOR U.S. DOMESTIC KEY-ENTERED TRANSACTIONS IN LIEU OF TAKING A MANUAL CARD IMPRINT, WITH THE EXCEPTION OF DISCOVER. FAILURE TO FOLLOW THESE PROCEDURES WILL PREVENT YOU FROM DEFENDING A TRANSACTION IN THE EVENT THAT IT IS CHARGED BACK UNDER A CLAIM THAT THE RIGHTFUL CARDHOLDER DID NOT AUTHORIZE THE PURCHASE. ENTERING INFORMATION INTO A TERMINAL MANUALLY WILL NOT PREVENT THIS TYPE OF CHARGEBACK. FOR MAIL/TELEPHONE/INTERNET AND OTHER CARD NOT PRESENT ORDERS SEE SECTION 28.2. IF THE PHYSICAL CARD IS NOT PRESENT, ANOTHER FORM OF PAYMENT MUST BE REQUESTED;

- Cardholder's signature. However, eligible merchants participating in Mastercard's Quick Payment Service Program, Visa No Signature Required Program, American Express No Signature Program, Discover's No Signature Program, PayPal's No Signature Program, and/or certain Discover transactions (see note below) are not required to obtain the Cardholder's signature under certain conditions set forth by each program;

- Date of the transaction
- Amount of the transaction (including the approved currency of the sale);
- Description of the goods and/or services involved in the transaction (if there are too many items, combine them into one description; e.g. "clothing" instead of "one pair of pants, one shirt"). Do not carry information onto a second Sales Draft;
- Description of your merchandise return and Credit/refund policy;
- A valid authorization code; and
- Merchant's Doing Business As ("D/B/A") name and location (city and state required) and Merchant Identification Number.

When imprinting Sales Drafts, do not alter the Cardholder account number, circle or underline any information on the Sales Draft or alter a Sales Draft in any way after the transaction has been completed and

signed. Stray marks and other alterations on a Sales Draft may render it electronically unscannable, unreadable or illegible. This may result in a Chargeback or summary adjustment to your account.

For Discover sales using a paper Sales Draft (as opposed to Electronic Draft Capture), the paper sales draft must also contain the initials of your representative or employee that conducted the transaction. For Discover Credits, the Credit Draft must contain the signature of your authorized representative or employee that conducted the transaction.

Discover and PayPal Card Sales in an amount more than \$50.00 including sales taxes, tip, surcharge and/ or Cash Over amount are not eligible for treatment as No Signature Required Card Sales and you may lose a dispute of such a Card Sale if the Merchant fails to obtain the Cardholder's Signature on the Sales Draft.

Eligible merchants participating in Visa Easy Payment Service ("VEPS") (Visa's No Signature Required Program), Quick Payment Service and/ or Small Ticket are only required to provide the Cardholder with the completed Sales Draft when requested by the Cardholder.

**NOTE:** If you are a merchant operating under certain merchant category codes ("MCC") approved by the Card Organizations, you are not required to provide a transaction receipt, unless requested by the Cardholder or obtain the Cardholder's signature provided that you transmit the full track data in the authorization request and the sale amount is below the applicable program floor limit (Mastercard/ Discover/PayPal/ American Express/STAR is \$50.00 or less. Visa's program limit remains at \$25.00 or less excluding U.S. grocery stores (MCC 5411) and discount stores (MCC 5310) where the limit is \$50.00.

For Discover only include the last 4-digits of the merchant identification number.

For Mastercard, if you are operating vending machines under MCC 5499 (Miscellaneous Food Stores-Convenience Stores, Markets, Specialty Stores), you need not provide a receipt at the time a transaction is conducted. If a vending machine cannot provide a printed receipt, you must disclose and post instructions advising customers how a receipt may be obtained.

### Sales Drafts for American Express Transactions.

You must create a Sales Draft for every Charge. For each Charge submitted electronically, you must create an electronically reproducible Sales Draft. The Sales Draft (and a copy of the customer's receipt) must disclose your return and/or cancellation policies.

If the Cardholder wants to use different Cards for payment of a purchase, you may create a separate Sales Draft for each Card used. However, if the Cardholder is using a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge, nor shall you create more than one Sales Draft.

- Submit the Charge to American Express directly, or through your Processor, for payment.
- Retain the original Sales Draft (as applicable) and all documents evidencing the Charge, or reproducible records thereof, for the timeframe listed in our country-specific policies.
- Provide a copy of the Sales Draft to the Cardholder.

You may be able to create more than one Sales Draft if the purchase qualifies for a delayed delivery Charge. The retention time frame for Sales Drafts is twenty-four (24) months from the date you submitted the corresponding Charge to us. Pursuant to applicable law, truncate the Card number and do not print the Card's expiration date on the copies of Sales Drafts delivered to Cardholders. Truncated Card number digits must be masked with replacement characters such as "x," "\*" or "#," and not blank spaces or numbers.

If you submit Charges on paper, you must create a Sales Draft containing all of the following required data:

- Provide a copy of the Sales Draft to the Cardholder.
- Full Card number and expiration date (pursuant to applicable law), and

if available, Cardholder name.

- The date the Charge was incurred.
- The amount of the Charge, which must be the total price for the purchase of goods and services (plus applicable taxes and gratuities) purchased on the Card.
- A clear description of the goods or services purchased by the Cardholder.
- An imprint or other descriptor of your name, address, Merchant Identification Number and, if applicable, store number.
- The words “no refunds” if you have a no refund policy, and your return and/or cancellation policies.

#### **American Express No Signature Program/ No PIN Required Program.**

You may participate in the American Express No Signature/ No PIN Program. This No Signature/ No PIN Program allows establishments not to request a signature from Cardholders on the Sales Draft. To qualify for the No Signature/ No PIN Program, both the establishment and each Charge must meet the following criteria:

##### **Establishment Criteria.**

If your establishment is classified in an industry that accepts in-person Charges, then the establishment may participate in the No Signature/ No PIN Program with the exception of the following categories:

- Merchants who do not conduct in-person Charges (i.e., internet, mail order or telephone order).
- Prohibited transactions as set forth in the American Express Card Organization Rules or illegal transactions or activity, as described in Section 25.2.
- High Risk Merchants (e.g., establishments whose business type has had historically high occurrences of fraud and disputed charges with American Express or as compared to other similarly situated merchants (or both); examples include internet electronic services or nightclubs/lounges) as determined by American Express in its sole discretion.

- Merchants placed in American Express' Fraud Full Recourse Program.

##### **Charge Criteria:**

- The amount or Charge must meet the threshold established in American Express' country specific policy.
- The Charge Submission must include the appropriate indicator to reflect that the Card and the Cardholder were present at the point of sale.
- The Charge Submission must include a valid approval.

Under the No Signature/ No PIN Program, Chargebacks will not be exercised for such Charges based solely on the establishment's failure to obtain the Cardholder's signature at the point of sale. If a disproportionate amount or a number of disputed Charges under the No Signature/ No PIN Program occur, you must cooperate to reduce the amount or number of disputed Charges. If such efforts fail, you may be placed in American Express Chargeback programs, or your establishment's participation in the No Signature Program may be modified or terminated. The established threshold for charges to qualify under the No Signature/ No PIN Program is \$50.00 or less.

**28.2. Mail / Telephone/ Internet (Ecommerce) Orders and Other Card Not Present Sales.** You may only engage in mail/ telephone/ Internet orders provided they do not exceed the percentage of your total payment Card volume reflected on your Application. Failure to adhere to this requirement may result in cancellation of your Agreement. Merchants conducting Internet transactions using Mastercard or Visa Cards must have special codes (an “Electronic Commerce Indicator”) added to their authorization and settlement records. Discover does not use an Electronic Commerce Indicator. Failure to register as a merchant conducting Internet transactions can result in fines imposed by the Card Organizations.

Mail, Telephone, Internet and other Card Not Present transactions have a substantially higher risk of Chargeback. Since you will not have an

imprinted or magnetically swiped transaction and you will not have the Cardholder's signature on the Sales Draft as you would in a face-to-face transaction, you will assume all risk associated with accepting a mail/ telephone/Internet or other Card Not Present transaction. The following procedures, while they will not eliminate Chargebacks, are useful in reducing them and should be followed by you:

- Obtain the expiration date of Card.
- On the Sales Draft, clearly print the Cardholder's account number; effective and expiration dates; date of transaction; description of the goods and services; amount of the transaction (including shipping, handling, insurance, etc.); Cardholder's name, billing address and shipping address; authorization code; and merchant's name and address (city and state required); provided, that you must effect PAN Truncation, and must not include the expiration date, on the copy of the Sales Draft or Credit Draft that you provide to the Cardholder, or as required by applicable law, the Sales Draft or Credit Draft you retain.
- For mail orders, write “MO”; for telephone orders, write “TO” on the Cardholder's signature line.
- If feasible, obtain and keep a copy of the Cardholder's signature on file on a form authorizing you to submit telephone and mail order transactions.
- You should utilize the Address Verification Service for all Card Not Present Transactions (see note below). Address Verification is specifically required for all Discover Card Not Present Transactions. **If you do not receive a positive match through AVS, you may not process the Discover Card Not Present Transaction. If you do not have AVS, contact us immediately.**
- You should obtain the 3 or 4 digit Card Verification Code number and include it with each authorization request. Discover Card Organization Rules specifically require that you submit the Card Verification Code with the authorization request for all Discover Card Not Present Transactions.
- For telephone orders, it is recommended that written verification of the sale be requested from the Cardholder (sent by mail or fax).
- You may not submit a transaction for processing until after the merchandise has been shipped or the service has been provided to the customer. (The Card Organizations will permit the immediate billing of merchandise manufactured to the customer's specifications [i.e., special/ custom orders] provided the Cardholder has been advised of the billing details.)
- You should provide a copy of the Sales Draft to the Cardholder at the time of delivery. You must also obtain proof of delivery of the goods or services to the address designated by the Cardholder (i.e., by getting a signature of the Cardholder or person designated by the Cardholder through the delivery carrier). If the Cardholder visits one of your locations to receive the goods or services purchased, obtain an imprint of the card and the Cardholder's signature.
- Notify the Cardholder of delivery time frames and special handling and/ or of cancellation policies. Merchandise shipping dates must be within seven (7) days of the date Authorization was obtained. If, after the order has been taken, additional delays will be incurred (e.g., out of stock), notify the Cardholder. If you have not shipped the product by the seventh day, you must reverse the original authorization then reauthorize the transaction.
- You may not require a Cardholder to complete a postcard or other document that displays the Cardholder's account number in clear view when mailed.
- If you accept orders via the Internet, your web site must include the following information in a prominent manner:
  - Complete description of the goods or services offered
  - Description of your merchandise return and Credit/refund policy;
  - Customer service contact, including email address and/or telephone number;
  - Transaction currency (U.S. dollars, unless permission is otherwise

received from Servicers);

- Any applicable export or legal restrictions;
  - Delivery policy;
  - Consumer data privacy policy;
  - A description of the transaction security used on your website; and
  - The sale or disclosure of databases containing Cardholder account numbers, personal information, or other Card transaction information to third parties is prohibited.
- Address of merchant including country.
  - Cancellation policy; and
  - Date any free trial period ends.
- You may not accept Card Account Numbers through Electronic Mail over the Internet.

**NOTE:** Address Verification Service (AVS) (and other fraud mitigation tools such as Verified by Visa®, Mastercard® Secure Code, Discover Protect Buy, SafeKey, Card Validation Codes and Card Identification) does not guarantee against Chargebacks, but used properly, it assists you in reducing the risk of fraud by confirming whether certain elements of the billing address provided by your customer match the billing address maintained by the Issuer. AVS also may help you avoid incurring additional interchange expenses. AVS is a separate process from obtaining an Authorization and will provide a separate response. A transaction may be authorized regardless of the AVS response. It is your responsibility to monitor the AVS responses and use the information provided to avoid high-risk transactions.

#### **American Express Internet Charges.**

**Processing a Card Not Present Charge for American Express Transactions** you must:

- Submit the Charge to American Express;

For Card Not Present Charges, you must create a Sales Draft and ask the Cardholder to provide:

- Card number;
- Card expiration date;

In addition, it is recommended that you ask for:

- Name as it appears on the Card,
- Cardholder's billing address, and
- Ship-to address, if different from the billing address.

American Express will not Chargeback for such charges based solely upon a Card- member claim that he or she did not receive the disputed goods if you have:

- Verified the address to which the goods were shipped was the Cardholder's full billing address.
- Provided proof of delivery signed by the Cardholder or an authorized signer of the Card indicating the delivery of the goods or services to the Card- member's full billing address.

American Express will not be liable for actual or alleged fraudulent transactions over the internet and will have the right to Chargeback for those charges.

For Internet Orders, you must:

- Use any separate merchant numbers (seller ID) established for your internet orders in all of your requests for Authorization and Submission of charges.
- Provide us with at least one (1) month's prior written notice of any change in your internet address.
- Comply with any additional requirements that American Express provides from time to time. Additionally, if a disputed Charge arises involving a Card Not Present Charge that is an internet electronic delivery

Charge, American Express may exercise Chargeback for the full amount of the Charge and place you in any of its Chargeback programs.

**28.2.1. Discover Protocol for Internet Transactions.** Each Internet Discover Card transaction accepted by you and submitted to us shall comply with Discover standards, including, without limitation, Discover standards governing the formatting, transmission and encryption of data, referred to as the "designated protocol." You shall accept only those Internet Discover Card transactions that are encrypted in accordance with the designated protocol. As of the date of these Operating Procedures, the designated protocol for the encryption of data is Secure Socket Layer (SSL). We may, at our discretion, withhold Settlement until security standards can be verified. However, the designated protocol, including any specifications with respect to data encryption, may change at any time upon thirty (30) days advance written notice. You shall not accept any Internet Discover Card transaction unless the transaction is sent by means of a browser which supports the designated protocol.

**28.3. Customer Service Telephone Numbers** for Card types which are funded by individual non-bank Card Organizations include:

**American Express EDC Program 1-800-528- 5200**

**American Express 1-800-451-5817**

**JCB, International 1-800-366-4522**

**(For YEN and CAD currency only)**

**TeleCheck 1-800-366-1054**

**Voyager 1-800-987-6591**

**WEX 1-800-492-0669 (24 hours)**

#### **29. Data Security**

**THE FOLLOWING IS IMPORTANT INFORMATION REGARDING THE PROTECTION OF CARDHOLDER DATA. PLEASE REVIEW CAREFULLY AS FAILURE TO COMPLY CAN RESULT IN SUBSTANTIAL FINES AND LIABILITIES FOR UNAUTHORIZED DISCLOSURE AS WELL AS TERMINATION OF THIS AGREEMENT.**

**29.1. Payment Card Industry Data Security Standards (PCI DSS).** Visa, Mastercard, Discover and JCB and American Express aligned data security requirements to create a global standard for the protection of Cardholder data. The resulting Payment Card Industry Data Security Standards (PCI DSS) defines the requirements with which all entities that store, process, or transmit payment card data must comply. PCI DSS is the name used to identify those common data security requirements. The Cardholder Information Security Program (CISP) is Visa USA's data security program, the Site Data Protection (SDP) program is Mastercard's data security program and Discover Information Security and Compliance (DISC) is Discover's data security program, and the Data Security Requirements (DSR) is American Express' data security program, each based on the PCI DSS and industry aligned validation requirements. PCI DSS PCI compliance validation is focused on Merchant Equipment (as defined below) where Cardholder data is processed, stored, or transmitted, including:

- All external connections into your network (i.e., employee remote access, third party access for processing, and maintenance).
- All connections to and from the Authorization and settlement environment (i.e., connections for employee access or for devices such as firewalls, and routers); and
- Any data repository outside of the Authorization and settlement environment.

For the purposes of this Section 29, "Merchant Equipment" means any and all equipment you use in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, including, without limitation, all telecommunication lines and wireless connections and software, systems, point-of-sale terminals, card readers, merchandise and card scanners, printers, PIN pad devices and other hardware, whether owned by you, Merchant Providers or other Persons used by you.

The Card Organizations or we may impose fines or penalties, or restrict you from accepting Cards if it is determined that you are not compliant with the applicable data security requirements. We may in our sole discretion, suspend or terminate Services under this Agreement for any actual or suspected data security compromise. You agree that you will not request any Authorizations, submit any Sales Drafts or Credit Drafts until you have read and understood the PCI DSS, CISP, SDP and DISC for which you acknowledge we have provided you sufficient information to obtain, and you will be deemed to have done so upon our receipt of your request or submission of any Authorizations, Sales Drafts or Credit Drafts.

You must comply with the data security requirements described in this Section 29.1, including without limitation, PCI DSS, SDP, CISP and DISC, and any additional Card Organization requirements applicable to payment applications and PIN transactions.

Detailed information about PCI DSS, can be found at the PCI DSS Counsel's website: [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).

Detailed information about Visa's CISP program can be found at Visa's CISP website: [www.visa.com/cisp](http://www.visa.com/cisp).

Detailed information about Mastercard's SDP program can be found at the Mastercard SDP website: [www.mastercard.com/sdp](http://www.mastercard.com/sdp).

Detailed information about DISC can be found at Discover DISC website: <http://www.discovernetwork.com/fraudsecurity/disc.html>.

Detailed information can be found at American Express' website: [www.americanexpress.com/merchanttopguide](http://www.americanexpress.com/merchanttopguide).

**29.2. Data Security Requirements. You must comply with the data security requirements shown below:**

- You must install and maintain a secure firewall configuration to protect data.
- You must protect stored data and do encrypt transmissions of data sent across open/public networks using methods indicated in the Payment Card Industry Data Security Standard (PCI DSS) which is available at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).
- You must use and regularly update anti-virus software and keep security patches up-to-date.
- You must restrict access to data by business "need to know," assign a unique ID to each person with computer access to data and track access to data by unique ID.
- You must not use vendor-supplied defaults for system passwords and other security parameters.
- You must regularly test security systems and processes.
- You must maintain a policy that addresses information security for employees and contractors.
- You must restrict physical access to Cardholder information.
- You may not transmit Cardholder account numbers to Cardholders for Internet transactions.
- You cannot store or retain Card Verification Codes (three-digit codes printed in the signature panel of most Cards, and a four digit code printed on the front of an American Express Card) after final transaction authorization.
- You cannot store or retain Magnetic Stripe data, PIN data or AVS data. Only Cardholder account number, Cardholder Name and Cardholder expiration date can be retained subsequent to transaction authorization.
- You must destroy or purge all Media containing obsolete transaction data with Cardholder information.
- You must keep all systems and Media containing Card account, Cardholder or transaction information (whether physical or electronic) in a secure manner so as to prevent access by, or disclosure to any unauthorized party.
- For Internet transactions, copies of the transaction records may be

delivered to Cardholders in either electronic or paper format.

- You must use only those services and devices that have been certified as PCI DSS compliant by the Card Organizations and by vendors approved by your bank.

**29.3. Compliance Audits.** You may be subject to ongoing validation of your compliance with PCI DSS standards. Furthermore, we retain the right to conduct an audit at your expense, performed by us or a third party designated by us to verify your compliance, or that of your agents or Merchant Providers, with security procedures and these Operating Procedures. In any event, upon request, you shall provide us with copies of any and all reports developed by your forensic vendor(s), and you shall ensure that we have direct communication access with such forensic vendor(s).

**29.4. Immediate Notice Required.** In the event that transaction data is known or suspected of having been accessed or retrieved by any unauthorized Person, you must contact us immediately and in no event more than 24 hours after becoming aware of such activity.

**29.5. Investigation.** You must, at your own expense (i) perform or cause to be performed an independent investigation, including a forensics analysis performed by a certified forensic vendor acceptable to us and the Card Organizations in accordance with Card Organization standards, of any data security breach of Card or transaction data, (ii) provide a copy of the certified forensic vendors final report regarding the incident to us and the Card Organizations, (iii) perform or cause to be performed any remedial actions recommended by any such investigation, and (iv) cooperate with us in the investigation and resolution of any security breach. Notwithstanding the foregoing, if required by the Card Organization, we will engage a forensic vendor approved by a Card Organization at your expense. You must cooperate with the forensic vendor so that it may immediately conduct an examination of Merchant Equipment, and your Merchant Providers' procedures and records and issue a written report of its findings.

**29.6. Required Information for Discover or PayPal Security Breaches.** For security breaches involving Discover or PayPal transactions and/or track data, you must provide us and/or Discover or PayPal (as applicable) with the following information: (i) the date of breach; (ii) details concerning the data compromised (e.g., account numbers and expiration dates, Cardholder names and addresses, etc.); (iii) the method of such breach; (iv) your security personnel contacts; (v) the name of any person (including law enforcement) assisting you with your investigation of such breach; and (vi) any other information which we reasonably request from you concerning such breach, including forensics reports. You shall provide such information as soon as practicable, and the items listed in (i)-(v) shall be provided to us in any event within 48 hours of your initial notification to us of the breach.

**29.7. Merchant Providers.** The data security standards set forth in this Section 29 also apply to Merchant Providers. Before you engage any Merchant Provider, you must provide to us in writing (a) the Merchant Provider's legal name, (b) contact information, and (c) intended function. You acknowledge and agree that you will not use, or provide Card holder data access to, any Merchant Provider until you receive our approval and, if required, confirmation of our registration of that Merchant Provider with applicable Card Organizations. You must ensure that you and Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with all applicable Card Organization Rules, including without limitation, those requiring security of Cardholder data. You may allow Merchant Providers access to Cardholder data only for purposes authorized under and in conformance with the Card Organization Rules. You are responsible for all our costs and expenses associated with our review, approval, certification (and recertification as may required by us or the Card Organization Rules) and registration of any Merchant Providers.

Your use of the Services, equipment, software, systems, materials, supplies or resources of third parties regarding your Card transactions processing, including, without limitation, Merchant Providers and any third party lessors or licensors, will not affect your obligations under this Agreement to us which will apply to the same extent as if you had not used them.

We have no liability or responsibility to you or others regarding these third parties, even if we referred them to you. These third parties are your agents, and you are solely responsible for (i) determining whether they can meet your needs and standards, (ii) their actions, inactions and compliance with the terms of this Agreement and the Card Organization Rules and (iii) any and all fees, costs, expenses and other obligations owed to them by you or owed by them to us or to Card Organizations.

#### **29.8. Reserved.**

**29.9. Costs.** If you or a Merchant Provider (or other Person used by you) are determined by any Card Organization, regardless of any forensic analysis or report, to be the likely source of any loss, disclosure, theft or compromise of Cardholder data or Card transaction information (together, “**Compromised Data Events**”) and regardless of your belief that you have complied with the Card Organization Rules or any other security precautions and are not responsible for the Compromised Data Event, you must promptly pay us for all related expenses, claims, assessments, fines, losses, costs, and penalties and Issuer reimbursements imposed by the Card Organizations against us (together, “**Data Compromise Losses**”). In addition to the foregoing, you must also pay us promptly for all expenses and claims made by Issuers against us alleging your responsibility for the Compromised Data Event, apart from any claim procedures administered by the Card Organizations.

#### **30. Authorizations**

Each authorization request you submit to us must fully comply with the applicable provisions of this Agreement. Submission of an authorization request that does not fully comply may result in assessment of additional fees to you, a declined authorization response or a Chargeback to you.

An Authorization Approval Code only indicates the availability of funds on an account at the time the Authorization is requested. It does not guarantee or warrant that the person presenting the Card is the rightful Cardholder, the Charge is in fact valid or bona fide, nor is it a promise or guarantee that you will be paid for the Charge and not be subject to a Chargeback and/or adjustment.

A positive (approved) authorization response remains valid for:

- seven (7) days for Visa, Mastercard and American Express electronic processed transactions;
  - ten (10) days for Visa, Discover, and STAR electronic processed transactions subject to the following exception:
    - thirty (30) days for Visa, Discover and PayPal, twenty (20) days for STAR for the following Industries:
      - car rental;
      - airline and passenger railway;
      - lodging;
      - other Travel & Entertainment (T&E) categories.
    - seven (7) days for American Express electronic processed transaction subject to the following exception:
      - thirty (30) days for the Travel & Entertainment (T&E) industries.
- Delayed deliveries.

If delivery is longer than the allowable timeframes after the initial Authorization request, per payment type, the Authorization must be reversed for the unused portion and a new authorization obtained for the remaining amount prior to delivery:

- seven (7) days (Mastercard, Visa, American Express, and STAR transactions);

- ten (10) days (Discover Network and PayPal transactions);

For Card present transactions, it is highly recommended that you use your electronic authorization device to capture card data using the POS device by inserting the card (chip card), swiping the card (magnetic stripe) or tapping/ waving the card (contactless).

Do not attempt to obtain an Authorization Approval Code provided by someone other than us except as described in Section 30.4. If a Cardholder or another service provider provides you with either an authorization number or with a telephone number for obtaining Authorizations, the Authorization Approval Code you receive may not be valid. Even if the transaction is initially processed and funded, it may be charged back at a later date. Also, if you receive a purported Authorization Approval Code from someone other than us, we will not have the supporting records and will be unable to verify that you received the authorization if that is later questioned in a Chargeback.

If you obtain Address Verification, you must review the AVS response separately from the authorization response and make your own decision about whether to accept the transaction. A transaction can receive an Authorization Approval Code from the Card Issuer even if AVS is unavailable or reflects that the address provided to you does not match the billing address on file at the Issuer. If the authorized Cardholder disputes such a transaction, you will be responsible for the resulting Chargeback.

If you receive a Referral response to an attempted Authorization for American Express or Discover, you may not submit the transaction without calling for and receiving a voice authorization. After receiving a Referral response you may not attempt another Authorization on the same Card through your POS Terminal.

If you fail to obtain an Authorization Approval Code or if you submit a Card transaction after receiving a decline (even if a subsequent Authorization attempt results in an Authorization Approval Code), your transaction may result in a Chargeback and may be assessed fines or fees by the Card Organizations for which you will be responsible. These currently range from \$25 to \$150 per transaction. To avoid these costs and related Chargebacks, always obtain an Authorization Approval Code directly from your terminal before submitting a transaction for settlement.

You may not attempt to obtain multiple Authorizations for a single transaction, except when incremental Authorizations are allowed. Refer to Section 26.13 and [www.americanexpress.com/merchanttopguide](http://www.americanexpress.com/merchanttopguide) regarding additional provisions for specific industries. If a sale is declined, do not take alternative measures with the same Card to obtain an approval of the sale from other authorization sources. Instead, request another form of payment. If you accept and process a transaction that was declined, or attempt multi-transactions and/or multi-Authorizations, you are subject to a Chargeback, Card Organization Fines and/or cancellation of your Agreement. Do not discuss reason for decline with a Cardholder rather refer them to the customer service number on the back of the Card.

For Visa, Mastercard, Discover and PayPal transactions, Automated Fuel Dispensers must ensure that completion messages are submitted for Mastercard’s Card within 60 minutes of the Authorization.

For Visa, Mastercard, STAR, American Express, Discover and PayPal transactions, Merchants operating in the petroleum industry that conduct Card Sales at Automated Fuel Dispensers (AFDs), may submit an Authorization Request for \$1.00 to verify the validity of the Card presented. Under such circumstances, you must submit an Authorization Advice Message for the actual amount of the Card Sale within sixty (60) minutes of completion of fuel delivery regardless of whether you previously received a Partial Authorization Response or a positive Authorization Response for any other amount. If you do not complete the Card Sale following receipt of an approved Authorization Response for any amount, a request to cancel the Authorization Request must be submitted within sixty (60) minutes of the completion of fuel delivery.

**30.1. Card Not Present Transactions.** You must obtain the 3 digit Card Verification Code on the back of the Card (or the 4 digit Card Verification Code on the front of American Express Cards) and that include this code

with each Card Not Present authorization request unless the transaction is a recurring transaction. However, for recurring transaction Authorizations you submit the Card Verification Code only with the first authorization request, and not with subsequent recurring transaction authorization requests (See Section 26.7). **NOTE: For each Card Not Present Discover transaction, you must also verify the name and billing address of the Discover Cardholder using the Address Verification System (AVS).**

For Gateway merchants, it is your responsibility to ensure AVS/CVV2/CVC2 settings are appropriate to deter fraud for your particular type of business.

### **30.2. Authorization via Telephone (Other than Terminal/Electronic Device Users).**

- Call your designated voice authorization toll free number and enter the authorization information into the VRU using a touch tone phone or hold for an authorization representative.

- If advised to pick up a Card, use reasonable and peaceful means to do so, and do not take any action that will alarm or embarrass the Card presenter. You will bear all responsibility for claims, liabilities, costs and expenses as a result of any action by you, your employees, vendors or agents, that attempt to retain a Card without the Issuer's direct request or failure to use reasonable, lawful means in retaining or attempting to retain the Card. Forward the Card to: Attn: Rewards Department, P.O. Box 5019, Hagerstown, MD 21740. You may be paid a reward for the return of the Card.

- On occasion, the Authorization Center will ask you to obtain identification from the Cardholder before issuing an approval code. If you are instructed to do so, clearly write the appropriate identification source and numbers in the space provided on the Sales Draft unless otherwise prohibited by law.

- If the sale is declined, please remember that our operators are only relaying a message from the Issuer. The fact that a sale has been declined should not be interpreted as a reflection of the Cardholder's creditworthiness. The Cardholder should be instructed to call the Issuer.

### **30.3. Authorization via Electronic Devices.**

- If you use an electronic terminal to obtain Authorization Approval Code, all sales should be authorized through this equipment. Authorizations through other methods will result in additional charges to you.

- If your terminal malfunctions, refer to your Quick Reference Guide, if necessary, or call the POS Help Desk. The problem will either be corrected promptly or may require terminal programming or replacement. During the period in which your terminal is not functioning, remember to check it periodically since most terminal problems are temporary in nature and are quickly corrected.

- If a terminal is moved or if wires are disconnected, causing malfunction, call the POS Help Desk immediately and follow their instructions. You may be responsible for any service charges incurred for reactivation of the terminal.

- Until the terminal becomes operable, you must call your designated voice authorization toll free number and enter authorization information into the VRU using a touchtone phone. During this time, each transaction must be imprinted using a manual Imprinter machine. Failure to obtain an Authorization Approval Code and to imprint these transactions could result in a chargeback to your account.

**30.4. Third Party Authorization System.** If you have contracted with another authorization network to obtain Credit Card authorization, i.e., your terminal can Split Dial, liability resulting from discrepancies with that network must be resolved between you and that network.

We will not research Chargebacks resulting from Authorization Approval Codes obtained from another authorization service organization. Such Chargebacks will be passed through to you for resolution. If an authorization provided by a third party authorization system is challenged in a Chargeback, you must obtain proof (e.g., third party authorization logs)

from the authorization source and submit it to us within the time frame specified on the Chargeback documentation received.

IF YOU CONTRACTED TO USE ONE OF OUR AUTHORIZATION SERVICES, YOU MUST NOT USE ANOTHER THIRD PARTY AUTHORIZATION SYSTEM WITHOUT VERIFYING THEY ARE PROPERLY REGISTERED WITH THE NETWORKS BY YOUR BANK. THIS CAN BE DONE BY NOTIFYING CUSTOMER SERVICE AND HAVING THEM CHECK THE REGISTRATION STATUS. OTHERWISE, WE WILL BE UNABLE TO SUCCESSFULLY RESEARCH AND DEFEND ANY AUTHORIZATION RELATED CHARGEBACKS ON YOUR BEHALF. THIS DELAY WILL SIGNIFICANTLY DECREASE YOUR TIME TO RESEARCH AND PROVIDE PROOF OF AUTHORIZATION, THUS REDUCING YOUR OPPORTUNITY TO REVERSE A CHARGEBACK.

### **Third Party Vendors**

You must confirm Bank approval prior to using any vendor that is providing services that stores, processes, or transmits Cardholder data. This includes, but is not limited to: authorization, encryption key/software application loading, terminal driving/servicing (remote servicing), and shopping carts. This can be done by notifying Customer Service and having them check the registration status.

If you utilize another authorization network, you will be responsible for the downgrade of any transactions to a higher cost interchange that result from a mismatch of information to our systems and those of third party authorization networks (see Section 5.1).

If you use a third party authorization network, you must also comply with Section 29.7.

### **Call the following for other Card types:**

**American Express EDC Program 1-800-528-5200**

**JCB, International 1-800-522-9345**

**(For YEN and CAD currency only)**

**TeleCheck 1-800-366-5010**

**Voyager 1-800-987-6589**

**WEX 1-800-842-0071**

**Available 24 hours/day; 7 days/week**

All approved sales authorized in this manner must be entered manually as "post authorization" transactions into the terminal, once the terminal becomes operational. All credit transactions must be entered into the terminal for data capture. You may be subject to a Chargeback if you receive a Referral and subsequently receive an approval. To reduce the risk of such a Chargeback, the Card should be imprinted using a manual Imprinter machine. (For specific procedures on Electronic Data Capture, refer to the Terminal Operating Instructions/Users Guide.) If the terminal malfunctions for more than twenty-four (24) hours, contact Customer Service for further instructions on processing your transactions.

**30.5. Automated Dispensing Machines.** Records must be produced for all transactions whose origin and data capture are automated dispensing machines or Limited Amount Terminals. Records should include the Cardholder account number, merchant's name, terminal location, transaction date, identification of transaction currency, transaction type (purchase), authorization code and amount.

**30.6. Pre-Authorization for T&E (Travel & Entertainment) and Restaurant Merchants.** If you are a business engaged in providing travel and/or entertainment services (e.g., car rentals, hotels, motels, etc.) or a restaurant business, and engage in the practice of "pre-Authorization." You must comply with the following general procedures:

- A hotel, motel, or car rental merchant may obtain an estimated Visa, Mastercard, Discover or PayPal Authorization at the time of check-in.

- Restaurants must not add an estimated tip amount to the authorization request beyond the value of the goods provided, or services rendered, plus

any applicable tax.

- You must notify the Cardholder of the dollar amount you intend to “Pre-Authorize.”

- If the customer decides to use another form of payment (e.g., cash, check, etc.) you must promptly call the Voice Authorization Response Unit to delete the authorization hold. Provide the Cardholder’s account number, original dollar amount and date of the transaction, and the authorization code. If a new transaction takes place, a new imprinted and signed Sales Draft for the exact amount and a new authorization code for that amount must be obtained.

- **VEHICLE RENTAL PROVIDERS MAY NOT INCLUDE POTENTIAL VEHICLE DAMAGE OR INSURANCE DEDUCTIBLES IN ANY PREAUTHORIZATIONS.**

- If you receive a decline on a transaction, you must wait twenty four (24) hours before attempting to reauthorize. If you reauthorize prior to this time frame and receive an approval, you may be subject to a chargeback and a fine imposed by the Card Organizations.

- Hotels, motels, and car rental merchants are allowed up to a 15% variance above the amount authorized. If the final amount charged to the Cardholder exceeds the original estimate by more than 15% above the preauthorization, you must authorize any additional amounts, and all incremental authorization codes must be written in the authorization area along with the date of authorization and the amount authorized.

- Pre-Authorization for certain establishments services, are allowed up to a 20% (instead of 15%) variance above the amount authorized. If the final amount exceeds the amount “preauthorized” by more than 20%, you must authorize the additional amount. Estimating the Authorization amount to include a tip is prohibited. The authorization request should include only the amount associated with the bill presented to the consumer.

- You must obtain an Authorization for the initial estimated charges and then monitor the charges to ensure that the actual charges made do not exceed the estimated charges. If the actual charges exceed the amount of the initial estimated authorization (and any subsequent estimated authorizations), then you must secure a positive authorization for the additional amount. **NOTE:** Subsequent Authorizations should only be for the additional amount of total charges and must not include amounts already authorized.

- The estimated amount of any pre-authorization for lodging accommodations must be based on (i) the intended length of stay; (ii) the room rate; (iii) applicable taxes and service charges; and (iv) other miscellaneous charges as dictated by experience.

- If an authorization request is declined, no charges occurring after that date will be accepted for that Cardholder.

- You do not need to obtain a final Authorization if the total sum of charges (the final amount) does not exceed 20% of the previously authorized charges. You must record the dates, authorized amounts, and their respective Authorization Approval Codes on the Sales Draft(s).

**30.7. Discover and PayPal Procedure for Request for Cancellation of Authorization.** If a Discover or PayPal Card sale is cancelled or the amount of the transaction changes following your receipt of Authorization for the sale, you must process an authorization reversal via your POS Device or, for voice-approved authorizations for Discover Card sales, call your Authorization Center directly and request a cancellation of the Authorization. An Authorization may be cancelled at any time within ten (10) days of your receipt of the Authorization, but must be cancelled before the sales data relating to the transaction is submitted to us, after which the Authorization cannot be changed. For an Authorization cancellation, you must provide us with the following information, in this order:

- The Discover Merchant Identification Number used in the Authorization;
- The Card number;

- The original amount of the Authorization being cancelled;
- The new amount of the total transaction (if any);
- The original authorization code for the Authorization being cancelled;
- The expiration date of the Card; and
- A brief reason for the Authorization cancellation.

**30.8. Partial Authorization and Authorization Reversal.** Partial Authorization provides an alternative to a declined transaction by permitting a Card Issuer to return an Authorization approval for a partial amount, an amount less than the transaction amount requested by the merchant when the available card balance is not sufficient to approve the transaction in full. The Cardholder is able to use up the remaining funds on the Card and select another form of payment (i.e. another payment Card, cash, check) for the remaining balance of the transaction. For Mastercard transactions, partial authorization is optional for batch authorized e-commerce transactions, mail order, telephone order transactions and recurring payment transactions. For Discover transactions, partial Authorization support is optional for Card Not Present transactions. If you support partial Authorizations, a partial Authorization indicator must be included in each Authorization request.

An Authorization reversal must be submitted if the Authorization is no longer needed a partial amount of the total authorized is submitted for the settled transaction, or the Cardholder elects not to the purchase. The transaction sent for settlement must be no more than the amount approved in the partial Authorization response. In the event that you wish to support the partial Authorization functionality, you must contact us for additional rules and requirements. An authorization reversal may only be submitted if the transaction has not settled. Once the transaction has settled, only a Credit or refund can occur.

### **31. Submission/Deposit of Sales Drafts and Credit Drafts**

#### **31.1. Submission of Sales for Merchants Other Than Your Business.**

You may present for payment only valid charges that arise from a transaction between a bona fide Cardholder and your establishment. If you deposit or attempt to deposit transactions that arise from sales between Cardholders and a different business than the one approved by us in our agreement with you, then the transaction may be charged back, we may suspend or debit funds associated with all such transactions, and we may immediately terminate your account and the Agreement.

**31.1.1. Factoring.** Factoring is considered merchant fraud and strictly prohibited. Factoring is the submission of authorization requests and/or Sales Drafts by a merchant for Card transactions transacted by another business. If you submit Sales Drafts on behalf of another Person, you will suffer any losses associated with the disputes of any such Sales Draft and/or transaction. Also if any fraud is involved, you could face criminal prosecution.

**31.2. Timeliness.** In order to qualify for the lowest fees for Services, all Sales and Credit Drafts must be properly completed and submitted daily. If you have not received payment for submitted Sales Drafts after one (1) week from your normal payment date, contact Customer Service. Late Submission of Sales or Credit Drafts may result in increased interchange rates or fees or in a Chargeback to you.

**31.3. Electronic Merchants: Daily Batching Requirements & Media Submission.** Batches must be transmitted to us by the time indicated on the Additional Important Information Page in Section 40.2 of the Agreement in order to be processed on the date of transmission. Additionally, if you deposit via magnetic tape, electronic transmissions, or Electronic Data Capture terminal and have contracted to send the actual Sales Drafts and Credit Drafts to us for imaging and retrieval, the Sales Drafts the Media must be batched daily by register/terminal following the procedures below. Failure to do so may result in a processing fee and/or a Chargeback due to our inability to retrieve the Media as requested by the Issuer.

- A register/terminal Batch header form must be filled out for each Batch of Media.



- The Batch header must be imprinted with your Merchant Identification Card, and all areas completed properly (i.e., Batch number, date, amount, number of items, etc.).

- The Batch/deposit total must match to the settled/reconciled amount displayed on the terminal upon closing the Batch.

- Any discrepancies between the actual Media and electronic display must be reconciled and corrected before storing the Media (for merchants who contract to hold their Media) or before sending us the copies of the deposit. Otherwise, transactions may appear to be a new Submission and may be manually keyed (causing duplicate billing to Cardholders and resulting in Chargebacks) or we may not be able to retrieve an item when requested by the Issuer.

- It is your responsibility to ensure that the actual Media is batched correctly and, depending on the terms of your Agreement, either stored at your location or sent to Processor. (In some cases, the actual Media is sent daily to your head office, and forwarded to Processor for imaging.)

- You must confirm that your equipment has transmitted your Batches to us at least once daily. Even if your equipment is designed or programmed to close and submit Batches without your intervention, it is ultimately your responsibility to confirm that the Batches have been transmitted to us for processing.

**Note:** A batch is defined as: Sales Drafts and Credit Drafts received per day, per transaction date, per location (maximum, 500 documents per batch).

### 32. Settlement

Except as otherwise set forth in this Program Guide, your funds for Mastercard, Visa, Discover, PayPal and American Express transactions will ordinarily be processed and transferred to your Settlement Account within two (2) Business Days from the time a Batch is received by Processor if your Settlement Account is with the Bank. If your Settlement Account is not with the Bank or one of its affiliates, as otherwise agreed upon by the parties, your Mastercard/ Visa/ Discover/ PayPal transactions will ordinarily be processed and transferred to the Federal Reserve within two (2) Business Days from the time a Batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

If you have been classified by Discover as having a Discover Direct Strategic Relationship with Discover, we will not acquire your Discover transactions and they will be subject to your agreement with Discover. If you have a direct relationship with PayPal, we will not acquire your PayPal in-store transactions (we will simply pass transaction data to PayPal) and they will be subject to your agreement with PayPal.

You acknowledge and agree that if we had not agreed or do not acquire transactions for any Card type (i) we have no liability or responsibility whatsoever for the settlement of or disputes regarding those transactions and (ii) you will pursue directly with the related Card Organization all claims and disputes regarding those transactions. You agree to pay us per item processing, authorization and other fees in the Application for any non-acquired transaction services you receive from us. For the avoidance of doubt, with respect to the payments you have elected to accept on your Merchant Processing Application, you authorize us to submit Card transactions to, and receive settlement for such transactions from, the applicable Card Organizations on your behalf.

### 33. Refunds/Exchanges (Credits)

#### 33.1. Refunds.

- You must promptly complete and submit a Credit Draft for the total amount of the Credit which must include the following information:

- The account number;
- The Cardholder's name;
- Your name, city, state and Merchant Identification Number;
- A description of the goods or services;
- The transaction date of the Credit;

- The total amount of the Credit; and

- For Discover / PayPal in-store Card transactions, the approved currency used and the signature of your authorized representative or employee.

Note: PayPal is limited to U.S. currency.

- You cannot process a Credit transaction that does not correspond to a refund on a previous transaction on the original Sales Draft.

- Full refunds must be for the exact dollar amount of the original transaction including tax, handling charges, etc. (You must identify the shipping and handling charges incurred.) The refund amount may not be for more than the original Card sale amount.

- All dollar amounts and other handwritten information must be clearly written. (Stray marks on the Credit Draft will render it unscannable/ illegible.)

- Do not circle or underline any information on the Credit Draft.

- Imprint the Credit Draft with the same Card used by the Cardholder to make the original purchase when applicable. You should not credit an account that differs from the account used for the original transaction.

- Never give cash or check Credit refunds or other consideration for Card sales with the exception of the following type of Visa transactions only:

- Visa Easy Payment Service Transaction (Visa's 'no signature required' program);

- A gift purchased as a Mail/Phone Order transaction; or

- Visa prepaid Card transaction if the Cardholder states that the Visa prepaid Card has been discarded.

- Have the Cardholder sign the Credit Draft, give the Cardholder the appropriate copy, and deposit the Credit Draft immediately. Failure to process a credit within five (5) calendar days may result in a Chargeback.

- Authorization is not required for Credits.

- You cannot intentionally submit a sale and an offsetting Credit at a later date solely for the purpose of debiting and crediting your own or a customer's account.

- You are responsible for paying all refunds submitted to us on your merchant account. We assume no responsibility for verifying any Credits or refunds.

- Do not process a Credit transaction once a Chargeback is received. Credits issued after a Chargeback has been received may not be recoverable and the merchant would be financially responsible for the Credit as well as the Chargeback.

- **YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

- For Discover only include the last 4 digits of the merchant identification number.

#### 33.1.1. Processing a Credit for American Express Transactions.

These are additional requirements for a Credit for purchases or payments made on an American Express Card.

#### To issue a Credit, you must:

1. Compare the last four digits on the Sales Draft against the Card presented (when applicable).
2. Have the Cardholder sign the Credit Draft (when applicable).
3. Provide a copy of the Credit Draft to the Cardholder.

You must not issue a Credit when there is no corresponding Charge, nor issue a Credit in exchange for cash or other consideration from a Cardholder. You must submit all Credits under the establishment where the Credit originated. A Credit must be issued in the currency in which the original Charge was submitted to us. You must issue Credits to the Card

used to make the original purchase; however, if the Credit is for the return of a gift by someone other than the Cardholder who made the original purchase, apply your usual refund policy.

If the Cardholder indicates that the Card on which the purchase was originally made is no longer active or available, do the following:

- For all Cards except Prepaid Cards, advise the Cardholder that you must issue the Credit to that Card. If the Cardholder has questions, advise him or her to call the customer service number on the back of the Card in question.

- If the inactive or unavailable Card is a Prepaid Card, apply your usual refund policy for returns.

If you issue a Credit, American Express will not refund the discount or any other fees or assessments previously applied on the corresponding Charge. The discount on Chargebacks will not be refunded.

Your return and cancellation policies must be fair and clearly disclosed at the time of sale in compliance with applicable law. Your policies must be conveyed to the Cardholder prior to completion of the Charge and printed on a copy of a receipt or Sales Draft. Your refund policy for purchases on the American Express Card must be at least as favorable as your refund policy for purchases made with other payment products or other payment methods.

#### **Return Policy recommendations.**

Provide clear return instructions for your customers, including the following information:

- Customer service telephonenumber.
- Reference number for the return.
- Expected processing time for the Credit.
- Return address, preferably on a pre-formatted shipping label (if applicable).

You must submit all Credits to us within seven (7) days of determining that a Credit is due.

#### **Cancellation Policy Recommendations.**

- Provide document cancellation policy and terms and conditions on the contract the Cardholder signs, or on your website, as applicable.
- Provide Cardholder with a cancellation number that can be tracked in your records.

#### **American Express Return Policy For Prepaid Products.**

If your return policy for the purchase of prepaid products is different from your standard return policy, you must ensure that such prepaid product-specific return policy is clearly disclosed to the Cardholder at the time of purchase in accordance with applicable law and also coded to print on all receipts and copies of Sales Drafts you provide to Cardholders.

#### **33.2. Exchanges.**

- No additional paperwork is necessary for an even exchange. Just follow your standard company policy.
- For an uneven exchange, complete a Credit Draft (follow the procedures outlined in Section 33.1.) for the total amount of only the merchandise returned. The Cardholder's account will be credited for that amount. Then, complete a new Sales Draft for the total amount of any new merchandise purchased.

#### **34. Retention of Records For Retrievals and Chargebacks.**

##### **34.1. Retain Legible Copies.**

For Visa, Mastercard and STAR: You must securely retain legible copies of all Sales and Credit Drafts or any other transaction records for a period of thirteen (13) months from the date of each transaction and a period of five (5) years for the retention of healthcare Sales Drafts and Credit Drafts. The Sales Draft you retain must comply with all requirements (see Section 28.1).

For Discover: You must securely retain legible copies of all Sales and Credit Drafts or any other transaction records for the longer of (i) 365 days or (ii) the resolution of any pending or threatened disputes, claims, disagreements or litigation involving the Card transaction. You must also keep images or other copies of Sales Drafts for no less than three (3) years from the date of the Discover transaction.

For PayPal: the longer of (i) (A) one (1) year from the transaction date, or (B) if the transaction date was subject to dispute, two (2) years from the transaction date or (ii) the time period required by applicable law.

For American Express: You must submit the Credit to your Processor, for payment. You must securely retain legible copies of all Sales Drafts and Credit Drafts or any other transaction records for 24 months from the date you submitted the corresponding Credit to us. You must also provide a copy of the Credit Draft to the Cardholder or as required by applicable law, truncate the Card Number and do not print the Card's expiration date on copies of Credit Drafts delivered to the Cardholder.

**34.2. Provide Sales and Credit Drafts.** You must provide all Sales Drafts and Credit Drafts or other transaction records requested by us within the shortest time limits established by Card Organization Rules. You are responsible for any deficiencies in Card transaction data transmitted or otherwise delivered to us.

#### **35. Lost/Recovered Cards**

If a card is left behind and remains unclaimed, you should call the appropriate payment organization's Customer Service team via the number below or the number printed on the back of the Card and they will instruct you on how to handle it:

Visa: 1-800-336-8472

Mastercard: 1-800-826-2181

Discover: 1-800-DISCOVER (1-800-347-2683)

American Express: 1-800-992-3404

PayPal: 1-877-569-1113

#### **36. Chargebacks, Retrievals and Other Debits**

##### **36.1. Chargebacks.**

**36.1.1. Generally.** Both the Cardholder and the Issuer have the right to question or dispute a transaction. If such questions or disputes are not resolved, a Chargeback may occur. A Chargeback is a Card transaction that is returned to us by the Card Issuer. As a result, we will debit your Settlement Account or settlement funds for the amount of each Chargeback. It is strongly recommended that, whenever possible, you contact the Cardholder directly to resolve a disputed transaction or Chargeback, unless the dispute involves a Discover Cardholder, in which case Discover rules and regulations expressly prohibit you from contacting the Discover Cardholder regarding the dispute. You are responsible for all Chargebacks, our Chargeback fees, and related costs arising from your transactions.

**36.1.2. Transaction Documentation Requests.** In some cases, before a Chargeback is initiated, the Issuer will request a copy of the Sales Draft via a request for transaction documentation. We will forward the request to you. You must respond to the request within the time frame and manner set forth in the request. We will then forward your response to the Issuer. If you fail to timely respond, we will so notify the Issuer and a Chargeback may result. Upon receipt of a transaction documentation request, immediately retrieve the requested Sales Draft(s) using the following guidelines:

- Make a legible copy, centered on 8-1/2 x 11-inch paper (only one (1) Sales Draft per page).
- Write the 'case number' from the request for transaction documentation on each copy/page.
- If applicable, make copies of a hotel folio, car rental agreement, or mail/phone/internet order form, or other form of receipt.
- If a Credit transaction has been processed, a copy of the Credit Draft is

also required.

- Letters are not acceptable substitutes for Sales Drafts.
- Respond via Dispute Manager, fax or mail legible copies of the Sales Draft(s) to the fax number or mail address provided on the request form. You may be charged for the fax or mail options.
- If you fax your response, please set your fax machine to print your fax number and name on the documents that you send. We can use this information to determine where the documentation received originated from should additional research be required.
- Additionally, please set the scan resolution on your fax machine to the highest setting. The higher resolution setting improves the clarity of characters and graphics on the documentation transmitted and helps reduce the number of illegible fulfillments and/or Chargebacks.

If we do not receive a clear, legible and complete copy of the transaction documentation within the timeframe specified on the request, you may be subject to a Chargeback for which there may be no recourse.

A handling fee may be charged by the Issuer and will be debited from your Settlement Account or settlement funds if a Transaction Documentation Request results from a difference in the following information on the Sales Draft and the transmitted record: merchant name or an incorrect city, state, foreign country and/or transaction date.

**36.13. Chargeback Process.** Regardless of whether you respond to a Transaction Documentation Request, a Chargeback may be debited to your Settlement Account for numerous reasons (see below). If the Card Issuer submits a Chargeback, we will send you a Chargeback notification, which may also include a request for transaction documentation. **Due to the short time requirements imposed by Mastercard, Visa, Discover, PayPal and American Express, it is extremely important that you respond to a Chargeback notification and Transaction Documentation Request within the time frame set forth in the notification.** Do not process a credit transaction once a Chargeback is received; the Issuer will Credit the Cardholder's account. Credits issued after a Chargeback has been received, may not be recoverable and you may be financially responsible for the Credit as well as the Chargeback. If the information you provide is both timely and, in our sole discretion, sufficient to warrant a representation of the transaction and/or reversal of the Chargeback, we will do so on your behalf. However, representation and/or reversal is ultimately contingent upon the Card Issuer and/or Cardholder accepting the transaction under applicable Card Organization guidelines. Representation or reversal is not a guarantee that the Chargeback has been resolved in your favor.

For Visa Chargebacks: If we reverse the Chargeback and represent the transaction to the Issuer, the Issuer, at its sole discretion, may elect to submit the matter for arbitration before Visa. Visa currently charges a \$250 filing fee and a \$250 review fee. Whether or not a decision is made in your favor, you will be responsible for all such fees and charges, and any other applicable fees and charges imposed by Visa, as they may change from time to time. Such fees and charges will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

For STAR Chargebacks: If we reverse the Chargeback and re-present the transaction to the Card issuing bank, the Card issuing bank, at its sole discretion, may elect to submit the matter for arbitration before STAR. Whether or not a decision is made in your favor, you will be responsible for all fees and charges relating to that arbitration and any other applicable fees and charges imposed by STAR. Such fees and charges will be debited from your Settlement Account or Settlement funds in addition to the Chargeback.

For Mastercard Chargebacks: If we reverse the Chargeback and represent the transaction to the Card Issuer, at its sole discretion, may elect to resubmit the Chargeback. In such event, at the discretion of Processor, we will debit your Settlement Account or settlement funds for the Chargeback. However, if you feel strongly that it is an invalid Chargeback, we may, on your behalf and at your request, submit the matter for arbitration before

Mastercard. Mastercard currently charges a \$250 filing fee and a \$250 review fee. Whether or not a decision is made in your favor, you will be responsible for all such fees and charges, and any other charges imposed by Mastercard, as they may change from time to time. Such fees and charges will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

For Discover and PayPal Chargebacks: If Discover or PayPal rejects our representation request and you feel strongly that the Chargeback is invalid, we may, at the discretion of Processor and on your behalf and at your request, submit the matter for dispute arbitration before Discover or PayPal. Discover and PayPal charges acquirers fees for representation requests and matters submitted to Discover or PayPal for arbitration. We, in turn, may charge you fees for these items.

If the Chargeback is not disputed within the applicable time limits set forth by Mastercard, Visa, Discover, PayPal and American Express rules and regulations, reversal rights are forfeited. Our only alternative, for Visa and Mastercard non-fraud Chargeback reason codes, is to attempt a "good faith collection" to the Issuer on your behalf. This process can take up to six (6) months and must meet the Issuer's criteria (e.g., at or above a set dollar amount. Good faith collection attempts are not a guarantee that any funds will be collected on your behalf. Issuers normally charge good faith collection fees, which are deducted from the transaction amount if accepted in addition to any processing fees that are charged by us.

For American Express Chargebacks: You may request a Chargeback reversal if the Chargeback was applied in error. In order for us to consider your request, you must have responded to the original inquiry within the specified timeframe, request the

Chargeback reversal no later than 20 days after the date of the Chargeback, and provide all supporting documentation to substantiate the error.

**Note:** Discover and American Express do not offer good faith collection for Acquirers.

Mastercard and Visa Card Organization Rules require that a merchant make a good faith attempt and be willing and able to resolve any disputes directly with the Cardholder. Discover rules and regulations, however, prohibit you and/or us from contacting the Cardholder directly regarding dispute(s) or any other matter, except as required for acceptance of Discover transactions, and require you and/or us to submit any responses to dispute notices directly to Discover.

Due to Card Organization Rules, you may not re-bill a Cardholder after a Chargeback is received for that transaction, even with Cardholder authorization.

We strongly recommend that you include a detailed rebuttal letter along with all pertinent documents when responding to a transaction request or a Chargeback notification (e.g., rental agreement, imprinted portion of the invoice or Sales Draft; the portion signed by the Cardholder; and the area where the authorization codes, with amounts and dates, are located).

Due to the short time frames and the supporting documentation necessary to successfully (and permanently) reverse a Chargeback in your favor, we strongly recommend the following:

- Avoid Chargebacks by adhering to the guidelines and procedures outlined in these Operating Procedures.
- If you do receive a Chargeback, investigate, and if you dispute the Chargeback, submit the appropriate documentation within the required timeframe.
- Whenever possible, contact the Cardholder directly to resolve the dispute, unless the dispute relates to a Discover Cardholder, in which case direct contact with the Discover Cardholder regarding the dispute is prohibited by their Card Organization Rules.
- If you have any questions, call Customer Service.

**36.14. Chargeback Reasons.** This section outlines the most common types of Chargebacks. This list is not exhaustive. For ease of understanding,

we have combined like Chargebacks into six groupings. We have included recommendations on how to reduce the risk of Chargebacks within each group. These are recommendations only, and do not guarantee that you will be able to prevent Chargebacks.

**1. Authorization Issues:** Proper Authorization procedures were not followed and valid Authorization was not obtained.

**The following scenarios could cause an Authorization Related Chargeback to occur:**

- Authorization not obtained.
- Authorization was declined.
- Transaction processed with an expired card and Authorization was not obtained.
- Transaction was processed with an invalid account number and Authorization was not obtained.
- Card Recovery Bulletin (CRB) or Exception File was not checked (transactions below floor limit).

**To reduce your risk of receiving an Authorization Related Chargeback:**

- Obtain valid Authorization on the day of the transaction.
- Card Present Transactions-Authorization must be obtained on the transaction date for the amount settled.
- Card Not Present Transactions-Authorization must be obtained on the transaction date for the amount settled. However, if merchandise is being shipped, Authorization must be obtained within seven calendar days of the transaction ship date.
- If a declined response is received, then request another form of payment from the Cardholder.
- If a Referral response is received, then follow proper voice procedures to obtain a valid Authorization and obtain an imprint of the card
- "Pick-up" response indicates that the Issuer is requesting for the card to be retained and returned back to them. The Credit Card should not be accepted for payment. Alternatively, you should call the appropriate payment organization's Customer Service team via the number below or the number printed on the back of the Card and they will instruct you on how to handle it.
- Merchants should not exceed any predetermined thresholds for specific terminal types as specified by each Card Organization.

**2. Cancellations and Returns:** Credit was not processed properly or the Cardholder has cancelled and/or returned items.

**The following scenarios could cause a Cancellation and Return Related Chargeback to occur:**

- Cardholder received damaged or defective merchandise.
- Cardholder continued to be billed for cancelled recurring transaction.
- Credit transaction was not processed.

**To reduce your risk of receiving a Cancellation and Return Related Chargeback:**

- Issue Credit to the Cardholder for the same account as the purchase in a timely manner.
- Do not issue Credit to the Cardholder in the form of cash, check or in-store/merchandise Credit as we may not be able to recoup your funds in the event the transaction is charged back.
- Ensure customers are fully aware of the conditions for recurring transactions. Cancel recurring billings as soon as notification is received from the Cardholder or as a Chargeback, and Issue a Credit as needed to the cardholder in a timely manner.
- Pre-notify the Cardholder of billings within 10 days (Domestic) and 15 (International) prior to billing, allowing the Cardholder time to cancel the transaction.

• Provide proper disclosure of your refund policy for returned/cancelled merchandise, or services to the Cardholder at the time of transaction in accordance with applicable law.

- Card present, Cardholder signed the Sales Draft containing disclosure.
- If applicable, the words "NO EXCHANGE, NO REFUND," etc. must be clearly printed in ¼ inch lettering on the Sales Draft near or above the Cardholder signature.
- Ecommerce, provide disclosure on website on same page as check out showing Cardholder must click to accept prior to completion.
- Card Not Present, provide cancellation policy at the time of the transaction.
- Provide cancellation numbers to Cardholder's when lodging services are cancelled.
- Ensure delivery of the merchandise or services ordered to the Cardholder.

**3. Fraud:** Transactions that the Cardholder or authorized user claims are unauthorized; the account number is no longer in use or is fictitious, or the merchant was identified as "high risk".

**The following scenarios could cause a Fraud Related Chargeback to occur:**

- Multiple transactions were completed with a single card without the Cardholder's permission.
- Counterfeit card was utilized and proper acceptance procedures were not followed.
- Authorization was obtained; however, full track data was not transmitted.
- Cardholder states that they did not authorize or participate in the transaction.

**NOTE:** Visa Fraud:

- Complete a retrieval request and/or provide a sales slip that contains all required data elements; and
- Respond to all retrieval requests with a clear legible copy of the transaction document that contains all required data elements within the specified timeframe.

**To reduce your risk of receiving a Fraud Related Chargeback:**

**Card Present Transactions:**

- Pre-notify the Cardholder of billings within 10 days.
- American Express customers have the option to receive written notification of the recurring transaction at least (10) days prior to submitting, or any time the Charge amount exceeds a maximum amount that has been set by the cardholder.
- Obtain an Authorization for all transactions.
- If you are utilizing an electronic device to capture Card data information, swipe all Card transactions through your electronic authorization device to capture Cardholder information and ensure the displayed Cardholder number matches the number on the Card.
- You should avoid keying the Card data into your electronic authorization device unless you are unable to capture the Card data through one of the above methods. If you do not key the Card data into your electronic authorization device, it is highly recommended that you also key in the 3 or 4 digit Verification Code. Otherwise, you should imprint the card using a valid imprinting device that will capture the embossed Card and merchant information. Do not alter the imprint on the draft in any way. Manually entering the information into the terminal does not protect you from this type of Chargeback. All pertinent information relating to the transaction must be written on the manually imprinted draft (transaction date, dollar amount, authorization code and merchandise description) along with the Cardholder signature.

**Note:** Do not imprint on the back of a signed Sales Draft. The imprint must be on the transaction document that contains all transaction

elements to prove the Card was present at the time of the transaction.

- Obtain the Cardholder signature for all transactions; ensure the signature on the Sales Draft matches the signature on the back of the Card.
- Process all transaction one time and do not Batch out transactions multiple times.
- Educate staff on procedures to eliminate point of sale (POS) fraud.

**Card Not Present Transactions:**

- Participation in recommended Fraud Prevention Tools.
- Verified by Visa Program.
- Mastercard SecureCode.
- Discover ProtectBuy Program.
- American Express SecureKey Program.
- Address Verification Services.
- Use of Card Verification Code.

**Note:** While transactions utilizing these tools may still be disputed, the service may assist you with your decision to accept the Card for the transaction.

- Ensure you ship to the AVS confirmed address (bill to and ship to should match).
- Obtain Authorization for all transactions.
- Ensure merchant descriptor matches the name of the business and is displayed correctly on the Cardholder statement.
- Ensure descriptor includes correct business address and a valid customer service number.
- American Express offers fraud mitigation tools for both Card Present and Card Not Present transactions to help verify that a Charge is valid. These tools help you mitigate the risk of fraud at the point of sale, but are not a guarantee that a Charge is in fact valid or bona fide, or that you will not be subject to a Chargeback. For optimal use of the tools, please visit American Express' Fraud Prevention Information at: [www.americanexpress.com/fraudinfo](http://www.americanexpress.com/fraudinfo).

**4. Cardholder Disputes:** Merchandise or services not received by the Cardholder, Merchandise defective or not as described.

**The following scenarios could cause a Cardholder Dispute Chargeback to occur:**

- Services were not provided or merchandise was not received by the Cardholder.
- The Cardholder was charged prior to merchandise being shipped or merchandise was not received by agreed upon delivery date or location.
- Cardholder received merchandise that was defective damaged or unsuited for the purpose sold, or did not match the description on the transaction documentation/verbal description presented at the time of purchase.
- Cardholder paid with an alternate means and their Card was also billed for the same transaction.
- Cardholder cancelled service or merchandise and their Card was billed.
- Cardholder billed for a transaction that was not part of the original transaction document.

**To reduce your risk of receiving a Cardholder Dispute Related Chargeback:**

- Provide Services or Merchandise as agreed upon and described to the cardholder; clearly indicate the expected delivery date on the sales receipt or invoice.
- Contact the cardholder in writing if the merchandise or service cannot be provided or is delayed, and offer the cardholder the option to cancel if your internal policies allow.

• In the event that the cardholder received defective merchandise or the merchandise received was not as described; resolve the issue with the cardholder at first contact.

- If the merchandise is being picked up by the Cardholder, have them sign for the merchandise after inspection that it was received in good condition.
- Do not Charge the Cardholder until the merchandise has been shipped, ship according to the agreed upon terms and obtain signed Proof of Delivery from the Cardholder.
- If unable to provide services or merchandise, issue credit to cardholder in a timely manner.
- Accept only one form of payment per transaction and ensure the cardholder is only billed once per transaction.
- Do not bill Cardholder for loss, theft or damages unless authorized by the Cardholder.

**5. Processing Errors:** Error was made when transaction was processed or it was billed incorrectly.

**The following scenarios could cause a Processing Error Chargeback to occur:**

- Transaction was not deposited within the Card Organization specified timeframe.
- Cardholder was issue a Credit Draft; however, the transaction was processed as a sale.
- Transaction was to be processed in a currency other than the currency used to settle the transaction.
- The account number or transaction amount utilized in the transaction was incorrectly entered.
- A single transaction was processed more than once to the Cardholders account.
- Cardholder initially presented card as payment for the transaction; however Cardholder decided to use an alternate form of payment.
- Limited amount or self-service terminal transaction was processed for an amount which is over the pre-determined limit.

**To reduce your risk of receiving a Processing Error Related Chargeback:**

- Process all transactions within the Card Organization specified timeframes.
- Ensure all transactions are processed accurately and only one time.

**Note:** In the event that a transaction was processed more than once; immediately issue voids, transaction reversals or Credits.

- Ensure that credit transaction receipts are processed as Credits and sale transaction receipts are processed as sales.
- Ensure all transactions received a valid Authorization Approval Code prior to processing the transaction and obtain a legible magnetic swipe or imprinted Sales Draft that is signed.
- Do not alter transaction documentation or make any adjustments unless the Cardholder has been contacted and agrees to any modifications of the transaction amount.

• Ensure limited amount, self-service and automated fuel dispenser terminals are set properly to conform to the pre-determined limits.

**Chargebacks due to non-receipt of information Description:**

- The transaction documentation was not provided to fulfill the retrieval request.
- The retrieval request was fulfilled with an illegible sales draft or was an invalid fulfillment (incorrect sales draft or the sales draft did not contain required information that may include signature).
- The Cardholder does recognize or is unfamiliar with the transaction

due to the merchant name and/or location not matching the name and/or location where the transaction took place.

#### **Recommendations to reduce such risk of Chargebacks:**

- Provide a clear and legible copy of the sales draft that contains all required data elements within the required timeframe that is specified on the retrieval request.
- Ensure that the most recognizable merchant name, location and/or Customer Service phone number is provided on all transactions.
- Retain copies of all transaction documentation for the required timeframe that is specified by each payment organization.
- Develop efficient methods to retrieve transaction documentation to maximize ability to fulfill request.

#### **36.2. Summary (Deposit) Adjustments / Electronic Rejects.**

Occasionally, it is necessary to adjust the dollar amount of your summaries/Submissions (deposits) and Credit or debit your Settlement Account or settlement funds accordingly. The following is a list of the most frequent reasons for Summary (Deposit) Adjustments/Electronic Rejects:

- Your summary reflected an arithmetic error.
- Submitted sales not included in your Agreement (e.g., American Express).
- The dollar amount is unreadable/ illegible.
- The Cardholder's account number is unreadable/ illegible.
- Duplicate Sales Draft submitted.
- Card number is incorrect /incomplete.
- Summary indicated Credits, but no Credits were submitted.

**36.3. Disputing Other Debits and Summary Adjustments.** In order to quickly resolve disputed debits and Summary Adjustments, it is extremely important that the items listed in this section be faxed or sent to the address listed on the notification.

If the Summary Adjustment is for an unreadable or incorrect Cardholder account number, resubmit the corrected Sales Draft with your next deposit. Also, if the transaction is over thirty (30) calendar days old, you must reauthorize and obtain a valid Authorization Approval Code.

A clear and legible copy of the Sales Draft containing the following should be obtained from your files:

- Date of sale/Credit;
- Cardholder's account number, name and signature;
- Total amount of the sale and description of goods and services; and
- Date and Authorization Approval Code.

Include a dated cover letter detailing the reasons for requesting a review of the debit or Summary Adjustment and documentation to support your dispute. (You should retain a copy of the correspondence and all documentation for your files.) If the inquiry is related to prior correspondence, be sure to include the control number we previously used.

Immediately fax or mail the Sales Draft or Credit Drafts to the fax number or address provided on your notification letter.

If you have any questions, please call the Customer Service number provided on the last page of this Program Guide. If a Customer Service Representative informs you that additional documentation is required in order to fully review the item, please immediately submit your rebuttal and transaction documentation to the fax number or address listed on the debit notification.

#### **37. Account Maintenance**

**37.1. Change of Settlement Account Number.** If you change the Settlement Account in which you receive the proceeds of your transactions, you must call Customer Service or your Account Manager immediately. If you accept payment types other than Visa, Mastercard, Discover, PayPal and American Express (such as where you have a direct relationship with

American Express, and TeleCheck Services), you are also responsible for contacting the Card Organizations or companies governing those Cards to notify them of this change.

**37.2. Change in Your Legal Name or Structure.** You must call Customer Service or your Account Manager and request a new Agreement.

**37.3. Change in Company DBA Name, Address or Telephone/ Facsimile Number.** To change your company or location DBA name, address (or e-mail address), or telephone/facsimile number, you must send the request in writing to the address on your statement.

**37.4. Other Change(s) in Merchant Profile.** You must immediately notify us of any change to the information on file with us in your merchant profile, including: (i) any new lines or types of business; (ii) change in ownership; (iii) the opening, closing or liquidation of business or any location; (iv) change in Card processing method (i.e., paper Sales Drafts to POS Device); (v) voluntary or involuntary party to a bankruptcy case; (vi) entry into a loan or other agreement with a third party that seeks to affect this Merchant Agreement; and/or (vii) change from a business that exclusively conducts card-present retail sales to one that accepts Card sales by mail, telephone or Internet transactions. We retain the right to terminate this Agreement if you fail to notify us of any change to the information in your merchant profile.

**37.5. Charges for Changes to Account Maintenance.** You may be charged for any changes referenced in this section or any other changes requested by you or otherwise necessary related to account maintenance.

#### **38. Card Organization Monitoring**

Mastercard, Visa and Discover, PayPal and American Express have established guidelines, merchant monitoring programs and reports to track merchant activity such as, but not limited to excessive Credits, reported fraud and Chargebacks, and increased deposit activity. In the event you exceed the guidelines or engage in practices that could circumvent such monitoring programs or submit suspicious transactions as identified by a Card Organization or any related program or reports, you may be subject to: (i) operating procedure requirement modifications; (ii) incremental Chargebacks and/or increased fees; (iii) settlement delay or withholding; (iv) termination of your Agreement; or (v) audit and imposition of fines.

#### **39. Supplies**

##### **Placing Orders.**

• To order additional supplies, call Customer Service or order through the customer service IVR when you have two months' inventory left. We will ship you an adequate amount of supplies. The amount of supplies (based on usage) on hand should not exceed a three to six-month supply.

• In an EMERGENCY, please contact Customer Service using the number provided on the last page of this Program Guide. If supplies are sent via an express delivery service, the delivery charges will be debited to your account.

• You are responsible for unauthorized use of sales/credit and summary Media. We recommended that you store all supplies in a safe location.

• You may be charged for supplies and taxes plus applicable shipping and handling charges.

#### **40. Special Provisions for American Express**

The provisions in this Section 40 apply to American Express Card acceptance and Transactions.

**40.1. Treatment of the American Express Brand.** Except as expressly permitted by applicable law, you must not:

- indicate or imply that you prefer, directly or indirectly, any other payment products over the Card,
- try to dissuade Cardholders from using the Card,
- criticize or mischaracterize the Card or any of American Express' services or programs,
- try to persuade or prompt Cardholders to use any other payment

products or any other method of payment (e.g., payment by check),

- impose any restrictions, conditions, disadvantages or fees when the Card is accepted that are not imposed equally on all other payment products, except for electronic funds transfer, or cash and check,
- suggest or require Cardholders to waive their right to dispute any transaction,
- engage in activities that harm the American Express business or the American Express Brand (or both),
- promote any other payment products (except your own private label card that you issues for use solely at your establishments) more actively than you promote the Card, or
- convert the currency of the original sale transaction to another currency when requesting Authorization or submitting transactions (or both).

You may offer discounts or in-kind incentives from your regular prices for payments in cash, ACH funds transfer, check, Debit Card or Credit Card, provided that (to the extent required by applicable law): (i) you clearly and conspicuously disclose the terms of the discount or in-kind incentive to your customers, (ii) the discount or in-kind incentive is offered to all of your prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable law and Card Organization (e.g., Visa, Mastercard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this section will not constitute a violation of the provisions set forth in the above section "Treatment of the American Express Brand."

#### **40.2. Treatment of the American Express Marks.**

Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, you must indicate your acceptance of the Card and display American Express' Marks (including any Card application forms provided to you) as prominently and in the same manner as any other payment products. You must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the American Express Marks, nor (without prior written consent from Processor) indicate that American Express endorses your goods or services. You shall only use the American Express Marks as permitted by the Agreement and shall cease using American Express' Marks upon termination of the Agreement.

**40.3. Treatment of American Express Card Member Information.** Any and all Cardholder Information is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, you must not disclose Cardholder Information, nor use nor store it, other than to facilitate transactions at your Establishments in accordance with the Agreement.

**40.4. American Express Transaction Data.** The transaction data you collect to facilitate the Charge must be or have been provided directly to you by the Cardholder. You must not accept or have accepted transaction data from, nor shall you provide or have provided transaction data to, any third parties other than your covered parties (as defined in the Data Security Requirements (DSR)). If you fail to comply with this requirement, in addition to other rights and remedies regarding "monitoring", you may be charged a fee as indicated on the Merchant Processing Application, we may suspend Card acceptance privileges at your establishments, or terminate the Agreement. Where Cardholders pay you using payment or "e-wallet" accounts (which Cardholders may have created by providing Card- member information when the account was established), the transaction data collected to facilitate the Card Not Present Charge has already been provided directly by the Cardholder. You are not required to have the Cardholder re-enter the transaction data. All information required by American Express evidencing one or more transactions, including information obtained at the point of sale, information obtained or generated during Authorization and Submission, and any Chargeback.

**40.5. Treatment of American Express Cardholder Information.** You acknowledge that any and all American Express Cardholder information is

confidential and the sole property of the Issuer, American Express or any of its Affiliates. Except as otherwise specified in the Agreement, you must not disclose Cardholder information, nor use nor store it, other than to facilitate transactions at your establishments in accordance with the Agreement.

#### **40.6. Disclosure and Use of Data Collected Under Agreement.**

We may disclose to American Express data and information that you provide on your Application and that we collect as part of performing American Express payment processing services or transaction related services including information about you. American Express may use the information that you provide in the Application at the time of setup to screen and monitor your American Express acceptance, to perform its responsibilities in connection with your American Express Card acceptance to respond to court orders and legal investigations, and to perform analytics and create reports for our and American Express's internal purposes, and for any other lawful business purposes, including marketing purposes. American Express may otherwise use and share your information for business purposes and as permitted by Applicable Law. American Express uses reasonable administrative, technical and physical security measures to protect Program Merchant information consistent with the sensitivity of the information.

**40.6.1. Consent for American Express to Contact You by Phone, eMail, Text or Facsimile.** American Express may use the information you provide in the Application (as such information may be updated) to call you or send you communications or materials via email, SMS, text or facsimile regarding American Express products, services and resources available to you. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers that you provide. You consent and agree to receive autodialed, automated and/or prerecorded calls and communications (which may include SMS or text messages) at the telephone number(s) you have provided. If you provide a fax number, you consent and agree to receiving fax communications from American Express. In connection with the foregoing, you understand that the calls made or communications sent to you by American Express may be subject to charges or fees by your telecommunications or other applicable service provider that are your responsibility to pay. You understand that your consent under this Section 40.6.1 is not a condition of purchasing or receiving any product or service or entering into this Agreement.

**40.6.2. Opt-Out:** You may opt-out of receiving marketing related communications and materials from American Express by calling Processor at the Customer Service number indicated in the Program Guide and indicating that you no longer want to receive marketing or other communications from American Express, in which case Processor will disable your American Express acceptance services, and you will no longer be permitted to accept American Express payment cards under the Agreement.

**40.7. Conversion to a Direct Relationship with American Express.** You acknowledge and agree that upon written notice from us, you will be converted to a direct American Express Card acceptance relationship with American Express if and when the annual American Express Card charges that you submit under this Agreement are greater than \$1,000,000. You agree that, upon conversion, (i) you will be bound by American Express' then-current Card Acceptance Agreement with respect to American Express Transactions; (ii) American Express will set pricing and other fees payable by you for American Express Card acceptance; and (iii) you will no longer be able to submit American Express Card transactions under this Agreement, but this Agreement will continue in full force and effect with respect to other payments and services you elected to receive on your Application. If you need to receive American Express related services from us after you have been converted to a direct relationship with American Express, then you will need to contact our Customer Service at 1-800-451-5817 to request that your account be entitled for American Express acceptance and to acknowledge the new pricing terms for our services associated with your direct relationship with American Express.

#### **40.8. Reserved.**

**40.9. Third Party Beneficiary Rights.** American Express is a direct

and intended third-party beneficiary of this Agreement, and may enforce any terms of this Agreement that apply to American Express, including American Express Card acceptance and transaction processing, directly against you.

**40.10. Your Right to Opt Out of American Express Card Acceptance.** You may opt out of accepting American Express Cards at any time without directly or indirectly affecting your rights to accept any other payment products. In order to opt out you must complete the Limited Acceptance Form. To obtain a copy of this form, you call Processor at the Customer Service Number stated in Section 42.4 of the Program Guide.

**40.11. Collections from American Express Cardholder.** You may not bill or collect from any American Express Cardholder for any purchase or payment on the American Express Card unless a Chargeback has been exercised, you have fully paid for such Charge, and you otherwise have the right to do so.

**40.12. American Express Key-Entered Charges.**

If a Card cannot be read electronically, in addition to the “Magnetic Stripe Card Charges” requirements, you must:

- Key-enter the data.
- 40.13. Keyed No Imprint for American Express Transactions.**
  - Your establishments may be eligible to participate in the American Express “Keyed No Imprint Program.” The “Keyed No Imprint Program” allows you to submit in-person charges without taking an imprint of the Card if you meet the following Charge criteria:

- All Cards qualify for the “Keyed No Imprint Program.”
- The Charge must be key-entered.
- The Charge Submission must include the appropriate indicator to reflect that the Card and the Cardholder were present at the point of sale.
- The Charge Submission must include a valid approval, and;
- The CID Number must be confirmed as a positive match. Under the “Keyed No Imprint Program,” Chargebacks will not be exercised for such charges based solely on the establishment’s failure to obtain an imprint of the Card. If a disproportionate amount or number of disputed charges under the “Keyed No Imprint Program” occurs, you must cooperate to reduce the number of disputed charges. If such efforts fail, you may be placed in any of American Express’ Chargeback programs or your participation in the “Keyed No Imprint Program” may be modified or terminated.

**40.14. Merchant Website Information Display Guidelines.**

- An accurate description of the goods/services offered, including the currency type for the transaction (e.g, U.S. Dollars). Transaction currency must be in U.S. Dollars.
- Your physical address in the U.S.
- An email address and a telephone number for customer service disputes.
- Return/refund policy.
- A description of your delivery policy (e.g, No COD, No overnight).
- A description of your security practices (e.g, information highlighting security practices you use to secure transactions conducted on the internet).
- A statement of known export restrictions, tariffs, and any other regulations.
- A privacy statement regarding the type of personal information collected and how the information is used. Additionally, you must provide to customers the option to decline being included in marketing campaigns or having their personal information included on lists sold to third parties.

**40.15. Aggregated Charges.**

If you are classified as an internet industry, you may process aggregated charges, provided the following criteria are met:

- Clearly disclose your intent and obtain written consent from the Cardholder that their purchases or refunds (or both) on the Card may be aggregated and combined with other purchases or refunds (or both) before you request an Authorization.

- Each individual purchase or refund (or both) that comprises the aggregated Charge must be incurred under the same merchant number and on the same Card.

- Obtain a pre-Authorization of no more than \$15

- Create a Sales Draft for the full amount of the aggregated Charge.

- The amount of the aggregated Charge must not exceed \$15 or the amount for which you obtained pre-Authorization.

- Submit each Sales Draft within our submission timeframe.

- Provide the Cardholder with an email containing the date, amount, and description of each individual purchase or refund (or both) that comprises the aggregated Charge, and the date and the amount of the aggregated Charge.

**40.16. American Express-Excessive Disputes.** You may be subject to various fees and assessments as set forth on the Application including fees for excessive disputes. Some fees and assessments are for special products or services, while others may be applied based upon non-compliance of American Express policies and procedures. Many non-compliance fees and assessments can be avoided by correcting the actions that are causing such non-compliance.

**40.17. American Express Right to Modify or Terminate Agreement.**

American Express has the right to modify the Agreement with respect to American Express Card transactions or to terminate your acceptance of American Express Card transactions and to require Processor to investigate your activities with respect to American Express Card transactions.

**40.18. Acceptance Procedures for American Express Travelers and Gift Cheques.**

Procedures for accepting American Express Travelers and Gift Cheques:

- Watch Merchant’s customer countersign in the lower left corner of the cheque, and compare the countersignature to the signature in the upper left corner for American Express Travelers Cheques and Gift Cheques. For Cheques for Two, the customer’s countersignature must match either one of the two signatures on top.

- Obtain authorization - American Express recommends obtaining an authorization to reduce the chances of accepting fraudulent cheques. American Express offers a variety of authorization tools. Obtain online authorization at [www.americanexpress.com/verifyamextc](http://www.americanexpress.com/verifyamextc).

**41. Glossary**

As used in this Program Guide, the following terms mean as follows:

**Acquirer:** Bank in the case of Mastercard, Visa and certain debit transactions or Processor in the case of Discover and PayPal (in-store only) transactions that acquire Card sale transactions from merchants such as yourself.

**Address Verification:** A service provided through which the merchant verifies the Cardholder’s address, in whole or in part. Primarily used by Mail / Telephone/Internet order merchants. Address verification is intended to deter fraudulent transactions, however, an AVS match does not guarantee that a transaction is valid. An AVS request should generally be submitted with an authorization request. The AVS response, if available, however will not impact whether any associated authorization request is approved or denied. You may be charged an AVS fee for any AVS request you submit even if we are not able to provide a response to the request.

**Affiliate:** “Affiliate” of a Person means another Person that, directly or indirectly, (i) owns or controls such Person or (ii) is under common ownership or control with such Person.

**Agreement:** The Agreements among Client, Processor and Bank



contained in the Application, the Program Guide and the Schedules thereto and documents incorporated therein, each as amended from time to time, which collectively constitute the Agreement among the parties.

**Annualized Sales Volume:** Annualized Sales Volume is the greater of (1) the sum of the monthly Sales Volume since the account was activated, divided by the number of months the account has been active, and then multiplied by twelve (12), or (2) the estimated annual Sales Volume listed in the Agreement. An active account is defined as an account having a Sales Volume of fifty dollars (\$50.00) or greater for that month. If the Client has three months or less of Sales Volume, the "Annualized Sales Volume" is the estimated annual Sales Volume provided by the Client in the Agreement.

**Application:** See Merchant Processing Application.

**Authorization:** Approval by, or on behalf of, the Card Issuer to validate a transaction. An authorization indicates only the availability of the Cardholder's Credit Limit or funds at the time the Authorization is requested. An Authorization Fee (see Fee Schedule) can be charged for each Authorization, whether approved or declined.

**Authorization Approval Code:** A number issued to a participating merchant by the Authorization Center which confirms the authorization for a sale or service.

**Authorization and Capture:** Refers to the communication of instructions from your POS device or other systems to our computer systems, whether the communications are for authorization requests or any other capture of information. If your Service fee Schedule reflects an authorization and capture fee it may be applied to each communication you transmit to us.

**Authorization Center:** A department that electronically communicates a merchant's request for authorization on Credit Card transactions to the Cardholder's bank and transmits such authorization to the merchant via electronic equipment or by voice authorization.

**Authorization /EDC Fees:** A fee that applies to all Visa, Mastercard and Discover Card approvals (pre-authorizations, authorizations & authorization reversals), denials, batch inquiries, and batch entry transactions and includes any transaction fees and capture fees.

**Bank:** The bank identified on the Application signed by you.

**Bankruptcy Code:** Title 11 of the United States Code, as amended from time to time.

**Batch:** A single Submission to us of a group of transactions (sales and credits) for settlement. A Batch usually represents a day's worth of transactions.

**Business Day:** Monday through Friday, excluding Bank holidays.

**Buyer Initiated Payment (BIP):** A payment that occurs when a cardholding business approves an invoice (or invoices) and submits an electronic payment instruction causing funds to be deposited directly into a their supplier's merchant account.

**Card:** Means a Credit Card and/or a Debit Card.

**Cardholder:** Means the Person whose name is on a Card and any authorized user of such Card, including the Person that has entered into an agreement establishing a Card account with an Issuer. The words "Card Member" refer to Cardholder.

**Card General Terms:** Section of the Program Guide, including any amendments or modifications.

**Card Not Present Sale/Transaction:** A Transaction that occurs when the Card is not present at the point-of-sale, including Internet, mail-order and telephone-order Card sales.

**Card Organization:** Any entity formed to administer and promote Cards, including without limitation Mastercard Worldwide ("Mastercard"), Visa U.S.A., Inc. ("Visa"), DFS Services LLC ("Discover"), PayPal, Inc. ("PayPal"), American Express Company, Inc. ("American Express") and any applicable debit networks.

**Card Organization Rules:** The rules, regulations, standards, releases,

interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including with respect to EBTs, the Quest Operating Rules).

**Card Verification:** A three-digit value printed in the signature panel of most Cards and a four-digit value printed in the front of an American Express Card. Visa's Card Verification Code is known as CVV2; Mastercard's Card Verification Code is known as CVC2; the Card Verification Codes for Discover, PayPal and American Express are known as a Card Identification Numbers (CID). Card Verification Codes are used to deter fraudulent use of an account number in a non-face-to-face environment, (e.g., mail orders, telephone orders and Internet orders).

**Card Verification Value (CVV) / Card Validation Code (CVC) / Card Identification Data (CID):** A unique value encoded on the Magnetic Stripe of a Card used to validate Card information during the Authorization process.

**Cardholder Verification Method (CVM):** A method used to confirm the identity of a Cardholder and to signify Cardholder acceptance of a transaction, such as signature, Offline PIN, and Online PIN.

**Cash Benefits:** An EBT account maintained by an Issuer that represents pre-funded or day-of-draw benefits, or both, administered by one or more government entities, and for which the Issuer has agreed to provide access under the EBT program. Multiple benefits may be combined in a single cash benefit account.

**Cash Over Transaction:** Dispensing of cash by a merchant in connection with a Card sale, other than a PIN Debit Card transaction, for the purchase of goods or services.

**Charge or Charges:** The total price, including all applicable taxes and gratuities, for the purchase of goods or services at a merchant for which a Cardholder has signed a Sales Draft or otherwise indicated intent to pay with a Card.

**Chargeback:** A Card transaction (or disputed portion) that is returned to us by the Issuer. Client is responsible for payment to us for all Chargebacks.

**Check Warranty:** A service provided through a merchant's POS equipment which guarantees payment up to a defined limit, provided the merchant follows proper steps in accepting the check.

**Check Verification:** A service provided in which a merchant accesses a national negative file database through its terminal/register to verify or authorize that a person has no outstanding bad check complaints at any of the member merchants. This is not a guarantee of payment to the merchant.

**Chip:** An integrated microchip embedded on a Card containing cardholder and account information.

**Chip Card:** A Card with an embedded EMV-compliant chip containing memory and interactive capabilities used to identify and store additional data about a Cardholder, an Account, or both.

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

**Client:** The party identified as "Client" on the Application. The words "Subscriber," "you," "your" and "Customer" refer to Client. Also, sometimes referred to as "Merchant."

**Contactless Payment:** payment performed in a Card-Present Environment with a Contactless card or Payment Device (e.g., Mobile

phone) at the Point-of-Transaction.

**Credit:** A refund or price adjustment given for a previous purchase transaction.

**Credit Card:** A device bearing a valid Organization Mark of Visa, Mastercard, Discover, PayPal or American Express and authorizing the Cardholder to buy goods or services on Credit and, to the extent the Schedules so provide, a valid device authorizing the Cardholder to buy goods or services on Credit and issued by any other Card Organizations specified on such Schedules.

**Credit Draft:** A document evidencing the return of merchandise by a Cardholder to a Client, or other refund or price adjustment made by the Client to the Cardholder, whether electronic, paper or some other form, all of which must conform to Card Organization Rules and applicable law.

**Credit Limit:** The credit line set by the Issuer for the Cardholder's Credit Card account.

**Customer Activated Terminal (CAT):** A Magnetic Stripe terminal or chip-reading device (such as an automatic dispensing machine, Limited Amount Terminal, or Self-Service) that is not an ATM.

**Data Incident:** Any actual or potential unauthorized or fraudulent access to (or use, disclosure, or alteration of) transaction data, whether consisting of a single event, a continuous course of events, or a series of related events.

**Data Incident Expenses:** Means: (a) any obligations that you have to us arising from a Data Incident including EMV Upgrade Costs; (b) the costs of a security assessment conducted by a qualified security assessor approved by a Payments Organization or PCI to determine the cause and extent of a Data Incident; and (c) any reasonable fees and expenses incurred by us, or by you with our prior written consent, for any Mitigation Services specifically approved by us in writing but only if the Mitigation Services are provided within one (1) year following discovery of the relevant Data Incident.

**Debit Card:** Means a PIN Debit Card and/or a Non-PIN Debit Card.

**Dial-Up Terminal:** An Authorization device which, like a telephone, dials an Authorization Center for validation of transactions.

**Discount Rate:** A percentage rate charged to merchants, as applicable, for processing Card transactions.

**Discover International Service Fee:** A fee assessed by Discover on the amount of Card Sales (excluding Cash Over) conducted at a Client location in the United States where the domicile of the Issuer of the Card used in the Card Sale is a country other than the United States. This fee is not applicable to Card Sales with JCB and China Union Pay cards.

**Electronic Benefit Transfer (EBT):** An Electronic Benefits Transfer system used to deliver certain government delivered benefits, including without limitation Cash Benefits and FNS, SNAP and WIC Benefits, to EBT customers.

**Electronic Draft Capture (EDC):** A process which allows a merchant's Dial-Up Terminal to receive Authorization and capture transactions, and electronically transmit them to the Processor. This eliminates the need to submit paper for processing.

**EMV:** Developed by Europay, Mastercard, and Visa. It is the global standard for chip based payments.

**EMV Upgrade Costs:** The costs you agree to incur to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled Cards in a manner compliant with the PCI DSS.

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

**Factoring:** The submission of authorization requests and/or Sales Drafts by a merchant for Card sales or cash advances transacted by another business. Factoring is prohibited.

**Fraud Full Recourse:** One of American Express's Chargeback programs

**Gross:** When referred to in connection with transaction amounts or fees, refers to the total amount of Card sales, without set-off for any refunds or Credits.

**Imprinter:** A manual or electric machine used to physically imprint the merchant's name and ID number as well as the Cardholder's name and Card number on Sales Drafts.

**Issuer:** The financial institution or Card Organization (or other Entity authorized by a Card Organization) which has issued a Card to a Person.

**Limited Amount Terminal:** A customer Activated Terminal that has data capture only capability, and accepts payment for items such as parking garage fees, road tolls, motion picture theater entrance, or magnetic stripe telephones.

**Magnetic Stripe:** A stripe of magnetic information affixed to the back of a plastic Credit or Debit Card. The Magnetic Stripe contains essential Cardholder and account information.

**Marks:** Names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations.

**Mastercard Account Status Inquiry Service Fee:** Zero dollar Account Status Inquiry Service requests (including AVS, CVC2 or both).

**Mastercard CVC2 Fee:** A fee assessed for transactions acquired in the U.S. Region with the CVC2 (Three digit code on the back of the Mastercard issued card) included in the transaction for authorization and where the CVC2 response value equals 'M' (Match) or 'N' (Invalid/did not match). The fee will not be applied to Account Status Inquiry (ASI) requests.

**Mastercard Digital Enablement Fee:** A fee assessed by Mastercard on select Card Not Present transactions.

**Media:** The documentation of monetary transactions (i.e., Sales Drafts, Credit Drafts, computer printouts, etc.)

**Merchant Identification Card:** A plastic embossed card supplied to each merchant to be used for imprinting information to be submitted with each batch of paper Sales Drafts. Embossed data includes Merchant Identification Number, name and sometimes merchant ID code and terminal number.

**Merchant Identification Number:** A number that numerically identifies each merchant location, outlet, or line of business to the Processor for accounting and billing purposes.

**Merchant Processing Application ("MPA"):** The Merchant Processing Application and Agreement executed by Client, which is one of the documents comprising the Agreement.

**Merchant Provider:** Any Person engaged by you to provide services to you involving or relating to (i) access to Cardholder data, transaction data or information related to either Cardholder data or transaction data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs).

**Mitigation Service:** A service provided to a cardholder whose information is the subject of a Data Incident, where the primary purpose of the service is to mitigate the effects of the Data Incident, including identity theft education and assistance and credit monitoring.

**Non-Bank Services:** Products and/or Services for which Bank is not responsible, or a party to, including American Express EDC Transactions, PIN Debit Card, and Electronic Benefits Transfer Transactions, TeleCheck Check Services, Gift Card Services and Transactions involving Cards from other Non-Bank Card Organizations, such as Voyager Fleet Systems, Inc., WEX, Inc. and WEX Bank, Discover, PayPal, Leasing, TransArmor, Fraud Services, Wireless, Payeezy Gateway Services, and other items as may be indicated in this Program Guide.

**Non-PIN Debit Card:** A device with either a Visa, Mastercard or Discover Mark that is tied to a Cardholder's bank account or a prepaid account and which is processed without the use of a PIN.

**Non-Qualified Interchange Fee:** The difference between the interchange fee associated with the anticipated interchange program and the

interchange fee associated with the more costly interchange level at which the transaction actually was processed.

**Non-Qualified Surcharge:** A surcharge applied to any transaction that fails to qualify for the anticipated interchange program and is therefore downgraded to a more costly interchange level. The Non-Qualified Surcharge (the amount of which is set forth on the Service Fee Schedule) is in addition to the Non-Qualified Interchange Fee, which is also your responsibility (see above and Section 5.1).

**Operating Procedures:** The information prepared by Processor, containing operational procedures, instructions and other directives relating to Card transactions. The current Operating Procedures are set forth in Part B of the Program Guide.

**PAN Truncation:** A procedure by which a Cardholder's copy of a Sales Draft or Credit Draft, or as required by applicable law, the Sales Draft or Credit Draft that you retain, will only reflect the last four digits of the Card account number.

**Person:** A third party individual or Entity, other than the Client, Processor or Bank.

**PIN:** A Personal Identification Number entered by the Cardholder to submit a PIN Debit Card transaction.

**PIN Debit Card:** A device bearing the Marks of ATM networks (such as NYCE, Star) used at a merchant location by means of a Cardholder-entered PIN in the merchant PIN Pad.

**PIN Debit Banks:** The PIN Debit Bank(s) identified on the Application signed by you that is/ are the sponsoring or acquiring bank(s) for certain PIN Debit networks.

**PINless Transaction:** A PIN Debit transaction using a Debit Card that does not require the Cardholder to enter a PIN. .

**Point of Sale (POS) Terminal:** A device placed in a merchant location which is connected to the Processor's system via telephone lines and is designed to authorize, record and transmit settlement data by electronic means for all sales transactions with Processor.

**Processor:** The entity identified on the Application (other than the Bank) which provides certain services under the Agreement.

**Program Guide (also known as the Merchant Services Program Terms and Conditions):** The booklet which contains Operating Procedures, General Terms, Third Party Agreements, and Confirmation Page, which, together with the Application and the Schedules thereto and documents incorporated therein, constitute your Agreement with Processor and Bank.

**Recurring Payment Indicator:** A value used to identify transactions for which a Cardholder provides permission to a merchant to bill the Cardholder's Card account at either a predetermined interval or as agreed by the Cardholder for recurring goods or services.

**Referral:** A message received from an Issuer when an attempt for Authorization requires a call to the Voice Authorization Center or Voice Response Unit (VRU).

**Reserve:** Monies held by us in order to secure or fund your obligations with us.

**Reserve Account:** An account established and funded at our request or on behalf, pursuant to Section 11 of the Agreement.

**Resubmission:** A transaction that the merchant originally processed as a Store and Forward transaction but received a soft denial from the respective debit network or Card Organization. The Resubmission transaction allows the merchant to attempt to obtain an approval for the soft denial, in which case Client assumes the risk that the transaction fails.

**Retrieval Request/Transaction Documentation Request:** A request for documentation related to a Card transaction such as a copy of a Sales Draft or other transaction source documents.

**Revenue:** Total fees for Services minus the amount of interchange,

assessments and other pass through fees paid by you and passed through to payment networks by us. Total fees for Services includes Credit Card and Non-PIN Debit processing fees, PIN debit, non-bank, chargeback and other fees listed in the Pricing Terms.

**Rules:** The rules, regulations, standards, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including with respect to EBTs, the Quest Operating Rules).

**Sales/Credit Summary:** The identifying form used by a paper Submission merchant to indicate a Batch of Sales Drafts and Credit Drafts (usually one day's work). Not a Batch header, which is used by electronic merchants.

**Sales Draft:** Evidence of a purchase, rental or lease of goods or Services by a Cardholder from, and other payments to, Client using a Card, including preauthorized orders and recurring transactions (unless the context requires otherwise); regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Card Organization Rules and applicable law.

**Sales Volume:** The total combined amount of Credit Card, PIN Debit and Non-PIN Debit (Mastercard, Visa, Discover and American Express) payment transactions processed by us minus any amounts attributable to returned items.

**Schedules:** The attachments, addenda and other documents, including revisions thereto, which may be incorporated into and made part of this Agreement concurrently with or after the date of this Agreement.

**Self Service Terminals:** A Customer Activated Terminal that accepts payment of goods or services such as prepaid cards or video rental, has electronic capability, and does not accept PIN's.

**Servicers:** Bank and Processor collectively. The words "we," "us" and "our" refer to Servicers, unless otherwise indicated in this Program Guide.

**Services:** The activities undertaken by Processor and/or Bank, as applicable to authorize, process and settle all United States Dollar denominated Visa, Mastercard, Discover, PayPal and American Express transactions undertaken by Cardholders at Client's location(s) in the United States, and all other activities necessary for Processor and Bank to perform the functions required by this Agreement for all other Cards covered by this Agreement. For the avoidance of doubt, and without limiting the foregoing, "Services" shall include any ancillary products or services provided to You by Processor and/or Bank in connection with this Agreement to the extent such products or services are not provided to you pursuant to a separate agreement with Processor and/or Bank.

**Settlement Account:** An account or accounts(s), unless otherwise agreed upon by the parties, at Wells Fargo Bank or one of its affiliates, designated as the account to be debited and credited by Processor or Bank for Card transactions, fees, chargebacks and other amounts due under the Agreement or in connection with the Agreement.

**Signature Debit:** A transaction using a Debit Card that requires the Cardholder to provide a signature rather than a PIN.

**Split Dial:** A process which allows the authorization terminal to dial directly to different Card Processors (e.g., American Express) for Authorization. In this instance, the merchant cannot be both EDC and Split Dial. Split Dial is also utilized for Check Guarantee companies.

**Split Dial/Capture:** Process which allows the Authorization terminal to dial directly to different Card processors (e.g., American Express) for Authorization and Electronic Draft Capture.

**Store and Forward:** A transaction that has been authorized by a merchant when the merchant cannot obtain an authorization while the customer is present, typically due to a communications failure. The merchant will store the transaction electronically in their host system and retransmit the transaction when communications have been restored.

**Submission:** The process of sending Batch deposits to Processor for

processing. This may be done electronically or by mail.

**Summary Adjustment:** An adjustment to your Submission and / or Settlement Accounts in order to correct errors. (See Sections 36.2. and 36.3.)

**Telecommunication Card Sales:** Individual local or long distance telephone calls, for which the telephone service provider is paid directly by use of a Card. These do not include, however, calls paid for with pre-paid telephone service cards. Telecommunication Card Sales are considered Card Not Present Sales.

**Transaction Fees:** Service costs charged to a merchant on a per transaction basis.

**Us, We and Our:** See Servicers.

**You, Your:** See Client.

## **42. ADDITIONAL IMPORTANT INFORMATION PERTAINING TO THIS ENTIRE AGREEMENT**

### **42.1. Electronic Funding Authorization**

All payments to Client shall be through the Automated Clearing House ("ACH") and shall normally be electronically transmitted directly to the Settlement Account you have designated or any successor account designated to receive provisional funding of Client's Card sales pursuant to the Agreement. Client agrees that any Settlement Account designated pursuant to the preceding sentence will be an account primarily used for business purposes. Neither Wells Fargo Bank, N.A. ("Wells Fargo Bank") nor Wells Fargo Merchant Services, L.L.C. can guarantee the timeframe in which payment may be credited by Client's financial institution where the Settlement Account is maintained.

Client hereby authorizes Wells Fargo Bank and its authorized representative, including Wells Fargo Merchant Services, L.L.C., to access information from the Settlement Account and to initiate credit and/or debit entries by bankwire or ACH transfer and to authorize your financial institution to block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement Account and to authorize your financial institution to provide such access and to credit and/or debit or to block the same to such account. This authorization is without respect to the source of any funds in the Settlement Account, is irrevocable and coupled with an interest. This authority extends to any equipment rental or purchase agreements which may exist with Client as well as to any fees and assessments and Chargeback amounts of whatever kind or nature due to Wells Fargo Merchant Services, L.L.C. or Wells Fargo Bank under terms of this Agreement whether arising during or after termination of the Agreement. This authority is to remain in full force and effect at all times unless and until Wells Fargo Merchant Services, L.L.C. and Wells Fargo Bank have consented to its termination at such time and in such a manner as to afford them a reasonable opportunity to act on it. In addition, for each ACH which cannot be processed, and all subsequent funding may be suspended until Client either (i) notifies Wells Fargo Merchant Services, L.L.C. that ACH's can be processed or (ii) a new electronic funding agreement is signed by Client. Client's Settlement Account must be able to process or accept electronic transfers via ACH.

### **42.2. Funding Acknowledgement Automated Clearing House (ACH).**

Automated Clearing House (ACH). I acknowledge that the funds for Mastercard, Visa and Discover, PayPal and American Express transactions will be processed and transferred to my Settlement Account within two (2) Business Days from the time a Batch is closed (by 11:00 p.m. PT) and within one (1) Business Day from the time the Batch is closed (by 11:00 p.m. PT) if such account is a Wells Fargo Settlement Account. The ACH transactions will appear on your statement as "Merchant Bnkcd".

### **42.3. Additional Fees and Early Termination**

The fees for Services as shown on your pricing disclosure are based on the assumption that your Credit Card and Non-PIN Debit transactions will qualify at the anticipated interchange programs associated with your account.

If a transaction fails to qualify for your anticipated interchange programs, you will be billed a Non-Qualified Interchange Fee, plus a Non-Qualified Surcharge for each such non-qualifying transaction (see Section 5.1 and Glossary).

Your initial fees for Services are stated on your Application and may be adjusted from time to time to reflect:

- a. Any increases or decreases in the interchange and/or assessment portion of the fees,
- b. The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Client, and
- c. Increases in any applicable sales or telecommunications charges or taxes levied by any state, federal or local authority related to the delivery of the services provided by Wells Fargo Merchant Services, L.L.C. when such costs are included in the Service or other fixed fees.

In addition to the Debit Card transaction fees set forth on the Application, Client shall be responsible for the amount of any fees imposed upon a transaction by the applicable debit network.

A Monthly Minimum Processing Fee will be calculated beginning thirty (30) days after the date Client's Application is approved. (Refer to your pricing disclosures.)

Authorization Fees are charges that apply each time you communicate directly with Processor.

Authorization /EDC Fee applies to all Visa, Mastercard and Discover Card approvals (pre-authorizations, authorizations and authorization reversals), denials, batch inquiries, and batch entry transactions and includes any transaction fees and capture fees.

An equipment rental fee will be charged each month for each piece of equipment rented, plus tax as applicable. Client will be charged for actual shipping fees for equipment and cost of supplies.

The parties further agree and acknowledge that, in addition to any remedies contained herein or otherwise available under applicable law, if (a) Client breaches this Agreement by improperly terminating it prior to the expiration of the applicable term of the Agreement, (b) this Agreement is terminated prior to the expiration of the applicable term of the Agreement due to an Event of Default, or (c) the actual volume is materially less than the anticipated annual volume, then Servicers will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, in an effort to liquidate in advance the sum that should represent such damages, the parties have agreed that the amount calculated in the manner specified below (the "Early Termination Fee") is a reasonable pre-estimate of Servicers' probable loss. The Early Termination Fee shall be paid to SERVICERS within 7 days after Client's receipt of Servicers' calculation of the amount due.

The amount of the Early Termination Fee will be calculated as follows:

- (i) If the Client's total Sales Volume for the preceding 12 months\* is less than One Million Dollars (\$1,000,000) there is no Early Termination Fee; or
- (ii) If the Client's total Sales Volume for the preceding 12 months\* is greater than or equal to One Million Dollars (\$1,000,000) and the termination occurs during the initial term or any renewal term, then the Early Termination fee is Five Hundred Dollars (\$500.00) per location plus six (6) times the highest amount of Revenue in any single calendar month during the initial term or any renewal term.

\* If you have been processing with us for less than 12 months, the early termination fee shall be calculated based on "Annualized Sales Volume" in lieu of "Sales Volume."

Client's obligation with respect to any Monthly Minimum Processing Fee will end when Servicers receive the aforementioned Early Termination Fee.

**42.4. Addresses for Notices**

**PROCESSOR:**

**Wells Fargo Merchant Services, L.L.C.:**

P.O. Box 6079  
Concord, CA 94524  
Attn: Sales Manager

**BANK:**

**Wells Fargo Bank:**

P.O. Box 6079  
Concord, CA 94524  
Attn: Merchant Services

**Important Phone Numbers:** (see also Sections 28.3 and 30.4)

Customer Service: 1-800-451-5817 press 2

**Mastercard/Visa/Discover Authorization Center**

1-800-626-4480

**POS Help Desk:** 1-800-622-0842

If this application for business credit is denied you may obtain a written statement of the specific reasons for the denial. To obtain the statement, please contact Credit Initiation, PO Box 6079, Concord, CA 94524, within sixty (60) days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within thirty (30) days of receiving your request.

# Part III: Third Party Agreements

The following Agreements are Third Party Agreements entered into between Client and the Third Parties identified in the Third Party Agreements. If Client desires to receive the products and/or services offered under a Third Party Agreement, Client must check the appropriate box or otherwise indicate such desire in the Merchant Processing Application, in which case the terms and conditions of the Third Party Agreement shall be binding upon Client. The Signature page in the Merchant Processing Application or any Schedule thereto shall also serve as a signature page to the Third Party Agreements.

Client acknowledges that the Third Parties are relying upon the information contained on the Merchant Processing Application and the Schedules thereto, all of which are incorporated by reference into the Third Party Agreements.

## 1.0. TeleCheck Solutions Agreement

**1. Services.** TeleCheck will provide Client (also referred to as Company) with the Telecheck services indicated in the Merchant Processing Application and Agreement which may include: (i) coded information that it may use when deciding whether to accept a check or electronic funds transfer item (each an **Item**, and together, **Items**) when provided by its consumers as payment, (ii) settlement processing services and (iii) warranty or verification services; all as described in this Agreement (together, **Services**). TeleCheck will be Company's exclusive provider of the Services during the Term (defined below) of this Agreement. Company agrees to the terms of this Agreement by signing the Merchant Processing Application; clicking "Accept" or "Install" when presented via an App (as applicable and described below); or using any of the Services. Company acknowledges that the Specialty Items (Settlement Only) service does include receiving coded information, warranty or verification services.

**1.1. Delivery by Application.** If the TeleCheck Services are provided through TeleCheck's check acceptance application (**App**) that resides on a Clover® point of sale device (a **Device**), Company agrees that this Agreement will govern Company's access to and use of TeleCheck's Services on such App. Company's use of its Device is subject to its agreement with the supplier of the Device (and not TeleCheck), and this Agreement does not alter Company's agreement with its Device supplier. Company will comply with the terms of its agreement with the Device supplier; and warrants that it is authorized to install and use TeleCheck's App on the Device.

**1.2. Submitting Items.** Company will designate the types of Items it accepts and that it will submit to TeleCheck for processing under this Agreement as indicated on the Merchant Processing Application. Company must submit the Item to TeleCheck through the appropriate service. For example, checks presented in person by consumers at Company's point of sale can only be submitted through the In-Person Warranty (or Verification) service, checks sent through the mail to Company can only be submitted through the By Mail/Drop Box service. Company will submit all of its designated Items to TeleCheck for processing under this Agreement. Except for Items processed through the By Mail/Drop Box service, TeleCheck will analyze each Item that Company submits for processing and, in its discretion, provide Company with an approval or decline code with respect to each Item. TeleCheck will give Company operating guidelines and specifications, as applicable, to assist Company with properly accepting and submitting its Items for processing (operating guidelines and specifications may be provided to Company electronically or made available via the Internet).

**1.3. Information Warranty.** If Company has selected a warranty service in the Merchant Processing Application, TeleCheck warrants the accuracy of the information given in its approval code (the **Information Warranty**) when an Item meets the warranty requirements described below. Items that satisfy TeleCheck's Information Warranty and meet the corresponding warranty requirements are **Eligible Items**. TeleCheck will purchase Eligible Items that are subsequently dishonored, returned, reversed, or otherwise not paid by a consumer's financial institution (these Items are **Return Items**). Company's sole remedy for a breach of TeleCheck's Information Warranty is the right to require TeleCheck to purchase an Eligible Item that became a Return Item. TeleCheck's liability to Company

for breach of its Information Warranty will not exceed the lesser of: (a) the amount of the Eligible Item, or (b) the Warranty Maximum set forth in the TeleCheck Service Application and Agreement. Company may accept Items that do not receive an approval code or that do not meet the warranty requirements (these Items are **Ineligible Items**); however, Ineligible Items are not covered under TeleCheck's Information Warranty and TeleCheck will not purchase them.

**1.4. Warranty Requirements.** Company represents and warrants that each Item it submits to TeleCheck for processing and coverage under the Information Warranty meets the following requirements:

A. General Requirements. The following apply to all Items unless otherwise specified:

- (1) the Item was submitted to TeleCheck for processing according to TeleCheck's operating guidelines and specifications, and Company obtained a single approval code for it;
- (2) the Item is drawn on the consumer's deposit account at a United States or Canadian financial institution (for example, and without limitation, money orders, cashier's checks, travelers checks, insurance checks, credit card checks, or non-first party Items are Ineligible Items);
- (3) the Item, or a clear image of the Item (if submitted using a mobile or other optical imaging device), shows the consumer's name, address, check number, and routing and account numbers in the MICR line (not applicable if the payment is online or over the phone);
- (4) the Item is a properly completed first party Item that is dated, payable to Company, made out for the amount due to Company for its goods or services, and signed by the consumer (not applicable if the payment is online or over the phone);
- (5) the consumer authorized debiting its account by electronic funds transfer or remotely created check for the amount of the Item (an **Authorization**) in accordance with TeleCheck's operating guidelines and specifications and the rules of the National Automated Clearinghouse Association (**NACHA Rules**), as applicable, for the services utilized ;
- (6) the Item represents the consumer's payment obligation to Company for its goods or services, and has not been used in another transaction;
- (7) the amount of the Item (a) is for the price of Company's goods or services, (b) matches the amount submitted to TeleCheck for processing, and (c) does not exceed the Warranty Maximum;
- (8) the Item was not submitted as a split sale or in other ways to avoid these warranty requirements or the Warranty Maximum;
- (9) the Item is not for credit, cash, or payment on an account, debt, or Item already due to Company;
- (10) the Item does not pre-date or post-date the date of the transaction and corresponding inquiry to TeleCheck by more than 1 calendar day;
- (11) the transaction and corresponding Item are not subject to any stop payment, dispute or setoff right;
- (12) Company is not aware of anything that invalidates the Item, prevents its collection, or relieves the consumer from liability for it; and
- (13) Company provided the notices required by applicable Law (defined in **Section 21.1** below), authorizing TeleCheck to process the Item as an

electronic funds transfer or remotely created check and imposing (and authorizing such processing of) a fee for Return Items.

B. Requirements For In Person Payments: If a consumer presents a paper check in-person at Company's point of purchase location, in addition to those in **Section 1.4 A.** above the following requirements apply and must be followed in accordance with TeleCheck's operating guidelines and specifications: (a) the consumer signed an authorization to debit consumer's account and consumer's signature on the authorization reasonably matches the name imprinted on the Item; (b) the authorization must be clearly and conspicuously posted and a copy of the authorization must be provided to the consumer and (c) the Item must be voided and returned to the consumer after submission to TeleCheck for processing. If such in-person payment is approved as a paper check that cannot be settled as an electronic funds transfer, the additional requirements in Section 1.4 F below apply.

C. Requirements For Online Payments: If a consumer makes an online payment, the following requirements apply in addition to those in **Section 1.4 A** above: (a) the consumer electronically authorized the transaction in accordance with TeleCheck operating guidelines and specifications and **(b)** the payment website site authenticates the consumer's identity and uses appropriate site security and internet session security standards in accordance with the NACHA Rules.

D. Requirements For Phone Payments: If the consumer makes payment over the phone, the following requirements apply in addition to those in **Section 1.4 A.** above: (a) the consumer provided a telephonic authorization in accordance with TeleCheck operating guidelines and specifications; (b) the payment is not the result of Company initiating an unsolicited telephone call to consumer with which Company had no prior relationship; and (c) Company directly tape recorded the verbal telephonic authorization from consumer or, alternatively, Company sent the required written confirmation notice of the oral authorization to the consumer.

E. Requirements for Mail/Drop Box Checks: If the consumer provides a paper check which was mailed in or submitted in a drop box to Company, the requirements in **Section 1.4 A** above apply except (a) the check must be for payment that is not more than 60 days past due; (b) the check must not be post-dated or dated earlier than 20 days from the date of inquiry to TeleCheck; and (d) Company must securely store the check for at least 60 days following the corresponding payment transaction at which time it must be destroyed. Additionally, the consumer must not have notified Company that the check was not to be converted into an electronic funds transfer. If such mail/drop box check is approved as a paper check that cannot be settled as an electronic funds transfer, the additional requirements in **Section 1.4 F** below apply.

F. Requirements for Mobile Checks or any Checks Approved as Paper Only. If TeleCheck approves an Item as a paper check that could not be settled as an electronic funds transfer (i.e. check is to be deposited by Company) or the check is submitted to TeleCheck as an image through a mobile device (either, a **Paper Settlement Item**), the following requirements apply in addition to those in **Section 1.4 A** above: (a) the check must include the consumer's name (imprinted by the manufacturer), physical address (imprinted by the manufacturer or written on the check according to TeleCheck's operating guidelines – P.O. Boxes will not be accepted), phone number (with area code), identification type and number (imprinted or written on check), Company's TeleCheck Subscriber Number and TeleCheck's approval code; (b) the consumer's signature must reasonably match the name imprinted on the check and (c) Company must send Paper Settlement Items that were presented in-person at Company's point of purchase and that become Return Items directly from its financial institution to TeleCheck within 30 days of the date on the check. If the Paper Settlement Item was mailed in or submitted in a drop box by the consumer to Company, or if the Item was presented by the consumer to Company and submitted through a mobile device by Company to TeleCheck, and subsequent to the transaction TeleCheck instructs Company to deposit the check (due to image quality issues (a **Redeposit Check Item**), Company must deposit the Redeposit Check Item within 2

days of TeleCheck's instruction to do so and TeleCheck must receive it for purchase within 45 days of the date on the check. Paper Settlement Items and Redeposit Check Items may only be presented once for payment (TeleCheck will not accept Paper Settlement Items or Redeposit Check Items that Company or its financial institution presented for payment more than once). In addition, Company must securely store the physical check for at least 60 days following the corresponding payment transaction.

**1.5. Electronic Images.** If the Item is submitted to TeleCheck by Company as an image using a mobile device or other image reader, the ability to settle imaged Eligible Items to the banking system depends on (a) the quality of the image and (b) the banking system's ability to accept the image for settlement processing. Company will use a third party provider to capture images of Items using a mobile device (this third party, an **Image Vendor**) and submit those images to TeleCheck. Company acknowledges that its Image Vendor will require some of Company's account information (including, without limitation, merchant account number, contact name, email address and device identifier) to submit Item images to TeleCheck; and authorizes TeleCheck to provide the Image Vendor with the information necessary to allow it to submit Item images to TeleCheck on behalf of Company. TeleCheck is not responsible for the image quality of Items submitted through Company's Image Vendor, or submission of the images by Company's Image Vendor to TeleCheck. Company will destroy the physical checks that were submitted as electronic images after storing them securely for at least 60 days.

**1.6. Authorization.** Company will maintain a copy of each consumer's Authorization for the longer of: (a) 2 years, or (b) the period of time required by the NACHA Rules. Company will provide TeleCheck with legible copies of Authorizations within 7 days of TeleCheck's request for them.

**1.7. Assignment of Items.** Company assigns all if its right, title, and interest in each Eligible Item that it submits to TeleCheck for warranty coverage when the Item becomes a Return Item. Company will reasonably aid TeleCheck in its enforcement of the rights associated with an assigned Eligible Item.

**1.8. Processing Notices; Return Item Fees.** Company will post, and provide consumers with, notices at the point of sale that are required to process Items using the Services and to collect fees on Return Items. Company will assess the highest fee amount allowed by applicable Laws on all Return Items, which TeleCheck may collect and retain from consumers.

**1.9. "Goodwill" of an Ineligible Item.** TeleCheck may elect to provide warranty coverage for an Ineligible Item that Company submits for processing. Providing warranty coverage for an Ineligible Item will not constitute a course of dealing, waiver of rights, or prevent TeleCheck from rejecting warranty coverage for any other Ineligible Items.

**1.10. Updating Information.** Company will promptly notify TeleCheck if (a) a consumer makes any payment to Company or returns any goods in connection with a Return Item that is subject to warranty coverage, or (b) Company cancels any services paid for by an Item that is subject to warranty coverage; both representing a full or partial satisfaction of the Return Item. Company's notice of payment or cancellation of services will identify the consumer.

**1.11. Chargeback.** TeleCheck may chargeback any Eligible Item that it purchased from Company for coverage under the Information Warranty if:

- (1) the consumer returned the goods or services (in whole or in part) that were paid for with the Item;
- (2) Company has not delivered the goods or services that were paid for using the Item;
- (3) the Item is subject to any stop payment, dispute, or setoff;
- (4) the consumer makes full or partial payment to Company for the Item, or provides any form of security to ensure its payment;
- (5) the goods or services were initially delivered on credit or under a lease;

(6) the purchase transaction, the payment represented by the Item, or transferring the Item to TeleCheck (by assignment or otherwise) is void or invalid for any reason other than the consumer's bankruptcy;

(7) Company breaches the applicable warranty requirements for Eligible Items;

(8) Company submits multiple Items or duplicate Items related to the same transaction for processing (e.g., deposits a paper Item previously submitted for processing as an electronic Item without TeleCheck's direction to do so);

(9) Company does not submit its Items to TeleCheck for processing within 1 calendar day of the transaction date (for batch processing, Items must be submitted to TeleCheck for processing within 7 calendar days of the transaction date);

(10) the consumer disputes authorizing the Item, its validity, or the amount debited for it (except in the case of third party fraud committed with a consumer's check);

(11) the consumer's Authorization is incomplete or invalid;

(12) Company fails to provide TeleCheck with a legible copy of an Authorization within 7 days of a request for it; or

(13) Company breaches this Agreement, alters an Item or approval code, or submits an Item with Knowledge it is likely to become a Return Item.

**Knowledge** means facts or circumstances which, if known, would cause a merchant, using commercially reasonable judgment, to independently refuse to accept an Item (including, without limitation, splitting single transactions into smaller components or resubmitting Items that were previously denied).

Company will immediately notify TeleCheck if it has Knowledge that any of the above circumstances occur. Company will continue to be responsible for its chargebacks after termination of this Agreement. TeleCheck may chargeback any amounts that exceed the Warranty Maximum for an Eligible Item.

## 2. Non-Warranty Services.

**2.1.** If any of the verification services or the Specialty Items (Settlement Only) services are selected by Company in the Merchant Processing Application (**Non-Warranty Services**), TeleCheck will have no liability for any Item that is processed using the Non-Warranty Services that is subsequently returned, dishonored, reversed or otherwise unpaid, and does not warrant the checks processed using the Non-Warranty Services. There will be no payment to Company for any loss from transactions processed through the Non-Warranty Services. Company assumes all risks that Items accepted by Company may result in Return Items. Company will be fully responsible and liable to TeleCheck for all Return Items, regardless of the reason or timing. TeleCheck will deduct or offset all Return Items against any amounts to be paid to Company for Items to settled under this Agreement or, alternatively, TeleCheck may initiate debits to Company's Settlement Account (defined in Section 3.1 below) for all such Return Items.

**2.2. Representations and Warranties.** Company represents and warrants that each Item submitted under any of the Non-Warranty Services complies with the following, (a) the Item was submitted to TeleCheck in accordance with the TeleCheck's operating guidelines and specifications, (b) the consumer authorized debiting its account by electronic funds transfer or remotely created check for the amount of the Item in accordance with in accordance with the TeleCheck's operating guidelines and specifications and NACHA Rules including, without limitation, providing any necessary notices to consumer (not applicable to the Specialty Items (Settlement Only) services) and (c) the requirements in **Sections 1.4. B., C. and D** (as applicable to the type of Item presented) have been complied with.

## 3. Settlement.

**3.1.** Company will identify one or more bank accounts held in its name (each, a **Settlement Account**) that TeleCheck will use in connection

with the Services. Company authorizes TeleCheck to (a) initiate credits to the Settlement Account for proceeds that correspond to Company's transactions; (b) initiate debits to the Settlement Account for any amounts that may be owed or are required to be paid under this Agreement; (c) initiate the transaction to a consumer's deposit account on Company's behalf for Items that are owed to it; and (d) initiate adjustments related to the foregoing (including, without limitation, adjustments for chargebacks or partial adjustments). TeleCheck may initiate any transfer by Automated Clearing House (**ACH**) entry.

### 3.2. TeleCheck reserves the right to decline processing any Item.

TeleCheck will initiate a funds transfer for Company's transactions that were processed under this Agreement; less any amounts due from Company for fees, refunds, adjustments or its other obligations. TeleCheck will typically credit Company's settlement funds to its Settlement Account within 2 banking days once the transactions are finally submitted to TeleCheck for settlement processing.

**3.3.** TeleCheck may recover amounts associated with any adjustments for an Item that are made to the Settlement Account at Company's request or due to its error. TeleCheck may also recover amounts associated with any fees that a consumer paid to its financial institution because of these adjustments.

**3.4.** Company must promptly notify TeleCheck if it fails to receive any settlement funds or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if Company provides inaccurate information about, or fails to notify TeleCheck of changes to, the Settlement Account. TeleCheck is not responsible for settlement errors that arise if Company provides inaccurate information about, or fails to notify TeleCheck of changes to, the Settlement Account.

**4. Financial Information.** Company will promptly provide any financial or other information reasonably requested by TeleCheck to perform credit risk, security, qualification, and other reviews related to providing the Services, transactions submitted, fulfillment of obligations to TeleCheck, or the financial condition of Company. Company authorizes TeleCheck to obtain information from third parties when performing credit risk, security, qualification, and other reviews.

**5. Notice of Material Changes.** Company will provide TeleCheck with reasonable advance notice of any material change in the nature of Company's business (including, without limitation, any change to Company's operations that would materially affect its products sold, services provided, or the procedures it follows for payments acceptance). The failure to provide TeleCheck with this notice constitutes a material breach of this Agreement.

## 6. Company's Payment Obligations.

Fees. Company will pay TeleCheck for: (a) all fees and charges for the Services that are set forth in the TeleCheck Service Application and Agreement; (b) all Items that are charged back; (c) all adjustments required in connection with Company's transactions; and (d) all costs, liabilities, or other obligations imposed on TeleCheck by third parties as a result of transactions submitted by Company, its actions, or inactions.

**6.1. Other Fees.** Company will also pay TeleCheck for the following fees and charges for the Services (as applicable): (a) **Customer Requested Operator Call Fee** (also called **CROC** or **Voice Authorization Fee**), which is an additional \$2.50 fee per operator or Interactive Voice Response (IVR)-assisted call that Company initiates, but TeleCheck does not request; (b) **December Risk Surcharge**, which is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in the month of December; (c) **Funding Report Fee**, which is a \$10.00 monthly fee to receive daily funding or weekly funding reports (the Funding Report Fee does not apply if TeleCheck provides the funding report monthly); (d) **Inquiry Rate**, which is the percentage rate that applies to the face amount of each Item (up to the Warranty Maximum) that Company submits to TeleCheck for authorization (whether or not TeleCheck issues an approval code for the Item); (e) **Monthly Minimum Fee**, which is the minimum aggregate amount of the Inquiry Rate fees that Company must pay on a monthly



basis (if the total Inquiry Rate fees for Company's Items submitted during any month is less than the Monthly Minimum Fee, then the Monthly Minimum Fee will apply); (f) **Monthly Processing Fee** is a monthly fee for handling Company's account; (g) **Special Handling Fee**, which is a \$5.00 fee applied when the following occur: (1) a chargeback of an Eligible Item, (2) an Item processed for payment must be corrected due to Subscriber's error or at Subscriber's request, or (3) TeleCheck elects (in its discretion) to process an Item that fails to meet the applicable warranty requirements, or that is a Return Item, as a "Goodwill" Item; (h) **Transaction Fee**, which is the additional per transaction charge for each Item that Company submits to TeleCheck for authorization or processing (whether or not TeleCheck issues an approval code for the Item); and (i) **Unauthorized Return Fee** is a fee applicable to any Item that is dishonored, returned, reversed, or otherwise not paid by the Consumer's financial institution for the reason that such Item is unauthorized by the Consumer.

**6.2. Early Termination Fee.** TeleCheck will suffer substantial injury, for which it would be difficult to determine damages, if Company breaches this Agreement or terminates it early in violation of the Agreement's terms. TeleCheck may recover damages equal to 90% of the aggregate Monthly Minimum Fees and Monthly Processing Fees that are payable for the unexpired portion of the then-current Term as an accurate reflection of these damages and realistic pre-estimate of TeleCheck's losses caused by an early termination of this Agreement.

## **7. Reserve.**

**7.1.** TeleCheck may require Company to fund a cash reserve (**Reserve**) in an amount that reflects TeleCheck's assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of TeleCheck, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that Company may have to TeleCheck. The Reserve is not a segregated fund that Company may claim to own. TeleCheck is obligated to pay to Company any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to Company's payment transactions have expired.

**7.2.** The obligations due to Company from the Reserve will not accrue interest unless required by applicable Laws.

**7.3.** TeleCheck will notify Company if a Reserve is established (including its amount) or if the amount of the Reserve is modified.

**7.4.** TeleCheck may set off any obligations that Company owes to TeleCheck from the Reserve.

**7.5.** Although Company acknowledges that the Reserve is a general obligation of TeleCheck, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of Company that is held by TeleCheck, Company grants and acknowledges that TeleCheck have a security interest in the Reserve and, at TeleCheck request, will provide documentation to reflect this security interest.

**8. Setoff and Priority.** All funds that TeleCheck owes to Company under this Agreement are subject to Company's payment obligations under this Agreement. TeleCheck may setoff or recoup amounts Company owes to TeleCheck against any funds that TeleCheck owes to Company.

**9. Statements, Reporting.** TeleCheck will provide Company with statements or electronic reporting (together, **Statements**) reflecting the fees, settlement amounts, and other information related to the Services. Company must review the Statements and inform TeleCheck of any errors within 60 days following the date that the error was, or should have been, reported; provided, Company must report settlement or funding errors to TeleCheck within 30 days (reporting errors will enable TeleCheck to recover amounts or prevent them from continuing). TeleCheck will have no obligation to provide refunds for errors that Company reports more than 60 days or 30 days (as applicable) after the errors were, or should have been, reported. Company and TeleCheck will work together to resolve issues or disputes that arise in connection with the Statements, or the funds credited or debited to the Settlement Account.

**10. Term.** This Agreement begins on the earlier of the dates when Company signs its TeleCheck Services Application and Agreement, submits its first Item for processing under this Agreement, or when Company downloads the App (this date, the **Effective Date**). The length of this Agreement's initial term is designated in the TeleCheck Services Application and Agreement (Initial Term). This Agreement will automatically renew for successive one-year periods (each, a **Renewal Term**), unless TeleCheck or Company provides the other with at least 30 days' written notice of non-renewal at the end of the Initial Term. The Initial Term together with any Renewal Term(s) is the Term of this Agreement.

## **11. Termination; Modification; Suspension.**

**11.1. General Termination.** Either Company or TeleCheck may terminate this Agreement by giving 30 days' advance notice if the other materially breaches this Agreement and fails to remedy the breach within 30 days of receiving notice of it. TeleCheck may terminate this Agreement upon written notice to Company for any reason (with or without cause) during its Term. If the Services are delivered through TeleCheck's App, Company may terminate this Agreement for any reason (with or without cause) during its Term by uninstalling the App. **11.2. Modification.** TeleCheck may modify this Agreement's terms (including, without limitation, its fees) upon 30 days' notice to Company, during which notice period Company may terminate this Agreement by providing written notice of termination to TeleCheck. Company's continued use of the Services after the 30 day period contained in a notice of modification from TeleCheck will constitute Company's acceptance of the new terms.

**11.3 Suspension.** TeleCheck may suspend its Services or settlement of any funds under this Agreement if it determines that questionable activity occurs with respect to Company's payment transactions (including, without limitation, if there are excessive Return Items associated with Company's Items, Company breaches the NACHA Rules, or if required by applicable laws. TeleCheck may also suspend or terminate its Services if requested by its Originating Financial Depository Institution.

## **12. Confidential Information.**

**12.1. Confidentiality.** Neither party will disclose non-public information about the other party's business (including, without limitation, the terms of this Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

**12.2. Disclosure.** The recipient may disclose the other party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors or vendors) that need to know it in connection with the recipient's performance under this Agreement, and are bound by confidentiality obligations materially similar to those required under this Agreement; and (2) in response to a subpoena, court order, or as required under applicable Laws or NACHA Rules.

## **13. Data Use; Security.**

**13.1. Data Use.** TeleCheck owns all right, title and interest in the data it obtains from providing the Services to Company.

**13.2 Data Security.** Company will implement commercially reasonable practices, including administrative, physical and technical safeguards, that are designed to: (a) maintain the security and confidentiality of Consumer Information, (b) protect against reasonably anticipated threats to the security or integrity of Consumer Information, and (c) protect against unauthorized access to or use of Consumer Information that could result in substantial harm or inconvenience to the consumer. Consumer Information is customer information Company receives in connection with

any transaction contemplated by this Agreement.

**14. License to Marks.** TeleCheck grants Company a limited, non-exclusive, non-transferrable, non-sublicensable, royalty-free license to use the trademarks, service marks and logos (together, **Marks**) that TeleCheck provides to Company during the Term of this Agreement. Company (a) may use the Marks only in the United States; (b) may use the Marks only in connection with its use of the Services; (c) will follow the branding guidelines that TeleCheck provides or makes available from time-to-time; and (d) will not use materials containing the Marks without TeleCheck's prior written permission. Company will not otherwise distribute, lease, sublicense, sell, modify, copy or create derivative works from the Marks. TeleCheck reserves to itself all right, title, interest or license (express or implied) to the Marks that are not specifically granted to Company under this Agreement; and may suspend or terminate this license upon written notice to Company.

**15. Indemnification.** Company will indemnify, defend, and hold TeleCheck harmless for all losses, damages, costs, or expenses (including reasonable attorney's fees) claimed against it by third parties, which arise from Company's gross negligence, willful misconduct, or breach under this Agreement.

**16. Exclusion of Damages.** Neither party will be liable to the other for lost profits, revenues or business opportunities, nor any exemplary, punitive, special, indirect, incidental, or consequential damages (whether any are direct or indirect); regardless of whether these damages were foreseeable or either party was advised they were possible.

**17. Limitation of Liability.** TeleCheck' aggregate liability to Company for losses arising from any cause (regardless of the form of action or legal theory) in connection with this Agreement will be limited to \$75,000.00

**18. Notices.** Written notices (other than normal operations) required under this Agreement will be sent by certified mail or national courier (with tracking and delivery confirmation). TeleCheck may also provide written notices required under this Agreement by regular mail. Notices will be effective upon receipt. Notices to Company will be sent to the address it provides on the TeleCheck Service Application and Agreement. Notices to TeleCheck will be sent to: TeleCheck Services, Inc., Attn: TeleCheck Merchant Services, Mail Stop A-12, 7301 Pacific Street, Omaha, NE 68114; with copies to TeleCheck Services, Inc., Attn: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065 and [legalpapers@firstdata.com](mailto:legalpapers@firstdata.com)

**19. Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement other than TeleCheck' subsidiaries and affiliates involved in providing the Services to Company. Each party is responsible for the performance of any third parties it uses in connection with the Services, and their compliance with the terms of this Agreement. TeleCheck is not responsible or liable to Company for any errors or breaches of this Agreement that occur because of Company's third party providers (e.g., without limitation, issues that arise from ACH network participants, or if Company uses third party providers or applications to capture electronic images of Items to submit to TeleCheck). TeleCheck may audit Company's compliance with this Agreement upon reasonable notice, during normal business hours, and at TeleCheck's expense; and as required by the NACHA Rules. TeleCheck's Originating Depository Financial Institution may also audit Company's compliance with this Agreement and the NACHA Rules.

**20. Waivers.** A party's delay or failure to exercise any of its rights under this Agreement will not be a waiver of those rights.

**21. Compliance with Law, Choice of Law, Waiver of Jury Trial.**

**21.1. Compliance with Law.** The parties will comply with all laws, regulations, and rules (including ACH's network rules, requirements, and standards; the **NACHA Rules**) (together **Laws**) that are applicable to their respective performance obligations under this Agreement. Company acknowledges that it is the Originator under the NACHA Rules with respect to its transactions and agrees to comply with its obligations as an Originator. Company certifies that it has a legitimate business need

for the information that TeleCheck provides through its Services, will use the information in connection with submitting payment transactions to TeleCheck for processing and for no other purpose, and will use the information only for permissible purposes under the Fair Credit Reporting Act (Company will not use TeleCheck's information for employment related purposes).

**21.2 Choice of Law; Waiver of Jury Trial.** This Agreement will be governed by New York law (without regard to its choice of law provisions). The courts of New York, New York will be the proper venue for legal proceedings brought in connection with this Agreement. **TeleCheck and Company each waive their right to a jury trial for claims arising in connection with this Agreement.**

**21. Entire Agreement, Amendment, Counterparts.** The defined term **Agreement** includes its schedules, addenda, and any amendments (capitalized terms used in the schedules, addenda, or amendments without definition will have the meanings given to them in this Agreement). This Agreement is the entire agreement between the parties and replaces any prior agreements or understandings (written or oral) with respect to its subject matter. Except as set forth in Section 11.2, modifications to this Agreement must be in writing, executed by the parties. This Agreement and any amendments may be executed electronically and in counterparts, each of which constitutes one agreement when taken together. Electronic and other copies of the executed Agreement are valid.

**22. Assignment.** Company may not assign this Agreement without TeleCheck's written consent. TeleCheck may assign this Agreement upon notice to Company. This Agreement will be enforceable against a party's permitted successors or assigns. This Agreement may not be continued, assumed, or assigned in the event of a bankruptcy or other insolvency event without consent from the non-bankrupt or insolvent parties.



