

**Fill in this information to identify the case:**Debtor 1 North Avenue Associates LLC

Debtor 2

(Spouse, if filing)

United States Bankruptcy Court Northern District of IllinoisCase number: 18-30054

FILED

U.S. Bankruptcy Court  
Northern District of Illinois

1/28/2019

Jeffrey P. Allsteadt, Clerk

**Official Form 410  
Proof of Claim**

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents**; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>Wells Fargo Bank N.A., and (see below)</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor <u>Wells Fargo Merchant Services, L.L.C.</u>	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b> <u>Wells Fargo Bank N.A., and (see below)</u> Name 1655 Grant Street 3rd Floor Attn: Kenneth Juni Concord, CA 9 Contact phone <u>925-483-9442</u> Contact email <u>kenneth.p.juni@wellsfargo.com</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	<b>Where should payments to the creditor be sent? (if different)</b> _____ Name _____ Contact phone _____ Contact email _____
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ <div style="text-align: right;">MM / DD / YYYY</div>	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

<b>6. Do you have any number you use to identify the debtor?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____										
<b>7. How much is the claim?</b>	\$ unknown _____ <div style="float: right; text-align: right;"> <b>Does this amount include interest or other charges?</b>  <input checked="" type="checkbox"/> No  <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).         </div>										
<b>8. What is the basis of the claim?</b>	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as healthcare information.  <div style="text-align: center;">See Annex</div>										
<b>9. Is all or part of the claim secured?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature of property:</b> <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____  Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <table style="width: 100%;"> <tr> <td style="width: 50%;"><b>Value of property:</b></td> <td style="width: 50%;">\$ _____</td> </tr> <tr> <td><b>Amount of the claim that is secured:</b></td> <td>\$ _____</td> </tr> <tr> <td><b>Amount of the claim that is unsecured:</b></td> <td>\$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)</td> </tr> </table> <table style="width: 100%;"> <tr> <td style="width: 60%;"><b>Amount necessary to cure any default as of the date of the petition:</b></td> <td style="width: 40%;">\$ _____</td> </tr> </table> <table style="width: 100%;"> <tr> <td style="width: 60%;"><b>Annual Interest Rate</b> (when case was filed)</td> <td style="width: 40%;">_____ %</td> </tr> </table> <input type="checkbox"/> Fixed <input type="checkbox"/> Variable	<b>Value of property:</b>	\$ _____	<b>Amount of the claim that is secured:</b>	\$ _____	<b>Amount of the claim that is unsecured:</b>	\$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)	<b>Amount necessary to cure any default as of the date of the petition:</b>	\$ _____	<b>Annual Interest Rate</b> (when case was filed)	_____ %
<b>Value of property:</b>	\$ _____										
<b>Amount of the claim that is secured:</b>	\$ _____										
<b>Amount of the claim that is unsecured:</b>	\$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)										
<b>Amount necessary to cure any default as of the date of the petition:</b>	\$ _____										
<b>Annual Interest Rate</b> (when case was filed)	_____ %										
<b>10. Is this claim based on a lease?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____										
<b>11. Is this claim subject to a right of setoff?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____										

<b>12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. <i>Check all that apply.</i>	<b>Amount entitled to priority</b>
A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
	<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
	<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
	<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
	<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies	\$ _____
<small>* Amounts are subject to adjustment on 4/1/19 and every 3 years after that for cases begun on or after the date of adjustment.</small>		

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.**

Check the appropriate box:

- ☒ I am the creditor.  
☐ I am the creditor's attorney or authorized agent.  
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.  
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 1/28/2019  
MM / DD / YYYY

/s/ /s/ Kenneth Juni

Signature

Print the name of the person who is completing and signing this claim:

Name	<u>/s/ Kenneth Juni</u>		
	First name	Middle name	Last name
Title	<u>Wholesale Credit Manager/Vice President</u>		
Company	<u>Wells Fargo Merchant Services</u>		
Address	Identify the corporate servicer as the company if the authorized agent is a servicer		
	<u>1655 Grant Street, 3rd Floor</u>		
	Number	Street	
	<u>Concord, CA 94520</u>		
	City	State	ZIP Code
Contact phone	<u>925-483-9442</u>		Email <u>kenneth.p.juni@wellsfargo.com</u>

## Fill in this information to identify the case:

Debtor 1 North Avenue Associates LLC

Debtor 2  
(Spouse, if filing) \_\_\_\_\_

United States Bankruptcy Court for the: Northern District of Illinois

Case number 18-30054

## Official Form 410

## Proof of Claim

04/16

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## Part 1: Identify the Claim

1. Who is the current creditor?	<u>Wells Fargo Bank N.A. and Wells Fargo Merchant Services, L.L.C.</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>  <u>WELLS FARGO, Attn: Kenneth Juni</u> Name <u>1655 Grant Street, 3rd Floor</u> Number Street <u>Concord CA 94520</u> City State ZIP Code Contact phone <u>925-483-9442</u> Contact email <u>kenneth.p.juni@wellsfargo.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	<b>Where should payments to the creditor be sent? (if different)</b>  Name Number Street City State ZIP Code Contact phone _____ Contact email _____
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

**Part 2:** Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____
7. How much is the claim?	\$ <u>unliquidated</u> . Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See Annex</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property.  <b>Nature of property:</b> <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**☒ No☐ Yes. Check one:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ \_\_\_\_\_

☐ Up to \$2,850\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$12,850\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies. \$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

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Check the appropriate box:

☒ I am the creditor.☐ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date

1/27/2019  
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name	Kenneth Juni		
	First name	Middle name	Last name
Title	Wholesale Credit Manager/Vice President		
Company	Wells Fargo Merchant Services		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	1655 Grant Street, 3rd Floor		
	Number	Street	
	Concord	CA	94520
	City	State	ZIP Code
Contact phone	925-483-9442		Email kenneth.p.juni@wellsfargo.com

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	
	)	
Morgan Administration, Inc. d/b/a, <i>et al.</i> ,	)	Case No. 18-30039
d/b/a Home Owners Bargain Outlet, <sup>1</sup>	)	(Jointly Administered)
	)	
Debtors and Debtors in Possession	)	Hon. Jacqueline P. Cox
	)	

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**ANNEX TO PROOF OF CLAIM OF WELLS FARGO BANK N.A. AND  
WELLS FARGO MERCHANT SERVICES L.L.C.**

1. Claimant. The undersigned, Wells Fargo Bank N.A. and Wells Fargo Merchant Services L.L.C. (collectively, “*Wells Fargo*”), is filing this proof of claim against the Debtors in these jointly administered cases, as a holder of a claim against the Debtors.

2. Background. On October 25, 2018 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Illinois (the “*Court*”), thereby commencing the Debtors’ bankruptcy cases (the “*Chapter 11 Cases*”). On November 2, 2018, the Court granted the Debtors’ motion for the Chapter 11 Cases to be jointly administered for procedural purposes only. [D.E. 68].

3. Claim. As further detailed below, Wells Fargo’s claims against the Debtors are based upon certain merchant servicing agreements entered into between the Debtors and Wells Fargo, whereby Wells Fargo provided credit card processing services for the Debtors in exchange for fees. On or about October 25, 2012 (for the Debtors, excluding FP Retail Associates LLC) and

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Morgan Administration, Inc. (4200); Belvidere Associates LLC (8559); FP Retail Associates LLC (0915); Hillcrest Enterprises, LLC (4581); Jular Media LLC (0805); KLS Acquisition Corp. (0925); Loomis Enterprises LLC (5451); North Avenue Associates LLC (3229); Oak Creek Distribution LLC (0634); OL Enterprises LLC (9401); and Deforab LLC (9348).

May 1, 2017 (for FP Retail Associates LLC), the Debtors and Wells Fargo entered into these merchant services agreements, as memorialized by, inter alia: *Wells Fargo Merchant Services, L.L.C. Pricing Terms*, dated November 5, 2012; *Merchant Services Program Guide* (WFB1405), signed October 25, 2012 (a copy of which is attached as **Exhibit A**); *Merchant Processing Application*, signed May 1, 2017 (a copy of which is attached as **Exhibit B**); *Wells Fargo Merchant Services, L.L.C. Pricing Terms*, dated April 20, 2017; and *Merchant Services Program Guide* (WFB1707), signed May 1, 2017 (a copy of which is attached as **Exhibit C**) (collectively, the “*Transaction Documents*”).

Credit card processing arrangements, such as the arrangement between Wells Fargo and the Debtors are ubiquitous. Pursuant to the terms of the Transaction Documents here, and in return for the Debtors’ undertaking the obligations therein, Wells Fargo agreed to process bankcard payments (“*Card Transactions*”) in connection with the operation of the Debtors’ business prior the commencement of the Chapter 11 Cases and continued to do so throughout the Debtors’ liquidation.

By way of brief background—Wells Fargo provides merchant credit card processing services. These credit card processing services consist of submitting electronic transactions to card brands,<sup>2</sup> Visa, U.S.A., Inc. (“*Visa*”) and MasterCard International, Inc. (“*MasterCard*”) as well as dealing with the reversals or Chargebacks (defined below) of those transactions, among other services.

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<sup>2</sup> Bankcards operate differently than single issuer cards such as American Express, Discover or Diners Club in that American Express, Discover and Diners Club deal directly with both cardholders and merchants. In the case of the bankcards Visa and MasterCard, different banks have relationships with the cardholders and the merchants. Accordingly, complex issues relating to the allocation of risk of loss arise in bankcard transactions that do not arise in single issuer transactions.



Visa and MasterCard exchange Card Transactions among the thousands of banks that are their members. In the normal course, a card charge takes the following path:

- A consumer (referred to in the industry as a “cardholder”) enters into an agreement to obtain a bankcard with a bank that is a member of Visa or MasterCard. The bank that issues this card is referred to as the “**Issuing Bank**.”
- Merchants, like the Debtors, enter into an agreement with a bank who is a member of Visa or MasterCard to obtain the right to accept bankcards and to be paid for the charges accepted by the merchant. The bank that enters into such a relationship acquires the card transactions and is referred to in the industry as an “**Acquiring Bank**.” Wells Fargo Merchant Services L.L.C. provides processing related services on behalf of Acquiring Banks and is a party to the merchant processing agreement.
- A bankcard transaction is initiated when a cardholder makes a purchase from a merchant or otherwise permits a merchant to charge his or her card.
- The merchant will swipe or manually enter the cardholder’s card information into an approved point of sale terminal or approved non-face-to-face software program, and in doing so electronically sends an authorization request to the Issuing Bank who then responds to the merchant regarding whether the card being used in the transaction has enough credit available (or “open to buy”) for the transaction. If the merchant receives an authorization approval code, the sale can proceed.<sup>3</sup> If the merchant receives a response that the card does not have enough credit available for the transaction, the transaction is declined.
- The merchant will then electronically send all of its transaction records for the day to its processor (like Wells Fargo) on behalf of the Acquiring Bank.
- The Acquiring Bank and/or a processor on its behalf will then bundle all the transactions it receives from its various merchants daily, and will send those transactions electronically to the appropriate card brands (*i.e.*, Visa or MasterCard).
- The card brands will then send the transactions it receives to the Issuing Banks.
- The Issuing Banks wire to the card brands the funds represented by the total of all the transactions remitted to it by the various Acquiring Banks through the card brands. The Issuing Banks then bill their cardholders during the normal billing cycle.

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<sup>3</sup> That approval code does not, however, warrant to the merchant that the person actually using the card is the actual cardholder or that the transaction the merchant submits will not ultimately be charged back.

- The card brand will aggregate the funds they receive from the thousands of Issuing Banks, and distribute them among the Acquiring Banks according to the total amount of transactions submitted by each Acquiring Bank.
- The Acquiring Banks, and/or a processor on its behalf, will then distribute the funds they receive to their merchants according to the transactions submitted by the merchants.

Generally, this process works smoothly. But in the event a cardholder disputes a Card Transaction with its Issuing Bank, the Issuing Bank could reverse the transaction and “short” or “decrease” that day’s funding by the disputed amount *despite the fact* the processor (here, Wells Fargo) on behalf of the Acquiring Bank had already made a full provisional payment to the merchants (here, the Debtors) based on that Card Transaction having been previously approved by the Issuing Bank. The industry refers to these as “Chargebacks.”

In light of the volume of credit card charges processed by the Debtors until only days before the commencement of the Chapter 11 Cases, and particularly because the Debtors’ operations ceased, Wells Fargo remains exposed to significantly more Chargeback liability than that described in the preceding paragraph. Accordingly, Wells Fargo’s claim against the Debtors as of the date hereof (including Chargeback liability),<sup>4</sup> is in the aggregate amount of at least \$656,529.06 (as of January 24, 2019) (and increases by the day), not including fees and expenses of Wells Fargo’s counsel.

Supporting Documents. In support of its Claim, Wells Fargo attaches as exhibits to this annex the documents which were noted above as attached.

Reservation of Rights. The execution and filing of this proof of claim is made under compulsion of the bar date fixed for this matter by the Court and is not and shall not be deemed:

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<sup>4</sup> Wells Fargo expressly reserves its rights to supplement, clarify, revise, or correct any and all amounts described herein, and nothing contained herein shall constitute a waiver of any of Wells Fargo’s claims whatsoever against any person or entity, including with respect to any governing document referred to herein.

(a) a waiver or release of Wells Fargo's rights against any other entity or person liable for all or any part of the Claim asserted herein; (b) a waiver of any rights or remedies of Wells Fargo under the Transaction Documents, or an election of remedies which waives or otherwise affects any other remedy; (c) consent by Wells Fargo to the jurisdiction of this Court with respect to any proceeding commenced in this case against or otherwise involving Wells Fargo; (d) a waiver of the right to move to withdraw the reference with respect to the subject matter of the Claim, any objection or other proceedings commenced with respect thereto or any other proceedings commenced in this case against or otherwise involving Wells Fargo; (e) a waiver or release by Wells Fargo of its right to trial by jury, or a consent by Wells Fargo to a trial by jury, in this Court or any other court; (f) a waiver of any right to the subordination, in favor of Wells Fargo, of indebtedness or liens held by any creditors of the Debtors; (g) a waiver of any right of Wells Fargo to assert that all or any portion of the Claim constitutes an administrative expense claim in this case; (h) a waiver of any past, present or future defaults or events of defaults; (i) a waiver of any indebtedness owed to or rights held by Wells Fargo with respect to any Debtors or non-Debtor affiliate or other entity; (j) a waiver of any right to fees, indemnities, costs and expenses permitted under the Transaction Documents, and under applicable law; or (k) a waiver of any right to seek and obtain additional interest from the Debtors or any of its Debtor or non-Debtor affiliates as set forth in the Transaction Documents. Wells Fargo expressly preserves all procedural and substantive defenses with respect to any claim that may be asserted against Wells Fargo by the Debtors, or by any trustee or other representative of these estates. To the extent that there is a conflict between anything in this proof of claim and governing terms under the Transaction Documents, such terms and conditions of the Transaction Documents shall govern.

Amendments. Wells Fargo expressly reserves its right to file any separate or additional proof of claim with respect to the Claim set forth herein or otherwise (which proof of claim, if so filed, shall not be deemed to supersede this proof of claim unless expressly so stated therein), to amend or supplement this proof of claim in any respect, including with respect to the filing of an additional or amended claim for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

Notice. All notices in respect of this claim should be forwarded to:

<p>WELLS FARGO  Attn: Kenneth Juni  1655 Grant Street, 3<sup>rd</sup> Floor  Concord, CA 94520</p> <p>-and-</p> <p>FIRST DATA  Attn: Bram A. Maravent  3975 NW 120<sup>th</sup> Ave.  Coral Springs, FL 33065</p>	<p>With a copy to:</p> <p>James N. Robinson  Joseph A. Pack  WHITE &amp; CASE LLP  Southeast Financial Center, Suite 4900  200 South Biscayne Boulevard  Miami, Florida 33131-2352  Telephone: (305) 371-2700  Facsimile: (305) 358-5744  E-mail: jrobinson@whitecase.com  E-mail: joseph.pack@whitecase.com</p>
---	--

Dated: January 28, 2019

**EXHIBIT A**

*Merchant Services Program Guide* (WFB1405), signed October 25, 2012

WELLS  
FARGO

*Merchant Services*

# Program Guide

Together we'll go far



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.

These Program Terms and Conditions (the "Program Guide") presents terms governing the acceptance of Visa®, MasterCard®, Discover® and American Express® Credit Card and Non-PIN Debit Card payments. Other Services include all services related to: JCB® Card, PIN Debit Card, and Electronic Benefits Transfer payments, TeleCheck® check services, Equipment purchase and rental, Gift Card Services, and acceptance of Cards from other Non-Bank Card Organizations such as Voyager Fleet Systems, Inc. ("Voyager"), Wright Express Corporation and Wright Express Financial Services Corporation (collectively, "WEX"). Your Merchant Processing Application will indicate the types of payments and Services you have elected to accept.

**This Program Guide, together with your Merchant Processing Application and the schedules thereto (collectively, the "Agreement"), including, without limitation, the Interchange Qualification Matrix and one of the following Interchange Schedules, as 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, such as TeleCheck for check services, will provide services to you. We will not accept any alterations or strike-outs to the Program Guide and, if made, any such alterations or strike-outs shall not apply. Please read this booklet completely as it contains important information.**

**The provisions of this Agreement regarding Discover Card Transactions, American Express Card Transactions and Other Services constitute an agreement solely between you and Processor and/or third parties. Bank is not a party to this Agreement insofar as it relates to Discover Card Transactions and Other Services, and Bank is not responsible, and shall have no liability, to you in any way with respect to Discover Card Transactions and Other Services.**

#### OTHER IMPORTANT INFORMATION:

Credit 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") 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 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 assessments for submitting transactions into their systems. A substantial portion of the Discount Rate or Transaction Fees that you pay will go toward these fees and assessments.

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 their Acquirers and Issuers and the procedures, responsibilities and allocation of risk for this process. Merchants are also bound by Card Organization Rules. The Card Organization Rules and applicable laws 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).

# Program Guide

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## A. OPERATING PROCEDURES

This part of the Program Guide (through Section 13) 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® and Discover Cards carried by your customers, as well as to the independent Card Issuers of American Express®/Optima®, and JCB®. The Operating Procedures contained in this part focus primarily on the MasterCard, Visa and Discover 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 and Discover, 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.

## 1. MasterCard, Visa And Discover Acceptance

**1.1. Card Descriptions.** At the point of sale, the Card must be carefully examined to determine whether it is a legitimate and valid Card. The name of the Card (e.g., Visa, MasterCard or Discover) 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 and Discover Card designs:

**Visa:** Visa Cards have the Visa symbol on the right-hand side of the Card. Above the Visa symbol is the 3-dimensional hologram of the Visa Dove design. The expiration date must be followed by one space and the symbol "V". Visa Cards contain a 16-digit account number embossed across the middle of the Cards and the first digit is always a four (4). In addition, the Classic and Preferred Cards have the first four digits of the account number printed directly below the embossed number. You must always check these numbers carefully to ensure that they are the same. Beginning January 2006, Visa has a new Card design which differs significantly from the previous description. You are required to familiarize yourself with the new design by consulting the document entitled "Card Acceptance and Chargeback Management Guidelines for Visa Merchants" (VRM 08.12.16). You may download the document free of charge from Visa's website at <http://www.visa.com/merchant> or order a hardcopy to be mailed to you for a nominal charge by telephoning Visa Fulfillment at 800-VISA-311. Both the old and new Visa Card designs will be circulating concurrently in the marketplace through the year 2010. Only Visa Cards fitting the old or new descriptions may be accepted.

Beginning May 2008, Visa issued a new card design for un-embossed Visa cards. Unlike embossed Visa cards with raised numbers, letters and symbols, the un-embossed card has a smooth, flat surface. Because of the un-embossed cards flat surface, it cannot be used for transactions that require a card imprint. Un-embossed cards can only be used by merchants who process with an electronic Point Of Sale Terminal. As a result, the bottom of the card bears the following note, "Electronic Use Only."

**MasterCard:** MasterCard Cards are issued under the following names: MasterCard, EuroCard, Access, Union, Million and Diamond. The MasterCard symbol appears on the front or back of the Card. MasterCard and the Globe designs appear in a 3-dimensional hologram above the symbol. In addition, the words Classic, Preferred, Gold or Business may appear. MasterCard account numbers are sixteen (16) digits, and the first digit is always a five (5). The first four digits of the account must be printed directly below the embossed number. Only MasterCard Cards fitting this description may be accepted. Pursuant to an alliance with MasterCard, Diners Club Cards issued in the United States and Canada are being re-issued with a sixteen (16) digit account number the first two digits of which are now fifty-five (55) and with the MasterCard mark and hologram on the front of the Diners Club Card. These Diners Club Cards shall be accepted and processed in the same manner as MasterCard transactions.

Diners Club International Cards that are issued outside the U.S. and Canada may be re-issued with the MasterCard mark on the back of the Card. These Diners Club Cards will have account numbers that are fourteen (14) digits, the first two digits of which are thirty-six (36). When these Diners Club Cards are used within the United States, Canada and other designated areas, they will be processed as MasterCard transactions. Beginning Jan 2006, MasterCard has a new Card design significantly different from the previous description. You are required to familiarize yourself with the new design by consulting a document "MasterCard Card Identification Features." You may download the document free of charge from MasterCard's website at <http://www.mastercardmerchant.com>. Both the old and new MasterCard Card designs will be circulating concurrently in the marketplace through the year 2010. Only MasterCard Cards fitting the old or new descriptions may be accepted.

**Discover:** All valid standard rectangular plastic Cards bearing the Discover Acceptance Mark or the Discover/NOVUS Acceptance Mark, as indicated below, include the following common characteristics and distinctive features.

- Card Numbers are composed of 16 digits and are displayed on the front of the Card.
- Card Numbers are clear and uniform in size and spacing within groupings.
- An embossed security character, displayed as a stylized "D," appears on the same line as the embossed "Member" since date or "Year Joined" date (if present) and the "Valid Thru" date. The embossed "Valid Thru" date, if present, appears in mm/yy format and indicates the last month in which the Card is valid. An overprint on the signature panel reads "Discover" or "Discover Network." On some Cards, the overprint may display the name of the Card (e.g., Discover, Discover 2GO, Discover Platinum).
- **Cards manufactured before October 3, 2008**, display the Discover three-dimensional hologram, bearing a distinct circular shape and images of a globe pierced by an arrow, water, and stars on a repetitive pattern background (the "Discover Hologram") on the front of the Card.
- The Discover Hologram reflects light and appears to move as the Card is rotated.
- All Cards display a magnetic stripe on the reverse side of the Card. **Cards manufactured on or after October 3, 2008** feature a three-dimensional holographic design that is incorporated into the magnetic stripe. A series of distinct circular shapes will be visible across the length of the magnetic stripe, with blue glows between each shape. When the Card is rotated, the holographic design will reflect light and there will be apparent movement and color switching within the circular shape.
- Cards displaying either the Discover Hologram or the holographic magnetic stripe are valid after the effective dates indicated above, with the Discover Hologram eventually replaced by the holographic magnetic stripe for new Cards. Although both the Discover Hologram and the holographic magnetic stripe will each appear on Cards, valid Cards will not display both designs.
- Depending on the issuance date of the Card, the word "DISCOVER" will appear in ultraviolet ink on the front of the Card when it is held under an ultraviolet light.
- An underprint of "void" on the signature panel becomes visible if erasure of the signature is attempted.
- The Card Number or the portion of the Card Number displayed on the signature panel on the back of the Card should match the number displayed on the front of the Card and appear in reverse indent printing.
- **CID must be printed in a separate box to the right of the signature panel on the back of the Card.**
- An overprint on the signature panel reads "Discover." On some cards, the overprint may display the name of the Card (i.e., Discover, Discover 2GO®, Discover Platinum).
- A Discover Zip Indicator may appear on the back of a standard rectangular plastic Card indicating the Card can be used to conduct Contactless Card Transactions.

**Note:** Valid Cards may not always be rectangular in shape (e.g., Discover 2GO® Cards) and certain valid Contactless Payment Devices approved by us for use in accessing Card Accounts (e.g., radio frequency (RF) enabled Cards, key fobs, and Mobile Commerce Devices) and to conduct Contactless Card Transactions may not display the features described above.

The features described below are found on Prepaid Gift Cards; however, the placement of these features may vary:

- Depending on the issue date of the Card, the Discover Acceptance Mark or the Discover/NOVUS Acceptance Mark will appear on the front or back of the Card.
- The embossed, stylized "D" appears on the front of the Card.
- **A valid expiration date is embossed on the front of the Card.**
- Only the person whose name appears on an American Express Card is entitled to use it. Cards are not transferable.
- The signature on the back of the Card must match the Cardmember's signature on the Sales Draft, and must be the same name that appears on **Other Card Features for Cards with a Discover Acceptance Mark.**
- The front of the Card may display "Temporary Card," "Prepaid Card," "Gift Card," or "Electronic Use Only" Must be printed on the front or the back of the Card.

**Note:** Prepaid Gift Cards accepted at a limited, specific list of Merchants may but are not required to display Discover hologram and, may but are not required to bear the Discover Acceptance Mark.

Un-embossed Prepaid Cards display a printed Card number. The "Valid Thru" date and the Cardholder name may or may not be printed on the Card. The embossed "D" security character is not present. "Electronic Use Only" is printed on the front or the back of an un-embossed Card. Obtain an electronic Authorization Response using a POS device for un-embossed Prepaid Cards.

You are required to remain familiar with Discover Card designs and may reference the document, "Discover Security Features." You may download the document free of charge from Discover's website at <http://www.discovernetwork.com/fraudsecurity/fraud.html>.

**American Express Card.** 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.

- 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.
- The signature on the back of the Card must match the Cardmember'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.
- Do not accept a card outside the valid from and to dates.

**1.2. 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.

**1.3. 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 and Discover Cards now have a 3-digit number (CVV 2/CVC 2/CID) printed on the panel known as the Card Validation Code.

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

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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.

- Indicate the positive identification, including any serial number and expiration date, on the Credit Draft or Sales Draft; 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.
- Require the Cardholder to sign the signature panel of the Card prior to completing the Transaction.

**1.4. 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.

**1.5. Special Terms.** If you limit refund/exchange terms or impose other specific conditions for Card sales, 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 show this information.

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 small ticket transaction or a no signature required 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.

**1.6. Delayed Delivery 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 3.1.), 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:** For Visa transactions, you must obtain an Authorization if the cumulative total of both Sales Drafts exceeds the floor limit. 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 one Authorization. You must note on both Sales Drafts the words "delayed delivery," "deposit" or "balance," as appropriate, and the authorization date and approval code.

**Discover:** For Discover transactions, you must label one Sales Draft "deposit" and the other "balance," as appropriate. You must obtain the "deposit" authorization before submitting the sales data for the "deposit" or the "balance" to us. If delivery of the merchandise or service purchased will occur more than ninety (90) calendar days after the "deposit" authorization, you must obtain a subsequent authorization for the "balance." 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 Cardmember 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 Cardmember 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 Number and treat deposits on the Card no differently than you treat deposits on all other payment products.

**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 (as opposed to the ninety (90) days in Discover transactions), you should reauthorize the unprocessed portion of the transaction prior to delivery. 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.

**1.7. 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., monthly insurance premiums, yearly subscriptions, 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.

You must obtain an Authorization for each transaction and write "Recurring Transaction" (or "P.O." for MasterCard transactions) 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 Card Validation Code number with the first authorization request, but not subsequent authorization requests. Discover Card Organization Rules specifically require that you follow this Card Validation Code 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 Cardmembers 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.

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.

**1.8. Certain Rules and Requirements.** The following rules are requirements strictly enforced by Visa, MasterCard and Discover:

- 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 Card.

- You cannot establish any special conditions for accepting a Card.
- 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 1.9.
- You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address; 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 transaction, and zip code for a Card-present key entered transaction in order to obtain an Address Verification. 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 refinancing or transfer of an existing Cardholder obligation deemed uncollectible.
- 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 cannot submit a transaction or sale that has been previously charged back.
- 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.
- You cannot submit a transaction or sale to cover a dishonored check.
- 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.
- 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.

**1.9. Card Acceptance.** If you have indicated either in the 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 1.9 will apply:

**1.9.1.** 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.

**1.9.2.** 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.

**1.9.3.** 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 18.1 and Glossary).

**1.9.4.** 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.



**1.9.5.** 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. The terms in Section 28 shall apply to such services.

**1.10. 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 1.10 is deemed a cash advance, and cash advances are prohibited.

**1.11. Merchants in the Lodging Industry.**

**1.11.1. 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, over-bookings, and priority checkout. If you are a merchant in the lodging industry, you must contact us for these additional rules and requirements. Failure to do so could result in additional charges or termination of this Agreement.

**1.11.2. 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 relationship manager for details and the appropriate MasterCard and Visa requirements.

**1.11.3. 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.

**1.11.4. 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.

**1.12. Customer Activated Terminals and Self-Service Terminals.** Prior to conducting Customer Activated Terminal ("CAT") transactions or Self-Service Terminal transactions, **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.**

**1.13. Displays and Advertising.** You must prominently display appropriate Visa, MasterCard, Discover, 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. You may not indicate that Visa, MasterCard, Discover, American Express, 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.

**1.13.1. 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. 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 Program Marks.

**1.13.2. American Express sublicense to Use American Express Marks.** You must not use our Marks in any way that injures or diminishes the goodwill associated with that Mark, nor (without our prior written consent) indicate that we endorse your goods or services. You shall only use our Marks as reasonably necessary to perform your obligations under the Agreement and shall cease using our Marks upon termination of the Agreement. The guidelines listed below apply to the Merchant's use of the American Express "Blue Box" logo.

- The "Blue Box" logo must appear on all point of purchase materials and signs.
- 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.
- Always spell out American Express.
- 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.

**1.14. 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.

**1.15. 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.
- No minimum purchase is required for you to offer Cash Over to a Discover Cardholder, provided that some portion of the total Card sale must be attributable to the purchase of goods or services.
- 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.)**

**1.16. 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.

If the appearance of the Card being presented or the behavior of the person presenting the Card is suspicious in nature, 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?

**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 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 SWIPE CARD NUMBER MAY BE RECEIVED.

**Fraud-Prone Merchandise Tips:**

- 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.**

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.

**3.1. 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 an electronic device (e.g., authorization / draft capture terminal, cash register, POS Device, etc.) and swipe the Card to read and capture the Card information via the Magnetic Stripe, you do not have to imprint the Card. **HOWEVER, IF THE TERMINAL FAILS TO READ THE MAGNETIC STRIPE OR IF YOU ARE REQUIRED TO OBTAIN A VOICE AUTHORIZATION, THEN YOU MUST IMPRINT THE CARD. IN ADDITION, THE SALES DRAFT MUST HAVE THE CARDHOLDER'S SIGNATURE. 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 3.2.;**
- Cardholder's signature. However, eligible merchants participating in MasterCard's Quick Payment Service Program, Visa Easy Payment Program, and Discover 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 Account 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 Card Sales in an amount more than \$25.00 including sales taxes, tip, 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 No Signature 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:** For Discover transactions, if you are a merchant operating under certain merchant category codes approved by Discover, you are not required to obtain the Cardholder's signature so long as the full track data is transmitted in the authorization request and the sale amount is \$25.00 or less.
- This Section shall apply only to receipts that include a Card account number that are electronically printed and shall not apply to transactions in which the sole means of recording the Card account number is by handwriting or by an imprint or copy of the Card.

**3.2. 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, and **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-digit Card Validation Code number and include it with each authorization request. Discover Card Organization Rules specifically require that you submit the Card Validation 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 and 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"), does not guarantee against Chargebacks, but used properly it assists 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 not match addresses when submitted for AVS and still receive an Authorization. It is your responsibility to monitor the AVS responses and use the information provided to avoid high-risk transactions.

**3.2.1. 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.

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

<b>American Express/ESA or Direct</b>	<b>1-800-528- 5200</b>
<b>American Express OnePoint</b>	<b>1-800-451-5817</b>
<b>JCB, International</b>	<b>1-800-366-4522</b>
<b>TeleCheck</b>	<b>1-800-366-1054</b>
<b>Voyager</b>	<b>1-800-987-6591</b>
<b>WEX</b>	<b>1-800-492-0669 (24 hours)</b>

#### 4. 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.**

**4.1. 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 Operating Policy (DSOP) 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 4, "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 4.1, including without limitation, PCI DSS, SDP, CISP, DISC and DSOP, 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 about American Express Data Security Operating Policy (DSOP) website can be found at: <https://www.americanexpress.com/datasecurity>

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

- You must install and maintain a secure network firewall to protect data across public networks.
- You must protect stored data and data sent across networks using methods indicated in the PCI DSS.
- 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 Validation Codes (three-digit values 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.

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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 services and Merchant Equipment that have been certified as PCI DSS compliant by the Card Organizations.

**4.3. 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).

**4.4. 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.

**4.5. 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) of any data security breach of Card or transaction data, (ii) perform or cause to be performed any remedial actions recommended by any such investigation, and (iii) 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.

**4.6. Required Information for Discover Security Breaches.** For security breaches involving Discover transactions and/or track data, you must provide us and/or Discover 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.

**4.7. Merchant Providers.** The data security standards set forth in this Section 4 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.

**4.8. Noncompliance Fees.** If we have not received receipt of your validation of compliance with your PCI DSS standards within the first 60 days of the date of the Agreement, you will be charged a monthly Non-Validation of PCI Compliance fee as set forth in the Application or as otherwise communicated to you, for the period beginning upon expiration of the 60 day period, until such time as you are compliant or this Agreement is terminated, whichever comes first. This monthly Non-Validation of PCI Compliance fee is in addition to any other fees for which you are responsible related to your failure to be compliant as related hereunder.

**4.9. 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.

## 5. 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.

You must obtain an Authorization Approval Codes from us (or a Person as provided in Section 5.4) for all transactions. A positive authorization response for MasterCard remains valid for seven (7) days for electronic processed transactions. For true paper merchants for MasterCard and Visa transactions the Authorization remains valid for five (5) days. A positive authorization response for Discover transactions remains valid for ninety (90) days. Failure to settle within these timeframes, may result in a late presentment Chargeback.

Failure to obtain an Authorization Approval Code for a sales transaction may result in a Chargeback and/or the termination of your Agreement. Authorization Approval Codes can be obtained through your POS Terminal or a Voice Response Unit ("VRU"). Any fees related to Authorizations will be charged for a request for an Authorization Approval Code, whether or not the transaction is approved.

Do not attempt to obtain an Authorization Approval Code provided by someone other than us except as described in Section 5.4. 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.

An Authorization Approval Code only indicates the availability of Credit on an account at the time the Authorization is requested. It does not warrant that the person presenting the Card is the rightful Cardholder, nor is it a promise or guarantee that you will not be subject to 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, 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.

For Cards other than MasterCard, Visa and Discover (e.g., American Express, etc.) or for check acceptance, you must follow the procedures for authorization and acceptance for each.

You may not attempt to obtain multiple Authorizations for a single transaction. 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.

For MasterCard transactions, automated fuel dispensers must ensure that completion messages are submitted for MasterCard's Card within 60 minutes of the Authorization.

**5.1. Card Not Present Transactions.** You should obtain the 3-digit Card Validation Code (CVV2, CVC2, CID) and submit this Code with all authorization requests with respect to transactions where the Card is not present (e.g., telephone, mail or internet sales). However, for recurring transaction Authorizations you should submit the Card Validation Code with the first authorization request only, and not with subsequent recurring transaction authorization requests (See Section 1.7). **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), and if you do not receive a positive match, do not process the Discover Card Not Present transaction.

### 5.2. 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.

### 5.3. 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.



**5.4. 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, DO NOT USE ANOTHER THIRD PARTY SYSTEM WITHOUT NOTIFYING CUSTOMER SERVICE. 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.

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 18.1).

If you use a third party authorization network, you must also comply with Section 4.7.

**Call the following for other Card types:**

<b>American Express/ESA or Direct</b>	<b>1-800-528-5200</b>
<b>JCB, International</b>	<b>1-800-522-8788</b>
<b>TeleCheck</b>	<b>1-800-366-5010</b>
<b>Voyager</b>	<b>1-800-987-6589</b>
<b>WEX</b>	<b>1-800-842-0071</b>

**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.

**5.5. 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 and amount.

**5.6. 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 or Discover 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

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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, 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 should 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 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 120% of the previously authorized charges. You must record the dates, authorized amounts, and their respective Authorization Approval Codes on the Sales Draft(s).

**5.7. Discover Procedure for Request for Cancellation of Authorization.**

If a Discover Card sale is cancelled or the amount of the transaction changes following your receipt of Authorization for the sale, you must call your Authorization Center directly and request a cancellation of the Authorization. An Authorization may be cancelled at any time within fifteen (15) 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 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.

**5.8. 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.

**6. Submission/Deposit of Sales Drafts and Credit Drafts****6.1. 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.

**6.1.1. 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.

**6.2. Timeliness.** In order to qualify for the lowest interchange Discount Rate, 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.

**6.3. Mail/Branch Deposit Procedures.** Complete the appropriate summary form designated for your use. Imprint the completed summary with your Merchant Identification Card, if applicable, and sign it. Please do not staple or clip Sales Drafts together or to summary forms. This will distort the Cardholder's account number and may result in a Summary Adjustment or Chargeback to you. Mail your deposits daily to us, or, if your Agreement allows deposit at a local bank branch, you must make daily deposits.

Do not send us the merchant copies (which are for your records); submit only the Bank hard copies of the transactions. If merchant copies are submitted, they will be returned to you unprocessed.

**6.4. 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 39.2 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 its 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.

**7. Settlement**

Except as otherwise set forth in this Program Guide, your funds for MasterCard/ Visa/ Discover transactions will ordinarily be processed and transferred to your financial institution within two (2) Business Days from the time a Batch is

received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard/ Visa/ Discover 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.

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.

**8. Refunds/Exchanges (Credits)****8.1. 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 and expiration date;
  - The Cardholder's name;
  - Your name, city, state and Merchant Account Number;
  - A description of the goods or services;
  - The transaction date of the Credit;
  - The total amount of the Credit; and
  - For Discover transactions, the approved currency used and the signature of your authorized representative or employee.
- 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 for Card sales.
- 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.**

**8.2. 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 8.1.) 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.

**9. Retention of Records For Retrievals and Chargebacks****9.1. Retain Legible Copies.**

For MasterCard and Visa: You must securely retain legible copies of all Sales and Credit Drafts or any other transaction records for a period of eighteen (18) 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 3.1).

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 American Express: You must submit the Credit to American Express directly, or through 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 Cardmember 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 Cardmember.

**9.2. 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.

**10. Chargebacks, Retrievals and Other Debits****10.1. Chargebacks.**

**10.1.1. 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.

**10.1.2. 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.
- Fax or mail legible copies of the Sales Draft(s) to the fax number or mail address provided on the request form.
- 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 "non-receipt" for which there is 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.

**10.1.3. 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 and Discover 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 the merchant would 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 representment of the transaction and/or reversal of the Chargeback, we will do so on your behalf. However, representment and/or reversal is ultimately contingent upon the Card Issuer and/or Cardholder accepting the transaction under applicable Card Organization guidelines. Representment 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. If a decision is made in favor of the Cardholder and/or Issuer, and the Chargeback is upheld, you will be responsible for all such fees and any other applicable fees and penalties imposed by Visa, as they may change from time to time. Such fees and penalties 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. If a decision is made in favor of the Cardholder and/or Card Issuer, and the Chargeback is upheld, you will be responsible for all such fees and any other penalties imposed by MasterCard, as they may change from time to time. Such fees and penalties will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

For Discover Chargebacks: If Discover rejects our representment 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. Discover charges fees for representment requests and an arbitration fee as published in their fee schedule.

If the Chargeback is not disputed within the applicable time limits set forth by MasterCard, Visa, Discover 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" from 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. If a Chargeback is applied, the Chargeback reversal can only be requested if you prove that you already issued a Credit to the Cardmember for the amount of the disputed charge.

**Note:** Discover does 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 time frame.
- 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 Discover Card Organization Rules.
- If you have any questions, call Customer Service.

**10.1.4. Chargeback Reasons.** The following 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. Additionally, you can choose to retain the Credit Card and return it to the Acquirer for a reward.
- 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 instore/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.
  - Card present, Cardholder signed the Sales Draft containing disclosure.
  - If applicable, the words "NO EXCHANGE, NO REFUND," etc. must be clearly printed in 1/4" 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 Chargebacks: Chargeback representment rights do not exist if you failed to fulfill a retrieval request and/or provide a sales slip that contains all required data elements. To preserve Chargeback representment rights, respond to all retrieval requests with a clear legible copy of the transaction document that contains all required data elements within the required timeframe that is specified by the retrieval request.

**To reduce your risk of receiving a Fraud Related Chargeback:**

**Card Present Transactions:**

- Obtain an Authorization for all transactions.
- If you are utilizing an electronic device to capture Card 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.
- If you are unable to swipe the Card or if a Referral response is received, 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.
- Address Verification Services.
- CVV2, CVC2 and CID Verification.

**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 Cardholder's 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.

- 6. Non Receipt of Information:** Failure to Respond to a Retrieval Request or Cardholder Does Not Recognize.

**The following scenarios could cause Non Receipt of Information Chargeback to occur:**

- 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 sales draft did not contain required information which may include signature).
- The Cardholder does not 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.

**To reduce your risk of receiving a Non Receipt of Information Related Chargeback:**

- 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 Card Organization.
- Develop efficient methods to retrieve transaction documentation to maximize ability to fulfill requests.

**10.2. 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 15:

- 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 transactions, you are not permitted to convert from your local Discover approved currency into another currency, nor may you quote the price of a transaction in U.S. Dollars if completed in another approved currency.**
- Discount Rate 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 fee.
- 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 our termination of 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 interchange fees.
- Costs or expenses associated with responding to any subpoena, garnishment, levy or other legal process associated with your account.

**10.3. 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.

**10.4. 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.

## 11. Account Maintenance

**11.1. 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 Relationship Manager immediately. If you accept payment types other than Visa, MasterCard and Discover (such as the American Express Card, and TeleCheck Services), you are also responsible for contacting the Card Organizations or companies governing those Cards to notify them of this change.

**11.2. Change in Your Legal Name or Structure.** You must call Customer Service or your Relationship Manager and request a new Agreement.

**11.3. 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.

**11.4. 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.

**11.5. 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.

## 12. Card Organization Monitoring

MasterCard, Visa and Discover 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.

## 13. Supplies

### Placing Orders.

- To order additional supplies, call Customer Service 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 applicable shipping and handling charges.



**B. CARD GENERAL TERMS**

In addition to the preceding Operating Procedures, our Agreement with you includes the following General Terms. If you fail to follow any of the provisions of the Operating Procedures or General Terms, you may incur certain liabilities and we may terminate our Agreement.

**14. 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.

**15. 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 4 above. 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 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 the web sites such as <http://usa.visa.com/merchants/> and <http://mastercardmerchant.com>, as those links may change from time to time.

**16. Settlement of Card Transactions**

**16.1.** 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.

**16.2.** Unless otherwise agreed to in writing to the contrary, all discount rates are deducted daily. All settlements for Visa, MasterCard Discover 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.

**16.3.** 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 by the Card Organizations. 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. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

**16.4.** 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.

**16.5.** In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 23.4) 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.

**16.6.** 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.

**16.7.** 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.

**17. Exclusivity**

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

**18. Fees; Adjustments; Collection of Amounts Due**

**18.1.** 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 supplements or subsequent communications), all of which will be calculated and payable pursuant to the terms of this Agreement and any additional pricing supplements or subsequent communications.

If a transaction fails to qualify for your anticipated interchange levels 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 will be charged a higher interchange, Discount Rate or a Non-Qualified Interchange Fee, as well, any applicable surcharge for that transaction, all as further described in Section 39.3 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).

**18.2.** 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 90 days from the mail date (post mark) of the monthly statement in question. Note that NFI requests received after the 90 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 (402) 916-8949; 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.

**18.3.** 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.

**18.4.** 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.

**18.5.** 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.

**18.6.** Subject to Section 23.3, we may also increase our fees or add new fees for Services for any other reason at any time by notifying you twenty (20) days prior to the effective date of any such change or addition.

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

**18.8.** 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 related 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 related services have been paid in full.

**18.9.** 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.

**18.10.** 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 or Discover. Your Chargeback Percentage will be calculated as the larger of (a) the total Visa, MasterCard, American Express and Discover Chargeback items in any line of business in any calendar month divided by the number of Visa, MasterCard, American Express and Discover transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, MasterCard, American Express and Discover Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, MasterCard, American Express and Discover transactions in that line of business submitted in that month.

**18.11.** You must promptly and carefully review statements or reports provided or made available to you (physically, electronically or otherwise) reflecting Card transaction activity, including, activity in the Settlement Account and Reserve Account, whether provided by us or others. 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 such time period, we may, in our discretion, assist you, at your expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but we shall not have any obligation to investigate or effect any such 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.

**18.12.** 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.

## 19. Chargebacks

**19.1.** 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.

**19.2.** 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.

## 20. Representations; Warranties; Covenants; Limitations on Liability; Exclusion of Consequential Damages

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

**20.1.1.** 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, preauthorize order, or Credit Draft, and does not involve the use of a Card for any other purpose;

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

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

**20.1.4.** each Card transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased or rented or other payments to you 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;

**20.1.5.** 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;

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

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

**20.1.8.** 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;

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

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

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

**20.1.12.** 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 under Card Organization Rules, in a way not previously disclosed to us;

**20.1.13.** 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;

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

**20.1.15.** 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.

**20.1.16.** 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;

**20.1.17.** 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.

**20.2.** 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.

**20.3.** 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.

**20.4.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 26 or 20.5), 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.

**20.5.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 26), OUR LIABILITY TO ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 16.4, 16.6 OR 35.1, 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, LESS ONE PERCENT (1%).

**20.6.** 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 AMERICAN EXPRESS CARD, 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., WRIGHT EXPRESS CORPORATION AND WRIGHT EXPRESS FINANCIAL SERVICES CORPORATION.

## 21. Confidentiality

**21.1.** 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.

**21.2.** 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.

**21.3.** 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 or Bank, 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 or Bank 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.

**21.3.1.** 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 safe guarding 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.

**21.3.2.** 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.

**21.3.3.** 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.

**21.3.4.** 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 equitable relief, in addition to all other available remedies, to redress any breach.

**21.4.** With respect to any information received by us from Client via its use of the Services, we will keep such information confidential in accordance with applicable law; provided, that we may disclose such information (i) to third parties as we deem appropriate to provide the Services, (ii) our auditors and attorneys (internal and external) and regulators, (iii) as required or permitted by law, regulation or court order (iv) to our respective Affiliates as we deem appropriate.

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

**21.6.** 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 of us.

**21.7.** 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.

## 22. Assignments

**22.1.** 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 22, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

**22.2.** 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 (or provide a security interest) 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.

**22.3.** Upon notice to you, 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 and obligations hereunder and/or may delegate our duties 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.

**22.4.** 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.

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

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

**23.2.** The initial term of this Agreement shall commence and shall continue in force for three years after it becomes effective. 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.

**23.3.** 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 23.4 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 18.6, 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.

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

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

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

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

**23.4.4.** 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 Card Organization, or any other entity, or an actual or suspected data security breach, 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; or

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

**23.4.6.** 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 24; or

**23.4.7.** 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;

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

**23.4.9.** 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

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

**23.4.11.** 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 37.2 ("Compliance with Laws"); then, upon the occurrence of (1) an Event of Default specified in subsections 23.4.4, 23.4.9 or 23.4.11, 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.

**23.5.** 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.

**23.6.** 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 24.

**23.7.** 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.

**23.8.** 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 or Discover. 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.

**23.9.** After termination of this Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, 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.

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

**24.1.** 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 24. 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.

**24.2.** The Reserve Account shall be fully funded upon three (3) days' notice to you, or in instances of fraud or suspected fraud 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 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 Card transactions and Chargebacks in accordance with Card Organization Rules. We will hold funds pursuant to this Section 24 in master account(s) with your funds allocated to separate sub accounts. Unless specifically required by law, you shall not be entitled to interest on funds held by us in a Reserve Account.

**24.3.** 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.

**24.4.1.** To secure your obligations to Servicers and our respective Affiliates under this Agreement and any other agreement for the provision of related equipment or related 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 Servicers 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 the possession of Servicers, whether now or hereafter due or to become due to you from Servicers. Any such funds, money or amounts now or hereafter in the possession of Servicers may be commingled with other funds of Servicers, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of Servicers. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, Servicers 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 Servicers and our respective Affiliates under this Agreement and any other agreement with Servicers or any of Servicers' 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 Servicers such instruments and documents as Servicers may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

**24.4.2.** 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 24.4, 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.

**24.4.3.** 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 (collectively "Set Off Funds") any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement, you acknowledge that such Set Off Funds will be held in a commingled Reserve Account(s) of Servicers (as described in this subsection 24.4) 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.

**24.4.4.** If 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.

## 25. Financial and Other Information

**25.1.** 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 Merchant 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.

**25.2.** 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.

## 26. Indemnification

**26.1.** You agree to indemnify and hold us harmless from and against all losses, liabilities, damages and expenses:

- resulting from any breach of any warranty, covenant or agreement or any misrepresentation by you under this Agreement;
- 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;
- arising out of your use of the Services; or
- 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).

**26.2.** 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 Discover Card Transactions, American express Card Transactions and Other Services, including JCB Card, PIN Debit Card, and Electronic Benefits Transactions, TeleCheck check services, Gift Card Services, and Transactions involving Cards from other Non-Bank Card Organizations.

## 27. Special Provisions Regarding Non-Bank Cards

**27.1.** Non-Bank Card transactions are provided to you by Processor and not by Bank and include transactions made using Discover, American Express, JCB, Voyager and WEX Card types. Services provided, transactions processed and other matters contemplated under this Section 27 are subject to the rest of the Agreement, as applicable, except to the extent the terms of this Section 27 directly conflict with another provision of this Agreement, in which case the terms of this Section 27 will control; provided, however, that (i) Bank is not a party to this Agreement insofar as it relates to Non-Bank Card services, and Bank is not liable to you in any way with respect to such Services and (ii) you agree to pay Processor any per item processing, authorization and other fees described in the application for any non-acquired transaction services you receive from Processor. For the purposes of this section, 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, JCB (and Discover on its behalf), Discover, or any other Non-Bank Card Organization.

**27.2.** You understand that for American Express transactions, authorizations are obtained from and are funded by American Express. American Express will



provide you with its own agreement that governs those transactions, unless American Express OnePoint Services are provided to you in Section 2.0 of third Party Agreements. You understand and agree that 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 that American Express will charge additional fees for the services they provide.

**27.3. If you accept JCB Cards,** you agree to be bound by JCB and/or Discover provisions of this Agreement. You also acknowledge and agree that JCB transactions will be processed under and will be subject to Discover Card Organization Rules.

**27.4. 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.

**27.5. 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.

**27.6. 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 sales, upon the request of the Card holder, 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 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 Bank 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

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

Client acknowledges and agrees that its sole remedies with respect to the WEX Full Acquiring services shall be against Bank 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.

**27.7. If you accept Voyager Cards:**

- In addition to the information stated in Section 1 (MasterCard, Visa and Discover 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 1.5 (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 3.1 (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 7 (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 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. You are responsible for the expense of retaining sales data records and Sales Drafts.
- In addition to the scenario identified in Section 10.1.4 of the Operating Guide 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 20 (Representations; Warranties; Covenants; Limitations of Liability; Exclusion of Consequential Damages) of the 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.

**28. Special Provisions For PIN Debit Card**

The special provisions outlined in this Section 28 apply only to those PIN Debit Card transactions that are processed by a Cardholder entering a PIN. These provisions do not apply to Non-PIN Debit Card transactions which do not involve entry of a PIN.

**28.1. PIN Debit Card Acceptance.** Most, but not all, ATM Cards (Debit Cards) can be accepted at the point of sale at participating locations. Examine the back of the PIN 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 PIN 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 PIN 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 PIN 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 Personal Identification Number, for the completion of the transaction unless the circumstances appear suspicious. A signature is not required for PIN 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 PIN Debit Card transaction.

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

- All debit transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for PIN Debit Card transactions.
- You may not complete a PIN Debit Card transaction that has not been authorized. The Cardholder should be instructed to contact the Issuer to find out why a transaction has been declined. 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.
- You may not complete a PIN Debit Card transaction without entry of the Personal Identification Number (PIN) by the Cardholder.
- 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 PIN Debit Network used to process your transaction will depend upon, among other things, our own business considerations, the availability of the PIN Debit network at the time of the transaction and whether a particular PIN Debit Card is enabled for a particular PIN Debit network. The PIN Debit network utilized to route your transaction may or may not be the lowest cost network available. We may, in our sole discretion (i) utilize any PIN Debit network available to us for a given transaction (including a PIN Debit network affiliated with Processor) and (ii) add and/or remove PIN 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. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, you must request another form of payment from the customer.
- 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 TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING REFUNDS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

**28.3. Cash Back From Purchase.** You have the option of offering cash back to your customers when they make a PIN Debit Card purchase. You may set a

minimum and maximum amount of cash back that you will allow. If you are not now offering this service, your terminal may require additional programming to begin offering cash back.

**28.4. Settlement.** Within one Business Day of the original transaction, you must balance each location to the system for each Business Day that each location is open.

**28.5. Adjustments.** An adjustment is a transaction that is initiated to correct a PIN Debit Card transaction that has been processed in error. You will be responsible for all applicable adjustment fees that may be charged by a Debit Card network. Some networks may have established minimum amounts for adjustments.

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

- The Cardholder was charged an incorrect amount, either 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.
- All parties involved in processing adjustments 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.

## 29. Special Provisions Regarding Electronic Benefit Transfer ("EBT")

If you elect to engage in EBT transactions, the terms and conditions of this Section 29 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 29 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 29 directly conflict with another section of this Agreement, in which case the terms of this Section 29 will control; 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.

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

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 29, 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 the procedures set forth 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 EBT Rules and procedures applicable to such EBT Card transaction. 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.

You authorize us to initiate EBT Card transactions and to receive settlement for such transactions on your behalf.

**29.2. Manual EBT Vouchers.** In accordance with the procedures set forth in this Section 29 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 before payment of voucher will be made to you. Vouchers must be cleared within 10 Business 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 when you fail to obtain an authorization number from the applicable EBT service provider as set forth in this Section 29 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 29.1 above, you may not "re-submit" a manual sales draft for payment for the transaction.

**29.3. 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.

**29.4. 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.

**29.5. 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.

**29.6. 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 29 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 of 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 29 or the Agreement, as applicable.

The provision of services under this Section 29 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 29.

**29.7. 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 29 will be limited to purposes directly connected with such duties.

**29.8. 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 29 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.

### 29.9. Miscellaneous.

**29.9.1. 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 29. You will promptly notify us of any such errors or disputes.

### 29.9.2. 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 29 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 29, 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.

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

**29.9.4. 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 twenty (20) days' written notice to you provided that you may, upon written notice, terminate your obligation under this Section 29 upon receipt of notice of such amendment.

**29.9.5. 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.

**29.9.6. Reference to State.** Any references to state herein will mean the state in which you accept EBT benefits pursuant to this Section 29. If you accept EBT benefit in more than one state pursuant to this Section 29, then the reference will mean each such state severally, not jointly.

**29.9.7. 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 29.

## 30. Special Provisions Regarding Wireless Service

If you elect to purchase the Wireless Services from us as indicated on the Application, then the following terms and conditions of this Section 30, 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 30 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 30 directly conflict with another section of this Agreement, in which case the terms of this Section 30 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 Services are in no way responsible for providing, maintaining, servicing or supporting such third party voice and/or data services.

**30.1. 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. You will promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.
- **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 31 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.

**30.2. 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 30 and Section 31 ("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 30.2 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.

**30.3. 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 30.10, 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.

**30.4. 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:

- 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;
- your negligent acts or omissions;
- any breach by you of any of your obligations under this Section 30; or
- any Person's unauthorized access to Client's data and/or unauthorized financial activity occurring on your Merchant Account Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

**30.5. 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.

**30.6. Termination.** In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 30 may terminate:

- 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
- 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).

**30.7. 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.

**30.8. 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.

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

**30.10. 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.

### 31. Terms of Equipment Purchase or Rental

This Section 31 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"). If the Equipment Documents reflect that your equipment is leased, then the provisions of your lease are governed by Section 3.0 of Part II (Third Party Agreements). Equipment rented to or purchased by you under the Equipment Documents is referred to in this Section 31 as the "Equipment." THE EQUIPMENT IS BEING SOLD OR RENTED 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 31 are subject to the rest of the Agreement as applicable except to the extent the terms of this Section 31 directly conflict with any other provision of the Agreement, in which case the terms of this Section 31 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 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

**31.1. 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 31.7), except that any "Software" (as defined in Section 31.8) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 31.8 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 31.5. 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 31.5. (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.)

**31.2. 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 31. 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 31.

**31.3. Effective Date and Term of Section 31.** This Section 31 shall become effective on the first date you receive any piece of Equipment covered by this Section 31. This Section 31 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 31 shall survive the termination or expiration of this Agreement and continue until all Rental Equipment is returned or paid for.

**31.4. 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).

**31.5. 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 31.3). 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 31 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, 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.

**31.6. 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 31.11(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 31.11(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 31.5 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).

I. 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. Company name, complete address and phone number.
  2. Name of person to contact if there are any quest.
  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.

**31.7. 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.

**31.8. 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 31.8 shall survive the termination of this Equipment Agreement.

**31.9. Limitation on Liability.** Notwithstanding any provision of this Agreement to the contrary and in addition to the limitations and disclaimers set forth in Section 20 of this Agreement (including without limitation the disclaimers in Section 20.2 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.

**31.10. 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 harm less 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.

### 31.11. 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 31, or if any other default occurs under this Agreement, any such event shall be a default hereunder.

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 31, 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 31 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.

## 32. Special Provisions Regarding Gift Card Services

Gift Card Services are provided to you by Processor. The Services provided, transactions processed and other matters contemplated under this Section 32 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 32 directly conflict with another provision of this Agreement, in which case this the terms of this Section 32 will control; 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. The terms and conditions set forth in this Section govern the provision of Gift Card Services.

**32.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 32.1 or as defined in the Glossary or elsewhere in this Section.

- 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 maintained.
- d. "Designated Location" means any store 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 Locations 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.

**32.2. 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 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 authorizes Company, and Company agrees, to provide Services with respect to Gift Cards sold and activated by third party distributors. As between Company 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 Company agree that Company 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 Company is caused in whole or in part by any failure of any third party distributor or Client to provide to Company information regarding the sale and activation of such Card that is accurate, complete, timely and formatted in accordance with Company'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 Company approved third party distributors.

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

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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 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 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.



**32.4. Fees and Payment.** 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.

**32.5. 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 32.4(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 32.5(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 32.6(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 32.3 (f), (g), (h), (i), (k) and (l), and Sections 32.4, 32.5(b), 32.5(c), 32.5(d), 32.6 and 32.7 hereof shall survive any termination of this Agreement.

**32.6. 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.

**32.7. 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.

**32.8. 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).

**33. Special Provisions Regarding TransArmor® Services**

If you utilize the TransArmor Service, the following additional terms and conditions of this Section 33 shall apply.

The TransArmor Service is provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the TransArmor Service, 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.

The TransArmor Service provided, transactions processed and other matters contemplated under this Section 33 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 33 directly conflict with another provision of this Agreement, in which case the terms of this Section 33 will control.

**33.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 33 or as defined elsewhere in this Agreement.

**33.2. Grant of License.** Processor grants to you a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this Section 33 to use the TransArmor Service and the TransArmor Service Marks (as identified in the TransArmor Rules and Procedures) in the United States in accordance with this Section 33, including without limitation the TransArmor Rules and Procedures. Any rights with respect to the TransArmor Service not expressly granted by Processor in this Section 33 are deemed withheld.

**33.3. Services.** The TransArmor Service applies only to Card transactions sent from you to us for authorization and settlement pursuant to the Agreement, and specifically excludes electronic check and closed-loop gift card transactions. Processor will provide an encryption key to you to be used to encrypt (make unreadable) Card data during transport of the authorization request from your point of sale to Processor's systems. During the period when the transaction is being transmitted to Processor for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. Processor will then generate or retrieve a unique, randomly generated token assigned to the Card number that will be returned to you in the authorization response (the "Token").

**33.4. Responsibilities of Client.** You are responsible to comply with the following regarding your use of the TransArmor Service:

- a. You are required to comply with the Card Organization Rules, including taking all steps required to comply with the Payment Card Industry Data Security Standards (PCI DSS). You must ensure that all third parties and software use by you in connection with your payment processing are compliant with PCI DSS. Use of the TransArmor Service 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 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.

- b. Use of the TransArmor Service is not a guarantee against an unauthorized breach of your point of sale systems or any facility where you process and/or store transaction data (collectively, "Merchant Systems").
- c. You must deploy the TransArmor Service (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your Merchant Systems including replacing existing Card numbers on your Merchant 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 associated with the transaction, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.
- e. Any POS device, gateway and/or VAR you use in connection with the TransArmor Service must be certified by FDMS for use with the TransArmor Service.
- f. If you send or receive batch files containing completed Card transaction information to/from Processor, you must use the service provided by Processor to enable such files to contain only Tokens or truncated information.
- g. You must use truncated report viewing and data extract creation within reporting tools provided by Processor.
- h. You are required to follow rules or procedures we may provide to you from time to time related to your use of the TransArmor Service ("TransArmor Rules and Procedures"). We will provide you with advance written notice of any such rules or procedures or changes to such rules or procedures.
- i. You have no right, title or interest in or to the TransArmor Service, any related software, materials or documentation, or any derivative works thereof, and nothing in this Agreement assigns or transfers any such right, title or interest to you. You shall not take any action inconsistent with the stated title and ownership in this Section 33. You will not file any action, in any forum that challenges the ownership of the TransArmor Service, any related 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 this Section 33 and your access to and use of the TransArmor Service in the event of a challenge by you. No additional rights are granted by implication, estoppel or otherwise.
- j. You will not: (i) distribute, lease, license, sublicense or otherwise disseminate the TransArmor Service or any portion of it to any third party; (ii) modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the TransArmor Service or any portion of it; or (iii) sell, license or otherwise distribute the TransArmor Service or any portion of it; (iv) make any copies, or permit any copying, of the TransArmor Service or any portion of it; or (v) use any portion of the TransArmor Service as a standalone program or in any way independently from the TransArmor Service. If any portion of the TransArmor Service contains any copyright notice or any other legend denoting the proprietary interest of Processor or any third party, you will not remove, alter, modify, relocate or erase such notice or legend on such item.
- k. You will only use the TransArmor Service for your internal business purposes in a manner consistent with this Agreement.
- l. You will use only unaltered version(s) of the TransArmor Service and will not use, operate or combine the TransArmor Service 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 33.
- m. You will promptly notify us of a breach of any terms of this Section 33.

**33.5. Termination.** Unless prohibited by applicable law, we may modify this Section 33 by providing written notice of such modifications to you. You may choose not to accept the requirements of any such modifications by notifying

**33.6. Fees.** Client shall pay Processor the fees for TransArmor Service as set forth on the Application.

**33.7. TransArmor Limited Warranty.** Processor warrants that the Token returned to you, as a result of using the TransArmor Service, cannot be used to initiate a financial sale transaction by an unauthorized entity/person outside the Merchant Systems. This warranty by Processor is referred to herein as the "Limited Warranty" and is subject to the terms and conditions set forth in this Section 33. To be eligible for the Limited Warranty, you must maintain a processing relationship with Processor and be in compliance with all the terms of the Agreement, including this Section 33, and any other agreement relating to Cards eligible for the TransArmor Service. Subject to the terms, conditions and limitations set forth in the Agreement, including the limitation of liability provisions, Processor agrees to indemnify and hold you harmless from direct damages, including third party claims, resulting from Processor's breach of the Limited Warranty. The express remedy for Processor's breach of the Limited Warranty set forth in this paragraph constitutes Processor's entire liability and your sole and exclusive remedy for Processor's breach of the Limited Warranty. The Limited Warranty is void if (i) you use the TransArmor Service in a manner not contemplated by, or in violation of, the Agreement, including this Section 33, or any other agreement relating to Cards eligible for the TransArmor Service or (ii) you are grossly negligent or engage in intentional misconduct.

**33.8. TransArmor Disclaimer.** IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE AGREEMENT, THE FOLLOWING DISCLAIMER APPLIES TO THE TRANSARMOR SERVICE: EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 33, PROCESSOR MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED WITH REGARD TO THE TRANSARMOR SERVICE INCLUDING THE UNINTERRUPTED OR ERROR-FREE OPERATION OF THE TRANSARMOR SERVICE.

#### 34. Special Provisions Regarding Fraud Detection Services

If you elect to receive Fraud Services from us as indicated on the Application, 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.

**34.1. 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.

**34.2. 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.

**34.3. 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.

**34.4. 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.

**34.5. 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.**

**34.6. 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.

**34.7. 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.

**34.8. 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.**

### 35. Special Provisions Regarding Buyer Initiated Payments

The terms and conditions set forth in this Section 35 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.

**35.1. 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.

### 35.2. Acceptance of Buyer Initiated Payments.

- There is no hardware, software, or supplies required to accept Buyer Initiated Payments.
- 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.
- 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.
- 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.
- 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.
- 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.

**35.3. 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.

**35.4. 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.

**35.5. 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.

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

- 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.
- 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.

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

**35.8. 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.



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

**36.1. 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).

**36.2. 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.

**36.3. 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.

**36.4.** 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.

**37. Other Terms**

**37.1. 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 or from a Person shall not excuse the performance of your obligations to us under this Agreement.

**37.2. 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. 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.

**37.3. 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, if to you at your address appearing in the Application, or by electronic means, including but not limited to the e-mail address you have provided on the Application, and if to us at our address appearing in Section 39.4 of this Agreement, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065, and 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 the Merchant's last known address (including e-mail address), as indicated in our records, shall constitute effective notice to the Merchant under this Agreement.

**37.4. 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.

**37.5. 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.

**37.6. 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.

**37.7. 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, 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 37.7 does not apply to fee changes, which are governed by Sections 18.5 and 18.6.

**37.8. 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.

**37.9. Card Organization Rules.** The parties acknowledge that the Visa, MasterCard and Discover Card Organization Rules give Visa, MasterCard and Discover, certain rights to require termination or modification of this Agreement with respect to transactions involving Visa, MasterCard and Discover Cards and the Visa, MasterCard and Discover 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.

**37.10. 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.

**37.11. 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 1099 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.**

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 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, it is not a guarantee that a transaction is valid.

**Affiliate:** A person that, directly or indirectly, (i) owns or controls a party to this Agreement or (ii) is under common ownership or control with a party to this agreement.

**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.

**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.

**Authorization Approval Code:** A number issued to a participating merchant by the Authorization Center which confirms the authorization for a sale or service.

**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:** See either Credit Card or Debit Card.

**Cardholder:** Means the Person whose name is embossed on a Card (or Debit Card, as applicable) and any authorized user of such Card.

**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") and any applicable debit networks.

**Card Organization Rules:** The rules, regulations, 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 Validation Codes:** 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 Validation Code is known as CVV2; MasterCard's Card Validation Code is known as CVC2; Discover's Card Validation Code is known as a CID. Card Validation 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):** A unique value encoded on the Magnetic Stripe of a Card used to validate Card information during the Authorization process.

**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.

**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.

**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."

**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 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.

**Debit Card:** See either PIN Debit Card or 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 and/or amount charged a merchant for processing its qualifying daily Credit Card and Non-PIN Debit Card transactions, as set forth in the Application. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 18.1.

**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.

**Factoring:** The submission of authorization requests and/or Sales Drafts by a merchant for Card sales or cash advances transacted by another business.

**General Terms:** Section of the Program Guide, including any amendments or modifications.

**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 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.

**Media:** The documentation of monetary transactions (i.e., Sales Drafts, Credit Drafts, computer printouts, etc.).

**Merchant Account Number (Merchant Number):** A number that numerically identifies each merchant location, outlet, or line of business to the Processor for accounting and billing purposes.

**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 Account Number, name and sometimes merchant ID code and terminal number.

**Merchant Processing Application:** The Merchant Processing Application and Agreement executed by Client, Processor and Bank, 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).

**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 Level and the interchange fee actually was processed.

**Non-Qualified Surcharge:** A surcharge applied to any transaction that fails to qualify for the Anticipated Interchange Level 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 18.1).

**Operating Procedures:** The manual prepared by Processor, containing operational procedures, instructions and other directives relating to Card transactions. The current Operating Procedures are set forth in the Program Guide.

**Other Services:** Other Services include all services related to JCB Card, PIN Debit Card, and EBT Transactions, TeleCheck check services, Equipment purchase and rental, Gift Card Services and Transactions involving Cards from other Non-Bank Card Card Organizations such as Voyager Fleet Systems, Inc., Wright Express Corporation and Wright Express Financial Services Corporation.

**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 Sponsor Banks:** The PIN Debit Sponsor Bank(s) identified on the Application signed by you that is/ are the sponsoring or acquiring bank(s) for certain PIN Debit networks.

**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 Account:** An account established and funded at our request or on behalf, pursuant to Section 24 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.

**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.

**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 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 account (s) at a financial institution designated by Client 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.

**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 10.3 and 10.4.)

**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.

**39.1. 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, Client shall be charged ten dollars (\$10.00) 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.

**39.2. Funding Acknowledgement Automated Clearing House (ACH)**

Automated Clearing House (ACH). I acknowledge that the funds for MasterCard, Visa and Discover transactions will be processed and transferred to my Settlement Account within two (2) Business Days from the time a Batch is closed (by 12:00 a.m. PT) and within one (1) Business Day from the time the Batch is closed (by 12:00 a.m. PT) if such account is a Wells Fargo Settlement Account. The ACH transactions will appear on your statement as "Merchant Bnkcd".

**39.3. 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 Levels associated with your account.

If a transaction fails to qualify for your Anticipated Interchange Levels, you will be billed a Non-Qualified Interchange Fee, plus a Non-Qualified Surcharge for each such non-qualifying transaction (see Section 18.1 and Glossary).

Your initial fees for Services are stated on your Application and may be adjusted from time to time to reflect:

- Any increases or decreases in the interchange and/or assessment portion of the fees,
- The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Client, and
- 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 and, if (a) CLIENT breaches this Agreement by improperly terminating it prior to the expiration of the applicable term of the Agreement, or (b) this Agreement is terminated prior to the expiration of the applicable term of the Agreement due to an Event of Default, 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 is a reasonable pre-estimate of SERVICERS' probable loss. Such amount shall be paid to SERVICERS within 15 days after CLIENT's receipt of SERVICERS' calculation of the amount due.

For purposes of the remaining paragraphs in this Section 39.3, "Sales Volume" means the total combined amount of Credit Card, PIN Debit and Non-PIN Debit (MasterCard, Visa and Discover) payment transactions processed by us minus any amounts attributable to returned items".

If Client terminates the Agreement prior to the end of the then current term of the Agreement, Client shall pay an early termination fee equivalent to one of the following:

- If the Client's total Sales Volume for the past 12 months\* is less than One Million Dollars (\$1,000,000), the early termination fee is Five Hundred Dollars (\$500.00) per location; or
- If the Client's total Sales Volume for the past 12 months\* is greater than or equal to One Million Dollars (\$1,000,000), 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 current or prior term. "Revenue" is 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.

\* If Client has less than twelve months of Sales Volume, the early termination fee shall be calculated based on "Annualized Sales Volume" in lieu of "Sales Volume." "Annualized Sales Volume" means 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) 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.

Client's obligation with respect to any Monthly Minimum Processing Fee will end when SERVICERS receive the aforementioned liquidated damages. If Client terminates this agreement via facsimile, Client must keep a copy of the facsimile confirmation record. This facsimile confirmation record will be required to substantiate refund of fees that Client deems were incorrectly assessed after the termination of the Agreement.

**39.4. Addresses for Notices****PROCESSOR:****Wells Fargo Merchant Services, L.L.C.:**

1307 Walt Whitman Road  
Melville, NY 11747  
Attn: Sales Manager

**BANK:****Wells Fargo Bank:**

1200 Montego Way  
Walnut Creek, CA 94598  
Attn: Merchant Services

**Important Phone Numbers:**

(see also Sections 3.3 and 5.3)

Customer Service  
1-800-451-5817 press 1

**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, 1307 Walt Whitman Road, Melville, NY 11747, 1-800-767-2484 ext. 32900, 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 II: 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 SERVICES AGREEMENT**

This TeleCheck Services Terms and Conditions (the "Agreement") is entered by and between TeleCheck Services, Inc. ("TeleCheck") and Subscriber ("Subscriber") as indicated on the Merchant Processing Application. TeleCheck will provide one of the following services ("TeleCheck Services") as selected in the Merchant Processing Application: TeleCheck Electronic Check Acceptance® ("ECA®") warranty service ("ECA Warranty Service") or Paper Warranty service ("Paper Warranty Service"). Upon processing Subscriber's first check through any of the TeleCheck® services or from the date Subscriber is entered into the TeleCheck system as a subscriber, whichever is earlier (the "Effective Date"), the terms and conditions of this Agreement, including payment and the Minimum Monthly Fee, shall apply from that point forward. Any of the TeleCheck services, including, without limitation, funds settlement, billing and customer service, may be performed by one or more of TeleCheck's affiliates.

**1.0. TeleCheck Services Agreement**

This TeleCheck Services Terms and Conditions (the "Agreement") is entered by and between TeleCheck Services, Inc. ("TeleCheck") and Subscriber ("Subscriber") as indicated on the Merchant Processing Application. TeleCheck will provide one of the following services ("TeleCheck Services") as selected in the Merchant Processing Application: TeleCheck Electronic Check Acceptance® ("ECA®") warranty service ("ECA Warranty Service") or Paper Warranty service ("Paper Warranty Service"). Upon processing Subscriber's first check through any of the TeleCheck® services or from the date Subscriber is entered into the TeleCheck system as a subscriber, whichever is earlier (the "Effective Date"), the terms and conditions of this Agreement, including payment and the Minimum Monthly Fee, shall apply from that point forward. Any of the TeleCheck services, including, without limitation, funds settlement, billing and customer service, may be performed by one or more of TeleCheck's affiliates.

**1.1. Term, Termination and Amendment.** This Agreement shall be effective for an initial term of 12 months from the Effective Date; provided, however, that Subscriber may terminate this Agreement if Subscriber gives and TeleCheck receives written notice of termination within the first 30 days of the Agreement. Thereafter, this Agreement shall automatically renew for successive 12 month terms until terminated as provided for herein. Subscriber may terminate this Agreement at the end of the initial term or any renewal term upon at least 30 days' prior written notice to TeleCheck. TeleCheck reserves the right to amend, at its discretion, this Agreement, including, without limitation, any rates, fees, addenda and/or the TeleCheck Operational Procedures, by providing Subscriber notice and such amendments shall be effective 30 days from the date notice is mailed to Subscriber. In the event TeleCheck changes the rates, fees or warranty limits hereunder, Subscriber may terminate this Agreement upon written notice received by TeleCheck within such 30 day period. TeleCheck may terminate this Agreement at any time upon notice to Subscriber. Subscriber may terminate this Agreement at anytime upon written notice if TeleCheck has failed to cure a material breach of this Agreement within 30 days following written notice of that breach given by Subscriber.

**1.2. Definitions.** As used in this Agreement, the following definitions apply: "**ACH Network**" means the Automated Clearing House Network, a processing and delivery system that provides for the distribution and settlement of electronic credits and debits. "**Authorization Receipt**" means the written authorization receipt, in the form approved by TeleCheck, signed by Consumer for each ECA Warranty Transaction or ECA Verification Transaction, as applicable. "**Batch**" means a collection of saved transactions transmitted to TeleCheck for settlement processing. "**Claim**" means any claim, demand, directive, suit or other proceeding, notice, damage, expense (including reasonable attorney's fees), assessment, fine or liability of any kind. "**Consumer**" means a person or entity that authorizes an Item. "**Consumer Authorization Format**" means the required format (including, without limitation, all verbiage for payment authorization, return item fees, check approvals and declines, etc.), provided by TeleCheck to Subscriber, as amended from time to time, for processing Consumer payments to Subscriber by an Electronic Item. "**ECA Warranty Transaction**" means a transaction processed by TeleCheck under the ECA Warranty Service as an electronic funds transfer, a remotely created check or a paper check for the contemporaneous purchase of goods or service by a Consumer at Subscriber's physical location. "**Electronic Item Warranty Transaction**" means a payment transaction which is processed as an Electronic Item under the warranty service, for the purchase of goods or services by a Consumer. "**Item**" means an outstanding financial obligation pursuant to a paper check, electronic funds transfer or remotely created check processed under this Agreement. "**NACHA Rules**" means the National Automated Clearing House Association Operating Rules and Guidelines, as amended from time to time, that govern the ACH

Network. "**Paper Warranty Transaction**" means a transaction for the contemporaneous purchase of goods or services pursuant to TeleCheck's Paper Warranty Service program. "**Return Item Fee**" means any fee or exemplary damages allowed by law that may be assessed on a Return Item. "**Return Items**" mean any Items that are dishonored, returned, reversed, charged back or otherwise unpaid by a Consumer's financial institution upon presentment for payment, regardless of the reason or timing. "**Returned Payment**" means any financial obligation pursuant to this Agreement not paid by Subscriber's financial institution. "**Subscriber's Account**" means Subscriber's financial institution account. "**TeleCheck Approval Code**" means that TeleCheck has authorized an Item for warranty coverage under this Agreement. "**TeleCheck Operational Procedures**" means TeleCheck's published policies and procedures contained in various documents provided to Subscriber concerning the services, equipment and maintenance provided pursuant to this Agreement. "**TeleCheck Parties**" means TeleCheck, its affiliates, officers, directors, employees, shareholders, agents and attorneys. "**Warranty Maximum**" (a) for an Item processed as an ECA Warranty Transaction or LockBox Warranty Transaction or Electronic Item Warranty Transaction means the lower of (i) the face amount of the Item, (ii) the amount set forth on the Merchant Processing Application; or (iii) \$25,000.00; (b) for an Item processed as a Paper Warranty Transaction means the lower of (i) the face amount of the Item; (ii) the amount set forth on the Merchant Processing Application; or (iii) \$99,999.99 and (c) for an Item processed as an Electronic Item Warranty Transaction means the lower of (i) the face amount of the Item; (ii) the amount set forth on the Merchant Processing Application; or (iii) \$5000.00

**TERMS APPLICABLE ONLY TO  
TELECHECK ECA WARRANTY SERVICE****1.3. ECA Warranty Service.**

**1.3.1. Description.** The TeleCheck ECA Warranty Service provides Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; (b) processing services; and (c) warranty services for ECA Warranty Transactions that comply with the warranty requirements of Section 3.3, all in accordance with this Agreement.

**1.3.2. Processing Services.** For each ECA Warranty Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following Subscriber's regular close-out of the point of sale terminal and transmission of the saved ECA Warranty Transactions to TeleCheck for settlement processing, provided that the Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for ECA Warranty Transactions, including, without limitation, chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as an ECA Warranty Transaction.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due ("Funds Hold") should an excessive amount of Return Items or other questionable activity occur as determined by TeleCheck in its discretion, or as otherwise required by law. In addition to placing a Funds Hold with respect to any payment, TeleCheck may also freeze all processing activities. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if



Subscriber breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within 3 business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Subscriber or as a result of a Subscriber error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Subscriber. TeleCheck may also recover from Subscriber the amount of any fees paid by a Consumer to Consumer's financial institution which resulted from a Subscriber error.

**1.3.3. Warranty Requirements.** TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Subscriber one Item per ECA Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the Item. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such Item subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each ECA Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

- a. The check is a first party check drawn on Consumer's deposit account at a United States financial institution and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer;
- b. Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in 3.6(f)), including through split sales;
- c. The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;
- d. The signature of Consumer on the Authorization Receipt is not substantially different from the name imprinted on the check;
- e. The date of the check and the ECA Warranty Transaction accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);
- f. Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- g. The transaction is not subject to any stop payment, dispute or set-off;
- h. Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules including, without limitation, posting notice to authorize the ECA Warranty Transaction and the Return Item Fee in a prominent and conspicuous location, and providing a copy of the notice to the Consumer, all in accordance with Regulation E (12 C.F.R. Part 205);
- i. Consumer authorized the debiting of Consumer's account and the debit entry is in an amount agreed to by Consumer. Subscriber received a separate signed and completed Authorization Receipt from Consumer for each ECA Warranty Transaction;
- j. The paper check to which the ECA Warranty Transaction relates: (i) has not been used in any other transaction, (ii) is voided on the front by Consumer or Subscriber, and (iii) is returned to Consumer;
- k. The amount entered into the TeleCheck system and on the Authorization Receipt match exactly and does not exceed the Warranty Maximum; and
- l. If the ECA Warranty Transaction is approved as a paper check not eligible for processing as an electronic funds transfer, each representation and warranty set forth in Section 4.2 shall be applicable to such ECA Warranty Transaction.

**1.3.4. Authorization Receipts.** Subscriber shall (a) maintain the signed Authorization Receipt for a minimum period of 2 years from the date of the transaction or for the period specified by the NACHA Rules, whichever is longer, (b) physically deliver either the original or a legible copy of the signed Authorization Receipt to TeleCheck within 7 days of TeleCheck's request, and (c) permit TeleCheck to audit Subscriber (upon reasonable notice and during normal business hours) for compliance with this requirement.

**1.3.5. Assignment of ECA Warranty Transactions.** By electing to subscribe to the TeleCheck ECA Warranty Service, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any ECA Warranty Transaction submitted by Subscriber to TeleCheck under this Agreement. Subscriber shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

**1.3.6. Chargeback and Reassignment.** TeleCheck may chargeback to Subscriber any ECA Warranty Transaction processed by TeleCheck, or reassign to Subscriber any ECA Warranty Transaction which has been approved as a paper check and purchased by TeleCheck, in any of the following circumstances:

- a. The goods or services, in whole or in part, for which the ECA Warranty Transaction was submitted, have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- b. Subscriber has received full or partial payment or security in any form to secure payment of the Item, or the goods or services for which the Item was issued or authorized were initially delivered on credit or under a lease;
- c. The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the Item is not permitted by applicable law; or a court of law determines that the Item is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- d. Any of the representations made by Subscriber as set forth in Section 3.3 are or become false or inaccurate;
- e. Subscriber failed to comply with this Agreement;
- f. Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered either the check or the Authorization Receipt; or (ii) processed the transaction with reason to know that the Item was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction;
- g. The Authorization Receipt was incomplete or unsigned, or a legible copy of the Authorization Receipt was not received by TeleCheck within 7 days of a request by TeleCheck;
- h. A duplicate ECA Warranty Transaction relating to the same transaction was received and processed, or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;
- i. Consumer disputes authorizing the ECA Warranty Transaction or the validity or accuracy of the transaction;
- j. Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice; or
- k. The closeout of the Batch and transmission of the ECA Warranty Transaction to TeleCheck for settlement processing did not occur within 7 days from the date the TeleCheck Approval Code was issued for the transaction.

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the Item is charged back or reassigned as provided herein, (a) TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the Item, (b) TeleCheck may deduct or offset such Item against any amounts to be paid to Subscriber for ECA Warranty Transactions, or (c) upon request, Subscriber shall remit the amount of the Item to TeleCheck. TeleCheck may also chargeback to Subscriber any amount over the Warranty Maximum on any ECA Warranty Transaction where TeleCheck has not received payment for such transaction within 60 days of the date of the ECA Warranty Transaction. Upon charging back or reassigning an Item, TeleCheck shall have no further liability to Subscriber on such Item. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

**1.3.7. Account Reconciliation.** Payments processed by TeleCheck will be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in the reports, or of any funding failures or errors. In the event any ECA Warranty Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 3.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

**1.3.8. "Goodwill" of a Non-Compliance Item.** TeleCheck, in its sole discretion, may voluntarily elect not to chargeback or reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 3.3. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to chargeback or reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

**1.3.9. Reserve Account Establishment and Funding.** Subscriber expressly authorizes TeleCheck to establish a reserve account for ECA Warranty Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon 3 days' notice to Subscriber or in instances of fraud or breach of this Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following: (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by either TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. If Subscriber's funds in the reserve account are not sufficient to cover the delinquent fees, chargebacks or rejected and reassigned warranty Items, or any other fees and charges due from Subscriber to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In the event of a failure by Subscriber to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

**1.3.10. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The **"Inquiry Rate"** is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise, whether or not a TeleCheck Approval Code is issued. The **"Transaction Fee"** is the additional per transaction charge for each ECA

Warranty Transaction inquiry, whether or not a TeleCheck Approval Code is issued. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The **"Monthly Minimum Fee"** is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The **"Customer Requested Operator Call Fee"** or **"Voice Authorization Fee"** is an additional fee per operator or Interactive Voice Response (IVR)-assisted call not requested by TeleCheck. The **"December Risk Surcharge"** is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in December. The **"Monthly Statement/Processing Fee"** is a monthly fee for handling Subscriber's account.

The following additional fees may be also be charged by TeleCheck: The **"Funding Report Fee"** is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The **"POS Equipment Support Fee"** is a \$10.00 monthly fee per terminal for point of sale support services. The **"Chargeback Fee"** is a \$5.00 handling fee for each chargeback of an ECA Warranty Transaction. The **"Correction Fee"** is a \$5.00 fee payable on each Item that must be corrected due to Subscriber's error or at Subscriber's request. The **"Recovery Processing Fee"** is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A **"Terminal Application Update Fee"** of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. Any additional requests or other services not included in this Agreement may be subject to additional fees. Fees for these items may be obtained by contacting TeleCheck. The above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### TERMS APPLICABLE ONLY TO TELECHECK PAPER WARRANTY SERVICE

##### 1.4. Paper Warranty Service.

**1.4.1. Description.** The TeleCheck Paper Warranty Service provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept a check; and (b) warranty services for checks that meet the warranty requirements of Section 4.2, all in accordance with this Agreement.

**1.4.2. Warranty Requirements.** TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Subscriber one check per Paper Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the check. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such check subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each Paper Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

- The check is a first party check drawn on Consumer's deposit account at a United States or Canadian financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer. If a P.O. Box is used or an address is not imprinted by the check manufacturer, a physical address description is written on the check according to TeleCheck Operational Procedures;
- Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 4.4(f)), including through split sales;

- c. The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;
- d. The signature in the signature block on the check is not substantially different from the name imprinted on the check;
- e. The date of the check accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);
- f. Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- g. The TeleCheck Subscriber Number, Consumer's telephone number (including area code), identification type and number and TeleCheck Approval Code are printed or written on the check;
- h. The amount shown in words and figures on the check is (i) less than or equal to the amount entered into the TeleCheck system, or (ii) no more than \$1.00 over the amount entered into the TeleCheck system;
- i. The check is deposited in Subscriber's Account and received by TeleCheck for purchase within 30 days of the date of the check. Such check has been sent directly from Subscriber's financial institution after being presented for payment only once (no representations shall be allowed, whether paper or electronic); and
- j. The transaction is not subject to any stop payment, dispute or set-off.

**1.4.3. Assignment of Checks.** By electing to subscribe to the Paper Warranty Service, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any check submitted to TeleCheck for coverage under this Agreement. Subscriber shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

**1.4.4. Reassignment.** TeleCheck may reassign to Subscriber any check purchased by TeleCheck pursuant to the Paper Warranty Service provisions of this Agreement, in any of the following circumstances:

- a. The goods or Service, in whole or in part, for which the check was issued have been returned to Subscriber, have not been delivered by Subscriber, claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- b. Subscriber has received full or partial payment or security in any form to secure payment of the check, or the goods or services for which the check was issued were initially delivered on credit or under a lease;
- c. The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the check is not permitted by applicable law; or a court of law determines that the check is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- d. Any of the representations made by Subscriber as set forth in Section 4.2 are or become false or inaccurate;
- e. Subscriber failed to comply with this Agreement;
- f. Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered the check; or (ii) accepted the check with reason to know that it was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction; or

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Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice.

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the check is reassigned as provided herein, TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the check, or upon request, Subscriber shall remit the amount of the check to TeleCheck. Upon reassignment of a check, TeleCheck shall have no further liability to Subscriber on such check. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

**1.4.5. "Goodwill" of a Non-Compliance Item.** TeleCheck, in its sole discretion, may voluntarily elect not to reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 4.2. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

**1.4.6. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The **"Inquiry Rate"** is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise, whether or not a TeleCheck Approval Code is issued. The **"Transaction Fee"** is the additional per transaction charge for each transaction inquiry, whether or not a TeleCheck Approval Code is issued. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The **"Monthly Minimum Fee"** is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The **"Customer Requested Operator Call Fee"** or **"Voice Authorization Fee"** is an additional fee per operator or Interactive Voice Response (IVR)-assisted call not requested by TeleCheck. The **"December Risk Surcharge"** is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in December. The **"Monthly Statement/Processing Fee"** is a monthly fee for handling Subscriber's account. The **"Set Up Fees"** are fees related to the establishment and set up of the first and subsequent TeleCheck Services, which are charged on a per service by location basis.

The following additional fees may be also be charged by TeleCheck: The **"POS Equipment Support Fee"** is a \$10.00 monthly fee per terminal for point of sale support services. The **"Recovery Processing Fee"** is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A **"Terminal Application Update Fee"** of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. Any additional requests or other services not included in this Agreement may be subject to additional fees. Fees for these items may be obtained by contacting TeleCheck. The above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES

**1.5. Payment.** All fees and charges are due upon receipt of invoice. Subscriber authorizes TeleCheck to debit from Subscriber's Account, all payments and other amounts owed (including, without limitation, all Return Items, Returned Payments, chargebacks, adjustments, fees and charges, and delinquency charges) under this Agreement or any other agreement



between Subscriber and TeleCheck or its affiliates, and to credit all amounts owing to Subscriber under this Agreement to Subscriber's Account. If there are insufficient funds in Subscriber's Account to pay amounts owed to TeleCheck or its affiliates, or if debits to Subscriber's account are rejected due to ACH debit blocks, or if there are any amounts otherwise not paid by Subscriber when due, including, without limitation, delinquency charges, chargebacks or rejected and reassigned warranty Items, Subscriber shall immediately reimburse TeleCheck or its affiliates upon demand, or at TeleCheck's option, TeleCheck may offset or recoup such amounts against any amounts due Subscriber under this Agreement or any other agreement between Subscriber and TeleCheck or its affiliates. A delinquency charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account over 15 days delinquent. TeleCheck shall have the right to suspend all services and obligations to Subscriber, including the payment of all warranties due and all transactions previously authorized, during any period in which Subscriber's account is delinquent. Subscriber agrees to pay to TeleCheck a fee of \$25.00 or the highest amount permitted by law, whichever is lower, for any Returned Payment. Subscriber shall also be responsible for paying for all of the point of sale supplies related to the TeleCheck services (i.e., paper and ink for terminals, rubber stamps, if applicable).

**1.6. Security Interest.** To secure Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement (including any check or credit card processing services), Subscriber grants to TeleCheck a lien and security interest in and to any of Subscriber's funds pertaining to the transactions contemplated by this Agreement now or hereafter in the possession of TeleCheck or its affiliates, whether now or hereafter due or to become due to Subscriber from TeleCheck. Any such funds may be commingled with other funds of TeleCheck, or, in the case of any funds held in a reserve account, with any other funds of other subscribers of TeleCheck. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, TeleCheck is hereby authorized by Subscriber at any time and from time to time, without notice or demand to Subscriber 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 Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement, including, without limitation, fees for any other services (including any check or credit card processing services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Subscriber agrees to duly execute and deliver to TeleCheck such instruments and documents as TeleCheck may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

**1.7. Point of Sale Notices; Return Item Fees.** Subscriber agrees to follow procedures and post and provide at TeleCheck's direction any notices (including any updates to such notices) which in TeleCheck's opinion may be required for TeleCheck to process the Item and/or the Return Item Fee, as an electronic funds transfer, draft or otherwise. Subscriber also agrees to assess a Return Item Fee on all Return Items, and that TeleCheck shall be entitled to collect and retain the Return Item Fee from Consumer.

**1.8. TeleCheck Approval Code.** Subscriber acknowledges that TeleCheck will use its internal and proprietary risk management systems to evaluate the risk associated with any particular Item and to assist in its decision whether or not to issue a TeleCheck Approval Code. The decision to issue a TeleCheck Approval Code shall be within the discretion of TeleCheck.

**1.9. Credit Law Compliance.** Subscriber certifies that: (a) Subscriber has a legitimate business need, in connection with a business transaction initiated by Consumer, for the information provided by TeleCheck under this Agreement regarding such Consumer; and (b) the information provided by TeleCheck shall only be used for permissible purposes as defined in the Fair Credit Reporting Act, and applicable state and federal laws, with the exception that the information shall not be used for employment purposes, and shall not be used by Subscriber for any purpose other than a single business transaction between Consumer and Subscriber occurring on the date of the inquiry call to TeleCheck. Neither Subscriber, nor Subscriber's agents or employees, shall disclose the results of any inquiry made to TeleCheck except to Consumer about whom such inquiry is made and in no case to any other person outside Subscriber's organization. If Subscriber

decides to reject any transaction, in whole or in part, because of information obtained from TeleCheck, Subscriber agrees to provide Consumer with all information required by law and TeleCheck.

**1.10. Use of TeleCheck Materials and Marks.** Pursuant to authorization granted to TeleCheck by TeleCheck International, Inc., the owner of the trademarks referenced in this section, TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, nonassignable and nontransferable limited license, uncoupled with any right or interest, to use the **TELECHECK** and the **TELECHECK logo** service marks, and for those Subscribers who are receiving ECA Warranty Service or ECA Verification Service, the **TELECHECK ELECTRONIC CHECK ACCEPTANCE** and **ECA** Service marks (collectively, the "TeleCheck Marks") as follows. Subscriber may use and display decals, identification data and other materials provided by TeleCheck during the term of this Agreement at Subscriber's location solely in connection with the offering of TeleCheck services as authorized under this Agreement. Subscriber shall not permit any persons other than its own officers or employees at Subscriber's locations to use the TeleCheck Subscriber number assigned by TeleCheck. Subscriber agrees that upon termination of this Agreement it will, at its own expense, either return or destroy all TeleCheck materials (including the prompt removal of any TeleCheck decals, electronic files, logos or other materials or references to TeleCheck that are displayed to the public, including those affixed to equipment, doors or windows). The monthly fees payable by Subscriber will apply for all months or fractions of a month that any materials or TeleCheck-owned equipment remain in use. Subscriber shall not create any print, electronic or Internet-based materials including but not limited to any advertising or promotional materials using any TeleCheck Marks without the prior written consent of TeleCheck. Subscriber acknowledges TeleCheck International, Inc.'s ownership of the TeleCheck Marks and will not contest the validity of the marks or the ownership thereof. Subscriber further agrees to refrain from performing any acts that might discredit, disparage, dilute, infringe or negatively affect the value of the TeleCheck Marks or constitute unfair competition to TeleCheck or TeleCheck International, Inc. Subscriber agrees promptly to bring to TeleCheck's attention any unauthorized use of the TeleCheck Marks by third parties of which Subscriber becomes aware. Subscriber shall use the TeleCheck Marks pursuant to any guidelines provided by TeleCheck, as may be amended from time to time. The following shall appear at least once on every piece of advertising or promotional material created by Subscriber which uses the TeleCheck Marks and has received prior written approval from TeleCheck: "The ("Applicable Mark") trademark is owned by TeleCheck International, Inc. and is licensed for use by ("Subscriber Name")."

**1.11. Use of Information.** Subscriber agrees that: (a) any data and other information relating to an Item or Consumer obtained by TeleCheck in connection with any service provided hereunder (including any electronic or other image of all or any portion of any check or driver's license or other identification) shall be owned by TeleCheck, with all right, title, and interest thereto; (b) TeleCheck may use any credit information provided to a TeleCheck affiliate for TeleCheck's credit review; and (c) TeleCheck may provide or receive any experiential information regarding Subscriber or Subscriber's customers to or from any TeleCheck affiliate.

**1.12. TeleCheck Operational Procedures.** Subscriber shall strictly follow all TeleCheck Operational Procedures provided to Subscriber, as may be amended from time to time by TeleCheck, in its discretion.

### **1.13. Equipment.**

**1.13.1. General.** Subscriber may purchase point-of-sale equipment or Subscriber may rent equipment from TeleCheck as indicated on the Merchant Processing Application. Title to all rental or loaned equipment, if any, is retained by TeleCheck. Monthly rental fees will apply to all months or fractions of a month any equipment remains in use by or in the actual or constructive possession of Subscriber. Upon termination of this Agreement, Subscriber, at Subscriber's expense, shall return all rented or loaned equipment to TeleCheck in good repair, ordinary wear and tear excepted. TeleCheck will replace or repair terminal equipment rented from TeleCheck or supported by TeleCheck if Subscriber is paying a POS Equipment Support Fee upon Subscriber's request; provided, however that a swap fee of \$39.95 shall be charged per POS terminal replaced. Subscriber bears the entire risk of loss, theft or damage of or to equipment, whether or not owned by Subscriber. If TeleCheck provides replacement equipment to Subscriber via mail or other delivery service, Subscriber must return replaced equipment



to TeleCheck within thirty (30) business days or Subscriber will be deemed to have purchased the equipment and will be billed for it. Subscriber will not permit anyone other than authorized representatives of TeleCheck to adjust, maintain, program or repair equipment. A reprogramming fee of \$25.00 rate will be charged for each occasion that a piece of equipment is reprogrammed for additional features or different information. Subscriber will install all product updates to the equipment, its software or firmware, within thirty (30) days of receiving the updates from TeleCheck. There is a 30-day manufacturer's warranty on purchased equipment. A fee for the shipping and handling of equipment and parts will be charged to the Subscriber.

**1.13.2. Equipment Software, Firmware License.** TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, non-assignable and nontransferable limited license to use the software and firmware provided with the equipment; provided, Subscriber will not: (i) export the equipment, software or firmware outside the US; (ii) copy or use the software, firmware or documentation provided by TeleCheck with the equipment; (iii) sublicense or otherwise transfer any portion of such software, firmware, documentation or the equipment; (iv) alter, change, reverse engineer, decompile, disassemble, modify or otherwise create derivative works of such software, firmware, documentation or the equipment; or (v) remove or alter any intellectual property or proprietary notices, markings, legends, symbols, or labels appearing on, in or displayed by such software, firmware, documentation or the equipment.

**1.14. Limitation of Liability.** In no event shall either TeleCheck or Subscriber be liable to the other party, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental, indirect or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages. Notwithstanding anything to the contrary contained in this Agreement, in no event shall TeleCheck's liability under this Agreement for all Claims arising under, or related to, this Agreement exceed, in the aggregate (inclusive of any and all Claims made by Subscriber against TeleCheck, whether related or unrelated), the lesser of: (a) the total amount of fees paid to TeleCheck by Subscriber pursuant to this Agreement during the 12 month period immediately preceding the date the event giving rise to such Claims occurred; or (b) \$75,000.00.

**1.15. Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER. All decisions to reject any Item, driver's license or other form of identification or payment for Subscriber's products or services are solely Subscriber's responsibility.

**1.16. Changes in Law or NACHA Rules.** Notwithstanding anything to the contrary in this Agreement, if the continued performance of all or any portion of the obligations of TeleCheck becomes impossible or illegal due to changes in applicable federal, state or local laws or regulations, or by NACHA Rules, as determined by TeleCheck in its reasonable discretion, TeleCheck may, upon 30 days written notice to Subscriber, modify or discontinue TeleCheck's performance of its obligations to the extent necessary to avoid a violation of law or NACHA Rules or, if TeleCheck chooses in its sole discretion to incur additional expenses to comply, increase its fees to cover the additional cost of compliance. Additionally, if any fees or charges to TeleCheck increase for processing transactions through the ACH Network, TeleCheck may increase its fees by providing Subscriber 30 days written notice. Any notice under this section to increase fees or modify obligations will be effective 30 days from the date notice is mailed to Subscriber, and in such event Subscriber may terminate this Agreement upon written notice received by TeleCheck within such 30 day period.

**1.17. Updating Information.** With regard to any Return Items submitted to TeleCheck, Subscriber shall promptly notify TeleCheck if: (a) a Consumer makes any payment to Subscriber; (b) there is a return of goods or services, in whole or in part; or (c) there is a dispute of any amount, notice of bankruptcy or any other matter.

**1.18. Confidentiality.** Subscriber shall maintain the confidentiality of this Agreement and any information provided to Subscriber by either

TeleCheck, including, without limitation, TeleCheck Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential. Such information shall not be used except as required in connection with the performance of this Agreement or disclosed to third parties.

**1.19. No Resale, Assignment of Agreement.** This Agreement is solely between TeleCheck and Subscriber. Subscriber shall not provide or resell directly or indirectly, the services provided by TeleCheck to any other third party. This Agreement may be assigned by Subscriber only with the prior written consent of TeleCheck. TeleCheck may freely assign this Agreement, its rights, benefits or duties hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of TeleCheck and Subscriber's heirs, executors, administrators, successors and assigns.

**1.20. Indemnification.** In the event Subscriber (a) fails to strictly comply, in whole or in part, with any: (i) terms and conditions of this Agreement and any addenda hereto or TeleCheck Operational Procedures; or (ii) applicable law, rules, regulations and NACHA Rules, or (b) makes any false or inaccurate representation, Subscriber shall indemnify, defend and hold harmless the TeleCheck Parties from and against any and all Claims arising therefrom, including payment of all costs and reasonable attorneys' fees for actions taken by TeleCheck, whether by suit or otherwise, to defend the TeleCheck Parties from any Claim related thereto or to preserve or enforce TeleCheck's rights under this Agreement. In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, Subscriber shall: (a) promptly notify TeleCheck of the Claims or legal action; (b) reasonably cooperate with TeleCheck in the making of any Claims or defenses; and (c) provide information, assist in the resolution of the Claims and make available at least one employee or agent who can testify regarding such Claims or defenses. Upon written notice from TeleCheck to Subscriber, Subscriber shall immediately undertake the defense of such Claim by representatives of its own choosing, subject to TeleCheck's reasonable approval; provided, however, that TeleCheck shall have the right to control and undertake such defense by representatives of its own choosing, but at Subscriber's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws.

**1.21. Notices.** Any notice or other communication required or permitted to be given hereunder shall be delivered by facsimile transmission, overnight courier or certified or registered mail (postage prepaid return receipt requested) addressed or transmitted to the party to be notified at such party's address or number as provided on the Merchant Processing Application or at such party's last known address or number. Any notice delivered hereunder shall be deemed to have been properly given (a) upon receipt if by facsimile transmission, as evidenced by the date of transmission indicated on the transmitted material, (b) upon receipt if deposited on a prepaid basis with a nationally recognized overnight courier for next business day delivery, and (c) on the date of delivery indicated on the return receipt, if mailed by certified or registered mail. TeleCheck shall also be permitted to provide notice by regular mail and such notice shall be deemed effective 10 days after mailing, unless otherwise provided in this Agreement. The parties' addresses may be changed by written notice to the other party as provided herein.

**1.22. Force Majeure.** TeleCheck shall not be held responsible for any delays in or failure or suspension of service caused by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), transmission link failures, communication failures, failure, delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve system, failure, delay or error by any third party or any other third party system, strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, act of God or other causes reasonably beyond the control of TeleCheck.

**1.23. Compliance with Laws, Governing Law, Integration and Waiver of Jury Trial.** Subscriber agrees to comply with all federal and state laws, regulations and rules, including NACHA Rules, relating to the services provided hereunder. **Subscriber acknowledges and agrees that it will not use Subscriber's Account and/or the TeleCheck 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.** Subscriber certifies that it has not been

suspended by NACHA or any Card Organization, or cancelled by an ODFI or Third Party Sender (as defined in the NACHA Rules). This Agreement, plus any addenda attached hereto, constitutes the entire Agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

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.

**1.24. Severability and Interpretation, Third Party Beneficiaries.** If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. Neither this Agreement, nor any addenda or TeleCheck Operational Procedures, shall be interpreted in favor or against any party because such party or its counsel drafted such document. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement. This Agreement is solely for the benefit of TeleCheck (and its affiliates) and Subscriber and no other person or entity shall have any right, interest or claim under this Agreement.

**1.25. Amendment and Waiver.** No modification, amendment or waiver of any of the terms and conditions of this Agreement shall be binding upon TeleCheck unless made in writing and approved and signed by TeleCheck. No waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party. No waiver by any party of a breach or any provision of this Agreement shall constitute a waiver of any prior or subsequent breach of the same or any other provision of this Agreement. The parties agree that no failure or delay in exercising any right hereunder shall operate as a waiver of any such right. All of TeleCheck's rights are cumulative, and no single or partial exercise of any right hereunder shall preclude further exercise of such right or any other right.

**1.26. Damages.** Upon Subscriber's breach of this Agreement, including any unauthorized termination, TeleCheck shall be entitled to recover from Subscriber liquidated damages in an amount equal to ninety percent (90%) of the aggregate Monthly Minimum Fees and Monthly Statement/Processing Fees payable for the unexpired portion of the then current term of this Agreement. TeleCheck and Subscriber hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of Subscriber's breach of this Agreement, to the possibility that TeleCheck will not be able to mitigate its damages, and to the expense savings that TeleCheck may obtain by not having to provide services or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach.

**1.27. Financial and Other Information.**

**1.27.1.** 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. Upon request, you shall provide, and/or cause to be provided, to us and our affiliates, or our representatives or regulators reasonable access to your or your service provider's facilities and records for the purpose of performing any inspection and/or copying of 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 or airfare and hotel accommodations.

**1.27.2.** You will provide us with written notice of any judgment, writ, warrant, or 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 the same.

**1.28. Survivability.** All representations, warranties, indemnities, limitations of liability and covenants made herein shall survive the termination of this Agreement and shall remain enforceable after such termination.

**1.29. 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 for each calendar year beginning January 1, 2011 reporting all payment card transactions and third party network transactions with payees occurring in that calendar year. Accordingly, you will receive a Form 1099 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. Payors are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.

## Terms and Conditions For American Express OnePoint Card Acceptance Establishment Sales and Servicing Program

## 2.1. Scope and Other Parts of the Agreement; Definitions

**a. Scope of the Agreement.** The Agreement governs your acceptance of American Express Cards in the United States (but not Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions) under our American Express OnePoint Program, which makes available to eligible merchants an integrated service through our agent, Wells Fargo Merchant Services, L.L.C., among other agents. Schedule A contains important provisions governing your acceptance of the Card under this program. The Agreement covers you alone. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

**b. Other Parts of the Agreement.**

- i. **Merchant Regulations.** The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 2.8.j of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of “Merchant Regulations” or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call our agent: Wells Fargo Merchant Services, LLC (1-800-451-5817), or online at: <http://www.americanexpress.com/onepoint>. We may charge you a fee for each copy that you request.
- ii. **Schedule A.** Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.

**c. Definitions.** Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions are repeated here for ease of reference.

**Affiliate** means any Entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute “control” of the Entity.

**Agreement** means these General Provisions, Schedule A and any other accompanying schedules and exhibits, and the Merchant Regulations, collectively.

**American Express Card** and **Card** mean (i) any card, account access device, or payment device bearing our or our Affiliates’ Marks and issued by an Issuer or (ii) a Card Number.

**Cardmember** means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.

**Charge** means a payment or purchase made on the Card.

**Chargeback** (sometimes called “Full Recourse” or “Full Recourse” in our materials), when used as a verb, means our reimbursement from you for the amount of a Charge subject to such right; when used as a noun, means the amount of a Charge subject to reimbursement from you.

**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.

**Credit** means the amount of the Charge that you refund to Cardmembers for purchases or payments made on the Card.

**Discount** means the amount that we charge you for accepting the Card, which amount is: (i) a percentage (Discount Rate) of the face amount of the Charge that you submit; or a flat Transaction fee, or a combination of both; and/or (ii) a Monthly Flat Fee (if you meet our requirements).

**Disputed Charge** means a Charge about which a claim, complaint, or question has been brought.

**Entity** means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

**Establishments** means any or all of your and your Affiliates’ locations, outlets, web sites, on-line networks, and all other methods for selling goods and services, including methods that you adopt in the future.

**General Provisions** means the provisions set out in this document other than in Schedule A or any other accompanying schedule or exhibit hereto.

**Marks** mean names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.

**Merchant Regulations** means the American Express Merchant Regulations – U.S., which are available from our agent.

**Merchant Number** (sometimes called the “Merchant ID” or “Establishment” or “SE” number in our materials) means the unique ten-digit number we assign to your Establishment. If you have more than one Establishment, we may assign to each a separate Merchant Number.

**Other Agreement** means any agreement, other than the Agreement, between (i) you or any of your Affiliates and (ii) us or any of our Affiliates.

**Other Payment Products** mean any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products other than the Card.

**Reserve** means a fund established and/or collateral held by us as security for your or any of your Affiliates’ obligations to us or any of our Affiliates under the Agreement or any Other Agreement.

**We, our** and **us** mean American Express Travel Related Services Company, Inc.

**You** and **your** (sometimes called the “Merchant,” “Service Establishment,” or “SE” in our materials) mean the Entity accepting the Card under the Agreement, and its Affiliates conducting business in the same industry.

**d. List of Affiliates.** You must provide to our agent a complete list of your Affiliates conducting business in your industry and notify our agent promptly of any subsequent changes in the list.

## 2.2. Accepting the Card

**a. Acceptance.** You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmember’s choice of which Card to use and that charge and credit Cards, including corporate Cards, are interchangeable. You are responsible and jointly and severally liable for the performance by your Establishment of all provisions of the Agreement and all obligations of your Establishments under the Agreement.

**b. Transaction Processing and Payments.** Our Card acceptance, processing, and payment requirements are set forth in the Merchant Regulations. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Regulations.



- i. **Format.** You must create a Charge Record for every Charge and a Credit Record for every Credit that comply with our requirements, as described in the Merchant Regulations. You may create multiple Charge Records for a single purchase placed on different Cards, but you must not create multiple Charge Records for a single purchase to the same Card, by dividing the purchase into more than one Charge.
- ii. **Authorization.** You must obtain from and submit to us an Authorization Approval code for all Charges. Authorization does not guarantee that we will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.
- iii. **Submitting Charges and Credits.** Your Establishments must submit Charges and Credits in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card account used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations.
- iv. **Payment for Charges.** We will pay you, through our agent, according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations. We may adjust any of these amounts and may change any other amount we charge you for accepting the Card.
- v. **Chargeback.** We and our agent have Chargeback rights, as described in the Merchant Regulations. We and our agent may Chargeback by deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Account), or we or our agent may notify you of your obligation to pay us, which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Chargeback rights.
- vi. **Protecting Cardmember Information.** You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI DSS performed by Qualified Security Assessors or Approved Scanning Vendors (or both).

### 2.3. Protective Actions

- a. **Creating a Reserve.** Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to create a Reserve, we may immediately establish a Reserve or terminate the Agreement. We may establish a Reserve by (i) withholding amounts from payment we otherwise would make to you under the Agreement or (ii) requiring you to deposit funds or other collateral with us. Any collateral provided pursuant to this Section 2.3 of the General Provisions is subject to prior written approval. We may increase the amount of the Reserve at any time so long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under the Agreement (including Charges submitted by you for goods or services not yet received by Cardmembers and our costs of handling Disputed Charges) or to us or our Affiliates under any Agreement or any Other Agreement or to Cardmembers. Upon the occurrence of an event described in Section 2.3.b.viii of the General Provisions, and during any continuation of such event, we may take immediate action to establish or increase the amount of any Reserve to an amount proportional to the risk covered by such event.
- b. **Trigger Events for Reserve.** Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties currently owning 25% or more of such interests), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business; (iv) your becoming insolvent; (v) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; (vi) our reasonable belief that you will not be able to perform your obligations

under the Agreement, under any Other Agreement, or to Cardmembers; or (vii) our reasonable belief that you will not be able to perform your obligations under the Agreement, any Other Agreement, or to Cardmembers; or (viii) the establishment of a reserve or other protective action taken by any Entity with whom you have entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to you, (B) requires you to make a direct payment into a reserve account or similar device, or (C) requires you to provide such Entity with a letter of credit or other third-party guaranty of payment.

**c. Application of Reserve.** We may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts you or any of your Affiliates owe us or any of our Affiliates under the Agreement or any Other Agreement (ii) any costs incurred by us in connection with the administration of the Reserve, including attorney's fees, and (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including Attorney Fees and our cost of handling Disputed Charges.

**d. Other Protections.** We may take other reasonable actions to protect our rights and rights of any of our Affiliates, including changing the speed or method of payment for Charges, exercising Chargeback under any of our Chargeback programs, or charging you fees for Disputed Charges.

**e. Providing Information.** You must provide to us promptly, upon request, information about you and your Affiliates finances, creditworthiness, and operations, including your most recent certified financial statements. You must notify us immediately of the occurrence of any event described in Section 2.3 b. viii of the General Provision.

### 2.4. Notices

**a. Delivery and Receipt.** Unless otherwise explicitly provided for herein, all notices hereunder must be in writing and sent by hand delivery; or by U.S. postal service, such as first class mail or third class mail, postage prepaid; or by expedited mail courier service; or by electronic mail (e-mail); or by facsimile transmission, to the addresses set out below. Notices are deemed received and effective as follows: If hand delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail if mailed by first class postage or ten days after being deposited in the mail if mailed by third class postage. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver.

**b. Our Notice Address.** Unless we notify you otherwise, you shall send notices to us, through our agent, at: American Express Travel Related Services Company, Inc. c/o 1307 Walt Whitman Road, Melville, NY 11747.

**c. Your Notice Address.** Our agent shall send notice to you at the address, e-mail address, or facsimile number you indicated on your application to accept the Card. You must notify our agent immediately of any change in your notice address.

### 2.5. Indemnification and Liability

**a. Indemnity.** You shall indemnify, defend, and hold harmless us and our Affiliates, agents, successors, assigns, and third party licensees, from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from your breach, negligent or wrongful act or omission, failure to perform under the Agreement, or failure in the provision of your goods or services.

**b. Limitation of Liability.** In no event shall we or our Affiliates, agents, successors, or assigns be liable to you for any incidental, indirect, speculative, consequential, special, punitive, or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory) arising out of or in connection with the Agreement, even if advised of such potential damages. Neither you nor we (and our agent) will be responsible to the other for damages arising from delays or problems caused by telecommunications carriers or the banking system, except that our (and our agent's) rights to create Reserves and exercise Chargebacks will not be impaired by such events.



**2.6. Term and Termination**

**a. Effective Date/Termination Date.** The Agreement begins as of the date (i) you first accept the Card after receipt of the Agreement or otherwise indicate your intention to be bound by the Agreement or (ii) we approve your application to accept the Card, whichever occurs first. Either party can terminate the Agreement without cause (and notwithstanding any other rights established under the Agreement) at any time by notifying the other party. Termination will take effect according to the notice period specified in section 2.4.a of the General Provisions.

**b. Grounds for Termination.** In addition to our rights in sections 2.3.c and 2.6.a of the General Provisions, we may terminate the Agreement at any time without notice to you and without waiving our other rights and remedies if you have not submitted a Charge within any twelve month period. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

**c. Post-Termination.** If the Agreement terminates, without waiving our other rights and remedies, we and our agent may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove all displays of our Marks, return our materials and equipment immediately, and submit to our agent any Charges and Credits incurred prior to termination.

**d. Effect of Termination.** Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 2.1, 2.3, 2.5, 2.6, 2.7, and 2.8 of these General Provisions, our Charge back rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our and our agent's right of direct access to the Demand Deposit Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

**2.7. Dispute Resolution**

**a. Arbitration Rights.** All Claims shall be resolved, upon your or our election, through arbitration pursuant to this section 7 rather than by litigation.

**b. Arbitration Rules/Organizations.** The party asserting the Claim shall select one of the following arbitration organizations, which shall apply its rules in effect at the time the Claim is filed. In the event of an inconsistency between this section 2.7 and any rule or procedure of the arbitration organization, this section 2.7 controls. The party asserting the Claim shall simultaneously notify the other party of its selection.

If our selection is not acceptable to you, then you may select another of the following organizations within thirty days after you receive notice of our initial selection. Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located.

- National Arbitration Forum (NAF): P.O. Box 50191, Minneapolis, MN 55404-0191; (800) 474-2371; [www.arbitration-forum.com](http://www.arbitration-forum.com)
- American Arbitration Association (AAA): 335 Madison Ave., New York, NY 10017; (800) 778-7879; [www.adr.org](http://www.adr.org)
- JAMS (JAMS): 1920 Main Street, Suite 300, Irvine, CA 92614; (949) 224-1810; [www.jamsadr.com](http://www.jamsadr.com)

**c. Limitation of Rights.** IF ARBITRATION IS CHOSEN BY A PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE SHALL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PREARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES OR PROCEDURES OF NAF OR AAA, AS APPLICABLE. FURTHER, YOU SHALL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. NOTWITHSTANDING ANY OTHER PROVISION IN THE AGREEMENT AND WITHOUT WAIVING EITHER PARTY'S RIGHT TO APPEAL SUCH DECISION, IF ANY PORTION OF THIS SECTION 2.7 c OR OF SECTION 2.7.d BELOW IS DEEMED INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION 2.7 (OTHER THAN THIS SENTENCE) SHALL NOT APPLY.

**134 Individually Named Parties Only.** All parties to the arbitration must be individually named. There is no right or authority for any Claims to be arbitrated or litigated on a class action or consolidated basis, on behalf of the general public or other parties, or joined or consolidated with claims of other parties, and you and we are specifically barred from doing so. This prohibition is intended to, and does, preclude any trade association or other organization from arbitrating any Claim on a representative basis on behalf of the organization's members. The arbitrator's authority to resolve Claims OmahaWF1208 30 is limited to Claims between you and us alone, and the arbitrator's authority to make awards is limited to awards to you and us alone.

**e. Application of Provision.** For the avoidance of any confusion, and not to limit its scope, this section 2.7 applies to any putative class action lawsuit that has been filed against us prior to the effective date of the Agreement relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the Agreement as described in sections 2.1 and 2.2 of these General Provisions and Chapter 3 (Card Acceptance) of the Merchant Regulations, or prior versions of a Card acceptance agreement.

**f. Equitable Relief.** The arbitrator shall have the power and authority to grant equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section 2.7, nor to determine any matter or make any award except as provided in this section 2.7.

**g. Small Claims Court; Injunctive Relief.** We shall not elect to use arbitration under this section for any individual Claim that you properly file in a small claims court so long as the Claim is pending only in that court. Injunctive relief sought to enforce the provisions of sections 2.8.a and 2.8.b of these General Provisions is not subject to the requirements of this Section 2.7. This section 2.7 is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

**h. Governing Law/Appeal/Entry of Judgment.** This section 7 is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. § 16 et seq. (FAA). The arbitrator shall apply New York law and applicable statutes of limitations, honor claims of privilege recognized by law and, at the timely request of either party, provide a written and reasoned opinion explaining his or her decision. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA or if the amount of the award exceeds US \$100,000, in which case either party can appeal that award to a three-arbitrator panel administered by NAF or AAA or JAMS, as applicable, which shall reconsider de novo any aspect of the initial award requested by majority vote and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. The costs of such an appeal shall be borne by the appellant regardless of the outcome of the appeal. Judgment upon the award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

**i. Confidential Proceedings.** The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the negotiations, arbitrations, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by the arbitrator, including any arbitration award or judgment related thereto, are confidential, privileged, and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or arbitration.

**j. Split Proceedings for Equitable Relief.** Either you or we may seek equitable relief in arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered. Except as

otherwise provided in section 7.c. above, if any portion of this Section 7 (other than section 7.c or d) is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this section 7, the Agreement, or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

**k. Costs of Arbitration Proceedings.** You will be responsible of paying your share, if any of the arbitration fees (including filing, administrative, hearing and/or other fees) provided by the Arbitration Rules, to the extent such fees do not exceed the amount of the filing fees you would have incurred if the Claim had been brought in a state or federal court that would have jurisdiction over the Claim located in the federal judicial district where your headquarters is located. We will be responsible for paying the remainder of any arbitration fees. At your written request we will consider in good faith making a temporary advance of all or part of your share of the arbitration fees for any Claim you initiate as to which you or we seek arbitration. You will not be assessed any arbitration fees in excess of your share if you do not prevail in any arbitration with us.

## 2.8. Miscellaneous

**a. Confidentiality.** You must keep confidential and not disclose to any third party the provisions of the Agreement and any information that you receive from us that is not publicly available.

**b. Proprietary Rights and Permitted Uses.** Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations, nor shall one party use the other party's Marks without its prior written consent, except that we may use your name, address (including your website addresses or URLs), and customer service telephone numbers in any media at any time.

**c. Your Representations and Warranties.** You represent and warrant to us that: (i) you are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which you are organized; (ii) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business; (iii) you have full authority to enter into the Agreement and all necessary assets and liquidity to perform your obligations and pay your debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on your business or your ability to perform your obligations or pay your debts hereunder; (v) you are authorized to enter into this Agreement on behalf of your Establishments and Affiliates, including those indicated in this Agreement, and the individual who signs this Agreement or otherwise enters into it has authority to bind you and them to it; (vi) you are not (1) 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)), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (vii) you have not assigned to any third party any payments due to you under this Agreement; (viii) all information that you provided in connection with this Agreement is true, accurate, and complete; and (ix) you have read this Agreement and kept a copy for your file. If any of your representations or warranties in this Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate this Agreement in our discretion.

**d. Compliance with Laws.** You shall comply with all applicable laws, regulations, and rules.

**e. Governing Law; Jurisdiction; Venue.** The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Notwithstanding the immediately preceding sentence, the parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 et seq. (E-Sign Act). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein.

Subject to section 7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

**f. Interpretation.** In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the term "including" means "including, but not limited to;" (iv) the term "day" means "calendar day;" (v) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (vi) all captions, headings, and similar terms are for reference only; and (vii) where specific language is used to illustrate by example or clarify a general statement such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of Schedule A, and the provisions of the Merchant Regulations shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: Schedule A and any accompanying exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

**g. Assignment.** You shall not assign the Agreement, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign the Agreement without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of the parties and their respective successors and permitted assigns.

**h. Waiver; Cumulative Rights.** Either party's failure to exercise any of its rights under the Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

**i. Savings Clause.** Other than as set forth in the last sentence of section 2.7.c of the General Provisions, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.

**j. Amendments.** We reserve the right to change the Agreement at any time (including by amending any of its provisions, adding new provisions, or deleting or modifying existing provisions) on at least ten days' prior notice to you, provided that we shall change the Merchant Regulations pursuant to the following provisions. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card. We are not bound by any changes that you propose in the Agreement, unless we expressly agree in a writing signed by our authorized representative. An e-mail does not constitute such a signed writing.

- 1) Scheduled Changes. The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:
  - a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations; and
  - a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.
- Where a change is to take effect during the period between two editions of the Merchant Regulations, we shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change therein.

2) **Unscheduled Changes.** We also have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to you (unless another effective date is specified in the notice).

**k. Entire Agreement.** The Agreement is the complete and exclusive expression of the agreement between you and us regarding the subject matter hereof and supersedes any prior contemporaneous agreements, understandings, or courses of dealing regarding the subject matter hereof.

**l. Disclaimer of Warranties.** WE DO NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF TITLE OR NON-INFRINGEMENT

**m. No Third-Party Beneficiaries.** The Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto and none of the provisions of the Agreement shall be enforceable by any person other than the parties hereto, their successors and permitted assigns.

**134. Press Releases.** You shall not issue any press release or make any public announcement (or both) in respect of the Agreement or us without our prior written consent.

**o. Independent Contractors.** You and we are independent contractors. No agency, partnership, joint venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with the Agreement.

**AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.**

By: 

Kim C. Goodman  
President  
Merchant Services, Americas.

## SCHEDULE A

### Other Important Provisions for Card Acceptance American Express OnePoint Program

#### 1. Overview of American Express OnePoint Program

**a. Eligibility; Transition to Our Standard Card Acceptance Program.**

Our American Express OnePoint Program provides integrated Card acceptance services to eligible Entities through our agents, including Wells Fargo Merchant Services, L.L.C. If you do not qualify for this program, you may be enrolled in our standard American Express Card acceptance program, which has different servicing terms (e.g., different speeds of payment); you may terminate the Agreement if you do not wish to so be enrolled. If you become ineligible for our American Express OnePoint Program, we will transition you to our standard American Express Card acceptance program upon forty-five day's prior notice, unless you opt-out of that transition by notifying our agent in writing no later than fifteen days prior to the effective date of transition.

**b. Program Services.** We may perform our obligations and exercise our rights under the Agreement directly or through our agents. Since we are acting through our agent in many instances under the Agreement, the terms we, our, or us also may refer to our agent above, as the context requires. Please direct all inquiries and notices under the American Express OnePoint Program to our agent:

Wells Fargo Merchant Services, L.L.C.  
1307 Walt Whitman Road  
Melville, NY 11747  
1-800-451-5817

**c. Merchant Regulations.** The Merchant Regulations set forth the policies and procedures of our standard American Express Card acceptance program. The provisions of this Schedule A describe the different terms that apply to you under the American Express OnePoint Program and take precedence over the corresponding provisions of the Merchant Regulations. For example, since Entities classified in certain industries do not qualify for the American Express OnePoint Program, references in the Merchant Regulations to those industries may not apply to you. Please contact our agent for a copy of the Merchant Regulations and with any questions about specific industries under the program.

#### 2. Doing Business with American Express

**a. Certain American Express Terms Not Applicable.** Our Online Merchant Services, the terms applicable to Corporate Purchasing Cards, and our Monthly Flat Fee option are not available to you under the American Express OnePoint Program. During your participation in the program, you are not required to configure your systems to communicate directly with our systems and you must not provide Payment Services or otherwise act as a Payment Service Provider.

**b. Merchant Number; Your Merchant Information.** Under the American Express OnePoint Program, you will not receive a standard American Express Merchant Number.

Our agent will instead assign a unique OnePoint Program "merchant" or "account" number to your Establishment; if you have more than one Establishment (or a sales channel for Internet Orders), it may assign to each a separate number. You will need that number each time you call our agent under the American Express OnePoint Program. (If you are enrolled in or transition to our standard Card acceptance program, we (not our agent) will assign you a standard American Express Merchant Number.) You must notify our agent of any changes in your business and banking information and any closings of your Establishments. Our agent may verify and disclose information about you, including by requesting reports about you and the person signing your application to accept the Card.

#### 3. Authorization

During your participation in the American Express OnePoint Program, you must initiate an Authorization for each Charge according to the Authorization procedures of our agent and contact our agent about all Authorization responses. You must obtain from and submit to our agent an Authorization Approval code for all Charges. Authorization does not guarantee that we or our agent will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

#### 4. Submission

During your participation in the American Express OnePoint Program, you must submit Charges and Credits electronically to our agent according to its Submission procedures under the OnePoint Program "merchant" or "account" number of the Establishment where the Charge or Credit originated. You must not submit Charges and Credits on paper.

#### 5. Settlement

**a. Settlement Amount.** Our agent will pay you according to your payment plan, as described below, in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, which may include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Our agent will subtract the full amount of all applicable deductions from this payment to you (or debit your Demand Deposit Account), but if it cannot, then you must pay it promptly upon demand.

**b. Discount.** Your initial Discount and other fees and assessments are indicated in the Agreement or otherwise provided to you in writing by our agent. We or our agent may adjust any of these amounts and may change any other amount charged to you for accepting the Card. We or our agent may charge you different Discount Rates for Charges submitted by your Establishments that are in different industries. We or our agent will notify



you of such fees, such adjustments and charges, and assessments and any different Discount Rates or Transactions fees that apply to you.

**c. Payment Plan.** During your participation in the American Express OnePoint Program, the terms of your payment plan (e.g., speed of payment, payment and reconciliation options) with our agent govern settlement payments to you. Our agent will send payments for Charges from your Establishments according to your payment plan to your Demand Deposit Account that you designate to it. You must notify your bank that we, through our agent, will have access to your account for debiting and crediting the Demand Deposit Account.

#### 6. Protecting Cardmember Information

You must notify our agent immediately if you know or suspect that Cardmember Information has been accessed or used without authorization or used other than in accordance with the Agreement. You must promptly provide to us and our agent all Card Numbers related to the data incident and audit reports of the data incident, and you must work with us and our agent to rectify any issues arising from the data incident, as specified in the Merchant Regulations.

#### 7. Risk Evaluation

**a. Prohibited/High Risk Merchants and Activities.** Entities classified in certain industries or accepting Transactions for certain prohibited activities do not qualify for the American Express OnePoint Program, but may qualify for our standard American Express Card acceptance program. Please contact our agent with any questions about those risk evaluation procedures under the program.

**b. Protective Actions.** Our agent may take actions to protect our rights or those of any of our Affiliates on our behalf. For example, the determination to establish a Reserve may be triggered by events identified by our agent and may include requiring you to deposit funds or other collateral with us or our agent, changing the speed of payment for Charges, exercising immediate Chargeback, and charging you fees for Disputed charges. Our agent may establish the Reserve; increase the Reserve from time to time; make deductions and withhold from, and recoup and offset against the Reserve any amounts owed under the Agreement; and terminate the Agreement on our behalf. Our agent will inform you if a Reserve is established. You must provide to our agent promptly, upon request, information about your finances, creditworthiness, and operations, including your most recent certified financial statements. You must notify our Agent immediately of the occurrence of any event described in Section 2.3, b vii of the General Provisions.

#### 8. Inquires and Chargebacks

During your participation in the American Express OnePoint Program, our agent's procedures for Inquiries, Disputed Charges, and Chargebacks govern the Disputed Charge process, provided that nothing therein waives our Chargeback rights under the Agreement. Our agent may Chargeback by deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Account), or our agent may notify you of your obligation to pay us (through our agent), which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Chargeback rights.



**3.0. Equipment Lease Agreement**

This Section 3.0 governs any equipment that is leased to you. If your Application or other documents reflect that your equipment is purchased or rented, then the provisions of purchase or rental are governed by the Equipment Agreement set forth in Section 31.

This Equipment Lease Agreement ("Lease Agreement") is being entered into by and between you and First Data Merchant Services Corporation (hereinafter "Lessor," through its business unit, First Data Global Leasing). For purposes of this section, the words "we," "our" and "us" refer to First Data Merchant Services Corporation and its successors and assigns and the words "you" and "your" refer to the Lessee and its permitted successors and assigns.

Lessee hereby authorizes Lessor to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Lessee in conjunction with this Lease Agreement by initiating debit entries to the bank account designated by Lessee on the MPA (the "Settlement Account"). In the event of default of Lessee's obligations hereunder, Lessee authorizes debit of its account for the full amount due under this Lease Agreement. Further, Lessee authorizes its financial institution to accept and to charge any debit entries initiated by Lessor to Lessee's account. In the event that Lessor withdraws funds erroneously from Lessee's account, Lessee authorizes Lessor to Credit Lessee's account for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor has received written notice from Lessee of its termination in such time and in such manner as to afford Lessor a reasonable opportunity to act. Lessee also authorizes Lessor from time to time to obtain investigative credit reports from a credit bureau or a credit agency concerning Lessee.

**3.1. Equipment.** We agree to lease to you and you agree to lease from us the equipment identified on the Merchant Agreement or such other comparable equipment that we provide to you (the "Equipment"), according to the terms and conditions of this Lease Agreement. We are providing the Leased Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the Leased Equipment for any particular purpose. The term of Equipment includes the Equipment initially deployed under this Lease Agreement and/or any additions, replacements, substitutions, or additions thereto.

**3.2. Effective Date; Term and Interim Rent.**

- a. This Lease Agreement becomes effective on the earlier of the date we deliver any piece of Equipment to you (the "Delivery Date"), or acceptance by us. This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Leased Equipment to the site designated by you.
- b. The term of this Lease Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us (the "Commencement Date"), and continues for the number of months indicated on the MPA. **THIS IS A NONCANCELABLE LEASE FOR THE TERM INDICATED ON THE MPA.**
- c. You agree to pay an Interim Lease Payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Delivery Date until the date preceding the Commencement Date.
- d. **YOU ACKNOWLEDGE THAT THE LEASED EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR LEASED EQUIPMENT COMPATIBLE IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF THE MERCHANT PROCESSING AGREEMENT YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE LEASED EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS LEASE AGREEMENT WITH SAID SERVICE PROVIDER.**

**3.3. Site Preparation.** You will prepare the installation site(s) for the Leased 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.

**3.4. Payment of Amounts Due.**

- a. The monthly lease charge is due and payable monthly, in advance. You agree to pay all assessed costs for delivery and installation of Leased Equipment.
- b. In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes, assessments on or arising out of this Lease Agreement or the Leased Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local

sales, use, property, privilege and excise tax, tax preparation, compliance expenses, but exclusive of taxes based on our net income. Property taxes are calculated and charged based on the average of the estimated annual property taxes over the course of the term of the lease. You will also be charged an annual Tax Handling Fee, as set forth on the MPA and/or applicable Fee Schedule.

- c. Your lease payments will be due despite dissatisfaction with the Leased Equipment for any reason.
- d. Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than \$5.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of \$10.00 for any debit we attempt to make against your Settlement Account that is rejected.
- e. In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense charge of \$50.00 for each aggregate payment requiring a collection effort.

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

- a. You shall cause the Leased Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Leased Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.
- b. You shall not permit any physical alteration or modification of the Leased Equipment, or change the installation site of the Leased Equipment, without our prior written consent.
- c. You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Leased Equipment without our prior written consent.
- d. You shall comply with all governmental laws, rules and regulations relating to the use of the Leased Equipment. You are also responsible for obtaining all permits required to operate the Leased Equipment at your facility.
- e. We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Leased Equipment.
- f. The Leased 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 Leased Equipment evidencing our ownership.
- g. You shall keep the Leased Equipment adequately insured against loss by fire, theft, and all other hazards.
- h. You shall provide proof of insurance as evidenced by a certificate naming First Data Merchant Services Corporation as an additional insured under your insurance policy. **The loss, destruction, theft or damage of or to the Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly lease charges hereunder.**
- i. If you do not provide such proof of insurance, you may be charged a fee, on which we may make a profit, as set forth on your fee schedule in connection with insuring the Equipment.

**3.6. Title to Equipment.** The Leased Equipment is and shall at all times be and remain our sole and exclusive property, and you shall have no right, title or interest in or to the Equipment except as expressly set forth in this Lease Agreement or otherwise agreed to in writing. Except as expressly provided in Section 8, no transference of intellectual property rights is intended by or conferred in this Lease Agreement. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Leased Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Leased Equipment, then we shall be deemed to have a first lien security interest on the Leased Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto.

**3.7. Return or Purchase of Equipment at End of Lease Period.** Upon the completion of your lease term or any extension, you will have the option to (a) return the Equipment to us, or (b) purchase the Equipment from us for the lesser of fair market value at the time (as determined in good faith by us) or an amount equal to ten-percent (10%) of the total lease payments under this Lease Agreement with respect to each item of Equipment. In the absence of an affirmative election by you to return or purchase the Equipment, this lease will continue on a month-to-month basis at the existing monthly lease payment; or (c) after the final lease payment has been received by FDGL, the Agreement will revert to a month by month rental at the existing monthly lease payment. If Client does not want to continue to rent the equipment, then Client will be obligated to provide FDGL with thirty (30) day prior written notice to terminate and return the equipment to FDGL. If we terminate this Lease Agreement pursuant to Section 3.12 (b) due to a default by you, then you shall immediately return the Leased Equipment to us no later than the tenth Business Day after termination, or remit to us the fair market value of the Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 3.7 by debiting your Settlement Account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

**3.8. Software License.** We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Leased Equipment other than those owned or licensed by the manufacturer of the Leased Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the Leased Equipment.

**3.9. Limitation on Liability.** We are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the Leased Equipment, including any damage or injury to persons or property caused by the Leased Equipment. We are not liable for the use or maintenance of the Leased Equipment, its failure to operate, any repairs or service to it, or by any interruption of service or loss of use of the Leased Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Lease Agreement shall not exceed the aggregate lease amount paid to us for the particular Leased Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Lease Agreement are your sole and exclusive remedies.

**3.10. Warranties.**

- a. All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment, or non-infringement.
- b. You warrant that you will only use the Leased Equipment for commercial purposes and will not use the Leased Equipment for any household or personal purposes.

**3.11. Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses resulting from (a) the operation, use, condition, liens against, or return of the Leased 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.

**3.12. Default; Remedies.**

- a. If any debit of your Settlement Account initiated by us 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 of this Lease Agreement or any agreement with any of our affiliates or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under a processing Agreement with us or with an affiliate or joint venture to which we are a party will be treated as a default under this Lease Agreement. Such a default would include a default resulting from early termination of the Merchant Agreement.
- b. Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this lease and our future obligations under this Lease Agreement, repossess the Leased Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the Leased Equipment (as determined by us), not as a penalty but as liquidated damages for our loss of the bargain. Upon any such termination for default,

we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Leased Equipment, including entering onto your premises to recover the Leased Equipment. In any case, you shall also be responsible for our costs of collection, court costs as well as applicable shipping, repair and refurbishing costs of recovered Leased Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by charging your Settlement Account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Without limiting the foregoing, you agree that we are entitled to recover amounts owed to us under this Lease Agreement by obtaining directly from an affiliate or joint venture to which we are a party and with which you have entered into a Merchant Agreement any funds held or available as security for payment under the terms of the Merchant Agreement, including funds available under the "Reserve Account; Security Interest" section of the Merchant Agreement, if applicable.

**3.13. Assignment.** You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign or transfer this Lease Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent.

**3.14. Lease Guaranty.** No guarantor shall have any right of subrogation to any of our rights in the Leased Equipment or this Lease Agreement or against you, and any such right of subrogation is hereby waived and released. All indebtedness that exists now or arises after the execution of this Lease Agreement between you and any guarantor is hereby subordinated to all of your present and future obligations, and those of your guarantor, to us, and no payment shall be made or accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full.

**3.15. Governing Law; Venue; Miscellaneous.** This Lease Agreement shall be governed by and will be construed in accordance with the laws of the State of New York (without applying its conflicts of laws principles). The exclusive venue for any actions or claims arising under or related to this Lease Agreement shall be in the appropriate state of federal court located in Suffolk County, New York. If any part of this Lease Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

**3.16.** Should your terminal become inoperable due to manufacturer's defect in our reasonable determination, we will provide you with a replacement unit at no cost for the term of your lease so long as you are actively processing with us. If the leased equipment is obsolete or defective due to operator error, you can upgrade to a new unit by entering into a new lease contract. For such replacements contact the POS Help Desk.

**3.17. Notices.** All notices must be in writing, if to you at your address appearing in the Application and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida, 33065. Attn: Lease Department, and shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or 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, if to you at the address appearing on the MPA or by any electronic means, including but not limited to the email address you have provided on the MPA. Notices sent to the Merchant's last known address, as indicated in our records, shall constitute effective notice to the Merchant under this Agreement. Customer Service toll free number 1-877-257-2094..

**3.18. Entire Agreement.** This Lease Agreement constitutes the entire Agreement between the parties with respect to the Equipment, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Lease Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Lease Agreement.

Please read the Merchant Processing 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 18 of the Merchant Processing Program Guide).
2. **We may debit your bank account** from time to time for amounts owed to us under the Agreement.
3. **There are many reasons** why a Chargeback may occur. When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks, see Section 10 of the Merchant Processing 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 20 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 23, Term; Events of Default and Section 24, 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 early, you may be responsible for the payment of an early termination fee as set forth in Part I, Section 39.3 under "Additional Important Information."
9. **If you lease equipment from Processor**, it is important that you review Section 3.0 in Third Party Agreements. Neither Wells Fargo Bank, N.A. nor Wells Fargo Merchant Services, L.L.C. is a party to this Agreement. **THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.**
10. **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 II (Third Party Agreements) relevant to such third party services.

#### 11. Card Organization Disclosure

##### Member Bank Information: Wells Fargo Bank

The Bank's mailing address is Wells Fargo Bank, 1200 Montego Way, Walnut Creek, CA 94598 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 Merchant Agreement.
- c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard Rules with which Merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the Merchant.

##### Important Merchant Responsibilities:

- a) Ensure compliance with cardholder data security and storage requirements.
- b) Maintain fraud and chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization rules.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at: [http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.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 Legal Filing Name: \_\_\_\_\_

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) and read the complete Program Guide (Version WFB1405) consisting of 55 pages (including this confirmation), 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/downloads/pdf/biz/merchant/program\\_guide.pdf](http://www.wellsfargo.com/downloads/pdf/biz/merchant/program_guide.pdf)

#### CLIENT'S BUSINESS PRINCIPAL:

Signature (Please sign below):

X \_\_\_\_\_

Title

Date

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



WFB1405

**CONFIRMATION PAGE**

Please read the Merchant Processing 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.

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2. **We may debit your bank account** from time to time for amounts owed to us under the Agreement.
3. **There are many reasons** why a Chargeback may occur. When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks, see Section 10 of the Merchant Processing 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 20 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 23, Term; Events of Default and Section 24, 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 early, you may be responsible for the payment of an early termination fee as set forth in Part I, Section 39.3 under "Additional Important Information."
9. **If you lease equipment from Processor**, it is important that you review Section 3.0 in Third Party Agreements. Neither Wells Fargo Bank, N.A. nor Wells Fargo Merchant Services, L.L.C. is a party to this Agreement. **THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.**
10. **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 II (Third Party Agreements) relevant to such third party services.

**11. Card Organization Disclosure**

**Member Bank Information: Wells Fargo Bank**

The Bank's mailing address is Wells Fargo Bank, 1200 Montego Way, Walnut Creek, CA 94598 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 Merchant Agreement.
- c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard Rules with which Merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the Merchant.

**Important Merchant Responsibilities:**

- a) Ensure compliance with cardholder data security and storage requirements.
- b) Maintain fraud and chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization rules.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at: [http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.html)
- g) You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>

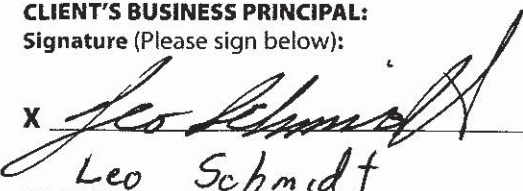
Print Client's IRS Legal Filing Name: \_\_\_\_\_

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) and read the complete Program Guide (Version WFB1405) consisting of 55 pages (including this confirmation), 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/downloads/pdf/biz/merchant/program\\_guide.pdf](http://www.wellsfargo.com/downloads/pdf/biz/merchant/program_guide.pdf)

**CLIENT'S BUSINESS PRINCIPAL:**

Signature (Please sign below):

x   
Leo Schmidt

Please Print Name of Signer

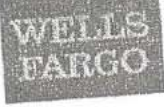
President / Member  
Title  
10/25/13  
Date



**EXHIBIT B**

*Merchant Processing Application*, signed May 1, 2017

Form # 97



**MERCHANT PROCESSING APPLICATION**

File # 1882214

Loc. 1 of 1

Merchant #

**TELL US ABOUT YOUR BUSINESS/OWNER'S INFORMATION**

Federal Tax ID number: 0915

Your DBA/Outlet Name: **Hobo 22**

Your IRS Legal Filing Name: **FP Retail Associates LLC**

DBA Address (No P.O. Box):  
**7630 Roosevelt Rd**

Head Office Name:  
**FP Retail Associates LLC**

Head Office Address:  
**2650 Belvidere RD**

Owner/Partner/Officer Name:  
**Leo Schmidt**

Home Address:

Owner/Partner/Officer Name:  
**Kathleen Schmidt**

Home Address:

Owner/Partner/Officer Name:  
**Julie Traub**

Home Address:

Owner/Partner/Officer Name:  
**Laura SchmidtWerner**

Home Address:

Owner/Partner/Officer Name:

Home Address:

Suite # City:  
**Forest Park**

Contact Name:  
**Rick Solger**

Suite # City:  
**Waukegan**

Title:  
**OWNER**

% of Ownership: **30**

Phone Number:

City:

State: **IL**

Zip Code: **60085**

US Citizen/Resident:  
☒ Yes ☐ No

Title:  
**OWNER**

% of Ownership: **30**

Phone Number:

City:

State: **IL**

Zip Code: **60085**

US Citizen/Resident:  
☒ Yes ☐ No

Title:  
**OWNER**

% of Ownership: **20**

Phone Number:

City:

State: **IL**

Zip Code: **60085**

US Citizen/Resident:  
☒ Yes ☐ No

Title:  
**OWNER**

% of Ownership: **20**

Phone Number:

City:

State: **IL**

Zip Code: **60085**

US Citizen/Resident:  
☒ Yes ☐ No

Title:

% of Ownership: **( ) -**

Phone Number:

City:

State:

Zip Code:

US Citizen/Resident:  
☐ Yes ☐ No

Business Type:

☐ Sole Proprietorship

☐ Partnership

☐ Not for Profit

☐ Publicly Traded

☐ Private Corp.

☐ Government

☒ LLC

Mnth/Yr. Started: **12/01/2015** #. of Employees: **75**

State Incorpor: **IL**

Mag Swipe **95%** + Keyed Manually **5%** = **100%**

POS Cardswipe/Imprint **100%** + Mail Order **0%** + Phone Order **0%**

Total Cash and Credit Sales: **\$14,000,000**

+ Internet **0%** + Tradeshows **0%** + Rec. Trans **0%** = **100%**

Business to Business: **5%**

Total Annual MC/Visa Volume: **\$12,000,000**

Business to Consumer: **95%**

Total Annual Discover Volume: **\$360,000**

Average Ticket/Sales: **\$102.00**

Total Annual Amex Volume: **\$0.00**

Maximum Ticket Amount: **\$35,000.00**

Total Relationship Annual Card Volume: **\$12,360,000**

Product/Services You Sell: **Hardware and Building Materials**

Do customers pay before receiving Products/Services? ☐ Yes ☒ No

# of days between when card is charged and the Products/Services received: **0-7 days**

Business Checking Account Number:

Transit Routing Number/ABA: **071001737**

For Non Wells Fargo Accounts: **MB Financial Bank, National Association**

Attach a Copy of Funding Check on Separate Page or Provide Bank Letterhead / Logo with Typed ABA/DDA/TIN/IRS Legal Filing Name Signed by a Bank Officer



Entitlement Option:

On-Line Debit, AMEX EDC, Business Track

Have you previously had an American Express SE Number ? ☒ Yes ☐ No American Express SE # 1122171267

Does your business/organization participate in internet gambling or wagering ? ☐ Yes ☒ No

Legal Disclosures

**Important Information about Procedures for Opening a New Account**

To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify, and record information that identifies each person (individuals and businesses) who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask for your driver's license or other identifying documents.

**Important Notice:** You agree, in order for us to service the Account or to collect any amounts you owe, we may from time to time make calls and/or send text messages to you at any telephone number(s) associated with your Account, including wireless telephone numbers that could result in charges to you. The manner in which these calls or text messages are made to you may include, but is not limited to, the use of prerecorded/artificial voice messages and/or an automatic telephone dialing system. You further agree that, in order for us to service the Account or to collect any amounts you owe, we may send electronic communications, including e-mails to you at any e-mail address you provide to us.

The signer(s) to this Merchant Processing Application (the "Application") hereby warrants and represents that it is authorized to sign this Application and provide the authorizations and consents set forth herein, and that the statements made in this Application are true and complete, including disclosure of all principals with twenty-five percent or more ownership in the Applicant. Each such signer(s) on behalf of him or herself and on behalf of the entity listed on this Application ("Applicant") authorizes Wells Fargo Bank, N.A. and Wells Fargo Merchant Services, L.L.C. (collectively, "Wells Fargo") and/or its agent(s) to investigate the individual and business history of Applicant and each representative signing the Application, including obtaining consumer and/or business credit reports, in order to evaluate Applicant's acceptability into the merchant program and providing such credit information to others as needed for such purpose. If the Application is approved, Applicant also authorizes Wells Fargo to obtain subsequent consumer and/or business credit reports in connection with the maintenance, updating, renewal or extension of the Agreement. Applicant agrees to immediately notify Wells Fargo of any material changes in information provided in or in connection with this Application. Applicant and each signer to this Application agree that all business references contacted in connection with this Application, including financial institutions, may release any and all credit and financial information to Wells Fargo, and such information and any other information provided by Applicant or in connection with this Application, may be shared with Wells Fargo's affiliates. Applicant acknowledges having received and reviewed a copy of the Wells Fargo Privacy Policy, which includes a form for Applicant to communicate its privacy and solicitation preferences to Wells Fargo. Any unilateral alteration or modification made by Applicant or its representatives to the text of this Application shall be of no legal effect and at Wells Fargo's discretion may render this Application invalid. Applicant acknowledges that acceptance into Wells Fargo's merchant program is subject to final evaluation and approval by Wells Fargo in its sole discretion.

Applicant acknowledges having received and reviewed a copy of the attached Program Guide, the provisions of which are incorporated herein by reference. Applicant understands and acknowledges that upon the expiration of three (3) calendar days from the date set forth below or after Applicant submits to Wells Fargo Merchant Services, L.L.C. and Wells Fargo Bank, N.A. (collectively "Wells Fargo") its first deposit for settlement, whichever comes first, (the "Rescission Period") Applicant will be bound by all provisions set forth in the Program Guide as it may be amended from time to time, unless Applicant notifies Wells Fargo in writing otherwise within the Rescission Period. Applicant further acknowledges and understands that it has an obligation to promptly contact Wells Fargo regarding any questions pertaining to any provision of the Program Guide, and that after the Rescission Period, it will be subject to any applicable early termination fees. Applicant further agrees that Applicant will not accept more than 30% of its card transactions via mail, telephone or Internet order.



However, if your Application is approved based upon contrary information stated in the "Tell Us About Your Business" section above, you are authorized to accept transactions in accordance with the percentages indicated in that section. If the Application is approved, each of the undersigned also authorizes us to obtain subsequent consumer reports in connection with the maintenance, updating, renewal or extension of the Agreement. Each of the undersigned furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit and financial information to us. If the application is not approved for a merchant processing account with Wells Fargo, you acknowledge that you are withdrawing your Application for an Equipment Lease. If you elect to lease equipment, you must sign a separate Equipment Lease Agreement between you and First Data Merchant Services Corporation.

By signing electronically, Applicant and each individual signing this Merchant Processing Application and Agreement consent to the use of electronic signatures and records in connection with this Application and Agreement, the Personal Guaranty, and all related communications and agreements.

To the extent you request merchant processing services for additional locations beyond those referenced in your application, the terms of your Merchant Processing Agreement shall apply with equal force and effect to such additional locations which are included within the definition of "Merchant".

Failure to provide an accurate Federal Tax Identification Number may result in a withholding of merchant funding per IRS regulations (See section 25.11 of your Program Guide for further information.)

By acknowledging this Application and the Agreement, you, Applicant, are expressly agreeing that Wells Fargo may share all of your personally identifiable information (for example, postal and email addresses, tax identification numbers, names and social security numbers of the authorized signer on this Application, account information, etc.), as well as your American Express transaction information (for example, all information required by American Express evidencing charges or credits, including information obtained at the point of sale, information obtained or generated during authorization and settlement, and any chargeback or other fee information related to an American Express payment card transaction), with American Express. American Express may use and share this information to perform its responsibilities in connection with the American Express payment card acceptance services that you receive under this Application and the Agreement. American Express may also use and share this information to promote the American Express Network, to perform analytics and create reports, and for any other lawful business purpose including to call you or send you communications or materials via direct mail, email, SMS, text or facsimile regarding American Express products, services and resources available to you. 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 paragraph is not a condition of purchasing or receiving any product or service or entering into this Agreement. If you do not wish to receive marketing or other communications from American Express, or if you wish to discontinue accepting American Express payment cards, you must contact Wells Fargo at 1-800-451-5817 to disable your American Express acceptance services, and you will no longer be permitted to accept American Express payment cards under this Application or the Agreement.



Personal Guaranty - Signature Required

Each signer below ("You" or "Your") agrees as follows. You, in Your individual capacity (even though You use a title or other designation with Your signature) jointly, severally and unconditionally guarantee and promise to pay to Wells Fargo all indebtedness of the Applicant at any time arising under or relating to the Agreement, including the related application and any related agreements or instruments as well as any extensions, modifications, or renewals thereof. You authorize Wells Fargo and/or its agent(s) to investigate the individual business history of Applicant and each representative signing the Agreement, including Yourself, including investigative credit reports, in order to evaluate acceptability in to the Wells Fargo Merchant Services Merchant Program and if accepted, to conduct further investigations from time to time thereafter and to report credit information to others.

As guarantor, You waive (i) presentment, demand, protest, notice of protest, and notice of nonpayment; (ii) any defense arising by reason of any defense of the Applicant or other guarantor; and (iii) the right to require Wells Fargo to proceed against Applicant or any other guarantor, to pursue any remedy in connection with the guaranteed indebtedness, or to notify You as guarantor of any additional indebtedness incurred by the Applicant, or of any changes in the Applicant's financial condition. You also authorize Wells Fargo, without notice or consent, to (a) extend, modify, compromise, accelerate, renew, or other wise change the terms of the guaranteed indebtedness; (b) proceed against one or more guarantors without proceeding against the Applicant or another guarantor; (c) release or substitute any part to the indebtedness or this guaranty; and (d) any other defense of surety or guarantor.

You represent and warrant to Wells Fargo that: (a) Wells Fargo has made no representation to You as to the creditworthiness of the Applicant; and (b) You have established adequate means of obtaining from the Applicant on a continuing basis financial and other information pertaining to Applicant's financial condition. You agree to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Your risks hereunder, and You further agree that Wells Fargo shall have no obligation to disclose to You any information or material about the Applicant which is acquired by Wells Fargo in any manner.

You acknowledge and agree that until all obligations subject to this guaranty shall have been paid in full, You shall have no right of subrogation, and You waive any right to enforce any remedy which Wells Fargo now has or may hereafter have against the Applicant or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Wells Fargo. You agree that this guaranty will be governed by California law; and shall benefit Wells Fargo and its successors and assigns.

IRS Legal Filing Name: FP Retail Associates LLC

Principal Name: Leo Schmidt

Signature: , an individual

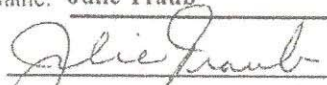
Date: 5-1-17

Principal Name: Kathleen Schmidt

Signature: , an individual

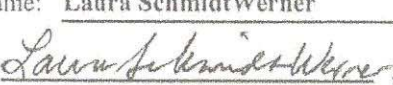
Date: 5-1-17

Principal Name: Julie Traub

Signature: , an individual

Date: 5-1-17

Principal Name: Laura SchmidtWerner

Signature: , an individual

Date: 5-1-17

**EXHIBIT C**

*Merchant Services Program Guide* (WFB1707), signed May 1, 2017

**WELLS  
FARGO**

*Merchant Services*  
**Program Guide**



## 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® 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:

**Discover Card transactions, American Express Card transactions and other Non-Bank Services are not provided to you by Bank, but are provided by Processor and/or third parties.**

**The provisions of this Agreement regarding Discover Card Transactions, American Express Card Transactions and Non-Bank Services constitute an agreement solely between you and Processor and/or third parties. Bank is not a party to this Agreement insofar as it relates to Discover Card Transactions, American Express Card Transactions and Non-Bank Services, and Bank is not responsible, and shall have no liability, to you in any way with respect to Discover Card Transactions, 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") 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 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 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).



# Program Guide

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Please read the Merchant Processing 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 Association. Any transactions that fail to qualify at your Anticipated Interchange Levels will be charged an additional fee (See Section 5 of the Merchant Processing 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 35 of the Merchant Processing 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. 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 41.3 under "Additional Important Information".
9. Third Party Services. To the extent you have elected to obtain any third party services as part of your merchant 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, 1200 Montego, Walnut Creek, CA 94598 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 Merchant Agreement.
- (c) The Bank is responsible for educating merchants on pertinent Visa and MasterCard Rules with which merchants must comply; but this information may be provided to you by Processor.
- (d) The Bank is responsible for and must provide settlement funds to the merchant.
- (e) The Bank is responsible for all funds held in 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 Merchant Agreement.
- (d) Comply with Card Organization Rules and applicable law and regulations..
- (e) Retain a signed copy of this Disclosure Page.
- (f) You may download "Visa Regulations" from Visa's website at: [http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.html).
- (g) You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>.

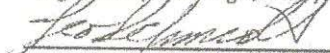
Print Client's IRS Legal Filing Name:

FP Retail Associates LLC

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) and read the complete Program Guide (Version WFB1707) consisting of 63 pages (including this confirmation), 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/downloads/pdf/biz/merchant/program\\_guide.pdf](http://www.wellsfargo.com/downloads/pdf/biz/merchant/program_guide.pdf)

#### CLIENT'S BUSINESS PRINCIPAL:

Signature (Please sign below):



Leo Schmidt

Please Print Name of Signer

OWNER

Title

5-1-17

Date





Please read the Merchant Processing 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.

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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 35 of the Merchant Processing 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 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 41.3 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.

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- 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 Merchant Agreement.
- d) Comply with Card Organization Rules and applicable law and regulations.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at: [http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.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 Legal Filing Name:

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) and read the complete Program Guide (Version WFB1707 REV00 (7/14)) consisting of 63 pages (including this confirmation), 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/downloads/pdf/biz/merchant/program\\_guide.pdf](http://www.wellsfargo.com/downloads/pdf/biz/merchant/program_guide.pdf)

#### CLIENT'S BUSINESS PRINCIPAL:

Signature (Please sign below):

X \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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

**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 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 the web sites such as [http://usa.visa.com/merchants//operations/op\\_regulations.html](http://usa.visa.com/merchants//operations/op_regulations.html) and <http://mastercardmerchant.com>. These 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 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. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

**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, any applicable surcharge for that transaction, all as further described in Section 41.3 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 90 days from the mail date (post mark) of the monthly statement in question. Note that NFI requests received after the 90 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 provided by this Card Organization may be subject to 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 or Discover. Your Chargeback Percentage will be calculated as the larger of (a) the total Visa, MasterCard, American Express and Discover Chargeback items in any line of business in any calendar month divided by the number of Visa, MasterCard, American Express and Discover transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, MasterCard, American Express and Discover Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, MasterCard, American Express and Discover 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

anywhere 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 hereunder, you represent warrant to and covenant with 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, preauthorize 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



**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 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, NON-INFRINGEMENT 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

**7.5.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 13), OUR LIABILITY TO 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 CARD 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 safe guarding 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 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 equitable relief, in addition to all other available remedies, to redress any breach.

**8.4.** With respect to any information received by us from Client via its use of the Services, we will keep such information confidential in accordance with applicable law; provided, that we may disclose such information (i) to third parties as we deem appropriate to provide the Services, (ii) our auditors and attorneys (internal and external) and regulators, (iii) as required or permitted by law, regulation or court order (iv) to our respective Affiliates as we deem 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, other merchants, or third parties. As permitted by law this includes collecting, using, and anonymizing cardholder information, dates, amounts, and other data from your transactions ("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 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.

**9.1.** 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 (or provide a security interest) 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 and shall continue in force for three years after it becomes effective. 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 this Agreement does not terminate that equipment lease.

**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.

**10.4.1.** a material adverse 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 an actual or suspected data security breach, 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; or

**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

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 or Discover. 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 penalty 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 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 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 sub accounts. 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



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 (collectively "Set Off Funds") any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement, 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. If 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 maintain a commercial lending relationship with Wells Fargo Bank, N.A. and Wells Fargo Bank, N.A. is permitted to disclose your financial statements to Wells Fargo Merchant Services upon request. In the event you

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 Cards

14.1. Non-Bank Card transactions are provided to you by Processor and not by Bank and include transactions made using Discover, American Express, Voyager and WEX Card types. 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; provided, however, that (i) Bank is not a party to this Agreement insofar as it relates to Non-Bank Card services, and Bank is not liable to you in any way with respect to such Services and (ii) you agree to pay Processor any per item processing, authorization and other fees described in the application for any non-acquired transaction services you receive from Processor. For the purposes of this section, 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 any other Non-Bank Card Organization.

14.2. 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. 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 Card holder, 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, Discover 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

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 35.1.4 of the Operating Guide 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 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.

## 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. 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 cash back from the Cardholder 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 Personal Identification Number, 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.
- 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 PIN Debit Network used to process your transaction will depend upon, among other things, our own business considerations, the availability of the PIN Debit network at the time of the transaction and whether a particular PIN Debit Card is enabled for a particular Debit network. The PIN Debit network utilized to route your transaction may or may not be the lowest cost network available. We may, in our sole discretion (i) utilize any PIN Debit network available to us for a given transaction (including a PIN Debit network affiliated with Processor) and (ii) add and/or remove PIN 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. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, you must request another form of payment from the customer.
- 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 TO SECURE YOUR TERMINALS AND TO INSTITUTE 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 have the option of offering 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 now offering this service, your terminal may require additional programming to begin offering cash back.

**15.4. Settlement.** Within one Business Day of the original transaction, you must balance each location to the system for each Business Day that each location is open.

**15.5. Adjustments.** An adjustment is a transaction that is initiated to correct a Debit Card transaction that has been processed in error. You will be responsible for all applicable adjustment fees that may be charged by a Debit Card network. Some networks may have established minimum amounts for adjustments.

The Cardholder was charged an incorrect amount, either 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.
- All parties involved in processing adjustments 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; 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 a POS Terminals, PIN pad and printer or other equipment that meet standards set forth in the EBT Rules ("Authorized Terminal") applicable to such EBT benefits during your normal business hours, in a manner consistent with your normal business practices and in accordance with the EBT Rules.

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 the procedures set forth 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 EBT Rules and procedures applicable to such EBT



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 before payment of voucher will be made to you. Vouchers must be cleared within 10 Business 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 when 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.

134 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

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indicate that EBT benefits are used only for the purposes of this Agreement, 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

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. You will promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.
- 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, non-transferable, 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 the Wireless Software. If the Processor or Bank terminates or disaffirms 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.

17.2. **Termination.** 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 Account 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

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, provided that the applicable tax is not a sales tax. If you elect to pay the applicable tax, 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).

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 Equipment and Software safe from theft, loss, destruction, damage, or any other hazard. 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 harm less shall include, but not be limited to, You loading additional software

#### 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

Gift Card Services are provided to you by Processor. 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 provision of this Agreement, in which case this the terms of this Section 19 will control; 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. **The terms and conditions set forth in this Section govern the provision of Gift Card Services.**

**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.

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- (n) "Program" means the program pursuant to which Client and Processor provide 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
- 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



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.

(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® Services

If you elect to utilize the TransArmor Service, the following additional terms and conditions of this Section 20 shall apply.

The TransArmor Service is provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the TransArmor Service, 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.

The TransArmor Service provided, transactions processed and other matters contemplated under this Section 20 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 20 directly conflict with another provision of this Agreement, in which case the terms of this Section 20 will control.

**"Legacy Data Conversion"** means that process by which historical information containing primary account Numbers (PAN) from transactions completed by you prior to implementation of TransArmor will be converted to information containing a Token.

**"Multi-Pay Token"** shall mean your specific alpha-numeric value that is: (i) randomly generated when a Card number is requested to be registered by you as your specific Token upon receipt of Cardholder approval to register the Card number; (ii) becomes associated with you and the Card within Processor and its Affiliates' systems; (iii) can be stored by you in your systems in lieu of the Card number to represent the Card number; (iv) can be used to initiate authorization processing for Cardholder-initiated or recurring payments; (v) may be retrieved by Processor or its Affiliates within their systems in connection with processing future transactions involving the same Card number or registered Token when submitted by you for authorization processing; and (vi) is returned to you from Processor or its Affiliates' systems as part of the Register PAN Response and/or authorization response.

**"Registered PAN Response"** is defined as the registration of a specific Card number (i.e., PAN) for purposes of associating that PAN with a specific Token.

**"Token"** means an alpha-numeric value that: (i) is randomly generated when a Card number used in a transaction is initially submitted by you for authorization processing; (ii) becomes associated with the Card within Processor and its Affiliates' systems; (iii) may be retrieved by Processor or its Affiliates within their systems in connection with processing future transactions involving the same Card number when submitted by you for authorization processing; and (iv) is returned to you from Processor or its Affiliates' systems as part of the authorization response.

**"Token Request"** shall mean your request to obtain a Multi-Pay Token for credit card information only (i.e., without an immediate authorization required), which permits you to store a Multi-Pay Token for future transactions involving the Cardholder.

**"TransArmor Service"** means those services described in Section 20.3 and may be either TransArmor VeriFone Edition Service or TransArmor RSA Service as selected by you.

**20.2. Grant of License.** Processor grants to you a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this Section 20 to use the TransArmor Service and the TransArmor Service Marks (as identified in the TransArmor Rules and Procedures) in the United States in accordance with this Section 20, including without limitation the TransArmor Rules and Procedures. Any rights with respect to the TransArmor Service not expressly granted by Processor in this Section 20 are deemed withheld.

**20.3. Services.** The TransArmor Service applies only to Card transactions sent from you to us for authorization and interchange settlement pursuant to the Agreement, and specifically excludes electronic check transactions, closed-loop gift card transactions, STAR contactless transactions read in contactless mode, Wright Express transactions, Voyager transactions, and other Card types that are not capable of being tokenized. Processor and Client may agree to include additional transaction types in the TransArmor Service when made available by Processor. Processor will provide an encryption key or other encryption capability to you to be used to encrypt (make unreadable) Card data during transport of the authorization request from your point of sale to Processor's systems. During the period when the transaction is being transmitted to Processor for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. Processor will then generate or retrieve a unique, randomly generated Token or Multi-Pay Token assigned to the Card number that will be returned to you in the authorization response. You must select one of the two options for the TransArmor Service as indicated on the Merchant Processing Application:

- TransArmor VeriFone Edition Service. This service option is limited to those clients which have an eligible VeriFone point of sale ("POS") devices and desire the software or hardware based encryption and tokenization to be activated through the VeriFone device.
- TransArmor RSA Service. This service option provides software based encryption and tokenization that is available to all clients to integrate into their POS or the point of sale device, if available or supported.

- following regarding your use of the TransArmor Service:
- a) You are required to comply with the Card Organization Rules, including taking all steps required to comply with the Payment Card Industry Data Security Standards (PCI DSS). You must ensure that all third parties and software use by you in connection with your payment card processing are compliant with PCI DSS. Use of the TransArmor Service will not, on its own, cause you to be compliant with, or eliminate your obligation to comply with PCI DSS or any other Card Organization Rule. You must demonstrate and maintain your current PCI DSS compliance certification. Compliance must be validated: (i) either (A) by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or (B) by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), and (ii) if applicable to your business, by passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with Card Organization Rules and PCI DSS.
  - b) Use of the TransArmor Service is not a guarantee against an unauthorized breach of your point of sale systems or any facility where you process and/or store transaction data (collectively, "Merchant Systems").
  - c) You must deploy the TransArmor Service (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your Merchant Systems including replacing existing Card numbers on your Merchant Systems with Tokens or Multi-Pay Tokens, as applicable. Full Card numbers must never be retained, whether in electronic form or hard copy.
  - d) You must use the Token or Multi-Pay Token, as applicable, in lieu of the Card number for ALL activities subsequent to receipt of the authorization response associated with the transaction, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.
  - e) Any point of sale device, gateway and/or value added reseller used by you in connection with the TransArmor Service must be certified by Processor for use with the TransArmor Service.
  - f) If you send or receive batch files containing completed Card transaction information to/from Processor, you must utilize the service provided by Processor to enable such files to contain only Tokens or Multi-Pay Tokens, as applicable or truncated information.
  - g) You must utilize truncated report viewing and data extract creation within reporting tools provided by Processor.
  - h) You are required to follow rules or procedures we may provide to you from time to time related to your use of the TransArmor Service ("TransArmor Rules and Procedures"). We will provide you with advance written notice of any such rules or procedures and any changes to such rules or procedures.
  - i) You have no right, title or interest in or to the TransArmor Service, any related software, materials or documentation, or any derivative works thereof, and nothing in this Agreement assigns or transfers any such right, title or interest to you. 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 the TransArmor Service, any related 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 this Section 20 and your access to and use of the TransArmor Service in the event of a challenge by you. No additional rights are granted by implication, estoppel or otherwise.
  - j) You will not: (i) distribute, lease, license, sublicense or otherwise disseminate the TransArmor Service or any portion of it to any third party; (ii) modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the TransArmor Service or any portion of it; (iii) sell, license or otherwise distribute the TransArmor Service or any portion of it; (iv) make any copies, or permit any copying, of the TransArmor Service or any portion of it; or (v) use any portion of the TransArmor Service as a standalone program or in any way independently from the TransArmor Service. If any portion of the TransArmor Service contains any copyright notice or any other legend denoting the proprietary interest of Processor or any third party, you will not remove, alter, modify, relocate or erase such notice or legend on such item.
  - k) You will only use the TransArmor Service for your internal business purposes in a manner consistent with this Agreement.

- l) You will use or disclose the Cardholder's (s) or other information and use the Fraud Services and Intercept-use, operate or combine the TransArmor Service 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 20.
- m) You will promptly notify Processor of a breach of any terms of this Section 20.
- n) You must obtain a Cardholder's written or electronic consent to store a Multi-Pay Token to represent such Cardholder's Card number for future purchases.
- o) You must store the Multi-Pay Token in its Merchant Systems in lieu of the Card number for all Cardholder profile records.
- p) You must require Cardholders to log into their Cardholder profile in order to initiate a Transaction with the registered Token. This login must require two factors authentication, such as a user ID and password.
- q) If you cease a processing relationship, then you must permanently delete all Tokens or Multi-Pay Tokens, as applicable, contemplated under this Section 20 from all Merchant Systems no later than ninety (90) days after the termination or expiration of the processing relationship.

**20.5. Term; Amendment; Termination.** Unless prohibited by applicable law, Processor may modify this Section 20 by providing written notice of such modifications to you. You may choose not to accept the requirements of any such modifications by notifying Processor in writing within thirty (30) days after receiving the modifications notice that you are terminating the TransArmor Service provided under this Section 20. In addition to any termination rights in this Section 20, Processor may terminate the TransArmor Service (i) upon thirty (30) days' advance written notice to you, or (ii) immediately if your material breach of the terms contained in this Section 20 remains uncured for ten (10) days following your receipt of written notice of such breach from Processor.

**20.6. Fees.** You shall pay the fees for TransArmor Service as set forth on the Application.

**20.7. TransArmor Limited Warranty ("Limited Warranty").** Processor warrants that the Token or Multi-Pay Token, as applicable, returned to you, as a result of using the TransArmor Service, cannot be used to initiate a financial sale transaction by an unauthorized entity/person outside the Merchant Systems. This warranty by Processor is referred to herein as the "Limited Warranty" and is subject to the terms and conditions set forth in this Section 20. To be eligible for the Limited Warranty, you must maintain a processing relationship with Processor and be in compliance with all the terms of the Agreement, including this Section 20, and any other agreement relating to transaction Cards eligible for the TransArmor Service. Subject to the terms, conditions and limitations set forth in the Agreement, including the limitation of liability provisions, Processor agrees to indemnify and hold you harmless from direct damages, including third party claims, resulting from Processor's breach of the Limited Warranty. The express remedy for Processor's breach of the Limited Warranty set forth in this paragraph constitutes Processor's entire liability and your sole and exclusive remedy for Processor's breach of the Limited Warranty. The Limited Warranty is void if (i) you use the TransArmor Service in a manner not contemplated by, or in violation of, the Agreement, including this Section 20, or any other agreement relating to transaction Cards eligible for the TransArmor Service or (ii) you are grossly negligent or engage in intentional misconduct.

**20.8. TransArmor Disclaimer.** IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE AGREEMENT, THE FOLLOWING DISCLAIMER APPLIES TO THE TRANSARMOR SERVICE: EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 20, PROCESSOR MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED WITH REGARD TO THE TRANSARMOR SERVICE INCLUDING THE UNINTERRUPTED OR ERROR-FREE OPERATION OF THE TRANSARMOR SERVICE OR NONINFRINGEMENT.

## 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 use the Fraud Services and Intercept-use, operate or combine the TransArmor Service 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 20.

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



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.

- There is no hardware, software, or supplies required to accept Buyer Initiated Payments.
- 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.
- 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.
- 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.
- 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.
- 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)

**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.

- 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.
- 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 First Data Global Gateway e4 Services

If you elect to utilize the Global Gateway e4 Services, the following additional terms and conditions of this Section 23 shall apply.

The Global Gateway e4 Services are provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the Global Gateway e4 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 Global Gateway e4 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 independ-

ently developed by you without our use of Confidential Information, or (b) is disclosed by you to us in writing; (ii) 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 account 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 Addendum, the terms of which are incorporated in this Addendum as if fully set forth herein.

**"Platform"** means our operated, or approved, electronic payment platform(s) and/or gateway(s) through which the payment services contemplated under this Section 23 are provided.

**"Services"** means the products or services offered through the First Data Global Gateway (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).

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

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

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

**23.2. Fees.** Client shall pay Processor the fees for the Global Gateway e4 Services as set forth on the Application. A separate account with us for Global Gateway e4 Services shall be required for each separate Merchant Account held by you.

**23.3. Term; Termination.** The Global Gateway e4 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 these Services upon giving the other party at least thirty (30) days prior written notice. We may suspend or terminate your access to the First Data Global Gateway e4 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 limited license to use the Software, 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 Software and the First Data Global Gateway e4. 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 Software in any way, other than in accordance with this

Section 23; (ii) use the Software or Documentation, either directly or indirectly, 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 Software, or otherwise apply any procedure or process to the Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software or any algorithm, process, procedure or other information contained in the Software, except as otherwise specifically authorized in accordance with this Section 23; (iv) provide the Software 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) make any copies of the Software 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 Software or Documentation; (vii) circumvent or attempt to circumvent any applicable security measures of the Software; (ix) attempt to access or actually access portions of the First Data Global Gateway e4 not authorized for your use; or (x) use the Software for any unlawful purpose.

**23.4.4. Updates.** From time to time we may, at our discretion, release Updates. 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 our 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 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 the Global Gateway e4 Services, all licenses granted hereunder shall immediately terminate, and within five (5) days thereof, you shall either return to us or destroy the Software and the Documentation, 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.

regulations, we reserve the right to copy and distribute to third parties, any information associated with your use of the Software or your activities on the First Data Global Gateway e4.

### 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 payment processing services through the First Data Global Gateway e4.

**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 Software 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 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 Software, your Customer's payment processing information, and the services provided hereunder to ensure (i) that you are using the Software and the 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.

**23.10. 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 First Data Global Gateway e4 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.** 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 First Data Global Gateway e4 or our Services.

**23.11.2.** 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.** 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.** 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 Software, 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 erroneous input.

**23.12. DISCLAIMER OF WARRANTIES.** YOU ACKNOWLEDGE AND AGREE THAT THE USE OF THE GLOBAL GATEWAY e4, SM OUR SERVICES AND THE SOFTWARE ARE AT YOUR SOLE RISK WE MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS ADDENDUM THE SOFTWARE, THE 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, ALL SOFTWARE AND 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 to the Person to be notified at the address or e-mail address of the Internet Gambling 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.

#### **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 request for additional secondary location(s) shall be included in 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

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 25.12), 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 25.12) 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

**25.9. Card Organization Rules.** The parties acknowledge that the Visa, MasterCard and Discover Card Organization Rules give Visa, MasterCard and Discover, certain rights to require termination or modification of this Agreement with respect to transactions involving Visa, MasterCard and Discover Cards and the Visa, MasterCard and Discover 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. 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 1099 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.**

**25.12 Electronic Communications.** You consent to receiving documents, notices and other communications from us electronically (collectively, "Electronic Communications") rather than in paper form. We may send such Electronic Communications to you directly at the last known email address that you provide to us, or we may notify you that an Electronic Communication is available at a website designated by us and provide you with instructions on accessing the Electronic Communication. You agree that such notification will be sent to you at the last known e-mail address that you provide to us, which will be the email address identified on your Application unless you subsequently notify us that you have a new email address. 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 an Electronic Communication, and you confirm that you have such access. You understand that there may be costs related to accessing Electronic Communications (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 Electronic Communications 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 an Electronic Communication 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.

**B. OPERATING PROCEDURES**

This part of the Program Guide (through Section 38) 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® and Discover Cards carried by your customers, as well as to the independent Card Issuers of American Express®. The Operating Procedures contained in this part focus primarily on the MasterCard, Visa and Discover 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 and Discover, 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 and American Express Card 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 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 and American Express Card designs:

**Visa:** Visa Cards have the Visa symbol on the right-hand side of the Card. Above the Visa symbol is the 3-dimensional hologram of the Visa Dove design. The expiration date must be followed by one space and the symbol "V". Visa Cards contain a 16-digit account number embossed across the middle of the Cards and the first digit is always a four (4). In addition, the Classic and Preferred Cards have the first four digits of the account number printed directly below the embossed number. You must always check these numbers carefully to ensure that they are the same. Visa has a new Card design which differs significantly from the previous description. "Card Acceptance and Chargeback Management Guidelines for Visa Merchants" (VRM 08.12.16). You may download the document free of charge from Visa's website at <http://www.visa.com/merchant> or order a hardcopy to be mailed to you for a nominal charge by telephoning Visa Fulfillment at 800-VISA-311. Both the old and new Visa Card designs will be circulating concurrently in the marketplace through the year 2010. Only Visa Cards fitting the old or new descriptions may be accepted.

Beginning May 2008, Visa issued a new card design for unembossed Visa cards. Unlike embossed Visa cards with raised numbers, letters and symbols, the unembossed card has a smooth, flat surface. Because of the unembossed cards flat surface, it cannot be used for transactions that require a card imprint. Unembossed cards can only be used by merchants who process with an electronic Point Of Sale Terminal. As a result, the bottom of the card bears the following note, "Electronic Use Only".

**MasterCard:** MasterCard Cards are issued under the following names: MasterCard, EuroCard, Access, Union, Million and Diamond. The MasterCard symbol appears on the front or back of the Card. MasterCard and the Globe designs appear in a 3-dimensional hologram above the symbol. In addition, the words Classic, Preferred, Gold or Business may appear. MasterCard account numbers are sixteen (16) digits, and the first digit is always a five (5). The first four digits of the account must be printed directly below the embossed number. Only MasterCard Cards fitting this description may be accepted. Beginning Jan 2006, MasterCard has a new Card design significantly different from the previous description. You are required to familiarize yourself with the new design by consulting a document "MasterCard Card Identification Features." You may download the document free of charge from MasterCard's website at <http://www.mastercardmerchant.com/us/merchant>. Both the old and new MasterCard Card designs will be circulating concurrently in the

**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” appears 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.

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 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.

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 you accept a Card that displays a printed, rather than embossed, Card number, you are required to obtain a Card imprint, the Card sale may be subject to dispute.

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.
- 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 Date.** At the time of sale, you must carefully examine the Card 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 and Discover Cards have a 3-digit number (CVV 2/CVC 2/CID) printed on the panel known as the Card Validation Code.

**Visa, MasterCard and Discover:** 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.
- Indicate the positive identification, including any serial number and expiration date, on the Credit Draft or Sales Draft; 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.
- 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 small ticket transaction or a no signature required 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 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.

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 Account Number and treat deposits on the Card no differently than you treat deposits on all other payment products.

#### **Advance Payment Charges for American Express Transactions.**

An advance payment Charge is a Charge for which full payment is made in advance of you providing the goods and/or rendering services to the Cardholder and such Charges carry higher risk. American Express may withhold settlement for part or all of such Charges until it is determined that the risk has diminished.

You must follow the procedures below if you offer Cardholders the option or require them to make advance payment Charges for the following types of goods and/or services:

- Custom-orders (e.g., orders for goods to be manufactured to a customer's specifications).
- Entertainment / ticketing (e.g., sporting events, concerts, season tickets).
- Tuition, room and board, and other mandatory fees (e.g., library fees) of higher educational institutions.
- Airline tickets, vehicle rentals, rail tickets, cruise line tickets, lodging, travel-related services (e.g., tours, guided expeditions).

#### **For an advance payment Charge, you must:**

State your full cancellation and refund policies, clearly disclose your intent and obtain written consent from the Cardholder to bill the Card for an advance payment Charge before you request an Authorization. The Cardholder's consent must include his or her agreement to all the terms of the sale (including price and any cancellation and refund policies), and a detailed description and the expected

- Complete a Sales Draft. If the advance payment Charge is a Card Not Present Charge, you must also ensure that the Sales Draft contains the words "Advance Payment;" and within twenty-four (24) hours of the Charge being incurred, provide the Cardholder written confirmation (e.g., email or facsimile) of the advance payment Charge, the amount, the confirmation number (if applicable), a detailed description and expected delivery date of the goods and/or services to be provided (including expected arrival and departure dates, if applicable) and details of your cancellation/ refund policy.

If you cannot deliver goods and/or services (e.g., because custom-ordered merchandise cannot be fulfilled), and if alternate arrangements cannot be made, you must immediately issue a Credit for the full amount of the advance payment Charge which cannot be fulfilled.

In addition to other Chargeback rights, a Chargeback may be exercised for any disputed advance payment Charge or portion thereof if the dispute cannot be resolved in your favor based upon unambiguous terms contained in the terms of sale to which you obtained the Cardholder's written consent.

**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., monthly insurance premiums, yearly subscriptions, 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 Account 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;

notification for the recurring transaction(s) at least (10) ten days prior to submitting, or any time the Charge amount exceeds a maximum amount that has been set 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. Certain Rules and Requirements.** The following rules are requirements strictly enforced by Visa, MasterCard and Discover:

- 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 establish any special conditions for accepting a Card.
- 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 26.9.
- 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.

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

- 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 promote a particular brand or type of general purpose card or a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to a customer;
- 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; or
- You may engage in any other practices substantially equivalent to these.

- You cannot use a Card prior to fulfilling any personal information requirements (e.g., Card Number, Cardholder's name, address, telephone number, 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.
- 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 cannot submit a transaction or sale that has been previously charged back.
- 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.
- You cannot submit a transaction or sale to cover a dishonored check.
- 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.
- 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.

**26.9. 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 26.9 will apply:

**26.9.1.** 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.

**26.9.2.** 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.

**26.9.3.** 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).

**26.9.4.** 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.

**26.9.5.** 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.

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 26.10 is deemed a cash advance, and cash advances are prohibited.

## **26.11. Merchants in the Lodging Industry.**

**26.11.1. 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 in the lodging industry, you must contact us for these additional rules and requirements. Failure to do so could result in additional charges or termination of this Agreement.

**26.11.2. 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 relationship manager for details and the appropriate MasterCard and Visa requirements.

**26.11.3. 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.

**26.11.4. 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 Card holder 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.

**26.12. Customer Activated Terminals and Self-Service Terminals.** Prior to conducting Customer Activated Terminal ("CAT") transactions or Self-Service Terminal transactions 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.

**26.13. Displays and Advertising.** You must prominently display appropriate Visa, MasterCard, Discover, 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



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.

**26.13.1. 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, BCCard, 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 Program Marks.

**26.13.2. 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. 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.

**26.15. 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:

- 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.)

**26.16. 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 behavior of the person presenting the Card is suspicious in nature, 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?

- 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 an electronic device (e.g., authorization/draft capture terminal, cash register, POS Device, etc.) and swipe the Card to read and capture the Card information via the Magnetic Stripe, you do not have to imprint the Card. HOWEVER, IF THE TERMINAL FAILS TO READ THE MAGNETIC STRIPE OR IF YOU ARE REQUIRED TO OBTAIN A VOICE AUTHORIZATION, THEN YOU MUST IMPRINT THE CARD. IN ADDITION, THE SALES DRAFT MUST HAVE THE CARDHOLDER'S SIGNATURE. 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.;

MasterCard's Quick Payment Service Program, Visa Easy Payment Program, American Express No Signature Program, Discover 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 Account 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 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:** For Visa, MasterCard and Discover transactions, if you are a merchant operating under certain merchant category codes ("MCC") approved by Visa, MasterCard and Discover, you are not required to obtain the Cardholder's signature so long as the full track data is transmitted in the authorization request and the sale amount is below the applicable program floor limit (MasterCard/ Discover/ American Express 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 has been raised to \$50.00.

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. 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 you name, address, Merchant Account Number and, if applicable, store number.
- The words "no refunds" if you have a no refund policy, and you return and/or cancellation policies.

#### **American Express No Signature Program.**

You may participate in the American Express No Signature Program. The No Signature Program allows establishments not to request a signature from Cardholders on the Sales Draft. To qualify for the No Signature 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 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 Section 39.6 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 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 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 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.

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, and 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 Validation Code number and include it with each authorization request. Discover Card Organization Rules specifically require that you submit the Card Validation 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 and 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 and country;
- Cancellation policy; and
- Date any free trial period ends.
- You may not accept Card Account Numbers through Electronic Mail over the Internet.

**NOTE:** AVS (and other fraud mitigation tools such as Verified by Visa, MasterCard Secure Code, CVV2, CVC2 and CID verification) 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 not match addresses when submitted for AVS and still receive an Authorization. It is your responsibility to monitor the AVS responses and use the information provided to avoid high-risk transactions.

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

For internet orders, you must use separate Merchant Account Numbers provided to you for internet orders on all your requests for Authorization and submission of charges, provide at least one (1) month's prior written notice of any change in your internet address, and comply with any additional requirements that may be added from time to time. Additionally, if a disputed Charge arises involving a Card Not Present Charge that is an internet electronic delivery Charge, a Chargeback may be exercised for the full amount.

#### **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 Cardholder 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 Cardholder'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.

When providing Proof of Delivery, a signature from the Cardholder or an authorized signer of the Card is not required.

**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 data encryption and cryptographic key management, shall be in effect 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:

<b>American Express/ESA or Direct</b>	<b>1-800-528- 5200</b>
<b>American Express</b>	<b>1-800-451-5817</b>
<b>JCB, International</b>	<b>1-800-366-4522</b>
<b>(For YEN and CAD currency only)</b>	
<b>TeleCheck</b>	<b>1-800-366-1054</b>
<b>Voyager</b>	<b>1-800-987-6591</b>
<b>WEX</b>	<b>1-800-492-0669 (24 hours)</b>

## **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 Operating Policy (DSOP) 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>

- You must install and maintain a secure network firewall to protect data across public networks.
- You must protect stored data and data sent across networks using methods indicated in the PCI DSS.
- 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 Validation Codes (three-digit values 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 services and Merchant Equipment that have been certified as PCI DSS compliant by the Card Organizations.

**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 Security Breaches.** For security breaches involving Discover transactions and/or track data, you must provide us and/or Discover 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

use of any Person or Persons, or any other Person, in connection with the breach; (v) 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 be 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 Credit 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.

You must obtain an Authorization Approval Code from us (or as authorized, pursuant to Section 5.4) for all transactions. A positive authorization response for MasterCard remains valid for seven (7) days for electronic processed transactions. For true paper merchants for MasterCard and Visa transactions the Authorization remains valid for fourteen (14) days. A positive authorization response for Visa will remain valid for thirty (30) calendar days from the date the Issuer provides the

Authorization Code for Card Sales in the airline, hotel, rental car, and travel industries, the lodging industry, and other travel MCCs including passenger transport and ten (10) days from the date of the Authorization response for Card Sales by Merchants in all other industries and MCCs. A positive Authorization response for Discover Network transactions remains valid for ten (10) days for Non T&E transactions and thirty (30) days for T&E transactions. A positive Authorization response for American Express Non T&E transactions are good for seven (7) days, and American Express T&E transactions are good for thirty (30) days.

Failure to obtain an Authorization Approval Code for a sales transaction may result in a Chargeback and/or the termination of your Agreement. Authorization Approval Codes can be obtained through your POS Terminal or a Voice Response Unit ("VRU"). Any fees related to Authorizations will be charged for a request for an Authorization Approval Code, whether or not the transaction is approved.

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, 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.

For Cards other than MasterCard, Visa and Discover (e.g., American Express, etc.) or for check acceptance, you must follow the procedures for authorization and acceptance for each. For American Express, you must obtain an Authorization Approval Code except for charges under a floor limit. The Authorization must be for the full amount of the Charge except for merchants that are classified in the restaurant industry.

You may not attempt to obtain multiple Authorizations for a single transaction. 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 and Discover transactions, automated fuel dispensers must ensure that completion messages are submitted for MasterCard's Card within 60 minutes of the Authorization.

For Discover 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

Request, the request must be submitted within sixty (60) minutes of the completion of fuel delivery.

**30.1. Card Not Present Transactions.** You should obtain the 3 or 4 digit Card Validation Code (CVV2, CVC2, CID) and submit this Code with all authorization requests with respect to transactions where the Card is not present (e.g., telephone, mail or internet sales). However, for recurring transaction Authorizations you should submit the Card Validation Code with the first authorization request only, 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), and if you do not receive a positive match, do not process the Discover Card Not Present transaction.

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, DO NOT USE ANOTHER THIRD PARTY SYSTEM WITHOUT NOTIFYING CUSTOMER SERVICE.



OTHERWISE, YOUR BUSINESS WILL BE SUBJECT TO A CHARGEBACK. 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.

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:**

<b>American Express/ESA or Direct</b>	<b>1-800-528-5200</b>
<b>JCB, International</b>	<b>1-800-522-9345</b>
<b>(For YEN and CAD currency only)</b>	
<b>TeleCheck</b>	<b>1-800-366-5010</b>
<b>Voyager</b>	<b>1-800-987-6589</b>
<b>WEX</b>	<b>1-800-842-0071</b>

**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 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 or Discover 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, 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

prohibited. The authorization request should include only the amount associated with the bill presented to the consumer.

- You should 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 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 120% 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 Procedure for Request for Cancellation of Authorization.** If a Discover Card sale is cancelled or the amount of the transaction changes following your receipt of Authorization for the sale, you must 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 Account 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 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 41.2 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.

## 32. Settlement

Except as otherwise set forth in this Program Guide, your funds for MasterCard/Visa/Discover transactions will ordinarily be processed and transferred to your financial institution within two (2) Business Days from the time a Batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard/Visa/Discover 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.

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

- 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 and expiration date;
  - The Cardholder's name;
  - Your name, city, state and Merchant Account Number;
  - A description of the goods or services;
  - The transaction date of the Credit;
  - The total amount of the Credit; and
  - For Discover transactions, the approved currency used and the signature of your authorized representative or employee.
- 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 for Card sales.
- 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.

### 33.2. 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 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 telephone number.
- 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.

#### 33.3. 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: 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 MasterCard: You must securely retain legible copies of all Sales Drafts 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 Drafts 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 American Express: You must submit the Credit to American Express directly, or through 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.

You must provide a copy of 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. Chargebacks, Retrievals and Other Debits

#### 35.1. Chargebacks.

**35.1.1. 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.

**35.1.2. 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.
- Fax or mail legible copies of the Sales Draft(s) to the fax number or mail address provided on the request form.
- 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 "non-receipt" for which there is 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.

**35.1.3. 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 and Discover 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 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. You will be responsible for all such fees and charges whether or not a decision is made in your favor, 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 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 \$150 filing fee and a \$250 review fee. You will be responsible for all such fees and charges whether or not a decision is made in your favor, 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 Chargebacks:** If Discover rejects our representment 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. Discover charges fees for representment requests and an arbitration fee as published in their fee schedule.

If the Chargeback is not disputed within the applicable time limits set forth by MasterCard, Visa, Discover 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" from 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 time frame.

unless the dispute relates to a Discover Cardholder, in which case direct contact with the Discover Cardholder regarding the dispute is prohibited by Discover Card Organization Rules.

- If you have any questions, call Customer Service.

**35.1.4. 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. Additionally, you can choose to retain the Credit Card and return it to the Acquirer for a reward.
- 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 instore/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 transactions, the Sales Draft must contain the disclosure: "The merchant is not responsible for the business and is displayed correctly on the Cardholder statement."
- 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 Chargebacks: Chargeback representment rights do not exist if you failed to fulfill a retrieval request and/or provide a sales slip that contains all required data elements. To preserve Chargeback representment rights, respond to all retrieval requests with a clear legible copy of the transaction document that contains all required data elements within the required timeframe that is specified by the retrieval request.

**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 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.
- If you are unable to swipe the Card or if a Referral response is received, 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.
- Address Verification Services.
- CVV2, CVC2 and CID Verification.

**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.

the merchant is not responsible for 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 predetermined limit.

- 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.

**6. Non Receipt of Information:** Failure to Respond to a Retrieval Request or Cardholder Does Not Recognize.

**The following scenarios could cause Non Receipt of Information Chargeback to occur:**

- 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 sales draft did not contain required information which may include signature).
- The Cardholder does not 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.

**To reduce your risk of receiving a Non Receipt of Information Related Chargeback:**

- 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 Card Organization.
- Develop efficient methods to retrieve transaction documentation to maximize ability to fulfill requests.

**35.2. 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.

**35.3. 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.

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.

## 36. Account Maintenance

**36.1. 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 Relationship Manager immediately. If you accept payment types other than Visa, MasterCard, Discover 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.

**36.2. Change in Your Legal Name or Structure.** You must call Customer Service or your Relationship Manager and request a new Agreement.

**36.3. 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.

**36.4. 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.

**36.5. 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.

## 37. Card Organization Monitoring

MasterCard, Visa and Discover 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.

## 38. Supplies

**Placing Orders.**

- To order additional supplies, call Customer Service 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.



The provisions in this Section 39 apply to American Express Card acceptance and Transactions.

**39.1. Card Acceptance.** If you elect to accept American Express Cards under the Agreement, You must accept the American Express Card as payment for goods and services sold (other than those goods or services identified under "Prohibited Uses of the American Express Card" in Section 39.6 below), or (if applicable) for charitable contributions made, at all of your establishments, except as expressly permitted by applicable law. You are jointly and severally liable for the obligations of your establishments under the Agreement.

**39.2. Arbitration Agreement for Claims Involving American Express.** In the event that you or we are not able to resolve a Claim this Section 39.2 explains how Claims may be resolved through arbitration. You or we or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator.

If arbitration is elected by any party to resolve a Claim, the parties understand and agree that neither you nor we nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, you, we, and American Express understand and agree that the parties will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under this Agreement. Arbitrator's decisions are final and binding, with very limited review by a court, and once confirmed by a court of competent jurisdiction, an arbitrator's final decision on a Claim is generally enforceable as a court order. Other rights you, we, or American Express would have in court may also not be available in arbitration.

**i. Initiation of Arbitration.** Claims may be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Section 39.2 and the selected arbitration organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if [American Express or we, on one hand, selects the organization and you, on the other hand,] select the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in New York, NY.

**ii. Limitations on Arbitration.** If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between you, us, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by you, us or American Express and cannot be used in any other case except to enforce the award as between you, us and American Express. This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision in this Section 39.2, if any portion of these Limitations on Arbitration set forth in this Section 39.2 (ii) is found invalid or unenforceable, then the entire Section 39.2 (other than this sentence) will not apply, except that you, we, and American Express do not waive the right to appeal that decision.

**iii. Previously Filed Claims/No Waiver.** You, we, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. You, we, or American Express may choose to delay enforcing or to not exercise rights under this Section 39.2, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this Section 39.2 applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against American Express prior to the effective date of the Agreement to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between Merchant and American Express.

**iv. Arbitrator's Authority.** The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under this Agreement. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this Section 39.2.

134 American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This Section 39.2 shall be enforced by any court of competent jurisdiction.

**vi. Small Claims.** American Express will not elect arbitration for any Claim you properly file in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

**vii. Governing Law/Arbitration Procedures/Entry of Judgment.** This Section 39.2 is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If your Claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

**viii. Confidentiality.** The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.

**ix. Costs of Arbitration Proceedings.** You will be responsible for paying your share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees you would have incurred if you had brought a claim in court. American Express will be responsible for any additional arbitration fees. At your written request, American Express will consider in good faith making a temporary advance of your share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

**x. Additional Arbitration Awards.** If the arbitrator rules in your favor against American Express for an amount greater than any final settlement offer American Express made before arbitration, the arbitrator's award will include: (1) any money to which you are entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by you.

**xi. Definitions.** For purposes of this Section 39.2 only, (i) "American Express" includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, (ii) "You" includes your Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) "Claim" means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or any other entity (including you or us) that American Express has the right to join, including any allegation involving a transaction using an American Express product or network or regarding an American Express policy or procedure.

**39.3. 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 Cardholder fees, discounts or benefits on the Cardholder, but not 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."

#### 39.4. 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.

**39.5. 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.

**39.6. Prohibited Uses of the American Express Card.** You must not accept the Card for any of the following:

- adult digital content sold via internet electronic delivery,
- amounts that do not represent bona fide sales of goods or services (or, if applicable, amounts that do not represent bona fide charitable contributions made) at your establishments. For example, purchases at your establishments by your owners (or their family members) or employees contrived for cash flow purposes, or payments that you have accepted in order to advance cash to Cardholders in connection with the transaction,
- amounts that do not represent bona fide, direct sales by your establishment to Cardholders made in the ordinary course of your business,
- cash or cash equivalent; for example, purchases of gold, silver, platinum, and palladium bullion and/or bars (collectible coins and jewelry are not prohibited), or virtual currencies that can be exchanged for real currency (loyalty program currencies are not prohibited),
- charges that the Cardholder has not specifically approved,
- costs or fees over the normal price of the goods or services (plus applicable taxes) that the Cardholder has not specifically approved,
- damages, losses, penalties, or fines of any kind,
- gambling services (including online gambling), gambling chips, gambling credits, or lottery tickets,
- unlawful/illegal activities, fraudulent business transactions or when providing the goods or services is unlawful/illegal (e.g. unlawful/illegal online internet sales of prescription medications or controlled substances; sales of any goods that infringe the rights of a rights-holder under laws applicable to American Express, you, or the Cardholder),
- overdue amounts or amounts covering returned, previously dishonored or stop-payment checks (e.g., where the Card is used as a payment of last resort),

limited to, payday loans, pawn loans or payday advances,

- sales made by third parties or entities conducting business in industries other than yours.
- Other items of which American Express or your Processor notifies you.
- You must not use the Card to verify a customer's age.

**39.7. 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 Operating Policy (DSOP)). 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 Cardholder 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.

**39.8. 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.

**39.9. 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.

**39.9.1. 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. 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 39.9.1 is not a condition of purchasing or receiving any product or service or entering into this Agreement.

**39.9.2. 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.

**39.10. 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 Cardholder's sales that you submit to American Express 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.

#### **39.11. Reserved.**

**39.12. 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.

**39.13. 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.

**39.14. 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.

**39.15. Completing a Transaction at the Point of Sale.** All valid transactions begin with a Cardholder's purchase at the point of sale. Whether the physical Card is used to facilitate a Card present Charge, or the Cardholder provides his or her Cardholder Information over the phone, via mail order, or the internet, the transaction must not be completed without the Card and/or information provided by the Cardholder. To accept the Card for charges at your establishments, at the point of sale, you must:

- Clearly and conspicuously disclose all material terms of sale prior to obtaining an Authorization, and
- Clearly and conspicuously inform Cardholders at all points of interaction (e.g., sales conducted in person, over the internet, mobile or via mail or telephone order) what Entity is making the sales offer, so that the Cardholder can clearly distinguish you from any other party involved in the interaction (e.g., a vendor of goods or provider of services you may engage, or another merchant seeking to conduct business with the Cardholder).

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 Operating Policy (DSOP)). If you fail to comply with this requirement, you may be charged non-compliance or other fees as indicated on the Merchant Processing Application and/or have your Card acceptance privileges at required your establishments suspended or disentitled.

**39.16. In Person Charges.** In-person charges refer to charges in which the Card and Cardholder are present at the point of sale. An example of this is when a Cardholder presents a Card to the merchant at a retail store. For all in-person charges, the Card must be presented. There are several ways in which you can conduct the in-person Charge. The steps you take vary according to how you go about conducting both types of in-person charges:

**39.17. Electronic charges or key-entered charges.** When providing proof of delivery, a signature from the Cardholder or an authorized signer of the Card is not required.

#### **39.18. Magnetic Stripe Card Charges.**

When presented with a Card at the point of sale you must:

- Verify that the customer is the Cardholder (Cards are not transferable).
- Capture Magnetic Stripe data by swiping the Card (unless the Charge was already initiated by waving the contactless chip Card in close proximity to the point of sale system).
- Match the Card number and the expiration date on the Card to the same information on the Sales Draft.

of the Card except when the Cardholder name is not captured on the Sales Draft or for prepaid Cards that do not show a name on their face.

- Validate the Card's presence by taking an imprint of the Card (the imprint is for your records). Failure to validate the Card's presence by taking an imprint of the Card can render merchant liable for Chargebacks if the Cardholder disputes the Charge, except when the Cardholder name is not captured on the Sales Draft or for prepaid Cards that do not show a name on their face.

#### **39.19. American Express Mobile Contactless Charges.**

When presented with a contactless-enabled mobile phone, in addition to the "Magnetic Stripe Card Charges" requirements, you must:

- Capture Magnetic Stripe or chip Card data by waving the contactless-enabled mobile phone in close proximity to the contactless reader.
- Compare the signature (when obtained) on the Sales Draft with the signature on the companion physical Card or a valid form of formal identification (e.g. driver's license). You must not record or store the information from such formal identification in any way.

If a mobile contactless transaction cannot be processed for any reason, you should require that the Cardholder provide the companion physical Card to complete the transaction.

#### **39.20. American Express Contact Chip Charges.**

When presented with a chip Card to be inserted into a chip Card reader, in addition to the "Magnetic Stripe Card Charges" requirements, you must:

- Capture chip Card data by inserting the Card into the chip Card reader, the point of sale system will advise Cardholders to enter their PIN (a chip and PIN Charge) or sign for the Charge (a chip and signature Charge).
- Chip and PIN Charges. Cardholders will enter their PIN into the point of sale system using the keypad. If the chip and PIN Charge are unable to be completed due to a technical problem, the point of sale system will show an error message.
- Chip and signature Charge. Failure to obtain a signature, when required, can render you liable for Chargebacks if the Cardholder disputes the Charge. Obtaining a signature may not be required if merchant's establishment and the Charge qualify for the No Signature Program.

#### **39.21. American Express Contactless Chip Charges.**

When presented with a chip Card to be read via a contactless reader and the Charge qualifies for the No Signature Program, in addition to the "Magnetic Stripe Card Charges" requirements, you must:

- Capture Magnetic Stripe or chip Card data using the contactless reader.

For charges that do not qualify under the No Signature Program, follow the relevant Card acceptance procedures outlined in either:

- "Magnetic Stripe Card Charges," or
- "Contact Chip Card Charges."

#### **39.22. 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.
- Validate the Card's presence by taking an imprint of the Card (the imprint is for your records). Failure to validate the Card's presence by taking an imprint of the Card can render you liable for Chargebacks if the Cardholder disputes the Charge.

#### **39.23. 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



### 39.24. 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.

### 39.25. 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.

### 39.26. American Express Prepaid Card Security Features.

Although there are a number of unique prepaid Cards, all prepaid Cards share similar features, except that Prepaid Cards may or may not be embossed, and the following features may appear on the front or back of the Card (or a combination of both):

- The American Express logo generally appears in the bottom right corner.
- The words PREPAID or INCENTIVE will generally be shown above the American Express logo.
- Cards pre-loaded with funds may show the dollar amount or the total points (reloadable Cards generally will not show a number).
- The CID Number will appear usually above the Card number or above the logo.
- The Card number appears on the Card.
- The valid date or expiration date appears on the Card.
- The recipient's name or company name may appear on the Card.

### 39.27. American Express Processing Prepaid Cards.

Prepaid Cards are available for a variety of uses: gifting, travel, incentive, etc. All American Express prepaid Cards show the American Express "Blue Box" logo either on the face or back of the prepaid Card. Prepaid Cards may or may not be embossed. Most prepaid Cards can be used for both in-store and online purchases. Prepaid Cards are valid through the date on the Card. Simply swipe the Card at the point of sale just like any other Card. A prepaid Card must be tendered for an amount that is no greater than the funds available on the Card.

- Instruct Cardholders that, before making a purchase, they must check their remaining funds by calling the twenty-four (24) hour, toll-free number on the back of the Card.

Authorization, ask the customer to call the toll-free number on the back of the Card to confirm that the purchase price does not exceed the available funds on the prepaid Card.

- If the prepaid Card does not have enough funds to cover the purchase price, process a split tender transaction or request an alternative form of payment.
- You must create a Sales Draft for a prepaid Card as you would any other Card.
- Be on the lookout for suspect transactions.

**39.28. American Express Policies and Procedures for Specific Industries.** This Section 39.28 states additional American Express policies and procedures applicable to merchants classified in specific industries. All other provisions and requirements of this Agreement apply to these merchants as well. To the extent possible, the provisions of this Section 39.28 and the other provisions of the Agreement applicable to American Express transactions shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then the provisions of this Section 39.28 shall govern.

**39.28.1. Auto dealers.** This section applies to merchants classified in an auto dealer industry.

The following requirements will apply to charges for the down payment or the entire purchase price of new and used motor vehicles. You may accept the Card for down payment of a motor vehicle, subject to the following provisions:

- You must not submit a Charge for the down payment price of a used motor vehicle unless and until you have a written agreement/bill of sale signed by the Cardholder setting forth the terms of the sale, including down payment price, and your cancellation policy.
- In addition to its other Chargeback rights, American Express also has Chargeback rights for any portion of the Charge for the down payment price of a used motor vehicle which is disputed by the Cardholder, if such disputed charge cannot be resolved in your favor based upon unambiguous language contained in the written agreement/bill of sale.
- Should a Cardholder exercise his or her right to rescind the written agreement/bill of sale during any rescission period set forth in the Cardholder's agreement with you or at law, you shall submit a Credit to us promptly.
- If American Express has classified you as an auto dealer of used motor vehicles exclusively, the down payment must not exceed 50% of the full purchase price of the motor vehicle.
- If the Cardholder denies making or authorizing the Charge, American Express will have Chargeback rights for such Charge in addition to our other Chargeback rights
- You may also accept the Card for the entire purchase price of a new or used motor vehicle, subject to the following provisions:
  - You are classified as an auto dealer of new or new and used motor vehicles (i.e. Your dealership sells new motor vehicles exclusively or both new and used motor vehicles).
  - The amount of the Charge does not exceed the total price of the motor vehicle after deduction of applicable discounts, taxes, rebates, cash down payments, and trade-in values.
  - You must not submit a Charge for the entire purchase price of a new or used motor vehicle unless and until you have a written agreement/bill of sale signed by the Cardholder setting forth the terms of the sale, including purchase price, delivery date and your cancellation policy.
  - In addition to other Chargeback rights, American Express also has Chargeback rights for any portion of the Charge for the entire purchase price of a new or used motor vehicle which is disputed by the Cardholder, if such disputed Charge cannot be resolved in your favor based upon unambiguous language contained in the written agreement/bill of sale.
  - Should a Cardholder exercise his or her right to rescind the written agreement/bill of sale during any rescission period set forth in the Cardholder's agreement with you or at law, you shall submit a Credit to us promptly.
  - If the Cardholder denies making or authorizing the Charge and you have not transferred title or physical possession of the motor vehicle to the Cardholder, American Express will have Chargeback rights for such Charge in addition to its other Chargeback rights.

If you are classified in the business-to-business (B2B) or wholesale distribution industries, and American Express determines that you are not in the telecommunications industry, then notwithstanding the prohibition in Section 39.6, "Prohibited Uses of the Card," you may accept the Card for overdue amounts to the extent that acceptance of overdue amounts is a common practice in your industry and does not constitute an attempt to obtain payment from the Cardholder whose prior methods of payment have, in American Express' reasonable judgment, been difficult to collect or uncollectible. An indicator of such difficulty, for example, may be the fact that you have sent a customer account to collections.

**To minimize your risk of a Chargeback with B2B Charges, always:**

- Obtain a signature for all in-person charges. For Card Not Present Charges, obtain Proof of Delivery, and
- Maintain clear and accurate records of orders and returns.

Notwithstanding the restriction in Section 26.6, you must not submit any Charge until the goods have been shipped or services have been provided to the Cardholder. To the extent that you have clearly disclosed your intentions to the Cardholder and the Cardholder agrees, then you may submit the following types of Charges to us before you ship the goods to the Cardholder:

- Charges representing deposits on custom and special orders (so long as you comply with applicable law) or goods not in inventory at the time the order is placed.
- Charges representing advance, partial, or full payment for goods that the Cardholder requests you to ship at a later date.

**39.28.3. Insurance.**

This section contains provisions specific to establishments that are classified in the insurance industry.

American Express undertakes no responsibility on your behalf for the collection or timely remittance of premiums. American Express will not be subject to any liability, under any circumstances, for any claim arising from, or related to, any insurance policy issued by you or your agencies.

If the Card is accepted as payment for fixed rate cash value life insurance policies or fixed rate annuities under the Agreement, you represent and warrant to Processor that the fixed rate cash value life insurance policies and fixed rate annuities for which the Card will be accepted for premium payments are not securities requiring registration under the Securities Act of 1933.

**39.28.4. Oil/Petroleum.**

If you are classified in the oil and petroleum industry, American Express may place you in the Fraud Full Recourse Program if you accept charges originating at a Customer Activated Terminal (CAT) gas pump. American Express will not exercise Chargeback up to a certain dollar amount for charges that qualify under the Oil Fraud Protection Program described below.

**Oil/Petroleum Requirements.**

**If you are classified in the oil and petroleum industry, you must:**

- Obtain a unique Merchant Account Number for your CAT gas pump sales. If you conduct any other business at your establishment (e.g., convenience store sales, car washing services), you must obtain a unique Merchant Account Number for those lines of business.
- Submit dealer location data along with each Authorization request and each Submission file. Dealer location data consists of your business':
  - dealer number (store number)
  - name
  - street address
  - city
  - postal code

**Oil/Petroleum Recommendations.**

American Express has implemented several policies and fraud prevention tools to assist in combating fraud at the gasoline pump.

**American Express recommends that you:**

- Set a pre-Authorization request of \$100 at your CAT gas pumps.
- For higher charges such as diesel, adjust the pre-Authorization amount to accommodate the higher charges.
- Set your CAT gas pumps to shut off when they reach the pre-Authorization amount.

Request a Pre-Authorization amount.

**Oil Fraud Protection Program.**

The Oil Fraud Protection Program addresses counterfeit fraud Chargebacks at fuel pump CATs. Under this program, American Express will not exercise Chargeback for the amount of the Charge up to \$100 provided that both the establishment and each Charge meet the following criteria:

- The Authorization request meets the data requirements listed under CATs.
- The Authorization request must include the correct merchant category code (MCC) for "automated fuel dispensers" (5542),
- The Issuer determines that the Card used to initiate the Charge was counterfeit, and,
- The establishment qualified for Chargeback protection under the program at the time of the Charge, as follows:

For an establishment to qualify under the Oil Fraud Protection Program, it (i) must authorize and submit Transactions under the unique Merchant Account Number (Seller ID) assigned to the establishment, and (ii) must have, in a given month, a counterfeit fraud to Charge volume ratio below 1%. An establishment whose counterfeit fraud to Charge volume ratio rises to or exceeds 1% in a given month will not qualify under the Oil Fraud Protection Program until the ratio falls below 1% for three (3) consecutive months. Notwithstanding the foregoing, the Oil Fraud Protection Program does not apply to merchants that submit one Merchant Account Number (Seller ID) consolidated charges from multiple establishments (i.e., central submitters) or to the establishments that those merchants submit on behalf of. American Express offers a variety of fraud prevention tools which may enable merchants to reduce fraud in order to qualify and retain eligibility for the program.

If you are classified in the restaurant or bar industry, then the following Authorization procedures apply. If the final restaurant or bar Charge is no greater than the amount for which you obtained Authorization plus 20% of that amount, no further Authorization is necessary. If the final restaurant or bar Charge is greater than the amount for which you obtained Authorization by more than 20%, you must obtain Authorization for any additional amount of the Charge that is greater than the original Authorization. When submitting the Charge, only include the initial approval.

**39.28.5. Restaurants.**

If you are classified in the restaurant or bar industry, then the following Authorization procedures apply. If the final restaurant or bar Charge is no greater than the amount for which you obtained Authorization plus 20% of that amount, no further Authorization is necessary. If the final restaurant or bar Charge is greater than the amount for which you obtained Authorization by more than 20%, you must obtain Authorization for any additional amount of the Charge that is greater than the original Authorization. When submitting the Charge, only include the initial approval.

**39.28.6. Telecommunications.**

If American Express classifies you in the Telecommunications industry, notwithstanding anything to the contrary in the Agreement, American Express may place you in one or more of the following Chargeback programs:

Partial Immediate Chargeback Program for an amount of \$50 or less; or Fraud Full Recourse Program

- American Express may establish audit procedures determined in American Express' discretion to ensure that no charges except for recurring billing charges are submitted under the Merchant Account Number designated for recurring billing charges.

**39.28.7. Government/Utilities/Education.**

This section applies to merchants classified in the government, utilities, or certain education industries (i.e. higher education, private school - kindergarten to grade 12).

Customers should feel free to use all forms of payment that you accept without being penalized for choosing a particular form of payment. To promote consumer choice, you are generally prohibited from imposing any restrictions, conditions, or disadvantages when the Card is accepted that are not imposed equally on all other payment products. See "Treatment of the American Express Brand".

Merchants in these specific industries may assess convenience fees on charges, provided that they comply with the other requirements of this section, as follows:

- Merchants must not impose a higher convenience fee on charges than it imposes on other payment products, except for Automated Clearing House funds transfers, cash, and checks.

- Merchants classified as educational institutions may assess convenience fees on all Charges, and privately owned utilities may assess convenience fees on all Charges.
- Merchants classified as educational institutions may assess convenience fees only on charges for tuition, room and board, school lunch payments or other mandatory fees.
- You must clearly disclose the amount of convenience fees to the customer and give the customer the opportunity to cancel the Charge if the customer does not want to pay the convenience fee.

Any explanation, verbal or written, describing why the convenience fee is being assessed, or how it is calculated, must characterize the convenience fee as an assessment to cover your administrative costs and not as an assessment to cover your cost of accepting the Card.

You must obtain separate Authorizations and Approval codes for each of the principal charges and the convenience fee. Furthermore, the descriptor on the convenience fee must clearly state that it is a convenience fee (e.g., Official Payments – City of X (principal payment) and Official Payments Convenience Fee (convenience fee)).

Your third-party service provider can only assess a convenience fee when it accepts the Card for the foregoing charges in compliance with the requirements of this section.

#### **39.28.8. Internet/Online Pharmacies.**

If it is determined that you are an internet/online pharmacy merchant that accepts the Card for sales of prescription medications (as defined by applicable law) in the Card Not Present environment:

- You must be certified by the Verified Internet Pharmacy Practice Sites program of the National Association of Boards of Pharmacy ([www.nabp.net](http://www.nabp.net)), or,
- You or your authorized representative must attest that you comply with the licensing and inspection requirements of (i) U.S. federal law and the state in which you are located and (ii) each state to which you dispense pharmaceuticals.

Upon request, you must promptly provide documentation that you fulfill the foregoing requirements. Failure to provide this documentation promptly may result in suspension or disentanglement of Card acceptance privileges. Specific procedures exist for transaction processing by internet/online merchants.

#### **Online/mail order tobacco retail.**

If you are classified or it is otherwise determined that you are an online or mail order (or both) tobacco or e-cigarette merchant, then you must provide the website address of the online store from which you sell your tobacco products. If your website facilitates tobacco sales, you will be required on request to provide an executed and notarized Affidavit of Compliance with Laws - Online/Mail Order Tobacco. If you fail to complete the Affidavit, Card acceptance privileges may be suspended. American Express may monitor your website.

**39.29. 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.

**39.30. 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.

**39.31. 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).



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 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.

**Business:** Client that has entered into a cardholding agreement with us. 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 embossed 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 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"), American Express and any applicable debit networks.

**Card Organization Rules:** The rules, regulations, 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 Validation Codes:** 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 Validation Code is known as CVV2; MasterCard's Card Validation Code is known as CVC2; the Card Validation Codes for Discover and American Express are known as a Card Identification Numbers (CID). Card Validation 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.

**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.

**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 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.

**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.

**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.

**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.

**General Terms:** Section of the Program Guide, including any amendments or modifications.

**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.

**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 Account Number, name and sometimes merchant ID code and terminal number.

**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).

**Non-Bank Services:** Products and/or Services for which Bank is not responsible, or a party to, including American Express, 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, Leasing, TransArmor, Fraud Services, Wireless, Global Gateway e4 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 program 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 Sponsor Banks:** The PIN Debit Sponsor 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 Debit Card transaction that a merchant submits to us for settlement/funding transactions with neither a PIN nor Signature.

**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.

**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 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.

**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 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.

designated by Client 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.

**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 35.3 and 35.4.)

**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.



**41. ADDITIONAL IMPORTANT INFORMATION PERTAINING TO THIS ENTIRE AGREEMENT****41.1. 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, Client shall be charged ten dollars (\$10.00) 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.

**41.2. Funding Acknowledgement  
Automated Clearing House (ACH).**

Automated Clearing House (ACH). I acknowledge that the funds for MasterCard, Visa and Discover transactions will be processed and transferred to my Settlement Account within two (2) Business Days from the time a Batch is closed (by 12:00 a.m. PT) and within one (1) Business Day from the time the Batch is closed (by 12:00 a.m. PT) if such account is a Wells Fargo Settlement Account. The ACH transactions will appear on your statement as "Merchant Bnkcd".

**41.3. 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:

- Any increases or decreases in the interchange and/or assessment portion of the fees,
- The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Client, and
- 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, or (b) this Agreement is terminated prior to the expiration of the applicable term of the Agreement due to an Event of Default, 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 15 days after Client's receipt of SERVICERS' calculation of the amount due.

The amount of the Early Termination Fee will be calculated as follows:

- If the Client's total Sales Volume for the preceding 12 months\* is less than One Million Dollars (\$1,000,000) and the termination occurs during the initial term, then the Early Termination Fee is Five Hundred Dollars (\$500.00) per location; or
- 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.

**41.4. Addresses for Notices****PROCESSOR:****Wells Fargo Merchant Services, L.L.C.:**

1307 Walt Whitman Road  
Melville, NY 11747  
Attn: Sales Manager

**BANK:****Wells Fargo Bank:**

1200 Montego, Building C  
Walnut Creek, CA 94598  
Attn: Merchant Services  
(925) 746-4143

**Important Phone Numbers:**

(see also Sections 28.3 and 30.4)

Customer Service  
1-800-451-5817 press 1

**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, 1307 Walt Whitman Road, Melville, NY 11747, 1-800-767-2484 ext. 32900, 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 SERVICES AGREEMENT**

This TeleCheck Services Terms and Conditions (the "Agreement") is entered by and between TeleCheck Services, Inc. ("TeleCheck") and Subscriber ("Subscriber") as indicated on the Merchant Processing Application and Agreement. TeleCheck will provide one of the following services ("TeleCheck Services") as selected in the Merchant Processing Application: TeleCheck Electronic Check Acceptance® ("ECA®") warranty service ("ECA Warranty Service"), paper warranty service ("Paper Warranty Service"). Upon processing Subscriber's first check through any of the TeleCheck® services or from the date Subscriber is entered into the TeleCheck system as a subscriber, whichever is earlier (the "Effective Date"), the terms and conditions of this Agreement, including payment and the Minimum Monthly Fee, shall apply from that point forward. Any of the TeleCheck services, including, without limitation, funds settlement, billing and customer service, may be performed by one or more of TeleCheck's affiliates.

**1.1. Term, Termination and Amendment.** This Agreement shall be effective for an initial term of 12 months from the Effective Date; provided, however, that Subscriber may terminate this Agreement if Subscriber gives and TeleCheck receives written notice of termination within the first 30 days of the Agreement. Thereafter, this Agreement shall automatically continue until terminated as provided for herein. Subscriber may terminate this Agreement at the end of the initial term hereafter upon at least 30 days' prior written notice to TeleCheck. TeleCheck reserves the right to amend, at its discretion, this Agreement, including, without limitation, any rates, fees, addenda and/or the TeleCheck Operational Procedures, by providing Subscriber notice and such amendments shall be effective 30 days from the date notice is mailed to Subscriber. In the event TeleCheck changes the rates, fees or warranty limits hereunder, Subscriber may terminate this Agreement upon written notice received by TeleCheck within such 30 day period. TeleCheck may terminate this Agreement at any time upon notice to Subscriber. Subscriber may terminate this Agreement at anytime upon written notice if TeleCheck has failed to cure a material breach of this Agreement within 30 days following written notice of that breach given by Subscriber.

**1.2. Definitions. As used in this Agreement, the following definitions apply:** "ACH Network" means the Automated Clearing House Network, a processing and delivery system that provides for the distribution and settlement of electronic credits and debits. "Authorization Receipt" means the written authorization receipt, in the form approved by TeleCheck, signed by Consumer for each ECA Warranty Transaction, as applicable. "Batch" means a collection of saved transactions transmitted to TeleCheck for settlement processing. "Claim" means any claim, demand, directive, suit or other proceeding, notice, damage, expense (including reasonable attorney's fees), assessment, fine or liability of any kind. "Consumer" means a person or entity that authorizes an Item. "Consumer Authorization Format" means the required format (including, without limitation, all verbiage for payment authorization, return item fees, check approvals and declines, etc.), provided by TeleCheck to Subscriber, as amended from time to time, for processing Consumer payments to Subscriber by an Electronic Item. "ECA Warranty Transaction" means a transaction processed by TeleCheck under the ECA Warranty Service (as applicable), as an electronic funds transfer, a remotely created check or a paper check for the contemporaneous purchase of goods or service by a Consumer at Subscriber's physical location. "Item" means an outstanding financial obligation pursuant to a paper check, electronic funds transfer or remotely created check processed under this Agreement. "NACHA Rules" means the National Automated Clearing House Association Operating Rules and Guidelines, as amended from time to time, that govern the ACH Network. "Paper Warranty Transaction" means a transaction for the contemporaneous purchase of goods or services pursuant to TeleCheck's Paper Warranty Service program. "Return Item Fee" means any fee or exemplary damages allowed by law that may be assessed on a Return Item. "Return Items" mean any Items that are dishonored, returned, reversed, charged back or otherwise unpaid by a Consumer's financial institution upon presentment for payment, regardless of the reason or timing.

"Returned Payment" means any financial obligation pursuant to this Agreement not paid by Subscriber's financial institution. "Subscriber's Account" means Subscriber's financial institution account. "TeleCheck Approval Code" means (a) for warranty services, that TeleCheck has authorized an Item for warranty coverage under this Agreement, and (b) for verification services, that TeleCheck has authorized an Item as eligible for processing. "TeleCheck Operational Procedures" means TeleCheck's published policies and procedures contained in various documents provided to Subscriber concerning the services, equipment and maintenance provided pursuant to this Agreement. "TeleCheck Parties" means TeleCheck, its affiliates, officers, directors, employees, shareholders, agents and attorneys. "Warranty Maximum" (a) for an Item processed as an ECA Warranty Transaction means the lower of (i) the face amount of the Item, (ii) the amount set forth on the Merchant Processing Application; or (iii) \$25,000.00; (b) for an Item processed as a Paper Warranty Transaction means the lower of (i) the face amount of the Item; (ii) the amount set forth on the Merchant Processing Application; or (iii) \$99,999.99.

**TERMS APPLICABLE ONLY TO TELECHECK ECA WARRANTY SERVICE****1.3. ECA Warranty Service.**

**1.3.1. Description.** The TeleCheck ECA Warranty Service provides Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; (b) processing services; and (c) warranty services for ECA Warranty Transactions that comply with the warranty requirements of Section 3.3, all in accordance with this Agreement.

**1.3.2. Processing Services.** For each ECA Warranty Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following Subscriber's regular close-out of the point of sale terminal and transmission of the saved ECA Warranty Transactions to TeleCheck for settlement processing, provided that the Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. Subscriber authorizes TeleCheck on its behalf to initiate debits to the Consumer's accounts for each such ECA Warranty Transaction. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for ECA Warranty Transactions, including, without limitation, chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as an ECA Warranty Transaction. As required by the NACHA rules TeleCheck's Originating Depository Financial Institution (as defined by the NACHA Rules) shall have the right to audit Subscriber's compliance with this Agreement and the NACHA Rules.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due ("Funds Hold") should any questionable activity occur as determined by TeleCheck in its sole discretion, including without limitation an excessive amount of Return Items or a breach of the NACHA, or as otherwise required by the Originating Financial Depository Institution or by law. In addition to the right to place a Funds Hold with respect to any payment, TeleCheck is also entitled without notice freeze or terminate all processing activities. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if Subscriber breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within 3 business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a



**1.3.4. Authorization Receipts.** Subscriber shall (a) maintain the signed Authorization Receipt for a minimum period of 2 years from the date of the transaction or for the period specified by the NACHA Rules, whichever is longer, (b) physically deliver either the original or a legible copy of the signed Authorization Receipt to TeleCheck within 7 days of TeleCheck's request, and (c) permit TeleCheck to audit Subscriber (upon reasonable notice and during normal business hours) for compliance with this requirement.

**1.3.5. Assignment of ECA Warranty Transactions.** By electing to subscribe to the TeleCheck ECA Warranty Service, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any ECA Warranty Transaction submitted by Subscriber to TeleCheck under this Agreement. Subscriber shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

**1.3.6. Chargeback and Reassignment.** TeleCheck may chargeback to Subscriber any ECA Warranty Transaction processed by TeleCheck, or reassign to Subscriber any ECA Warranty Transaction which has been approved as a paper check and purchased by TeleCheck, in any of the following circumstances:

- (a) The goods or services, in whole or in part, for which the ECA Warranty Transaction was submitted, have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- (b) Subscriber has received full or partial payment or security in any form to secure payment of the Item, or the goods or services for which the Item was issued or authorized were initially delivered on credit or under a lease;
- (c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the Item is not permitted by applicable law; or a court of law determines that the Item is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- (d) Any of the representations made by Subscriber as set forth in Section 1.3.3 are or become false or inaccurate;
- (e) Subscriber failed to comply with this Agreement;
- (f) Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered either the check or the Authorization Receipt; or (ii) processed the transaction with reason to know that the Item was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction;
- (g) The Authorization Receipt was incomplete or unsigned, or a legible copy of the Authorization Receipt was not received by TeleCheck within 7 days of a request by TeleCheck;
- (h) A duplicate ECA Warranty Transaction relating to the same transaction was received and processed, or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;
- (i) Consumer disputes authorizing the ECA Warranty Transaction or the validity or accuracy of the transaction;
- (j) Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice; or

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the Item is charged back or reassigned as provided herein, (a) TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the Item, (b) TeleCheck may deduct or offset such Item against any amounts to be paid to Subscriber for ECA Warranty Transactions, or (c) upon request, Subscriber shall remit the amount of the Item to TeleCheck. TeleCheck may also chargeback to Subscriber any amount over the Warranty Maximum on any ECA Warranty Transaction where TeleCheck has not received payment for such transaction within 60 days of the date of the ECA Warranty Transaction. Upon charging back or reassigning an Item, TeleCheck shall have no further liability to Subscriber on such Item. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

**1.3.7. Account Reconciliation.** Payments processed by TeleCheck will be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in the reports, or of any funding failures or errors. In the event any ECA Warranty Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 1.3.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

**1.3.8. "Goodwill" of a Non-Compliance Item.** TeleCheck, in its sole discretion, may voluntarily elect not to chargeback or reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 3.3. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to chargeback or reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

**1.3.9. Reserve Account Establishment and Funding.** Subscriber expressly authorizes TeleCheck to establish a reserve account for ECA Warranty Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon 3 days' notice to Subscriber or in instances of fraud or breach of this Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following: (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by either TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. If Subscriber's funds in the reserve account are not sufficient to cover the delinquent fees, chargebacks or rejected and reassigned warranty Items, or any other fees and charges due from Subscriber to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In the event of a failure by Subscriber to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Inquiry Rate" is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise, whether or not a TeleCheck Approval Code is issued. The "Transaction Fee" is the additional per transaction charge for each ECA Warranty Transaction inquiry, whether or not a TeleCheck Approval Code is issued. The "Monthly Minimum Fee" is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" "CROC" or "Voice Authorization Fee" is an additional fee per operator or Interactive Voice Response (IVR)-assisted call not requested by TeleCheck. The "December Risk Surcharge" is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in December. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account.

The following additional fees may also be charged by TeleCheck: The "Funding Report Fee" is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The "Chargeback Fee" is a \$5.00 handling fee for each chargeback of an ECA Warranty Transaction. The "Correction Fee" is a \$5.00 fee payable on each Item that must be corrected due to Subscriber's error or at Subscriber's request. The "Recovery Processing Fee" is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. Any additional requests or other services not included in this Agreement may be subject to additional fees. Fees for these items may be obtained by contacting TeleCheck. The above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### TERMS APPLICABLE ONLY TO TELECHECK PAPER WARRANTY SERVICE

##### 1.4. Paper Warranty Service.

**1.4.1. Description.** The TeleCheck Paper Warranty Service provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept a check; and (b) warranty services for checks that meet the warranty requirements of Section 4.2, all in accordance with this Agreement.

**1.4.2. Warranty Requirements.** TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Subscriber one check per Paper Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the check. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such check subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each Paper Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

- (a) The check is a first party check drawn on Consumer's deposit account at a United States or Canadian financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer. If a P.O. Box is used or an address is not imprinted by the check manufacturer, a physical address description is written on the check according to TeleCheck Operational Procedures;
- (b) Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 1.4.2 (f), including through split sales;

- (c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the check is not permitted by applicable law; or a court of law determines that the check is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- (d) Any of the representations made by Subscriber as set forth in Section 1.4.2 are or become false or inaccurate;
- (e) Subscriber failed to comply with this Agreement;
- (f) Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered the check; or (ii) accepted the check with reason to know that it was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. There is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction; or
- (g) Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice.

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the check is reassigned as provided herein, TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the check, or upon request, Subscriber shall remit the amount of the check to TeleCheck. Upon reassignment of a check, TeleCheck shall have no further liability to Subscriber on such check. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

**1.4.5. "Goodwill" of a Non-Compliance Item.** TeleCheck, in its sole discretion, may voluntarily elect not to reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 1.4.2. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

**1.4.6. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Inquiry Rate" is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise, whether or not a TeleCheck Approval Code is issued. The "Transaction Fee" is the additional per transaction charge for each transaction inquiry, whether or not a TeleCheck Approval Code is issued. The "Monthly Minimum Fee" is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" "CROC" or "Voice Authorization Fee" is an additional fee per operator or Interactive Voice Response (IVR)-assisted call not requested by TeleCheck. The "December Risk Surcharge" is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in December. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account.

The following additional fees may also be charged by TeleCheck: The "Recovery Processing Fee" is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. Any additional requests or other services not included in this Agreement may be subject to additional fees. Fees for these items may be obtained by contacting TeleCheck. The above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES

**1.5. Payment.** All fees and charges are due upon receipt of invoice. Subscriber authorizes TeleCheck to debit from Subscriber's Account, all payments and other amounts owed (including, without limitation, all Return Items, Returned Payments, chargebacks, adjustments, fees and charges, and delinquency charges) under this Agreement or any other agreement between Subscriber and TeleCheck or its affiliates, and to credit all amounts owing to Subscriber under this Agreement to Subscriber's Account. If there are insufficient funds in Subscriber's Account to pay amounts owed to TeleCheck or its affiliates, or if debits to Subscriber's account

**1.4.3. Assignment of Checks.** By electing to subscribe to the Paper Warranty Service, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any check submitted to TeleCheck for coverage under this Agreement. Subscriber shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

**1.4.4. Reassignment.** TeleCheck may reassign to Subscriber any check purchased by TeleCheck pursuant to the Paper Warranty Service provisions of this Agreement, in any of the following circumstances:

- (a) The goods or service, in whole or in part, for which the check was issued have been returned to Subscriber, have not been delivered by Subscriber, claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- (b) Subscriber has received full or partial payment or security in any form to secure payment of the check, or the goods or services for which the check was issued were initially delivered on credit or under a lease;
- (c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the check is not permitted by applicable law; or a court of law determines that the check is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- (d) Any of the representations made by Subscriber as set forth in Section 1.4.2 are or become false or inaccurate;
- (e) Subscriber failed to comply with this Agreement;
- (f) Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered the check; or (ii) accepted the check with reason to know that it was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to



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**1.10. Use of TeleCheck Materials and Marks.** Pursuant to authorization granted to TeleCheck by TeleCheck International, Inc., the owner of the trademarks referenced in this section, TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, nonassignable and nontransferable limited license, uncoupled with any right or interest, to use the TELECHECK and the TELECHECK logo service marks, and for those Subscribers who are receiving ECA Warranty Service or ECA Verification Service, the TELECHECK ELECTRONIC CHECK ACCEPTANCE and ECA Service marks (collectively, the "TeleCheck Marks") as follows. Subscriber may use and display decals, identification data and other materials provided by TeleCheck during the term of this Agreement at Subscriber's location solely in connection with the offering of TeleCheck services as authorized under this Agreement. Subscriber shall not permit any persons other than its own officers or employees at Subscriber's locations to use the TeleCheck Subscriber number assigned by TeleCheck. Subscriber agrees that upon termination of this Agreement it will, at its own expense, either return or destroy all TeleCheck materials (including the prompt removal of any TeleCheck decals, electronic files, logos or other materials or references to TeleCheck that are displayed to the public, including those affixed to equipment, doors or windows). The monthly fees payable by Subscriber will apply for all months or fractions of a month that any materials or TeleCheck-owned equipment remain in use. Subscriber shall not create any print, electronic or Internet-based materials including but not limited to any advertising or promotional materials using any TeleCheck Marks without the prior written consent of TeleCheck. Subscriber acknowledges TeleCheck International, Inc.'s ownership of the TeleCheck Marks and will not contest the validity of the marks or the ownership thereof. Subscriber further agrees to refrain from performing any acts that might discredit, disparage, dilute, infringe or negatively affect the value of the TeleCheck Marks or constitute unfair competition to TeleCheck or TeleCheck International, Inc. Subscriber agrees promptly to bring to TeleCheck's attention any unauthorized use of the TeleCheck Marks by third parties of which Subscriber becomes aware. Subscriber shall use the TeleCheck Marks pursuant to any guidelines provided by TeleCheck, as may be amended from time to time. The following shall appear at least once on every piece of advertising or promotional material created by Subscriber which uses the TeleCheck Marks and has received prior written approval from TeleCheck: "The ("Applicable Mark") trademark is owned by TeleCheck International, Inc. and is licensed for use by ("Subscriber Name")".

**1.11. Use of Information.** Subscriber agrees that: (a) any data and other information relating to an Item or Consumer obtained by TeleCheck in connection with any service provided hereunder (including any electronic or other image of all or any portion of any check or driver's license or other identification) shall be owned by TeleCheck, with all right, title, and interest thereto; (b) TeleCheck may use any credit information provided to a TeleCheck affiliate for TeleCheck's credit review; and (c) TeleCheck may provide or receive any experiential information regarding Subscriber or Subscriber's customers to or from any TeleCheck affiliate.

**1.12. TeleCheck Operational Procedures.** Subscriber shall strictly follow all TeleCheck Operational Procedures provided to Subscriber, as may be amended from time to time by TeleCheck, in its discretion.

### 1.13. Equipment.

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ordinary wear and tear. TeleCheck will replace or repair the equipment at its expense. If the equipment is replaced, the replacement equipment will be effective 30 days from the date notice is mailed to Subscriber, and in such event Subscriber may terminate this Agreement upon written notice received by TeleCheck within such 30 day period. Subscriber bears the entire risk of loss, theft or damage of or to equipment, whether or not owned by Subscriber. If TeleCheck provides replacement equipment to Subscriber via mail or other delivery service, Subscriber must return replaced equipment to TeleCheck within thirty (30) business days or Subscriber will be deemed to have purchased the equipment and will be billed for it. Subscriber will not permit anyone other than authorized representatives of TeleCheck to adjust, maintain, program or repair equipment. A reprogramming fee of \$25.00 rate will be charged for each occasion that a piece of equipment is reprogrammed for additional features or different information. Subscriber will install all product updates to the equipment, its software or firmware, within thirty (30) days of receiving the updates from TeleCheck. There is a 30-day manufacturer's warranty on purchased equipment. A fee for the shipping and handling of equipment and parts will be charged to the Subscriber.

**1.13.2. Equipment Software, Firmware License.** TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, non-assignable and nontransferable limited license to use the software and firmware provided with the equipment; provided, Subscriber will not: (i) export the equipment, software or firmware outside the US; (ii) copy or use the software, firmware or documentation provided by TeleCheck with the equipment; (iii) sublicense or otherwise transfer any portion of such software, firmware, documentation or the equipment; (iv) alter, change, reverse engineer, decompile, disassemble, modify or otherwise create derivative works of such software, firmware, documentation or the equipment; or (v) remove or alter any intellectual property or proprietary notices, markings, legends, symbols, or labels appearing on, in or displayed by such software, firmware, documentation or the equipment.

**1.14. Limitation of Liability.** In no event shall either TeleCheck or Subscriber be liable to the other party, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental, indirect or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages. Notwithstanding anything to the contrary contained in this Agreement, in no event shall TeleCheck's liability under this Agreement for all Claims arising under, or related to, this Agreement exceed, in the aggregate (inclusive of any and all Claims made by Subscriber against TeleCheck, whether related or unrelated), the lesser of: (a) the total amount of fees paid to TeleCheck by Subscriber pursuant to this Agreement during the 12 month period immediately preceding the date the event giving rise to such Claims occurred; or (b) \$75,000.00.

**1.15. Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER. All decisions to reject any Item, driver's license or other form of identification or payment for Subscriber's products or services are solely Subscriber's responsibility.

**1.16. Changes in Law or NACHA Rules.** Notwithstanding anything to the contrary in this Agreement, if the continued performance of all or any portion of the obligations of TeleCheck becomes impossible or illegal due to changes in applicable federal, state or local laws or regulations, or by NACHA Rules, as determined by TeleCheck in its reasonable discretion, TeleCheck may, upon 30 days written notice to Subscriber, modify or discontinue TeleCheck's performance of its obligations to the extent necessary to avoid a violation of law or NACHA Rules or, if TeleCheck chooses in its sole discretion to incur additional expenses to comply, increase its fees to cover the additional cost of compliance. Additionally, if any fees or charges to TeleCheck increase for processing transactions through the ACH Network, TeleCheck may increase its fees by providing Subscriber 30 days

will be effective 30 days from the date notice is mailed to Subscriber, and in such event Subscriber may terminate this Agreement upon written notice received by TeleCheck within such 30 day period.

**1.17. Data Security.** Subscriber shall implement commercially reasonable and prudent policies and procedures, including administrative, physical and technical safeguards which are designed to meet the following objectives: (a) ensure the security and confidentiality of Customer Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of such Customer Information, and (c) protect against unauthorized access to or use of Customer Information that could result in substantial harm or inconvenience to Subscriber's customer. "Customer Information" means all Subscriber customer information received by Subscriber in connection with any transaction contemplated by this Agreement. Subscriber agrees to comply with all provisions of applicable federal and state laws and regulations and NACHA Rules, as amended from time to time, related to the protection of Customer Information.

**1.18. Updating Information.** With regard to any Return Items submitted to TeleCheck, Subscriber shall promptly notify TeleCheck if: (a) a Consumer makes any payment to Subscriber; (b) there is a return of goods or services, in whole or in part; or (c) there is a dispute of any amount, notice of bankruptcy or any other matter.

**1.19. Confidentiality.** Subscriber shall maintain the confidentiality of this Agreement and any information provided to Subscriber by either TeleCheck, including, without limitation, TeleCheck Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential. Such information shall not be used except as required in connection with the performance of this Agreement or disclosed to third parties.

**1.20. No Resale, Assignment of Agreement.** This Agreement is solely between TeleCheck and Subscriber. Subscriber shall not provide or resell directly or indirectly, the services provided by TeleCheck to any other third party. This Agreement may be assigned by Subscriber only with the prior written consent of TeleCheck. TeleCheck may freely assign this Agreement, its rights, benefits or duties hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of TeleCheck and Subscriber's heirs, executors, administrators, successors and assigns.

**1.21. Indemnification.** In the event Subscriber (a) fails to strictly comply, in whole or in part, with any: (i) terms and conditions of this Agreement and any addenda hereto or TeleCheck Operational Procedures; or (ii) applicable law, rules, regulations and NACHA Rules, or (b) makes any false or inaccurate representation, Subscriber shall indemnify, defend and hold harmless the TeleCheck Parties from and against any and all Claims arising therefrom, including payment of all costs and reasonable attorneys' fees for actions taken by TeleCheck, whether by suit or otherwise, to defend the TeleCheck Parties from any Claim related thereto or to preserve or enforce TeleCheck's rights under this Agreement. In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, Subscriber shall: (a) promptly notify TeleCheck of the Claims or legal action; (b) reasonably cooperate with TeleCheck in the making of any Claims or defenses; and (c) provide information, assist in the resolution of the Claims and make available at least one employee or agent who can testify regarding such Claims or defenses. Upon written notice from TeleCheck to Subscriber, Subscriber shall immediately undertake the defense of such Claim by representatives of its own choosing, subject to TeleCheck's reasonable approval; provided, however, that TeleCheck shall have the right to control and undertake such defense by representatives of its own choosing, but at Subscriber's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws.

**1.22. Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing if, to Subscriber, at the Subscriber's address appearing on the Merchant Processing Application or, if to TeleCheck, at TeleCheck Merchant Services, Mail Stop A-12, 7301 Pacific Street, Omaha, NE 68114, with a

34 Any right hereunder shall preclude further exercise of such right or any other right.

**1.27. Damages.** Upon Subscriber's breach of this Agreement, including any unauthorized termination, TeleCheck shall be entitled to recover from Subscriber liquidated damages in an amount equal to ninety percent (90%) of the aggregate Monthly Minimum Fees and Monthly Statement/Processing Fees payable for the unexpired portion of the then current term of this Agreement. TeleCheck and Subscriber hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of Subscriber's breach of this Agreement, to the possibility that TeleCheck will not be able to mitigate its damages, and to the expense savings that TeleCheck may obtain by not having to provide services or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach.

**1.24.** Compliance with Laws, Governing Law, Integration and Waiver of Jury Trial. The parties agree to comply with all federal and state laws, regulations and rules, including NACHA Rules, each as amended, relating to the services provided hereunder. Subscriber further acknowledges and agrees that it will not use Subscriber's Account and/or TeleCheck 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. Subscriber certifies that it has not been suspended by NACHA or any Card Organization, or cancelled by an ODFI or Third Party Sender (as defined in the NACHA Rules). This Agreement, plus any addenda attached hereto, constitutes the entire Agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

**1.28.1.** Upon request, Subscriber 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. Subscriber will also provide such other financial statements and other information concerning its business and your compliance with the terms and provisions of this Agreement as we may reasonably request. Subscriber authorizes TeleCheck and its affiliates to obtain from third parties financial and credit information relating to Subscriber in connection with our determination whether to accept this Agreement and TeleCheck's continuing evaluation of Subscriber's financial and credit status. Upon request, Subscriber shall provide, and/or cause to be provided, to TeleCheck and TeleCheck's affiliates, or TeleCheck representatives or regulators reasonable access to Subscriber or Subscriber's service provider's facilities and records for the purpose of performing any inspection and/or copying of books and/or records deemed appropriate. In such event, Subscriber shall pay the costs incurred by TeleCheck or its affiliates for such inspection, including, but not limited to, costs incurred or airfare and hotel accommodations.

**1.28.2.** Subscriber will provide TeleCheck with written notice of any judgment, writ, warrant, or attachment, execution or levy against any substantial part (25% or more in value) of Subscriber's total assets not later than three (3) days after Subscriber becomes aware of the same.

**1.29. Survivability.** All representations, warranties, indemnities, limitations of liability and covenants made herein shall survive the termination of this Agreement and shall remain enforceable after such termination.

**1.30. 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 for each calendar year beginning January 1, 2011 reporting all payment card transactions and third party network transactions with payees occurring in that calendar year. Accordingly, for applicable transactions, you will receive a Form 1099 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. Payors are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.



# Northern District of Illinois Claims Register

[18-30054 North Avenue Associates LLC](#)

**Honorable Judge:** Jacqueline P. Cox

**Chapter:** 11

**Office:** Eastern Division

**Last Date to file claims:**

**Trustee:**

**Last Date to file (Govt):**

**Creditor:** (27484357)  
Wells Fargo Bank N.A., and  
(see below)  
1655 Grant Street  
3rd Floor  
Attn: Kenneth Juni  
Concord, CA 9

**Claim No: 46**  
*Original Filed*  
*Date: 01/28/2019*  
*Original Entered*  
*Date: 01/28/2019*

**Status:**  
*Filed by: CR*  
*Entered by: EPoc ADI*  
*Modified:*

*No amounts claimed*

**History:**

[Details](#) [46-1](#) 01/28/2019 Claim #46 filed by Wells Fargo Bank N.A., and (see below), Amount claimed: (ADI, EPoc)

**Description:**

**Remarks:** (46-1) Filer Comment: unliquidated

## Claims Register Summary

**Case Name:** North Avenue Associates LLC

**Case Number:** 18-30054

**Chapter:** 11

**Date Filed:** 10/25/2018

**Total Number Of Claims:** 1

No Amounts Claimed
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