

THE STATE OF TEXAS '
COUNTY OF HARRIS '

C73974
10-0727

1. PARTIES

A. Address

THIS AGREEMENT FOR CREDIT CARD PROCESSING SERVICES ("Agreement") is made on the Countersignature Date between the CITY OF HOUSTON, TEXAS ("City"), a home rule city of the State of Texas, and WELLS FARGO BANK, N.A., and WELLS FARGO MERCHANT SERVICES, LLC ("Contractor"), a Delaware company doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

Contractor

City Purchasing Agent
City of Houston
P.O. Box 1562
Houston, TX 77251

Wells Fargo Merchant Services, LLC
1307 Walt Whitman Road
Melville, NY 11747
Lilly Page
972-800-1722
Lilly.page@wellsfargo.com

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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**EXHIBITS**

- A. Scope of Service
- A-1 City Sites And City Departments Where City Sites Are Located
- A-2 Merchant Services Agreement/Application
- A-3 Merchant Services Program Guide
- B. Contractor’s Processing Fees
- C. Equal Employment Opportunity
- D. Drug Policy Compliance Declaration
- E. Certification of no safety impact positions
- F. Form POP 2 - Certification of Agreement to Comply With Pay or Play Program

C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

**WELLS FARGO BANK, N.A. and  
WELLS FARGO MERCHANT  
SERVICES, LLC**

**CITY OF HOUSTON, TEXAS**  
Signed by:

By: Tracy Seng  
Name: Tracy Seng  
Title: VP Relationship Mgmt.

By: Annise D. Parker  
Mayor Markum P. Reed

ATTEST/SEAL (if a corporation)  
WITNESS (if not a corporation)

ATTEST/SEAL:

By: David Wan  
Name: David Wan  
Title: Vice President, Contract Management

[Signature]  
City Secretary

APPROVED:

[Signature]  
City Purchasing Agent

APPROVED AS TO FORM:

COUNTERSIGNED BY:

Mayra Ramona  
Assistant City Attorney  
L.D. No/ 0371000056001

Ronald C. [Signature]  
City Controller [Signature]

DATE COUNTERSIGNED:

9-20-10

## II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below. Additional definitions are provided in Exhibit A-3 Section 36 (Wells Fargo Program Guide, Version WFB 1301).

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

"Assessment Fee" means any fee, other than the Interchange Fee, paid by Contractor to a Charge Card Association for entering Sales Records and Credit Records into the settlement networks of the Charge Card Association. The rates used in calculating these fees are established by the respective Boards of Directors of the Charge Cards and are subject to change upon written notice.

"Association" means the Card Association or any entity formed to administer and promote Cards, including VISA and MasterCard, and any other entity as specified on the Schedules to this Agreement.

"Association Rules" means the rules and regulations of Visa, MasterCard and any other Card brand accepted by the City. A summary of some of the key provisions of the Association Rules can be found in the Operating Procedures Guide located at [http://www.wellsfargo.com/downloads/pdf/biz/merchant/guide\\_operating.pdf](http://www.wellsfargo.com/downloads/pdf/biz/merchant/guide_operating.pdf) which is incorporated into and made a part of this Agreement by reference for all purposes. The City agrees to comply with the Association Rules during the term of this Agreement.

"Authorization" means the process by which City electronically accesses Contractor's computerized system, unless such system is inoperable or otherwise not accessible to City, in

which case City shall utilize the designated toll-free telephone number, to obtain credit approval from the Issuing Member before completion of the Card transaction.

“Banking Day” means Monday through Friday, except federal holidays.

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time.

“Batching Out” means the capitulation and closing out of a Unit of accumulated credit card payments for a given period of time for accounting and reconciliation purposes; it entails an electronic communication with Contractor to identify and reconcile first and last transactions to be included in the covered period. (It does not entail uploading of actual transaction data.) A “batch” is the accumulated Charge Card transactions for a covered period.

“Business Day” means a day (other than Saturday or Sunday) on which Contractor is open for business.

“Card” or “Charge Card” means a card issued by an Issuing Member of MasterCard (“MCI”) or Visa, which contains the MCI service mark or the Visa Blue, White and Gold Bands Design service mark or Diners Club/Carte Blanche, Discover or American Express. A Charge Card shall be deemed valid on or after the effective date, if shown, and through and including the expiration date embossed thereon. A Charge Card shall be deemed “invalid” if presented prior to this effective date and “expired,” if presented after the expiration date listed on the card. A Charge Card shall be deemed “counterfeit” in accordance with MCI’s Rules and/or Visa’s Operating Regulations or the rules of operations for any other applicable Charge Card associations. A Charge Card shall be deemed “revoked” if in place of an authorization code, the code message returned upon a request for authorization is “pick up card.”

“Cardholder” means the individual whose name is embossed on the Card and any

authorized user of such Card.

“Cardmember” means a bona fide and rightful user who is entitled to make charges to a valid credit card which is issued in such person’s name.

“Chargeback” refers to the debiting of the Settlement Account for all or part of the amount of a particular sale.

“Chargeback Percentage” means the actual monthly percentage calculated by dividing City’s total monthly VISA and MasterCard Chargeback items in any line of business by the number of City’s total monthly VISA and MasterCard transactions in such line of business.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

“City Sites” means certain locations within the City of Houston, Texas, designated in Exhibit “A-1” and such other locations that the Director may designate in the future to honor Charge Cards or Debit Cards for payment of Products under this Agreement. The Director may also delete City Sites as he deems necessary.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

“Credit Records” or “Credit Voucher” means all documents of Electronic Images used to evidence any refund or price adjustment to be credited to a Cardholder’s account for transactions concerning payment for Products. The form for each Credit Record shall be such as has been reasonably approved or supplied by Contractor for use under this Agreement.

“Debit Card” means a plastic card issued by a financial institution which will permit a

customer to access an asset account maintained at the financial institution.

“Debit Card Rules” means the by-laws, rules, documentation and manuals regarding merchant Debit Card processing promulgated or adopted by the Issuing Member and applicable Debit Card Networks, as such by-laws, rules, documentation and manuals may be amended or supplemented from time to time.

“Departments” shall mean City departments listed in Exhibits “A” and “A-1” and such other City departments that the Director may approve in the future to honor Charge Cards or Debit Cards under this Agreement.

“Diners Club/Carte Blanche Rules” shall mean the by-laws, rules, documentation and manuals regarding merchant Charge Card processing promulgated or adopted by Diners Club/Carte Blanche Rules, as such by-laws, rules, documentation and manuals may be amended or supplemented from time to time.

ADirector@ means the City Purchasing Agent, or the person he or she designates.

ADocuments@ mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

“Documentation” shall mean the standard, visually-readable materials, to include Operating Procedures Guide and Supervisor Training Guide, provided by Contractor for use by City Departments in connection with the System identified in this Agreement.

“Electronic Image” means the sales and/or credit data which is transcribed in a form

suitable for electronic processing.

“Enhancements” shall mean any revision, upgrade or new release of the System defined in this Agreement.

“Gross Sales Volume” shall mean the total Sales Record processed for a given month.

AINclude@ and Aincluding@, and words of similar import, shall be deemed to be followed by the words Awithout limitation@.

AInstallation Site(s)@ shall mean City Sites listed in Exhibit “A-1” where credit card payments are accepted by the City and any other City Sites added to this contract by the Director.

“Interchange Fee” means the fee paid by Contractor to a Charge Card association and/or Issuing Member for entering Sales Records and Credit Records into a Charge Card’s settlement network. The bases used in calculating these fees are established by the Boards of Director of each Charge Card association and are subject to change upon notice by the Charge Card association.

“Issuing Member” means a licensee or member of MCI or Visa which is authorized by MCI or Visa to issue Charge Cards.

“Merchant Services Program Guide” means the Wells Fargo Program Guide, Version WFB1301, attached hereto and marked as Exhibit “A-3,” which includes the Operating Guide (Sections 1 to 13) and the General Terms (Section 14 to end), which, subject to this Agreement, govern Contractor’s provision of merchant card processing services to City.

“MCI’s Rules” shall mean the by-laws, rules, documentation and manuals regarding merchant Charge Card processing promulgated or adopted by MCI, as such by-laws, rules, documentation and manuals may be amended or supplemented from time to time.

A Notice to Proceed@ means a written communication from the Director to Contractor instructing Contractor to begin performance.

“Operating Guide” means the then-current manual prepared by Contractor, containing operational procedures, instructions and other directives relating to Card transactions.

“Original Paper” means the City copy of a Sales Record or Credit Record transcribed in writing on a paper form which has either been reasonably approved or supplied by Contractor under this Agreement.

AParties@ mean all the entities set out in the Preamble who are bound by this Agreement.

“Preauthorized Order” means a Cardholder’s written authorization to make one or more future charges to such Cardholder’s MasterCard account.

“Processing Fees” means the fees assessed upon City for Contractor’s authorization, processing, settlement and collection of Sales Records and Credit Records.

“Products” shall mean the fees, fines, court costs, or other charges for which any Director of a City department is authorized to accept payments by Charge Cards pursuant to Sec. 2-140 of the Code of Ordinances, Houston, Texas.

“Qualified Card” means a Debit Card, Credit Card, or any other card accepted by the System and mutually agreed to as a Qualified Card by City and Contractor.

“Recurring Sale” means a Cardholder’s written authorization to make one or more future charges to such Cardholder’s VISA or other non-MasterCard Card account.

“Remedial Maintenance” means the furnishing of any products and services necessary to diagnose and correct System malfunctions and failures.

“Reserve Account” means a fund established and managed by Contractor, as permitted

under the Merchant Services Program Guide, to protect against actual or contingent liability arising from Chargebacks, adjustments, fees and other charges due to or incurred by Contractor.

“Retrieval Request” means a written demand by Contractor to City, in the manner permitted by the applicable Charge Card association for the retrieval of a Sales Record or Credit Record, either in the form of microfilm or Original Paper, previously delivered by Electronic Image to Contractor by City.

“Sales Records” or “Sales Draft” means all documents or Electronic Images used to evidence a transaction for payment for Products through the use of Charge Cards or Debit Cards. The form for each Sales Record shall be such as has been reasonably approved or supplied by Contractor for use under this Agreement.

“Services” shall mean merchant card processing services undertaken by Contractor to authorize, process and settle all United States Dollar denominated VISA and MasterCard Card transactions undertaken by Cardholders at City’s locations in the United States, and all other activities necessary for Contractor to perform the functions specified on the Schedules for all other Cards covered by this Agreement.

“Settlement Account” means an account at a financial institution designated by City as the account to be debited and credited by Contractor for Card transactions, fees, Chargebacks and other amounts due hereunder or in connection herewith (i.e., fines, attorneys’ fees, etc.).

“Successful Transmission” means a transmission for which the total dollar amount and the total number of Sales Records and Credit Records, as reported by City to Contractor in connection with such Transmission, correspond with the total dollar amount and total number of Sales Records and Credit Records as verified by Contractor following a Transmission.

“System” means a complete and operational credit card payment system, including, but

not limited to all equipment, hardware, terminal, software, Documentation, link-ups, authorization mechanisms, web-links to City Department payment portals and payment capture mechanisms for use by the participating City Departments to collect payments for Products.

“Terminal” means the electronic equipment used at the point of transaction to authorize Sales Records to generate electronic pulses which are captured in Electronic Images and transmitted to Contractor.

“Transaction” means a sale of Products made by the use of any Qualified Card beginning with the initiation of a request message at a Terminal and ending with the completion of the response message to that Terminal. Transaction, as used herein, shall also include manually imprinted transactions made in reliance on oral authorizations when electronic authorizations are not available.

“Transmission” and “transmit” mean the process whereby Sales Records and Credit Records are electronically transferred by Electronic Images.

“Unit” means the Terminal equipment for operations at one of the Installation Sites.

“Visa’s Operating Regulations” shall mean the by-laws, rules, documentation and manuals regarding merchant Charge Card processing promulgated or adopted by Visa, as such by-laws, rules, documentation and manuals may be amended or supplemented from time to time.

### **III. DUTIES OF CONTRACTOR**

#### **A. Scope of Services**

##### **Services in General**

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit AA.” The

following sections of Exhibit "A-2" are incorporated into this Agreement for all purposes.

Sections 15; 16; 18; 19; 20.1; 20.2; 20.3; 20.4 (except that the amount in this Section 20.4 is amended to read as \$150,000) 21; 22.3; 23.4; 24; 25; 27.1; 27.2; 28.1; 28.2; 28.4; 28.5; 35.9; and 35.12.

If there is a conflict between the terms of this Agreement and the sections in Exhibit "A-2" set forth above, the terms of this Agreement shall absolutely control.

B. Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

C. Reports

During the term of this Agreement, Contractor shall submit to the Director, fund settlement, merchant activity, System performance, the reports set out in Exhibit "A," Section 8 (xii, xiii, xiv & xv) and any other reports requested by the Director at monthly or other intervals specified by the Director.

D. Payment of Subcontractors

Contractor shall make timely payments to any persons or entities that supply labor, materials, or equipment to Contractor in connection with Contractor's performance of this Agreement. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE PAYMENTS TO CONTRACTOR'S SUPPLIERS.

E. INDEMNIFICATION

**CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD**

**THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS.**

**CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE. WITHOUT WAIVING ANY OF THE CITY'S IMMUNITIES, THE CITY'S LIABILITY, IF ANY, IS LIMITED TO THE EXTENT OF THE LIMIT OF APPROPRIATION SET OUT IN SECTION IV, G, BELOW.**

**F. INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT**

**CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE**

CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

**G. INDEMNIFICATION - PROCEDURES**

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 45 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and

(c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

H. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of

insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
  - ! \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers= Compensation including Broad Form All States endorsement:
  - ! Statutory amount
- (3) Contractor's Professional Liability (errors and omissions)
  - ! \$50 million
- (4) Financial Institution Bond, including Electronic and Computer Crime
  - ! \$50 million
- (5) Privacy Liability of Cyber Liability Coverage
  - ! \$25 million
- (6) Automobile Liability insurance
  - ! \$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy.  
Aggregate Limits are per 12-month policy period  
unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. Contractor shall give 30 days' written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default,

I. Warranties

Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.

J. Confidentiality - Protection of City=s Interest

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, Athe Information@) that they receive, or to which they have access, in strictest confidence. Contractor shall obtain written agreements from its agents, contractors, and subcontractors which bind them to terms in this Section. Except as required by law or Card Association Rules, Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing.

K. Use of Work Products - City May Use All Documents

(1) The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement.

(2) Contractor warrants that it owns the copyright to the Documents.

(3) Contractor shall deliver the original Documents to the Director on request. Within sixty working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

L. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license that will materially impact Contractor's performance under this Agreement.

M. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

N. Compliance with Equal Employment Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in "Exhibit C."

O. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace.

The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or

alcohol by contractors while on City Premises is prohibited.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing (“CCODT”):

(a) a copy of its drug-free workplace policy,

(b) the Certification of No Safety Impact positions (substantially similar to Exhibit “E”) at the time of execution of this Agreement. Contractor shall file updated designations of safety impact positions with the CCODT if safety impact positions are added to Contractor’s employee work force at any time during the term of this Agreement.

If Contractor files a written designation of safety impact positions, it shall then execute, file and comply with a Drug Policy Compliance Declaration in a form substantially similar to Exhibit “D.”

P. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Contractor shall complete and submit to the Director Exhibit “F,” POP-2 Form prior to the execution of this Agreement.

#### **IV. DUTIES OF THE CITY**

A. System Operation

City shall operate the System in accordance with this Agreement and the Card Association

Rules. City shall use the Terminals provided by Contractor at designated City Sites set out in Exhibit "A-1" to authorize all Transactions initiated with a Qualified Card when the System is operable. The City shall prepare a sales draft of Transaction record for every sale utilizing the System. Each sales draft and/or Transaction record shall be fully completed and must include the Cardmember's truncated account number, signature of the Cardmember, date of the Transaction, the City's name, location and identification number, and the total amount of the Transaction (including applicable taxes). The City shall deliver a completed copy of the sales draft to the Cardmember or authorized user at the time each Transaction is consummated. All sales drafts prepared by the City shall represent obligations of the Cardmember in the amounts set forth therein for services rendered. No sales drafts prepared by the City for Credit Card Transactions shall involve any cash advance or element of credit for any other purpose. The City shall maintain copies of the sales drafts for a period of three years from and after the date of the Transaction. Upon the Contractor's written request to the Director identifying with particularity a specific sales draft, the Director shall provide Contractor with a copy or the original of the requested sales draft within seven days of receipt of the request.

B. System Inoperable

The City understands and agrees that it may not accept a Debit Card for payment when the System is inoperable. When the System is inoperable, City shall follow the manual back-up instructions for Credit Card Transactions set forth in the Merchant Services Program Guide.

Unacceptable Cards

Without Contractor's specific permission, City shall not complete a Transaction involving the use of a Qualified Card for which an appropriate authorization has not been received from Contractor. City shall use its best efforts to retain or attempt by peaceful and lawful means any

Qualified Card which Contractor instructs it to retain.

C. Processing Fees

- (1) In consideration for the Processing Fees that the City authorizes Contractor to withhold as set out in Exhibit "B," Contractor shall perform all services set out in this Agreement. Contractor shall compute all City-authorized Processing Fees on a monthly basis.
- (2) The City does not guarantee that it will process any specific quantity or type of transactions of those that are described in the Scope of Services in Exhibit "A" of this Agreement.

Additions & Deletions

- (3) At any time during the term of this Agreement, the Director may issue Contractor a written notice to add more City Sites to this Agreement. In the event the Director sends Contractor such a request, then Contractor shall provide the System and process Qualified Card Transactions from funds collected using the System at such City Sites as set out in Exhibit "A" and this Agreement. For purposes of this section, the "Effective Date" means the date on which Contractor receives the written notice from Director. As of the Effective Date, each City Site added is subject to this Agreement, as if it had originally been a part of this Agreement, but the Processing Fees for Qualified Card Transactions starts to accrue only after the Effective Date.

At any time during the term of this Agreement, the Director may issue Contractor a written notice to delete a City Site from this Agreement. On receiving the Director's written notice, Contractor shall discontinue processing Qualified Card Transactions effective the day Contractor receives the notice or the date stated in the notice. After

Contractor withholds its Processing Fees for processing Qualified Card Transactions prior to the Director's notice and subject to any Chargebacks, if any, that apply to such Qualified Card Transactions, Contractor shall discontinue withholding Processing Fees for Transactions at the deleted City Site.

D. Method of Payment

1. Subject to all the terms and conditions of this Agreement, Contractor shall withhold the applicable Processing Fees, any other fees or costs set out in Exhibits "A" or "B" the Card Processing Rules or any other exhibit to this Agreement (in this paragraph, "the Fees") from funds collected by Contractor through Qualified Card Transactions made using the System under this Agreement. Contractor understands and acknowledges that City has appropriated and allocated no City funds to pay the Fees due under this Agreement, and that the City shall never be obligated to pay Contractor for any Fees in excess of the funds collected by Contractor under this Agreement. No other funds are, nor will be, appropriated for the purpose of paying Fees. Contractor's deposit of proceeds from a Transaction, as set out in Section 3 of Exhibit "A," shall automatically allocate the percentage or portion of such proceeds designated out in Article IV, D as the Fee for that Transaction.

Volume Discount

2. Contractor and City shall true up total credit card Transactions monthly and Contractor shall apply the applicable tier fee based on City's Transaction volume as set out below and in Table 1 in Exhibit "B." Contractor shall begin by applying the volume discounted Tier 1 fee of \$0.07 when the monthly total volume of City credit card Transactions reach 31,667 (380,000 divided by 12 months) and three months later calculate the Transaction volume for the prior three months. If the Transaction volume reaches 41,667 (500,001 divided by 12 months),

then, Contractor shall apply the volume discounted Tier 2 fee of \$0.065 for all Transactions processed during that three month period. In the event the Transaction volume reaches 58,334 (700,001 divided by 12 months), then, Contractor shall apply the volume discounted Tier 3 fee of \$0.055 for all Transactions processed during that three month period. After the first four months from the date the City issues Contractor a Notice to Proceed letter and thereafter during the term of this Agreement, Contractor shall increase or decrease the applicable Transaction fee based on the monthly Transaction volume reached by the City and the applicable Tier reached by the City.

3. Upon the expiration of this Agreement or in the event the City elects not to renew this Agreement by sending a renewal letter from the Director 30 days prior to the end of the Initial or renewal term of this Agreement, then, Contractor shall withhold its final Processing Fees as set out in Exhibit "B" from the final deposit, subject to additional Chargebacks or fees accruing to the City.

E. Settlement Account

The City shall establish and maintain the Settlement Account in which Contractor shall deposit all funds owed to City from Charge Card and Debit Card processing.

City may not close the Settlement Account without five days' advance written notice to Contractor of the closure and substitution of another depository account that is electronically accessible to Contractor for entry of credits and debits via ACH. City is liable for all fees and costs for overdrafts, if any, associated with the Settlement Account. In accordance with this Agreement, Contractor may at any time initiate credit or debit entries to correct errors, collect Processing Fees, or make appropriate adjustments to the Settlement Account via ACH or otherwise. Additional terms regarding the ACH settlement process are provided in the Wells Fargo Program Guide, Version WFB 1301, at Section 18.8. Following termination of this

Agreement, City agrees to maintain and keep the Settlement Account with a balance not to exceed of \$150,000 from credit card payment proceeds received by City in the Settlement Account open for a period of 180 days for the purpose of satisfying any charges, fees, or other amounts that may become due under this Agreement after termination including, for example and without limitation, association fines, losses associated with fraudulent transactions and/or chargebacks, and equipment rental and/or lease payments (if applicable).

G. Limit of Appropriation

(1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$0 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of

the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ \_\_\_\_\_

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor=s only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

H. Access to Site

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

## V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for five years unless sooner terminated under this Agreement (the "Initial Term").

B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the Initial term, this Agreement is renewed for three successive one-year terms upon the same terms and conditions.

At the end of the third successive one-year term, if the Director extends this Agreement to permit Contractor to complete its performance, then, the Director may in his or her sole discretion extend the time so long as such extension does not exceed 90 days. The 90-day extension of time does not require an amendment of the Agreement and Contractor is not entitled to damages for delay(s) regardless of the cause of such delay(s).

C. Termination for Convenience by City

The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section IV, E unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM CITY'S TERMINATION FOR CONVENIENCE.

D. Termination for Cause

If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed by Contractor.

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then

the Director may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

E. Termination for Convenience by Wells Fargo

Wells Fargo may terminate this Agreement at any time by giving 365 days written notice to the City. Wells Fargo's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

F. Termination for Cause by Wells Fargo. Wells Fargo shall be permitted to terminate for cause for City's failure to comply with the terms of the Card Association rules and as set forth in Sections 23.4 through 23.8 of the Merchant Services Program Guide.

## VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation

of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers= compensation benefits coverage.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party=s obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:
- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
  - (b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.

4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

5. If the Force Majeure continues for more than 10 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended

only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County.

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

H. Captions

Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor=s performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

L. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

O. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Product passes from Contractor to the City upon acceptance by the City.

P. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

Q. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

R. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in '9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

S. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

T. CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

1. Contractor shall provide electronic payment processing and gateway processing services to various City Departments for accepting payments to City for permits issued by City and for various City fees made by payees by credit cards, debit cards and, potentially, electronic check or ACH payments.
2. Contractor is responsible for processing electronic payments to the satisfaction of the City by providing City customers with web-based payment portals and point-of-sale processing systems, including, the Internet, Kiosks, telephone and Point of-Sale (POS) payment modules for both remote clients and in-office payments.
3. Contractor shall provide a payment system that:
  - a. interacts with City data via Cybersource and GovPartners' CDP and the Municipal Courts case management systems;
  - b. is extremely time sensitive;
  - c. is equipped to complete a payment without the City being required to take action;
  - d. is able to provide "real time" authorization and commitment of funds;
  - e. delivers funds in a timely and expeditious manner.
  - f. may be used at various locations for the collection of revenue from the payment of permits, fees, fines, bond postings and specific services provided by participating City Departments;
  - g. has a portal that allows for the future use of Spanish, in addition to English;
  - h. connects to multiple City portals that use different systems;

- i. allows for different City portals to transmit information in Spanish from City portals to Contractor for making payments to City;
  - j. allows City to use systems such as Cybersource to transmit City data from one system to another;
  - k. allows the City to set up a website and or shopping cart or payment page;
  - l. allows the City to accept online payments by issuing a merchant number and a terminal identification number to allow the City's established website to communicate with Contractor to get an authorization and settlement;
  - m. allows the City to select a Gateway from among common gateways such as:
    - (i) Authorize.net; (ii) PayPal/Verisign; and (iii) Cybersource; and
  - n. allows the City to serve as a reseller or support the City in the event the City in the future selects to have its own solution (customer-owned solution).
4. Contractor shall serve both as a merchant services provider and as a standard point of sale equipment provider. The City has a pilot Kiosk and may request Contractor to provide such machines for use at that Kiosk.

## City Departments' Use of Point of Sales Services

5. The end-user City Departments listed below use electronic point-of-sales payment services for the specific purposes set out in the table below:

DEPARTMENT	INTENDED USE OF POINT-OF-SALES SERVICES
Administration & Regulatory Affairs	For payment of permit fees - Commercial Permitting & Transportation; Department is responsible for the sale of almost 40,000 permits.
Convention & Entertainment	For payment of license fees, equipment rental, exhibit booth cleaning charges, parking fees, ticket sales, and other fees incurred by licensees and users at all Convention & Entertainment Facilities Department facilities.
Municipal Courts – Administration	For the collection of fines and fees including but not limited to traffic and non-traffic fines, public safety reports and bond postings. The Municipal Courts have jurisdiction over Class “C” misdemeanor violations including but not limited to traffic citations, non-traffic citations and parking citations. Approximately, over 668,000 payment transactions are processed and over 9,000 bonds are posted each year. All bond posting must be made in person.
Police	For payments accepted through the Police Academy.
PWE - Planning and Development Services Division	For the collection of permit fees, including mechanical, house move/mobile home, electrical, building, occupancy and plumbing.
Parks & Recreation	For payment of services associated with activities conducted at park sites.
HFD	Facilitate accepting Credit Card payments for various HFD services, such as Stand By's (Fire Watches), False Response Fee, Fire Alarm Permits, etc.

6. Contractor shall submit for the Director's approval:
- a. the design of the automated point-of-sale system ( a system which has the ability to process credit and debit cards and process checks as e-checks) it provides City under this Agreement;
  - b. an installation plan for installing the approved point-of-sale system at each

- locations identified by City Departments in Exhibit "A-1;" and
- c. an on-going maintenance plan for maintaining the point-of-sale system installed at City locations listed in Exhibit "A-1;"
  - d. Contractor is responsible for recommending the design of the automated point-of-sale system, its installation and maintenance, although each City end-user department will assist with the implementation of the system in its department, with some input and discussion between Contractor and the City Department Director.
  - e. Contractor shall provide and install an estimated 104 point-of-sale terminal devices at various City Departments as set out below:

Department	No. of Locations	Total No. of Units
Convention & Entertainment	3	4
Municipal Courts – Administration	9	61
Police	1	1
Fire Department	1	2
Administration & Regulatory Affairs	1	2
Parks & Recreation	9	10
PWE - Planning and Development Services Division	4	24
<b>Total No. of Units</b>	<b>104</b>	

- f. The City's Administration and Regulatory Affairs Departments does not have point-of-sale terminals at this time. All other City Departments listed in the table above, have their point-of-sale terminals connected to dedicated analog lines

### **SERVICES TO BE PROVIDED BY CONTRACTOR**

7. Contractor shall:

- a. provide payment processing and gateway services for credit cards;
- b. provide payment processing and gateway services for debit cards;
- c. provide payment processing and gateway services for e-checks or ACH.  
(The City's Public Works and Engineering and Convention and Entertainment Facilities Departments do not offer customers the option to pay by e-check, but, would like to offer such an option in the future; all their credit card payments are deposited into their account by ACH; while, the Houston Fire and Houston Police Departments do not currently accept e-check or use ACH facility);
- d. submit statements detailing payment activity;
- e. submit statements detailing charges to City;
- f. process electronic credit card transactions, electronic debit card transactions, electronic checks or ACH, card present transactions, card not present transactions initiated via telephone, internet, kiosk and point of sale terminals;
- g. offer processing for multiple "brands" and types of cards, including but not limited to, VISA, MasterCard, American Express, and Discover Card transactions;
- h. provide and maintain electronic payment processing that meets the following criteria:
  - i. Secure data during its transmission and storage;
  - ii. Payment transactions processed with "real-time" authorizations;
  - iii. Confirmation number generation for every successful payment;and

- iv. Notification by e-mail to the consumer and the City of all charge-backs; and notify customer-initiated and non-customer initiated charge-backs to their card.
- v. Contractor must be able to process transactions and accept settlement files from current systems, including, systems whose method of application varies from standard point-of-sale equipment, to various types of software data captured via personal computer, to internet-based applications using third party processors;
  - i. The Contractor shall at a minimum:
    - i. provide for the authorization and settlement of transactions through the appropriate authorization and settlement networks;
    - ii. provide gross settlement to a designated City of Houston Contractor/Supplier account for all payment and credit records processed;
    - iii. set up deposits and provide an accounting that shall ensure that each City Department's receipts are deposited separately for auditing purposes; each amount is deposited for the use and benefit of the City in an account maintained by a contractor/supplier of the City's choice along with Contractor's monthly reports of transaction-activity by City Department;
    - iv. provide a procedure for addressing the reconciliation of credit card activity to ensure that each City Department,

- separately, receives adequate and accurate reports to prepare its reconciliation; and
- iv. provide a monthly statement that itemizes service charges by components (i.e., transaction fee, equipment and maintenance, interchange charge, appropriate fees and service charges).
- j. Contractor must provide automatic or online reporting services with information on chargebacks, including:
  - i. Monthly statements detailing deposit activity fee and chargeback activity for each location; and
  - ii. Statements showing descriptors to determine adjustment items.
- k. Contractor must provide a monthly analysis statement showing charges for all account services with statements detailing activity by charge-card type;
- l. Contractor must provide a separate “merchant number” for each City Department for VISA, MasterCard, American Express, Discover Card and Pulse Debit Cards;
- m. Contractor’s System must include an E-commerce module that allows customers to apply and pay for services and licenses via a secure web site; and
- n. all System terminals and printers provided by Contractor must come with uninterrupted power supply back-up systems; (i.e. the terminals must be connected to electrical outlets with a battery

back-up system for emergencies to ensure that the System is up and running 24 hours a day, seven days a week and 365 of the year, less downtime due to maintenance).

## 8. Payment Validation

### Check Validation

- a. Contractor must provide a check validation service.
  - i. Contractor shall offer risk management services, to reduce the City's risks associated with such types of payments as check payments and electronic check payments. Contractor shall offer City check validation services, including the verification of NSF accounts, open accounts, valid account numbers or bank routing numbers, and sufficient fund accounts.
  - ii. Contractor shall provide the City's Municipal Courts Administration Department with real-time validation verifying the customer's bank account to ensure funds are available for draft.
  - iii. Contractor shall provide the City's Public Works and Engineering Department with check validation to verify that it is a true account.

### Check Authorization

- iv. Contractor must provide check authorization service and credit card authorizations in real time.

### Payment Processing

Contractor must:

- v. deposit all funds received via the on-line payment system at the City's depository bank;

- vi. process ACH transactions processed by 5:00 p.m. to make funds available to the City the next business day;
- vii. in the event an electronic check is returned due to in-sufficient funds, allow the City time to run such checks through one more time upon their return;
- viii. process credit card transactions received by 5:00 p.m. for settlement that night so that funds are available to the City within two business days;
- ix. post credit card payments to the City's contractor/supplier accounts as a daily batch by merchant account;
- x. post e-checks to the City's account as a daily batch; (each batch amount must tie to one day of e-check receipts);
- xi. notify by e-mail, the consumer and the City about all charge backs within two business days and include in such notifications the payer's name, date of payment, payment type (i.e. e-check, credit card), and payment amount; and
- xii. act as a fiduciary of the City with respect to the funds until such funds are deposited into the City's account.

### Reports

- xiii. Contractor shall ensure that the payment processor it provides under this Agreement generates reports which list each payee name, payment transaction type (credit card, debit card or ACH), payment description (i.e. receivable type and account number or fee type) and amount paid; provides subtotals by receivables type (or permit type) and by payment type; and in the event

- convenience fees are charged, provide separate subtotals for such convenience fees collected;
- xiv. Contractor shall provide each City Department using this Agreement with detailed reports, which provide City Departments with enough data to enable them to reconcile credit card service fees, fee payments, monthly processing charges, if any, etc;
  - xv. Contractor shall provide the City's Public Works and Engineering Department with detailed monthly reports in the format specified by the Director;
  - xvi. Contractor shall provide the Houston Fire Department with its Client Reporting Online Tool; and
  - xvii. Contractor shall provide the Convention & Entertainment Facilities Department with a separate monthly report about parking fees for revenues collected through Theater District Parking.

9. Functionality by City Department:

**Administration & Regulatory Affairs**

Contractor's System shall:

- a. interface with City data via Cybersource and GovPartners' CDP system with payment transactions passed through for settlement and transmit data from Cybersource as detailed in the Cybersource API documentation on the City web-site at [http://www.cybersource.com/partners/financial\\_partner\\_program](http://www.cybersource.com/partners/financial_partner_program) ;
- b. integrate with Cybersource as the City's Administration and Regulatory Affairs Departments does not plan to replace

- Cybersource at this time; but, as the Department's needs may change over time, Contractor's System must be flexible enough to make changes required by the Department;
- c. charge a convenience fee of 2.33% for credit card transactions for the City's Administration and Regulatory Affairs Department; and, as instructed by the Director, permit the Department to recover costs for credit card processing under this Agreement from convenience fees set by the Director;
  - d. work with GovPartner/CDP which manages convenience fees for the City's Administration and Regulatory Affairs Department's Commercial Permitting transactions by identifying the convenience fee and passing it as part of the payment transaction to Cybersource which in turn passes the information to the vendor;
  - e. be capable of handling an estimated total number of 40,000 permits processed annually for the City's Administration and Regulatory Affairs Department amounting to total an estimated volume of \$3.5 million dollars in permit fee transactions; and
  - f. set the payment address for permit fee transactions as:  
  
Commercial Permits & Enforcement  
  
611 Walker, 2nd Floor  
  
Houston, Texas 77002.

### **Convention & Entertainment Facilities**

For the City's Convention & Entertainment Facilities Department,

Contractor shall:

- a. accommodate payments made in person;
- b. offer a System capable of accepting payments made online through the Internet, which is the Department's preferred method of payment;
- d. set its System to charge no convenience fees for payment transactions for this City Department;
- e. ensure that its System is capable of handling an estimated total of 121,019 transactions annually at an estimated dollar volume of \$1,469,102.86.00; and
- f. set the payment address on the System as:  
  
Attn: Accounts Payable  
  
City of Houston  
  
Convention & Entertainment Facilities Dept.  
  
P.O. Box 61469  
  
Houston, TX 77208.

### **Houston Fire Department**

For the Houston Fire Department, Contractor shall:

- a. ensure that its System interfaces with City data via the Houston Fire Department's Integrated Land Management and SMART systems and Fire House Software applications (software has reporting capabilities used to track permits and inspections and to sell permits);
- b. set its System to charge a convenience fee as currently, the Houston Fire Department charges no convenience fee;
- c. ensure that its System is capable of handling an estimated total of

- c. 3000 transactions annually at an estimated dollar volume of \$1.1 million; and
- d. set the payment address on the System as:  
Houston Fire Department - Logistics  
Revenue Division  
1205 Dart St., Suite 113  
Houston, Texas 77007

### **Houston Police Department**

For the Houston Police Department, Contractor shall:

- a. provide a physical machine at each window that allows a customer to swipe a credit card through to initiate a transaction;
- b. set the equipment not to charge convenience fees;
- c. ensure that the equipment it provides the Houston Police Department has the capacity to process two transactions at an estimated total amount of \$125.00; and
- d. set the payment address as:  
Police Academy  
1200 Travis, 17<sup>th</sup> Floor  
Houston, Texas 77002

### **Municipal Courts Administration**

For the Municipal Courts Administration Department (MCAD), Contractor shall:

- a. provide ACH Processing with a One Time Presentment on Returns (MCAD re-presents e-checks one more time when processing electronic checks returned for non-sufficient funds);
- b. provide Point-of-Sale Terminals with Survey Capabilities at each

- window at which MCAD accepts payments from customers to enable customers to swipe a credit card to initiate a payment transaction; MCAD requires such terminals to have survey capabilities to permit MCAD to access data from the terminals in a customized format tailored to meet MCAD's needs;
- c. Website & Kiosk  
ensure that the System it provides MCAD is capable of accepting payments via a web-site and a kiosk and gives MCAD access to payer/transaction information, payment servicing functions and reports;
- d. set the System to charge a convenience fee of \$5 for each citation paid online, with a revenue of \$1.00 per citation paid online going to MCAD and Contractor paying all applicable credit or debit card fees for online transactions;
- e. set the System to charge a convenience fee of \$2 for each citation paid at a kiosk, with the entire \$2 convenience fee paid at a kiosk going to MCAD and Contractor paying all applicable credit or debit card fees for all transactions at a kiosk;
- f. ensure that the System is capable of processing an estimated 348,500 transactions annually at an estimated total value of \$44,250,000.00;
- g. ensure that in addition to the System, it provides a lockbox to accept electronic and paper remittances, convert checks to ACH deposits for deposit into MCAD's designated account;
- h. provide MCAD with same-day online custom reports, with the

- name of the defendant, citation number and the amount paid; and
- i. set the payment address as:  
  
Municipal Courts Building  
  
1400 Lubbock, Room 111  
  
Houston, Texas 77002

### **Parks and Recreation Department**

For the City's Parks and Recreation Department, Contractor:

- a. must assume total responsibility for maintenance of the System it provides this department, operate the System 24 hours a day, 7 days a week, 365 days of the year, except for downtimes for maintenance; and maintain both System software and hardware;
- b. shall manage maintenance of the System in such a way that down time for maintenance on the System does not exceed 1.5%;
- c. shall submit for the Director's approval a detailed System technical support and maintenance plan designed to handle different levels of System failure with a response to restore System operability in a manner to ensure System down time does not exceed 1.5%;
- d. shall set the System to charge no convenience fees for payments to this department;
- e. ensure that the System is capable of handling transactions at multiple locations listed below since there is no transaction volume for this department because it does not track both the total number of transactions and the total dollar volume of such transactions;
- f. shall offer System terminals at the following locations:

Sharpstown Park Golf Course

Memorial Golf Park

5600 Harbor Town Houston, TX 77036	1 Memorial Park Loop E Houston, TX 77007
Brock Park Golf Course 8201 John Ralston Rd. Houston, TX 77044	Gus Wortham Golf Course 7000 Capital Street Houston, TX 77011
Memorial Fitness Center 6402 Arnot Houston, Texas 77007	Lee LeClear Tennis Center 9506 South Gessner Houston, Texas 77074
Homer Ford Tennis Center 5225 Calhoun Houston, Texas 77021	HPARD Permits 2999 South Wayside Dr. Houston, Texas 77023

### **Public Works & Engineering Department**

For the City's Public Works & Engineering Department, Contractor shall:

- a. provide a System that accommodates payments made in person;
2. install a point-of-sale terminal at each window where the department accepts payments from customers by allowing customers to swipe a credit card through to initiate a payment transaction;
3. in consultation with the Director, set the convenience fee to be charged for payments to the City's Public Works & Engineering Department, because the department currently does not charge such fees;
4. ensure that its System is capable of handling an estimated total of 55,600 transactions annually for this department with an estimated total dollar volume of \$12,030,290.00; and

5. set the payment address for this department as:

City of Houston

Attn: Planning and Development Services

Public Works and Engineering Department

P.O. Box 61167

Houston, TX 77208 -1167

**10. General Qualifications**

Contractor must:

- a. have all required licenses, bonding, facilities, equipment and trained personnel necessary to perform the services set out in this Agreement;
- b. have an authorization and settlement System;
- c. have a System that interacts with City data via Cybersource and GovPartners' CDP system; and
- d. have a System that supports a "real time" transaction that is bi-directional in its communication and verification, (i.e. the System verifies and validates, in real time, the amount sent and received).

**Processing and Settlement**

Contractor shall provide a System:

- a. that is a full-fledged processor (front-end and back-end);
- b. that does flat fee processing (fixed rate per month based on volume);
- c. that accepts payment and credit records directly from the applications and/or third party contractors;

- d. that provides settlement of payments<sup>i</sup> such a way that payment proceeds from payments to City and credit records are deposited into Settlement Account(s) no later than 48 hours after payment and credit records are sent (batched);
- e. that provides daily gross settlement of payments;
- f. that supports address verification service (AVS) and Security Code (Visa CVV2, MasterCard CVC or Discover CID) data in authorization requests for transactions where either the card is not present or the magnetic strip is not readable;
- g. that supports timeout reversal requests;
- h. that performs an exact validation on the credit card number and the credit card expiration date;
- i. that returns an “accept” or “decline” message within an industry-acceptable timeframe;
- j. that prints a receipt within 10-15 seconds after a message is sent from the Terminal for authorization;
- k. that supports adjustments (edits) and voids transactions before such transactions are settled; and
- l. that does not allow for exposure of credit card numbers; e.g. receipts detailing card numbers.

## **11. TERMINAL SUPPLIES**

- a. Contractor shall provide all terminal supplies necessary to process qualified cards through its System via terminals purchased, rented or leased from Contractor. Such supplies shall include, but not be limited to, the following:

- i. Credit/Debit Card sales voucher.
- ii. Credit Card credit vouchers;
- iii. Printer ribbon;
- iv. Debit Card and Credit Card decals for all Cashier Booths;
- v. Suitable manual imprinters and appropriate procedures for the use of manual imprinters in the event the System is inoperable;
- vi. Transaction slips; and
- vii. Training, Orientation and Documentation.
- viii. Contractor shall provide System documentation and shall provide initial and additional training and retraining, as reasonably needed, to City personnel in the use of the System.

**12. PAYMENT CARD INDUSTRY (PCI) SECURITY STANDARDS**

- a. Contractor will meet the security expectations set forth in the Payment Card Industry Data Security Standards (PCI-DSS).
- b. Contractor will use commercially reasonable efforts to keep the City apprised of any updates on PCI compliance issues by sending out its quarterly news letters to City and give access to City Departments to download copies of the newsletter from its website, <https://www.wellsfargo.com/biz/merchant/service/newsletters>.
- c. Contractor shall keep the Director advised of all PCI compliance webinars it conducts to enable City employees and representatives involved in providing services under this Agreement to attend such webinars.
- d. During the term of this Agreement, Contractor shall assign a member of its staff, a

Relationship Manager, to work with the Director to respond to questions from City employees or representatives regarding PCI compliance matters.

Contractor's Relationship Manager shall assist the City in ensuring that the software or terminals used to accept credit card payments are PCI compliant

- e. During the term of this Agreement, Contractor's Relationship Manager shall inventory the terminals it supplies to City for accepting credit card payments and ensure that such terminals and the software on them are PCI compliant; and update City terminals and equipment to be PCI compliant when such terminals or equipment become obsolete or are non-PCI compliant.
- f. During the term of this Agreement, Contractor shall provide the following PCI compliance services:
  - i. quarterly newsletters on PCI compliant matters;
  - ii. access to its PCI webinars;
  - iii. links to its PCI resources;
  - iv. in-person training sessions regarding PCI compliance upon request from the City;
  - v. access to its team of PCI specialists to assist City employees and representatives with any clarifications they may seek on PCI compliance matters; and
  - vi. access to its Trustwave website, including services available at its website:  
<https://wellsfargo.trustkeeper.net>.

### **13. CUSTOMER SERVICE**

- a. Contractor must provide customer assistance, 24 hours a day, seven days-a-week;
- b. Contractor must provide customer service and problem resolution on Transactions requiring its intervention;

- c. Contractor must agree to provide the necessary staff to meet all of the requirements detailed in this Agreement;
- d. Contractor shall appoint a dedicated Relationship Manager to assist the City in resolving day-to-day operational issues presented by City cashiers handling credit card payments under this Agreement;
- e. During and after regular business hours,, Contractor shall provide access to its Point-of-Sale Help Desk which it must operate 24 hours a day, 7 days a week;
- f. Contractor must submit for the Director's approval its procedures for handling voided transactions and the resulting refunds for each of the following and the length of time before a customer receives their funds or when such funds are released:
  - i. a credit card payment;
  - ii. a debit card payment;
  - iii. an e-check; and
  - iv. an ACH payment.

#### **14. DISASTER RECOVERY**

Contractor must submit for the Director's approval a business continuity plan that identifies procedures relating to an emergency or significant business disruption that are reasonably designed to enable Contractor to meet its contractual obligations to City. Upon the Director's approval of such plan, Contractor must maintain the approved plan during the term of this Agreement.

#### **15. TRAINING AND DOCUMENTATION**

- a. Contractor shall provide initial training following the completion of the installation of the System and additional training and retraining, as requested

by the Director, to City personnel or agents in the use of the System and in applying Contractor's policies and procedures and PCI compliance standards.

- b. Contractor shall provide sufficient copies of System Documentation for all City employees and agents attending training programs under this Agreement.

## **15. MAINTENANCE AND SYSTEM UPGRADE**

- a. Contractor is solely responsible for maintaining the System.
- b. Contractor shall add new data elements and recommend technology improvements to satisfy new and emerging business developments in the City.
- c. Up-time is critical; therefore, Contractor shall make it its goal to keep the System in operation 24 hours per day, 7 days a week. In any event, System down-time should not exceed 1.5% of total run time in any given month.
- d. Contractor shall provide Help Desk services for System Terminals it provides under this Agreement, for the web site from which City customers may make payments and City kiosks where the City accepts payments, seven days a week, 24 hours per day.

## EXHIBIT A-1

### CITY SITES AND CITY DEPARTMENTS WHERE CITY SITES ARE LOCATED

- I. Municipal Courts Administration Department - Court Sites
  1. Municipal Courts Building  
1400 Lubbock  
Public Service Counter - First Floor  
Houston, Texas 77002
  2. Municipal Courts Building  
1400 Lubbock  
Parking Adjudication  
Houston, Texas 77002
  3. Southeast Command Station  
8300 Mykawa – Cashier  
Houston, Texas 77048
  4. Municipal Courts Call Center  
611 Walker, 3rd Floor  
Houston, Texas 77002
  5. Linebarger - Collections  
1301 Travis, Suite 425  
Houston, Texas 77002
  6. Municipal Courts West Side Command Station  
3201 S. Dairy Ashford – Cashier  
Houston, Texas 77082
  7. Municipal Courts North Command Center  
9455 West Montgomery – Cashier  
Houston, Texas 77088
  8. Municipal Courts Kingwood  
3915 Rustic Woods,  
Kingwood, Texas 77339
  9. Municipal Courts Clear Lake  
2855 Bay Area Blvd,  
Houston, Texas 77058

III. Convention & Entertainment Facilities Department - "CEF Department Sites"

1. George R. Brown Convention Center  
001 Avenida de las Americas - Event Services - 2nd Floor  
Houston, Texas 77010
2. Wortham Theater Center  
510 Preston, 4th Floor  
Houston, Texas 77002
3. Jones Hall for the Performing Arts  
615 Louisiana, Suite 101  
Houston, Texas 77002

Theater District Parking  
510 Preston  
Houston, TX 77002

IV. Public Works and Engineering Department – Planning and Development Services Sites

1. Building Inspections  
3300 Main Street  
Houston, TX 77002
1. Building Inspections  
3825 Dacoma  
Houston, Texas 77024
2. Sign Administration  
2600 Southwest Freeway  
Houston, Texas 77098
4. Office of the City Engineer  
611 Walker  
Houston, TX 77002

Location	# of terminals	Floor	Group
3300 Main	14	1	Permit
3300 Main	3	1	Fax Permit Section
3300 Main	1	2	Administration
3825 Dacoma	2	1	Permit Section
611 Walker	1	1	Office of the City Engineer
611 Walker	1	Basement	Office of the City Engineer
2600 Southwest Fwy.	2	6	Sign Administration
Total	24		

5. Houston Police Department  
Police Academy  
1700 Aldine Westfield (Transactions)  
Houston, Texas 77073

Invoice Payment:  
1200 Travis, 17th Floor  
Houston, Texas 77002

VI. Houston Fire Department

1. Houston Fire Department - Logistics  
Revenue Division  
1205 Dart St., Suite 113  
Houston, Texas 77007

VII. Parks and Recreation Department - Park Sites

1. Sharpstown Park Golf Course  
6600 Harbor Town  
Houston, Texas 77036
2. Brock Park Golf Course  
8201 John Roston  
Houston, Texas 77044
3. Memorial Golf Park (2 units)  
1001 Memorial Park Loop E  
Houston, Texas 77007
4. Memorial Fitness Center  
6402 Arnot  
Houston, Texas 77007
5. Gus Wortham Golf Course  
7000 Capital Street  
Houston, TX 77011
6. Lee LeClear Tennis Center  
9506 South Gessner  
Houston, Texas 77074
7. Homer Ford Tennis Center  
5225 Calhoun  
Houston, Texas 77021

8. HPARD Permits  
2999 South Wayside Dr.  
Houston, Texas 77023

VIII. Administration & Regulatory Affairs Department

1. Commercial Permits & Enforcement  
611 Walker, 2nd Floor  
Houston, Texas 77002

**EXHIBIT A-2**

**MERCHANT SERVICES AGREEMENT/APPLICATION**

## 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 or we may terminate our Agreement.

### 14. Services

Subject to Association Rules, Services may be performed by one or more of our affiliates, including the provision of terminals or other equipment and local support functions in connection with this Agreement.

### Operating Procedures; Association Rules

You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Association Rules. 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 Association 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 may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>.
- 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).
- You may download "American Express Merchant Regulations" from Visa's website at: [www.wellsfargo.com/biz/americanexpress](http://www.wellsfargo.com/biz/americanexpress).

### 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.** All settlements for Visa, MasterCard and Discover Card transactions will be net of credits / refunds, 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 our affiliates (and/or affiliates of Bank) 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 final audit, Chargebacks (including our related losses), fees and fines imposed by the Associations. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees and pending Chargebacks, or may deduct such amounts from settlement funds due to you. 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 third parties including but not limited to any Association or your financial institution.

**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.

### 17. Exclusion

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

**18.1.** You shall be charged fees for Services, which will be calculated and payable pursuant to this Agreement and any additional pricing supplements. You acknowledge that the fees agreed to are based on the

assumption that your transactions will qualify at a certain interchange level (your Anticipated Interchange Levels), as set by the applicable Association. If a transaction fails to qualify for your Anticipated Interchange Levels, then the Association will downgrade the transaction and process it at a more costly interchange level for which it does qualify. In that event, you shall be charged a Non-Qualified Interchange Fee, which is the difference in the interchange fee associated with the Anticipated Interchange Level and the interchange fee associated with the interchange level at which the transaction actually was processed; plus, any applicable Non-Qualified Surcharge for each non-qualifying transaction, the amount of which is set forth in the service fee schedule. 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@wellsfargomerchantsservicesllc.com](mailto:nfirequest@wellsfargomerchantsservicesllc.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.**

**18.3.** Authorization/EDC Fees will be charged for each transaction that you attempt to authorize. Capture and/or Transaction 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 decreases by Associations in interchange, assessments and other Association fees or to pass through increases charged by third parties for on-line communications and similar items. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change is implemented by the applicable Association or third party.

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

**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 settlement process 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 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 affiliates for any related services have been paid in full.

**18.9.** You agree to pay any fines imposed on us by any Association resulting from Chargebacks and any other fees or fines imposed by an Association 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 or Discover. Your Chargeback Percentage will be calculated as the larger of (a) the total Visa, MasterCard and Discover Chargeback items in any line of business in any calendar month divided by the number of Visa, MasterCard and Discover transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, MasterCard and Discover Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, MasterCard and Discover transactions in that line of business submitted in that month.

**18.11.** If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within 45 days after any debit or credit is or should have been effected. 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.

## 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; Limitations on Liability; Exclusion of Consequential Damages

**20.1.** Without limiting any other warranties hereunder, you represent and warrant as to each Card transaction submitted under our Agreement that:

**20.1.1.** the Card transaction represents a bona fide sale/rental of merchandise or services not previously submitted;

**20.1.2.** the Card transaction represents an obligation of the 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.** the Card transaction amount is only for the merchandise or services (including taxes, but without any surcharge) sold or rented 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.** the Card transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to you by a Cardholder or arising from the dishonor of a personal check);

**20.1.6.** you have no knowledge or notice of any fact, circumstances or defense which would indicate that the Card transaction was fraudulent or not authorized by the 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;

**20.1.7.** the Card transaction submitted to us was entered into by you and the Cardholder;

**20.1.8.** the Card transaction was made in accordance with these General Terms, Association Rules and the Operating Procedures; and

**20.1.9.** 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.

**20.1.10.** the Card transaction is not a transaction to facilitate illegal internet gambling, or any other activity which is prohibited by federal, state or local law

**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 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) AND 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 THE 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 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 ESTABLISHED BY THE FEDERAL RESERVE BOARD FROM TIME TO TIME, LESS ONE PERCENT (1%).

## 21. Confidentiality

**21.1.** Unless you obtain consents from us and each applicable Association, Card 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.** 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. 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 Credit 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 bank Card program and such other obligations as may be expressly required by applicable Association Rules. Subject to Association 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 sentence, 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. 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 an increase in the fees for Services, pursuant to Section 18.6, you may terminate this Agreement

without further cause or penalty by providing us written notice of termination. You must terminate within 20 days after we provide notice of the Section 18.6 fee increase. The Section 18.6 fee increase shall not take effect in the event you provide timely notice of termination. However, your continued use of our Services after the effective date of any increase shall be deemed acceptance of the increased fees for 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, business procedures, prospects, products or services; 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, non-compliance with any applicable data security standards, as determined by Servicers, of any Card Association, or any other entity, or an actual or suspected data security breach, nonconformance with any applicable data security standards, as determined by Servicers, any Card Association, 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 or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or

**23.4.6.** you shall 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 shall default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our affiliates;

**23.4.8.** you shall default in the payment when due, of any material indebtedness from borrowed money or any material trade payable; or

**23.4.9.** you shall file a petition or have a petition filed by another party under the 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 it 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 itself or of a substantial part of its 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 Association 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 US Department of the Treasury or your breach, as determined by Servicers, of Section 35.2 ("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 are intended to survive termination of this Agreement.

**23.6.** If any Event of Default shall have occurred 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 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 Associations 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 Associations 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 vested 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 or expiration 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 or expiration of this Agreement or for such longer period of time as is consistent with our liability for Card transactions and Chargebacks in accordance with Association Rules. Your funds will be held in an account commingled with reserve funds of our other Clients, without involvement by an independent escrow agent. Unless specifically agreed in writing by us or specifically required by applicable law, funds held by us in a Reserve Account shall not accrue interest.

**24.3.** If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges 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 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 their affiliates under this Agreement and any other agreement with Servicers or any of Servicers' 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") 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 shall be a National Association 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 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 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 the financial and credit status of you. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide to us or our representatives reasonable access to your 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 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 our Service; or
- arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Association 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.

## 27. Special Provisions Regarding Non-Bank Cards

**27.1.** You authorize us to share information from your Application with American Express, JCB, or any other Non-Bank Card Association.

**27.2.** You understand that American Express transactions are processed, authorized and funded by American Express. American Express will provide you with its own agreement that governs those transactions. 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 must securely retain original JCB Sales Drafts and JCB Credit Drafts for a period of at least 120 days from the date of the JCB Card transaction and you must retain microfilm or legible copies of JCB Sales Drafts and JCB Credit Drafts for a period of at least three (3) years following the date of the transaction.

**27.4.** If you accept JCB Cards, you agree to be bound by JCB rules. You also agree to be bound by all other provisions of this Agreement which are applicable to JCB.

**27.5.** 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.

**27.6.** If you execute a WEX Merchant Agreement, 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.

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

- In addition to the information stated in Section 1 (MasterCard and Visa 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 vouchers processed manually using a card Imprinter if required, the identification 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 Service Fee Schedule Addendum. 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; 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 Association upon the earlier of (i) the termination or expiration of our agreement with such Association, (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 Association 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, the availability of the network at the time of the transaction, whether a particular PIN Debit Card is enabled for a particular network and the routing requirements established by the networks and the card issuers. We may, at our sole discretion, utilize any PIN Debit Network available to us for a given transaction.
- You must issue a receipt to the Cardholder upon successful completion of a transaction. The Cardholder account number will be masked so that only the last four digits will appear. The masked digits will appear as a non-numeric character such as an asterisk. This is referred to as PAN Truncation.
- 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.

If you have agreed to issue Cash Benefits and will provide cash back or cash only transactions, you agree to maintain adequate cash on hand to issue confirmed Cash Benefits and will issue 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 that any EBT customers purchase goods or services as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate special checkout lanes restricted to use by EBT customers unless you also designate special checkout lanes for Debit or Credit Cards and/or other payment methods.

**29.1. Acceptance of EBT Benefits.** You agree to issue benefits to EBT customers in accordance with the procedures specified in all documentation provided to you by us, as amended from time-to-time and pursuant to all applicable law, rules and regulations. You must provide each EBT customer a receipt for each EBT transaction.

You will issue EBT benefits to EBT customers, in accordance with our then current procedures, in the amount authorized through a point-of-sale terminal, with personal identification number pad and printer. In the event of an equipment failure, you must comply with applicable procedures regarding manual voucher Authorization. You must also comply with the procedures set forth in the Quest Operating Rules, as amended from time-to-time, issued by the National Automated Clearing House Association and approved by the Financial Management Service of the U.S. Treasury Department, and any additional rules, regulations and procedures specified by any additional state or federal government or agency regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by referring EBT customers to their applicable EBT customer service center.

You may not accept any EBT Card for any purpose other than the acceptance of benefits, including without limitation acceptance of any EBT Card as security for repayment of any customer obligation. In the event of any violation of this provision, you will be obligated to reimburse the applicable state or us for any benefits unlawfully received. Cash should never be dispensed for Food Stamp Benefits.

**29.2. Manual EBT Vouchers.** All manual voucher Authorizations must be cleared on your POS terminal for payment of voucher to be made to you. Vouchers must be cleared within 10 Business Days of voice authorization. Vouchers cannot be cleared by any manner except by your POS terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your POS for payment, no further action can be taken to obtain payment for the voucher. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to 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.

**29.3. Acceptance of EBT Cash Benefits.** If you have agreed to issue Cash Benefits and will provide cash back or cash only transactions, you agree to comply with all applicable laws, rules and regulations and maintain adequate cash on hand to issue confirmed Cash Benefits and will issue 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 that any EBT customers purchase goods or services as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate special checkout lanes restricted to use by EBT customers unless you also designate special checkout lanes for debit or Credit Cards and/or other payment methods.

**29.4. Interoperability.** If you issue EBT benefits (Food Stamps and/or Cash Benefits), you must issue EBT benefits from EBT customers from all states.

**29.5. Required Licenses.** If you issue benefits under this Agreement, you represent and warrant to us that you are properly authorized to enter such transactions and are not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by any applicable agency. 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 benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenant that you will not issue benefits at any time during which you are not in compliance with the requirements of any applicable law.

**29.6. Term and Termination.** If you are disqualified or withdrawn from the food stamp program, your authority to issue benefits will be terminated contemporaneously 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 shall have the right to immediately terminate the provision of service under this Section 29.6 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 benefits during your normal business hours consistent with your normal business practices, your failure to comply with issuance procedures, 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 benefits. In the event 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.

The provision of services under this Section 29.6 shall terminate automatically in the event that our Agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

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

Individually identifiable information relating to a benefit recipient or applicant for 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.

The use of information obtained by you in the performance of your duties under this Section 29.7 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 mark, 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 benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider or we endorses your goods or services. Your right to use such Protected Marks pursuant to this Agreement will continue only so long as this Agreement remains in effect or until you are notified by us, any state or its EBT service provider to cease their use or display.

**29.9. Miscellaneous.**

**29.9.1. Amendments.** If any of these terms and conditions are found to conflict with federal or state law, regulation or policy of the rules, these terms and conditions are subject to reasonable amendment by 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.

**29.9.2. 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.

### 30. Special Provisions Regarding Wireless Service

If you elect to purchase any Wireless Equipment 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 NOT BEING SOLD TO YOU FOR HOME OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank.

Through our affiliates, we have acquired the right to resell and sublicense certain wireless POS Terminals and accessories (the "Wireless Equipment") and wireless data communication services using radio base stations and switching offered by the various cellular telephone and data networks throughout the country (the "Wireless Networks") in order to allow you to capture and transmit to us certain wireless Credit and Debit Card Authorization transactions or to transmit other communications to our system.

You acknowledge that one or more independent third party vendors ("Wireless Vendor(s)") has developed and provides the Wireless Equipment and Wireless Services to us through our affiliates under separate agreement(s).

In the event 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 the 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.

**30.1. Purchase of Wireless Services.** In connection with your purchase of Wireless Equipment, you will purchase the Wireless Networks' Service and obtain sublicenses to use any Wireless Software (as defined in Section 30.2)

associated therewith) collectively "Wireless Services"). The prices that you will pay for the Wireless Services are set forth on the Service Fee Schedule.

- **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 terminal 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.

- **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 Network(s), 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.

**30.2. Software Licenses.** We hereby grant to you a non-exclusive, nontransferable limited sublicense to use any Wireless Software solely in connection with your purchase and use of the Wireless Services. As used in this Section 30, Wireless "Software" means all software used in, for or in connection with the Wireless Equipment, the Wireless Services or the access thereto in whatever form, including without limitation source code, object code and microcode, including any computer programs and any documentation relating to or describing the software. 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 third party's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services, 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 Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the amount paid by you for the particular Wireless Services during any period of failure, delay, or non-performance of the Wireless Services. In no event shall Servicers, Wireless Vendor(s) or our respective affiliates be liable for any indirect incidental, special or consequential 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, Vendor(s) and us and our respective officers, directors, employees, and affiliates harmless from 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 Services;
- b. your negligent acts or omissions; or
- c. any breach by you of any of your obligations under this Section 30; or
- d. any third party'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 vendors or us related to the subject matter of this Wireless Services Agreement 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:

- a. Immediately upon termination of the Agreement between us (or our affiliates) and Vendor(s), provided that we will notify you promptly upon our notice or knowledge of termination of such Agreement, provided further that if 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 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 Vendor(s), then we may, in our sole discretion, continue to provide the Wireless Services through 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.** Our affiliates and 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 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 us, or that is or has been provided to you by a third party (to the extent expressly stated herein). If your Application or other documents reflect that your equipment is leased, then the provisions of your lease are governed by Section 31 in the Equipment Lease Agreement. Equipment rented to or purchased by you under this Section 31 is referred to in this section as the "Equipment." THE EQUIPMENT IS NOT BEING SOLD OR RENTED TO YOU FOR HOME OR PERSONAL USE. Sales and rentals of equipment are made by Processor, and for purposes of this section the words "we," "our," and "us" refer only to Processor and not to Bank. The Agreement between Processor and you as set forth in this section is referred to as the "Equipment Agreement," and the full Agreement of which the Equipment Agreement is a part is referred to as the "Merchant Agreement."

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASED OR RENT FROM US MAY NOT BE COMPATIBLE WITH ANOTHER 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 Merchant Agreement as being purchased by you (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, prior to the effective date of the Equipment 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. If merchant owned equipment becomes inoperable, we will provide a replacement based on inventory availability for a fee. If a like for like replacement is not available, you will be required to upgrade your merchant owned equipment. You should contact the POS Help Desk to order replacement equipment.

**31.2. Rental Equipment.** We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Merchant Agreement as being rented to you (the "Rental Equipment"), according to the terms and conditions of this Section 31. In addition, any rental equipment ordered by you during the term of the Merchant Agreement shall also be governed by the terms of this Equipment Agreement.

**31.3. Effective Date and Term of Equipment Agreement.** This Equipment Agreement shall become effective on the first date you receive any piece of Equipment covered by this Equipment Agreement. This Equipment Agreement will remain in effect until all of your obligations and all of our obligations under this Equipment 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 Rental 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 your Merchant Agreement and/or any other agreement then in effect with us for Card services. The provisions of this Equipment Agreement shall survive the termination or expiration of the Merchant Agreement and continue until all equipment rented from us 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.

- 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. The monthly rental charge specified in the Merchant Agreement 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 Merchant Agreement 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 Equipment Agreement 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 you under the Merchant Agreement (the "Settlement Account") or by deducting such amounts from amounts due to you from TeleCheck or Servicers. All authorizations and other provisions in your Merchant Agreement regarding the debiting and crediting of your Settlement Account apply with equal force with respect to amounts due to or from you under this Equipment Agreement. This authority will remain in full force and effect until we have given written notice to your bank where your Settlement Account is maintained that all monies due from you under this Equipment Agreement have been paid in full.
- 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 Equipment 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. As indicated in the Merchant Agreement, 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 provided under your Merchant Agreement. 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 Equipment 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 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 Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the 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 Merchant Agreement 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. Company 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.

**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 Equipment Agreement to the contrary notwithstanding, we 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 license to use the Software in your operation of the Equipment. 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.** Our liability arising out of or in any way connected with the Equipment shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Equipment Agreement will be your sole and exclusive remedies.

Client acknowledges and understands that we shall have no responsibility or liability concerning any equipment used by Client, including but not limited to hardware or software, obtained in any manner from a third party. In no event will we be responsible for any damages or losses whatsoever that Client may incur as a result of using any equipment obtained from a third party.

**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.

**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 Equipment Agreement, or if any other default occurs under the Merchant Agreement, any such event shall be a default hereunder.
- b. Upon the occurrence of any default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Equipment Agreement, 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 Equipment Agreement 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.

**31.12. Assignment.** Subject to the following provisions, this Equipment Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. You may not assign or transfer this Equipment Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Equipment Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer hereof. We may assign or transfer this Equipment Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Equipment Agreement.

## 32. Equipment Lease Agreement

This Section 32 governs any equipment that is leased to you by us. 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.

The Equipment Lease Agreement ("Lease Agreement") between us and you as set forth in this section is referred to as the "Lease Agreement" and for purposes of this Section 32, the full Agreement of which this Lease Agreement is a part is referred to as the "Merchant Agreement." For purposes of this section, the words "we," "our" and "us" refer to Wells Fargo Merchant Services, L.L.C. and its successors and assigns and the words "you" and "your" refer to the Lessee identified in the signature panel of this Merchant Agreement and its permitted successors and assigns.

Lessee hereby authorizes us or our designees, successors or assigns (hereinafter "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.

**32.1. Leased 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.

**32.2. 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.

**32.3. 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.

#### **32.4. 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.

#### **32.5. Use and Return of Leased 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 Leased 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.

**32.6. Title to Leased 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.

#### **32.7. Return or Purchase of Leased 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 Leased Equipment to us, or (b) purchase the Leased 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 Leased Equipment. In the absence of an affirmative election by you to return or purchase the Leased 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 32.12 (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 Leased Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 32.7 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.

**32.8. 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.

**32.9. 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.

#### **32.10. 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.

**32.11. 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.

**32.12. 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 an 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.

**32.13. 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. We intend to assign this Lease Agreement shortly after its execution to First Data Merchant Services Corporation.

**32.14. 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.

**32.15. Notices.** All notices must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing on the Merchant Agreement, and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida 33065. Attn: Lease Department. Customer Service toll free number 1-877-257-2094.

**32.16.** 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.

**33. Choice of Law; Venue; Waiver of Jury Trial**

**33.1. 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).

**33.2. 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.

**33.3. 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.

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

Gift Card Services are provided to you by Processor, and 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.**

**34.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 34.1 or as defined in the Glossary or elsewhere in this Section.

- a. "ACH" means the Automated Clearing House system.
- b. "Affiliate" means, with respect to either party, any entity that controls, is controlled by or is under common control with such party.
- c. "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.
- d. "Database" means the database on which Gift Card Data for each Gift Card issued under the Program is maintained.
- e. "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.
- 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 or Client 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. "PIN" means a Personal Identification Number.
- n. "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.

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

**34.2. 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.

**34.3. 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 or the Gift Card Equipment at which the transaction was initiated.
- 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 third party 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 third party, 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.

#### **34.4. Fees and Payment.**

- a. 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. All fees not paid within thirty (30) days of the date of Processor's merchant statement setting forth such fees shall incur interest at the rate equal to the lesser of (i) ten percent (10%) per annum, or (ii) the maximum rate permitted by applicable law from the date on which payment should have been made until the date on which Processor receives the payment.
- b. Processor may increase rates from time to time to the extent necessary to pass through increases in the costs of the underlying goods and services used or provided by Processor in connection with the provision of Services. Any such adjustments shall become effective upon written notice to Client.
- c. Processor may also increase rates for any other reason upon 30 days' written notice to Client.

#### **34.5. 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 34.4(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 34.5(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 34.6(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 34.3 (f), (g), (h), (i), (k) and (l), and Sections 34.4, 34.5(b), 34.5(c), 34.5(d), 34.6 and 34.7 hereof shall survive any termination or expiration to effectuate their intent shall survive termination of the Gift Card Services.

#### **34.6. Indemnification.**

- a. Client shall indemnify and hold harmless Servicers, their 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 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 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 Processor's business as a service provider; 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.

**34.7. 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.

#### **34.8. Limitation of Liability; Disclaimer of Warranties.**

- a. 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 AND 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).

- b. IN NO EVENT SHALL ANY PARTY, THEIR AFFILIATES, OR ANY OTHER OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST REVENUES, 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 EITHER PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. THIS SECTION GOVERNS THE PROVISION OF SERVICES, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, PROCESSOR DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS SECTION.

### 35. Other Terms

**35.1. 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 third party 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 third party shall not excuse the performance of your obligations to us under this Agreement.

**35.2. 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.

**35.3. 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, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier), if to you at your address appearing in the Application, and if to us at our address appearing on the Additional Important Information page, 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, when mailed or 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.

**35.4. 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.

**35.5. 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.

**35.6. 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.

**35.7. 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 thirty (30) 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.

**35.8. No Third Party Beneficiaries.** 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 third parties to be third-party beneficiaries of this Agreement.

**35.9. Association Rules.** The parties acknowledge that the Visa, MasterCard and Discover Association 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 Association Rules with respect to this Agreement's applicability to transactions involving such other Cards.

**35.10. Publicity.** Client may not use our logo, name, trademark, or service mark, including without limitation, in any advertisements, displays, or press releases without our prior written consent.

**35.11.** 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.

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

**MERCHANT SERVICES PROGRAM GUIDE**



*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.

This 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 Associations 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 (the "Agreement"), 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 International, Incorporated ("MasterCard"), Discover Financial Services LLC ("Discover") and American Express are payment card networks that electronically exchange Sales Drafts and Chargebacks for Credits and Debits. (We will refer to Visa, MasterCard and Discover as "Associations.") 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 Association, to the bank that issued the Cardholder's Credit Card (referred to as "Issuers"). The Issuers then bill their Cardholders for the transactions. The Associations charge the Acquirers interchange fees and assessments for submitting transactions into their systems. A substantial portion of the Discount 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 Association 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 Associations are conditional and subject to reversals and adjustments.

Each Association has developed rules and regulations ("Association Rules") that govern their Acquirers and Issuers and the procedures, responsibilities and allocation of risk for this process. Merchants are also bound by Association Rules. The Association Rules and applicable banking laws give Cardholders and Issuers certain rights to dispute transactions, long after payment has been made to the merchant. These disputed transactions are referred to as Chargebacks.

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 Association 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 defined terms used in the Agreement.

# Program Guide

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## PART I: CARD SERVICES

## A. CARD 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,<sup>®</sup> Visa<sup>®</sup> and Discover Cards carried by your customers, as well as to the independent Card Issuers of American Express<sup>®</sup>/Optima,<sup>®</sup> and JCB.<sup>®</sup> The Operating Procedures contained in this part focus primarily on the MasterCard, Visa and Discover Associations' operating rules and regulations, and seek to provide you with the principles for a sound Card program. 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 or 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 comprising at least 16 digits are displayed on the front of the Card.
- Card Numbers are clear and uniform in size and spacing within groupings.
- Expiration date, if present, appears in mm/yy format and indicates the last month in which the Card is valid.
- 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<sup>®</sup>, 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.

#### Prepaid Gift Card Security Features

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.**
- The front of the Card may display “Temporary Card,” “Prepaid Card,” “Gift Card,” or “Electronic Use Only.”

**Note:** Prepaid Gift Cards accepted at a limited, specific list of Merchants are not required to include the Discover Hologram and, may but are not required to bear the Discover Acceptance Mark or the Discover/NOVUS Acceptance Mark on the Card. 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>.

**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:

- 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 transaction receipt.
- 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 Association 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.

**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 your Merchant Agreement, you may not submit authorization requests or sales data for recurring transactions that are due after the termination date of your Merchant 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 Association 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.
- A Recurring Transaction or Preauthorized Order 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. Penalties can be assessed by the Associations for failure to use the Recurring Payment Indicator.

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

- You cannot establish minimum or maximum amounts 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 Card Issuer.
- You cannot impose a surcharge or fee for accepting a Card. However providing a discount for cash is permissible provided that the discount is clearly disclosed as a discount from the standard price.
- You cannot establish any special conditions for accepting a Card.
- You cannot establish procedures that discourage, favor or discriminate against the use of any particular Card. 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 ("AVS"). 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 uncollectable.
- You cannot submit a transaction or sale that has been previously charged back.

- You must create a Sales or Credit Draft for each Card transaction and deliver at least one copy of the Sales 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 Association Rules may result in fines or penalties.

**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 do not include such markings and you will not have such markings until January 2007. 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 Associations. 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, 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 your Merchant 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.

### 1.12. 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 your Merchant Agreement.

**1.13. Displays and Advertising.** You must prominently display appropriate Visa, MasterCard, Discover and, if applicable, other Association decals and program marks at each of your locations, in catalogs, on websites and on other promotional materials as required by Association Rules. You may not indicate that Visa, MasterCard, Discover or any other Association endorses your goods or services. Your right to use the program marks of either MasterCard, Visa or Discover terminates upon the earlier of (i) if and when your right to accept the Cards of the respective Association 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 Association to you of the termination of the right to use the program mark(s) for that Association, or (iii) termination of the license to use the program marks by the respective Association 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. 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.

### 1.14. 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 Card 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 except to the extent expressly authorized in writing in advance by Services and the Agreement .

**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 Program Guide 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 your Merchant Agreement.

## 2. 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?
- 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, 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 Card Issuer and request that you call a number (that he provides) for a “special” handling or Authorization?

### 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 SWIPED 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.**

### 3. Completion of Sales and Credit Drafts

You must prepare a Sales Draft or Credit Draft, as applicable, for each Card transaction and provide 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 or Credit Draft in the manner required by applicable law and Association Rules.  
**Note: The Sales or Credit Draft you provide to a Cardholder may 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 or Credit Drafts you retain. MasterCard requires that Card expiration dates be excluded from the Sales 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's Small Ticket, Visa/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;
- 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 Transaction Receipt.
- Eligible merchants participating in 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 Associations.

- 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).
- 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 Association 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 Associations 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.
- 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 Associations include:

<b>American Express ES<sup>®</sup></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>

#### 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, American Express, Discover and JCB 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, each based on the PCI DSS and industry aligned validation requirements. PCI DSS PCI compliance validation is focused on any system(s) or system component(s) where Cardholder data is retained, 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.

The Associations 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 Card processing Services under your Merchant Agreement for any actual or suspected data security compromise.

Detailed information about DISC 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: <https://sdp.mastercardintl.com>.

Detailed information about DISC can be found at Discover DISC website: <http://www.discovernetwork.com/fraudsecurity/disc.html>. The PCI Data Security Standard and detailed information about SDP, including the MasterCard Security Self-Assessment which you should complete, can be found at MasterCard's SDP website: <https://sdp.mastercardintl.com>.

Detailed information about American Express Data Security Operating Policy (DSOP) can be found at: <https://www.americanexpress.com/datasecurity>.

##### 4.2. 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 encrypt stored data and data sent across networks.
- 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.
- Don't 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).
- 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.

**4.3.** 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 third party providers, with security procedures and these Operating Procedures.

**4.4.** In the event that transaction data suspected of having been accessed or retrieved by any unauthorized person or entity, contact Customer Service or your Relationship Manager immediately and in no event more than 24 hours after becoming aware of such activity.

**4.5.** You must, at your own expense (i) perform or cause to be performed an independent investigation (including a forensics analysis) 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.

**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. Third Parties.** The data security standards set forth above also apply to any agent or third party provider that you may use to store, process or transmit Cardholder data. In addition, such agents or third party providers must be registered with the applicable Association. Therefore, you must:

- Notify us in writing of any agent or third party processor that engages in, or proposes to engage in, the storing, processing or transmitting of Cardholder data on your behalf, regardless of the manner or duration of such activities.
- Ensure that all such agents or third party processors are (i) registered with the applicable payment card brands; and (ii) comply with all applicable data security standards, including, without limitation, the PCI DSS.

You are solely responsible for the compliance of any and all third parties that are given access by you, to Cardholder data, and for any third party software that you may use.

## 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 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 thirty (30) 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 Associations 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, JCB, 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, Association Fines and/or cancellation of your Agreement.

**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 Card 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 Card 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</b>	<b>1-800-528-2121</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>

## 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 use 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 PREAMTHORIZATIONS.**
- 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 Associations.
- 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. 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 complete 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 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.** For Discover transactions, Factoring is considered merchant fraud and strictly prohibited, unless you are registered with us. 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 the Discover Card Sales. 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 37.2 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 and Credit Drafts to us for microfilming and retrieval, the Sales Drafts (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 Card 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 Card 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 microfilming.)
- **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

Your funds for MasterCard/Visa/Discover Network transactions will be processed and transferred to your financial institution within two (2) Business Days from the time a Batch is closed (by 11:00 p.m. ET) if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard / Visa / Discover transactions will be processed and transferred to the Federal Reserve within two (2) Business Days from the time a Batch is closed (by 11:00 p.m. ET); the Federal Reserve will transfer such amounts to your financial institution. Your Card transactions will be settled promptly after you submit Sales and Credit Drafts. You will be provided with settlement funds in one of the following manners:

- **Direct Settlement Account.** If you maintain a Settlement Account at a financial institution with which we have arrangements permitting direct payment of settlement funds, we will initiate a transfer of such applicable settlement funds through a credit to the Settlement Account. Such settlement will generally occur by the second banking day after we process the applicable Card transactions unless a different time is specified.

- **Wire Transfer.** If you receive payment of settlement funds by wire transfer, we will initiate a wire transfer of such applicable settlement funds to the Settlement Account. Settlement by wire generally occurs by 3:00 p.m. ET on the following banking day after we process the applicable Card transactions.
- **Automated Clearing House Credit.** If you receive payment of settlement funds through an automated clearing house ("ACH") credit, we will initiate a transfer of such applicable settlement funds through ACH to your Settlement Account. Settlement by ACH credit generally will take place on the second banking day after we process the applicable Card transactions.

## 8. Refunds/Exchanges (Credits)

### 8.1. Refunds.

- You must promptly complete and submit a Credit Draft for the total amount of the refund 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.
- 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 Credit 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 draft with the same Card used by the Cardholder to make the original purchase. You should not credit an account that differs from the account used for the original transaction.
- Never give cash or check Credit refunds for Credit 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 refunds.
- 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.

### 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 and Credit Drafts.

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 microfilm or other copies of Sales Drafts for no less than three (3) years from the date of the Discover transaction.

**9.2. Provide Sales and Credit Drafts.** You must provide all Sales and Credit Drafts or other transaction records requested by us within the shortest time limits established by Association Rules. You are responsible for any deficiencies in Card transaction data transmitted or otherwise delivered to us.

**9.3. Ensure Proper Retrieval Fulfillment.** To ensure proper Retrieval fulfillment and/or chargeback processing, Sales and Credit Drafts must contain the full sixteen (16) digit account number (as applicable), and expiration date (as applicable). Failure to retain this information could result in a future Chargeback to your account.

## 10. Chargebacks, Retrievals and Other Debits

### 10.1. Chargebacks.

**10.1.1. Generally.** Both the Cardholder and the Card 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 the 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 and related costs arising from your transactions.

**10.1.2. Transaction Documentation Requests.** In some cases, before a Chargeback is initiated, the Card 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 Card Issuer. If you fail to timely respond, we will so notify the Card 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 Sales Drafts 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.

- You need to respond to all transaction documentation requests within the specified timeframe indicated on the request, or you may be without recourse for a Chargeback. You must respond to all requests

related to fraud investigations. Subsequent Chargebacks for “non receipt of requested item relating to a transaction for fraud request” cannot be contested or represented.

**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, 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 Card Issuer will Credit the Cardholder’s account.

If the information you provide is both timely and, in our sole discretion, sufficient to warrant a representation of the transaction and/or reversal of the Chargeback, we will do so on your behalf. However, representation and/or reversal is ultimately contingent upon the Card Issuer and/or Cardholder accepting the transaction under applicable Association guidelines. Representation or reversal is not a guarantee that the Chargeback has been resolved in your favor.

For Visa Chargebacks: If we reverse the Chargeback and represent the transaction to the Card Issuer, the Card 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 Card 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 \$150 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 representation request and you feel strongly that the Chargeback is invalid, we may, at the discretion of Processor and on your behalf and at your request, submit the matter for dispute arbitration before Discover. Discover charges fees for representation 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, and Discover 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 Card Issuer on your behalf. This process can take up to six (6) months and must meet the Card 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. Card 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.

**Note:** Discover does not offer good faith collection for Acquirers.

MasterCard and Visa Association 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 Association 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 Association 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 seven 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 request another form of payment from the Cardholder.
- If a Referral response is received 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 Payment Card Company.

**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 on 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 customer 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 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 claim 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.

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

**Card Present Transactions:**

- Obtain an Authorization for all transactions.
- If you are an electronic merchant, magnetically 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 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 draft matches the signature on the back of the card.
- Process all transaction one time and do not batch out transaction 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.
- 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 Credit Card was also billed for the same transaction.
- Cardholder cancelled service or merchandise and their Credit 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 Payment Card Company specified timeframe.
- Cardholder was issued a credit voucher; 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 Payment Card Company 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 code prior to processing the transaction and obtain a legible magnetic swipe or imprinted transaction document 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 transaction receipt or was an invalid fulfillment (Incorrect sales slip or sales slip 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 transaction documentation that contains all required data elements within the required timeframe that is specified on the retrieval request.
- Ensure that the most recognizable merchant name, location and/or customer service phone number is provided on all transactions.
- Retain copies of all transaction documentation for the required timeframe that is specified by each Payment Card Company.
- 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 Association 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. The following is a list of reasons for other debits. We may add to or delete from this list as changes occur in the Association Rules or our operational requirements:

- Association 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 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.
- Association Merchant Chargeback/Fraud Monitoring Fee – 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, JCB).
- The dollar amount is unreadable/illegible.
- The Cardholder's account number is unreadable/illegible.
- Duplicate Sales Draft submitted.
- Credit 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 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 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 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 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 Associations 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 DBA name, 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) 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.

## 12. Association Compliance

MasterCard, Visa and Discover have established guidelines, merchant monitoring programs and reports to track merchant activity such as, but not limited to excessive credits and Chargebacks, and increased deposit activity. In the event you exceed the guidelines or submit suspicious transactions as identified by an Association or any related program or reports, you may be subject to: (i) operating procedure requirement modifications; (ii) incremental Chargebacks and/or 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 or we may terminate our Agreement.

### 14. Services

Subject to Association Rules, Services may be performed by one or more of our affiliates, including the provision of terminals or other equipment and local support functions in connection with this Agreement.

### 15. Operating Procedures; Association Rules

You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Association Rules. 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 Association 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 may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>.
- 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).
- You may download "American Express Merchant Regulations" from Visa's website at: [www.wellsfargo.com/biz/americanexpress](http://www.wellsfargo.com/biz/americanexpress).

### 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.** All settlements for Visa, MasterCard and Discover Card transactions will be net of credits / refunds, 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 our affiliates (and/or affiliates of Bank) 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 final audit, Chargebacks (including our related losses), fees and fines imposed by the Associations. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees and pending Chargebacks, or may deduct such amounts from settlement funds due to you. 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 third parties including but not limited to any Association or your financial institution.

**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.

### 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.** You shall be charged fees for Services, which will be calculated and payable pursuant to this Agreement and any additional pricing supplements. You acknowledge that the fees agreed to are based on the

assumption that your transactions will qualify at a certain interchange level (your Anticipated Interchange Levels), as set by the applicable Association.

If a transaction fails to qualify for your Anticipated Interchange Levels, then the Association will downgrade the transaction and process it at a more costly interchange level for which it does qualify. In that event, you shall be charged a Non-Qualified Interchange Fee, which is the difference in the interchange fee associated with the Anticipated Interchange Level and the interchange fee associated with the interchange level at which the transaction actually was processed; plus, any applicable Non-Qualified Surcharge for each non-qualifying transaction, the amount of which is set forth in the service fee schedule. 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 (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.**

**18.3.** Authorization/EDC Fees will be charged for each transaction that you attempt to authorize. Capture and/or Transaction 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 decreases by Associations in interchange, assessments and other Association fees or to pass through increases charged by third parties for on-line communications and similar items. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change is implemented by the applicable Association or third party.

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

**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 settlement process 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 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 affiliates for any related services have been paid in full.

**18.9.** You agree to pay any fines imposed on us by any Association resulting from Chargebacks and any other fees or fines imposed by an Association 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 or Discover. Your Chargeback Percentage will be calculated as the larger of (a) the total Visa, MasterCard and Discover Chargeback items in any line of business in any calendar month divided by the number of Visa, MasterCard and Discover transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, MasterCard and Discover Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, MasterCard and Discover transactions in that line of business submitted in that month.

**18.11.** If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within 45 days after any debit or credit is or should have been effected. 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.

## 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; Limitations on Liability; Exclusion of Consequential Damages

**20.1.** Without limiting any other warranties hereunder, you represent and warrant as to each Card transaction submitted under our Agreement that:

**20.1.1.** the Card transaction represents a bona fide sale/rental of merchandise or services not previously submitted;

**20.1.2.** the Card transaction represents an obligation of the 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.** the Card transaction amount is only for the merchandise or services (including taxes, but without any surcharge) sold or rented 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.** the Card transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to you by a Cardholder or arising from the dishonor of a personal check);

**20.1.6.** you have no knowledge or notice of any fact, circumstances or defense which would indicate that the Card transaction was fraudulent or not authorized by the 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;

**20.1.7.** the Card transaction submitted to us was entered into by you and the Cardholder;

**20.1.8.** the Card transaction was made in accordance with these General Terms, Association Rules and the Operating Procedures; and

**20.1.9.** 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.

**20.1.10.** the Card transaction is not a transaction to facilitate illegal internet gambling, or any other activity which is prohibited by federal, state or local law

**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 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) AND 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 THE 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 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 ESTABLISHED BY THE FEDERAL RESERVE BOARD FROM TIME TO TIME, LESS ONE PERCENT (1%).

## 21. Confidentiality

**21.1.** Unless you obtain consents from us and each applicable Association, Card 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.** 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. 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 Credit 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 bank Card program and such other obligations as may be expressly required by applicable Association Rules. Subject to Association 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 sentence, 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. 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 an increase in the fees for Services, pursuant to Section 18.6, you may terminate this Agreement

without further cause or penalty by providing us written notice of termination. You must terminate within 20 days after we provide notice of the Section 18.6 fee increase. The Section 18.6 fee increase shall not take effect in the event you provide timely notice of termination. However, your continued use of our Services after the effective date of any increase shall be deemed acceptance of the increased fees for 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, business procedures, prospects, products or services; 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, non-compliance with any applicable data security standards, as determined by Servicers, of any Card Association, or any other entity, or an actual or suspected data security breach, nonconformance with any applicable data security standards, as determined by Servicers, any Card Association, 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 or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or

**23.4.6.** you shall 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 shall default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our affiliates;

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

**23.4.9.** you shall file a petition or have a petition filed by another party under the 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 it 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 itself or of a substantial part of its 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 Association 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 US Department of the Treasury or your breach, as determined by Servicers, of Section 35.2 ("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 are intended to survive termination of this Agreement.

**23.6.** If any Event of Default shall have occurred 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 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 Associations 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 Associations 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 vested 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 or expiration 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 or expiration of this Agreement or for such longer period of time as is consistent with our liability for Card transactions and Chargebacks in accordance with Association Rules. Your funds will be held in an account commingled with reserve funds of our other Clients, without involvement by an independent escrow agent. Unless specifically agreed in writing by us or specifically required by applicable law, funds held by us in a Reserve Account shall not accrue interest.

**24.3.** If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges 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 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 their affiliates under this Agreement and any other agreement with Servicers or any of Servicers' 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") 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 shall be a National Association 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 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 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 the financial and credit status of you. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide to us or our representatives reasonable access to your 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 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:

- a. resulting from any breach of any warranty, 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 our Service; or
- d. arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Association 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.

## 27. Special Provisions Regarding Non-Bank Cards

**27.1.** You authorize us to share information from your Application with American Express, JCB, or any other Non-Bank Card Association.

**27.2.** You understand that American Express transactions are processed, authorized and funded by American Express. American Express will provide you with its own agreement that governs those transactions. 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 must securely retain original JCB Sales Drafts and JCB Credit Drafts for a period of at least 120 days from the date of the JCB Card transaction and you must retain microfilm or legible copies of JCB Sales Drafts and JCB Credit Drafts for a period of at least three (3) years following the date of the transaction.

**27.4.** If you accept JCB Cards, you agree to be bound by JCB rules. You also agree to be bound by all other provisions of this Agreement which are applicable to JCB.

**27.5. 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.

**27.6. If you execute a WEX Merchant Agreement,** 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.

### 27.7. If you accept Voyager Cards:

- In addition to the information stated in Section 1 (MasterCard and Visa 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 vouchers processed manually using a card Imprinter if required, the identification 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 Service Fee Schedule Addendum. 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; 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 Association upon the earlier of (i) the termination or expiration of our agreement with such Association, (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 Association 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, the availability of the network at the time of the transaction, whether a particular PIN Debit Card is enabled for a particular network and the routing requirements established by the networks and the card issuers. We may, at our sole discretion, utilize any PIN Debit Network available to us for a given transaction.
- You must issue a receipt to the Cardholder upon successful completion of a transaction. The Cardholder account number will be masked so that only the last four digits will appear. The masked digits will appear as a non-numeric character such as an asterisk. This is referred to as PAN Truncation.
- 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.

If you have agreed to issue Cash Benefits and will provide cash back or cash only transactions, you agree to maintain adequate cash on hand to issue confirmed Cash Benefits and will issue 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 that any EBT customers purchase goods or services as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate special checkout lanes restricted to use by EBT customers unless you also designate special checkout lanes for Debit or Credit Cards and/or other payment methods.

**29.1. Acceptance of EBT Benefits.** You agree to issue benefits to EBT customers in accordance with the procedures specified in all documentation provided to you by us, as amended from time-to-time and pursuant to all applicable law, rules and regulations. You must provide each EBT customer a receipt for each EBT transaction.

You will issue EBT benefits to EBT customers, in accordance with our then current procedures, in the amount authorized through a point-of-sale terminal, with personal identification number pad and printer. In the event of an equipment failure, you must comply with applicable procedures regarding manual voucher Authorization. You must also comply with the procedures set forth in the Quest Operating Rules, as amended from time-to-time, issued by the National Automated Clearing House Association and approved by the Financial Management Service of the U.S. Treasury Department, and any additional rules, regulations and procedures specified by any additional state or federal government or agency regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by referring EBT customers to their applicable EBT customer service center.

You may not accept any EBT Card for any purpose other than the acceptance of benefits, including without limitation acceptance of any EBT Card as security for repayment of any customer obligation. In the event of any violation of this provision, you will be obligated to reimburse the applicable state or us for any benefits unlawfully received. Cash should never be dispensed for Food Stamp Benefits.

**29.2. Manual EBT Vouchers.** All manual voucher Authorizations must be cleared on your POS terminal for payment of voucher to be made to you. Vouchers must be cleared within 10 Business Days of voice authorization. Vouchers cannot be cleared by any manner except by your POS terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your POS for payment, no further action can be taken to obtain payment for the voucher. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to 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.

**29.3. Acceptance of EBT Cash Benefits.** If you have agreed to issue Cash Benefits and will provide cash back or cash only transactions, you agree to comply with all applicable laws, rules and regulations and maintain adequate cash on hand to issue confirmed Cash Benefits and will issue 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 that any EBT customers purchase goods or services as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate special checkout lanes restricted to use by EBT customers unless you also designate special checkout lanes for debit or Credit Cards and/or other payment methods.

**29.4. Interoperability.** If you issue EBT benefits (Food Stamps and/or Cash Benefits), you must issue EBT benefits from EBT customers from all states.

**29.5. Required Licenses.** If you issue benefits under this Agreement, you represent and warrant to us that you are properly authorized to enter such transactions and are not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by any applicable agency. 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 benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenant that you will not issue benefits at any time during which you are not in compliance with the requirements of any applicable law.

**29.6. Term and Termination.** If you are disqualified or withdrawn from the food stamp program, your authority to issue benefits will be terminated contemporaneously 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 shall have the right to immediately terminate the provision of service under this Section 29.6 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 benefits during your normal business hours consistent with your normal business practices, your failure to comply with issuance procedures, 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 benefits. In the event 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.

The provision of services under this Section 29.6 shall terminate automatically in the event that our Agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

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

Individually identifiable information relating to a benefit recipient or applicant for 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.

The use of information obtained by you in the performance of your duties under this Section 29.7 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 mark, 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 benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider or we endorses your goods or services. Your right to use such Protected Marks pursuant to this Agreement will continue only so long as this Agreement remains in effect or until you are notified by us, any state or its EBT service provider to cease their use or display.

#### **29.9. Miscellaneous.**

**29.9.1. Amendments.** If any of these terms and conditions are found to conflict with federal or state law, regulation or policy of the rules, these terms and conditions are subject to reasonable amendment by 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.

**29.9.2. 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.

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

If you elect to purchase any Wireless Equipment 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 NOT BEING SOLD TO YOU FOR HOME OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank.

Through our affiliates, we have acquired the right to resell and sublicense certain wireless POS Terminals and accessories (the "Wireless Equipment") and wireless data communication services using radio base stations and switching offered by the various cellular telephone and data networks throughout the country (the "Wireless Networks") in order to allow you to capture and transmit to us certain wireless Credit and Debit Card Authorization transactions or to transmit other communications to our system.

You acknowledge that one or more independent third party vendors ("Wireless Vendor(s)") has developed and provides the Wireless Equipment and Wireless Services to us through our affiliates under separate agreement(s).

In the event 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 the 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.

**30.1. Purchase of Wireless Services.** In connection with your purchase of Wireless Equipment, you will purchase the Wireless Networks' Service and obtain sublicenses to use any Wireless Software (as defined in Section 30.2)

associated therewith) collectively "Wireless Services"). The prices that you will pay for the Wireless Services are set forth on the Service Fee Schedule.

- **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 terminal 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.
- **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 Network(s), 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.

**30.2. Software Licenses.** We hereby grant to you a non-exclusive, nontransferable limited sublicense to use any Wireless Software solely in connection with your purchase and use of the Wireless Services. As used in this Section 30, Wireless "Software" means all software used in, for or in connection with the Wireless Equipment, the Wireless Services or the access thereto in whatever form, including without limitation source code, object code and microcode, including any computer programs and any documentation relating to or describing the software. 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 third party's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services, 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 Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the amount paid by you for the particular Wireless Services during any period of failure, delay, or non-performance of the Wireless Services. In no event shall Servicers, Wireless Vendor(s) or our respective affiliates be liable for any indirect incidental, special or consequential 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, Vendor(s) and us and our respective officers, directors, employees, and affiliates harmless from 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 Services;
- b. your negligent acts or omissions; or
- c. any breach by you of any of your obligations under this Section 30; or
- d. any third party'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 vendors or us related to the subject matter of this Wireless Services Agreement 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:

- a. Immediately upon termination of the Agreement between us (or our affiliates) and Vendor(s), provided that we will notify you promptly upon our notice or knowledge of termination of such Agreement, provided further that if 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 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 Vendor(s), then we may, in our sole discretion, continue to provide the Wireless Services through 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.** Our affiliates and 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 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 us, or that is or has been provided to you by a third party (to the extent expressly stated herein). If your Application or other documents reflect that your equipment is leased, then the provisions of your lease are governed by Section 31 in the Equipment Lease Agreement. Equipment rented to or purchased by you under this Section 31 is referred to in this section as the "Equipment." THE EQUIPMENT IS NOT BEING SOLD OR RENTED TO YOU FOR HOME OR PERSONAL USE. Sales and rentals of equipment are made by Processor, and for purposes of this section the words "we," "our," and "us" refer only to Processor and not to Bank. The Agreement between Processor and you as set forth in this section is referred to as the "Equipment Agreement," and the full Agreement of which the Equipment Agreement is a part is referred to as the "Merchant Agreement."

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASED OR RENT FROM US MAY NOT BE COMPATIBLE WITH ANOTHER 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 Merchant Agreement as being purchased by you (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, prior to the effective date of the Equipment 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. If merchant owned equipment becomes inoperable, we will provide a replacement based on inventory availability for a fee. If a like for like replacement is not available, you will be required to upgrade your merchant owned equipment. You should contact the POS Help Desk to order replacement equipment.

**31.2. Rental Equipment.** We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Merchant Agreement as being rented to you (the "Rental Equipment"), according to the terms and conditions of this Section 31. In addition, any rental equipment ordered by you during the term of the Merchant Agreement shall also be governed by the terms of this Equipment Agreement.

**31.3. Effective Date and Term of Equipment Agreement.** This Equipment Agreement shall become effective on the first date you receive any piece of Equipment covered by this Equipment Agreement. This Equipment Agreement will remain in effect until all of your obligations and all of our obligations under this Equipment 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 Rental 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 your Merchant Agreement and/or any other agreement then in effect with us for Card services. The provisions of this Equipment Agreement shall survive the termination or expiration of the Merchant Agreement and continue until all equipment rented from us 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.

- 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. The monthly rental charge specified in the Merchant Agreement 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 Merchant Agreement 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 Equipment Agreement 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 you under the Merchant Agreement (the "Settlement Account") or by deducting such amounts from amounts due to you from TeleCheck or Servicers. All authorizations and other provisions in your Merchant Agreement regarding the debiting and crediting of your Settlement Account apply with equal force with respect to amounts due to or from you under this Equipment Agreement. This authority will remain in full force and effect until we have given written notice to your bank where your Settlement Account is maintained that all monies due from you under this Equipment Agreement have been paid in full.
- 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 Equipment 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. As indicated in the Merchant Agreement, 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 provided under your Merchant Agreement. 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 Equipment 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 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 Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the 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 Merchant Agreement 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. Company 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.

**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 (v) 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 Equipment Agreement to the contrary notwithstanding, we 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 license to use the Software in your operation of the Equipment. 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.** Our liability arising out of or in any way connected with the Equipment shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Equipment Agreement will be your sole and exclusive remedies.

Client acknowledges and understands that we shall have no responsibility or liability concerning any equipment used by Client, including but not limited to hardware or software, obtained in any manner from a third party. In no event will we be responsible for any damages or losses whatsoever that Client may incur as a result of using any equipment obtained from a third party.

**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.

**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 Equipment Agreement, or if any other default occurs under the Merchant Agreement, any such event shall be a default hereunder.
- b. Upon the occurrence of any default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Equipment Agreement, 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 Equipment Agreement 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.

**31.12. Assignment.** Subject to the following provisions, this Equipment Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. You may not assign or transfer this Equipment Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Equipment Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer hereof. We may assign or transfer this Equipment Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Equipment Agreement.

This Section 32 governs any equipment that is leased to you by us. 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.

The Equipment Lease Agreement ("Lease Agreement") between us and you as set forth in this section is referred to as the "Lease Agreement" and for purposes of this Section 32, the full Agreement of which this Lease Agreement is a part is referred to as the "Merchant Agreement." For purposes of this section, the words "we," "our" and "us" refer to Wells Fargo Merchant Services, L.L.C. and its successors and assigns and the words "you" and "your" refer to the Lessee identified in the signature panel of this Merchant Agreement and its permitted successors and assigns.

Lessee hereby authorizes us or our designees, successors or assigns (hereinafter "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.

**32.1. Leased 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.

**32.2. 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.

**32.3. 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.

#### **32.4. 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.

#### **32.5. Use and Return of Leased 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 Leased 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.

**32.6. Title to Leased 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.

#### **32.7. Return or Purchase of Leased 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 Leased Equipment to us, or (b) purchase the Leased 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 Leased Equipment. In the absence of an affirmative election by you to return or purchase the Leased 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 32.12 (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 Leased Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 32.7 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.

**32.8. 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.

**32.9. 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.

#### **32.10. 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.

**32.11. 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.

**32.12. 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 an 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.

**32.13. 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. We intend to assign this Lease Agreement shortly after its execution to First Data Merchant Services Corporation.

**32.14. 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.

**32.15. Notices.** All notices must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing on the Merchant Agreement, and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida 33065. Attn: Lease Department. Customer Service toll free number 1-877-257-2094.

**32.16.** 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.

**33. Choice of Law; Venue; Waiver of Jury Trial**

**33.1. 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).

**33.2. 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.

**33.3. 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.

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

Gift Card Services are provided to you by Processor, and 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.**

**34.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 34.1 or as defined in the Glossary or elsewhere in this Section.

- a. "ACH" means the Automated Clearing House system.
- b. "Affiliate" means, with respect to either party, any entity that controls, is controlled by or is under common control with such party.
- c. "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.
- d. "Database" means the database on which Gift Card Data for each Gift Card issued under the Program is maintained.
- e. "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.
- 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 or Client 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. "PIN" means a Personal Identification Number.
- n. "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.

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

**34.2. 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.

**34.3. 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 or the Gift Card Equipment at which the transaction was initiated.
- 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 third party 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 third party, 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.

#### **34.4. Fees and Payment.**

- a. 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. All fees not paid within thirty (30) days of the date of Processor's merchant statement setting forth such fees shall incur interest at the rate equal to the lesser of (i) ten percent (10%) per annum, or (ii) the maximum rate permitted by applicable law from the date on which payment should have been made until the date on which Processor receives the payment.
- b. Processor may increase rates from time to time to the extent necessary to pass through increases in the costs of the underlying goods and services used or provided by Processor in connection with the provision of Services. Any such adjustments shall become effective upon written notice to Client.
- c. Processor may also increase rates for any other reason upon 30 days' written notice to Client.

#### **34.5. 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 34.4(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 34.5(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 34.6(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 34.3 (f), (g), (h), (i), (k) and (l), and Sections 34.4, 34.5(b), 34.5(c), 34.5(d), 34.6 and 34.7 hereof shall survive any termination or expiration to effectuate their intent shall survive termination of the Gift Card Services.

#### **34.6. Indemnification.**

- a. Client shall indemnify and hold harmless Servicers, their 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 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 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 Processor's business as a service provider; 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.

**34.7. 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.

#### **34.8. Limitation of Liability; Disclaimer of Warranties.**

- a. 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 AND 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).

- b. IN NO EVENT SHALL ANY PARTY, THEIR AFFILIATES, OR ANY OTHER OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST REVENUES, 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 EITHER PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. THIS SECTION GOVERNS THE PROVISION OF SERVICES, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, PROCESSOR DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS SECTION.

### 35. Other Terms

**35.1. 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 third party 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 third party shall not excuse the performance of your obligations to us under this Agreement.

**35.2. 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.

**35.3. 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, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier), if to you at your address appearing in the Application, and if to us at our address appearing on the Additional Important Information page, 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, when mailed or 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.

**35.4. 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.

**35.5. 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.

**35.6. 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.

**35.7. 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 thirty (30) 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.

**35.8. No Third Party Beneficiaries.** 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 third parties to be third-party beneficiaries of this Agreement.

**35.9. Association Rules.** The parties acknowledge that the Visa, MasterCard and Discover Association 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 Association Rules with respect to this Agreement's applicability to transactions involving such other Cards.

**35.10. Publicity.** Client may not use our logo, name, trademark, or service mark, including without limitation, in any advertisements, displays, or press releases without our prior written consent.

**35.11.** 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.

**35.12. IRS Reporting.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return with the IRS for each calendar year beginning January 1, 2011, reporting all payment card transactions and third party network transactions with merchants occurring in that calendar year. Accordingly, you will receive a Form 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 the 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:** In the case of MasterCard and Visa transactions or network Acquirers 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.

**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.

**Association:** Any entity formed to administer and promote Cards, including without limitation MasterCard International, Incorporated ("MasterCard"), Visa U.S.A., Inc. and Visa International ("Visa"), Discover, American Express and any applicable debit networks.

**Association Rules:** The rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Association.

**Authorization:** Approval by, or on behalf of, the Card Issuer to validate a transaction for a merchant or another affiliate bank. An authorization indicates only the availability of the Cardholder's Credit Limit 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:** A day (other than Saturday or Sunday) on which Bank is open for business.

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

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

**Card issuer:** The bank or Association that issues a Card to an individual.

**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 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.

**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).

**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:** The procedure by which a Sales Draft or other indicia of a Card transaction (or disputed portion) is returned to Bank, the Acquirer or the Issuer. Client is responsible for reimbursing 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 "you," "your," "Customer" and "Merchant" also refer to Client.

**Credit:** A refund or price adjustment given for a previous purchase transaction.

**Credit Card:** A valid Card authorizing the Cardholder to buy goods or services on Credit and bearing the service mark of Visa, MasterCard or Discover and, to the extent the Schedules so provide, a valid Card authorizing the Cardholder to buy goods or services on Credit and issued by any other Associations specified on such Schedules.

**Credit Draft:** A document evidencing the return of merchandise by a Cardholder to a Client, or other refund made by the Client to the Cardholder.

**Credit Limit:** The credit line set by the Card Issuer for the Cardholder's 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:** An amount charged a merchant for processing its qualifying daily Credit Card transactions. 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 system that allows a government benefit recipient to authorize the transfer of their benefits from a Federal, State or local government account to a merchant account to pay for products and services received.

**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 a Card 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 Bank or Association which has issued a Card to an individual. MasterCard and Visa only issue Cards through Banks ("Issuing Banks") while Discover may issue Cards directly or issue Cards through an Issuing Bank.

**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.

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

**Merchant Processing Application:** The Application executed by Client, Processor and Bank, which is one of the documents comprising the Agreement.

**Non-PIN Debit Card:** A Debit Card 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 associated with the more costly interchange level at which the transaction actually was processed.

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

**PAN Truncation:** A procedure by which a Cardholder's copy of a Sales or Credit Draft will only reflect the last four digits of the Card.

**PIN:** A Personal Identification Number entered by the Cardholder to submit a PIN Debit Card transaction.

**PIN Debit Card:** A Debit Card used at a merchant location by means of a Cardholder-entered PIN in the merchant PIN Pad. PIN Debit Cards bear the marks of ATM networks (such as NYCE, Star).

**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 this Application (other than the Bank) which provides certain services under this Agreement.

**Program Guide:** The booklet which contains Operating Procedures, General Terms, Third Party Agreements, and Confirmation Page, which, together with the Merchant Processing 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 consumer provides permission to a merchant to bill the consumer's Card account at either a predetermined interval or as agreed by the Cardholder for recurring goods or services.

**Referral:** This 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:** A fund established and managed by us to protect against actual or contingent liability arising from Chargebacks, adjustments, fees and other charges due to or incurred by us.

**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 Association. The Resubmission transaction allows the merchant to attempt to obtain an approval for the soft denial, in which case you assume 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 Draft:** Evidence of a purchase of goods or Services by a Cardholder from Client using a Card, regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Association Rules and applicable law.

**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.

**Schedules:** The attachments, addenda and other documents, including revisions thereto, which may be incorporated into and made part 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 PINs.

**Services:** The activities undertaken by Processor and Bank to authorize, process and settle all United States Dollar denominated Visa, MasterCard and Discover Card 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.

**Servicers:** For Visa and MasterCard Credit and Non-PIN Debit Card transactions. Bank and Processor collectively. The words "us" and "we" refer to Servicers.

**Settlement Account:** An account 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., Amex) 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., Amex) 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 prepaid 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:** See Servicers.

**You, Your:** See Client.

## 37. ADDITIONAL IMPORTANT INFORMATION PERTAINING TO THIS ENTIRE AGREEMENT

### 37.1. 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.

### 37.2. 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".

### 37.3. 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-approvals, 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.

If Client has twelve (12) or more months in Net Credit Card and Non-PIN Debit (MasterCard/Visa and Discover) including PIN Debit volume ("Sales Volume") and 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 \$3,000,000, the early termination fee is \$500 per location; or
- If the Client's total Sales Volume for the past 12 months is greater than or equal to \$3,000,000, the early termination fee is 0.06% multiplied by the total Sales Volume for the past 12 months.

If Client has less than twelve (12) months in Sales Volume and 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 annualized Sales Volume for the past 12 months\* is less than \$3,000,000, the early termination fee is \$500 per location; or
- If the Client's annualized Sales Volume for the past 12 months\* is greater than or equal to \$3,000,000, the early termination fee is 0.06% multiplied by the annualized Sales Volume.

\*If Client has less than twelve months of Sales Volume, the annualized Sales Volume is calculated by summing the monthly Sales Volume since the account was initially active, divided by the number of months since active, and multiplied by 12. An active account is defined as 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 calculated by using the total annual volume provided by the Client on the Application.

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.

### 37.4. Addresses for Notices

**Wells Fargo Merchant Services, L.L.C.:**  
1307 Walt Whitman Road  
Melville, NY 11747  
Attn: Sales Manager

**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. 2900, 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.

## **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.

This TeleCheck Services Agreement (the "Agreement") is entered by and between TeleCheck Services, Inc. ("TeleCheck") and Subscriber as indicated on the Merchant Processing Application ("Subscriber"). TeleCheck will provide the Electronic Check Acceptance\* ("ECA\*") Warranty Services ("ECA Warranty Services") or Paper Check Acceptance Warranty Services ("Paper Warranty Services") as selected in the Merchant Processing Application. Upon processing Subscribers first check through the TeleCheck® service 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 Agreement (the "Agreement") is entered by and between TeleCheck Services, Inc. ("TeleCheck") and Subscriber as indicated on the Merchant Processing Application ("Subscriber"). TeleCheck will provide the Electronic Check Acceptance\* ("ECA\*") Warranty Services ("ECA Warranty Services") or Paper Check Acceptance Warranty Services ("Paper Warranty Services") as selected in the Merchant Processing Application. Upon processing Subscribers first check through the TeleCheck® service 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 TeleCheck 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 addenda (and in the case of TeleCheck, 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. "**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. "**C.O.D. Item**" means an outstanding financial obligation created pursuant to a paper check that is processed using TeleCheck's C.O.D. Warranty services, which are part of the Paper Warranty Services program. "**ECA Warranty Transaction**" means a transaction processed by TeleCheck as an electronic funds transfer, a remotely created check or a paper check for the contemporaneous purchase of goods or services by a Consumer. "**Effective Date**" means the earlier of the date Subscriber's first check is processed through the TeleCheck® service or the date Subscriber is entered into the TeleCheck system as a subscriber. "**Hold Check Item**" means an outstanding financial obligation created pursuant to a paper check, which is held prior to deposit in the Subscriber's financial institution account, written in connection with the purchase of a vehicle, and processed using TeleCheck's Hold Check Warranty services, which are part of the Paper Warranty Services program. "**Item**" means any outstanding financial obligation pursuant to a paper check, electronic funds transfer, remotely created check, C.O.D. Item, Hold Check Item, or Mail Order Item processed under this Agreement. "**Mail Order Item**" means an outstanding financial obligation

created pursuant to a paper check that is processed using TeleCheck's Mail Order Warranty services, which are part of the Paper Warranty Services program. "**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 Services 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 presentation 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 and its affiliates and their respective 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 face of this Agreement; (iii) \$25,000.00; or (iv) \$50.00 for a Subscriber under Flat Rate billing; and (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 face of this Agreement; (iii) \$99,999.99; or (iv) \$50.00 for a Subscriber under Flat Rate billing.

### TERMS APPLICABLE ONLY TO TELECHECK ECA WARRANTY SERVICE

#### 1.3. ECA Warranty Services.

**1.3.1. Description.** The TeleCheck ECA Warranty Services provide 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 1.3.3, all in accordance with this Agreement.

**1.3.2. Processing.** 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 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 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 account at a United States, Canada or Puerto Rico 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 Section 1.3.6(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, except that a Consumer purchase transaction at a grocery store may also include cash back not to exceed \$25.00 above the purchase amount;
- 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;
- 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 1.3.3(l), (m) and (n), and those set forth in Section 1.4.2 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 Services, 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
- 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) 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 1.3.3. 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, Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the face of this Agreement 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. The **"Transaction Fee"** is the additional per transaction charge for each ECA Warranty Transaction. The **"One Rate"** is a monthly fee for the ECA Warranty services, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee, Monthly Processing/Statement Fee and December Risk Charge. 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 Monthly Check Volume as stated in the face of this Agreement is accurate. Subscriber acknowledges that the fee is tied to monthly check volume and recognizes that TeleCheck may, in accordance with Section 1.1.1, increase the fee or institute traditional billing if Subscriber's monthly check volume exceeds TeleCheck's parameters. The **"Flat Rate"** is a monthly fee for the ECA Warranty services, and is intended

to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee and December Risk Charge. 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"** is an additional fee per operator-assisted call not requested by TeleCheck. The **"December Risk Surcharge"** is an additional percentage charge for each transaction 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 locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The **"Dual ID Surcharge"** is an additional 85 basis points (0.85%) charge for each transaction if the amount of the Item exceeds the MICR floor limit established by TeleCheck for Subscriber, and Subscriber is prompted for but does not obtain a second form of identification. 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 Support Fee"** is a \$10.00 monthly fee 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 **"Warranty Research Fee"** of \$7.50 may be charged each time Subscriber requests substantiation of a warranty payment/non-payment. 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. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### TERMS APPLICABLE ONLY TO TELECHECK PAPER CHECK ACCEPTANCE WARRANTY SERVICES

##### 1.4. Paper Check Acceptance Warranty Services.

**1.4.1. Description.** The TeleCheck Paper Warranty services 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 1.4.2, 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 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 1.4.4(f)), including through split sales;
- 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, except that a Consumer purchase transaction at a grocery store may also include cash back not to exceed \$25.00 above the purchase amount;

- 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 re-presentments shall be allowed, whether paper or electronic);
- j. If the check is provided in connection with a C.O.D. Item:
  - (i) Subscriber, at TeleCheck's request or direction, included a reasonable estimate of the freight and handling charges that will be included in the amount of the check submitted for processing as a C.O.D. Item,
  - (ii) the date of the inquiry call to TeleCheck is no later than 10 days of the date of the check submitted for processing as a C.O.D. Item, (iii) the date of the inquiry call and the TeleCheck Approval Code are both written on the check submitted for processing as a C.O.D. Item,
  - (iv) the amount of the C.O.D. Item does not differ by more than 10% from the amount approved by TeleCheck during Subscriber's inquiry related to the check submitted for processing as a C.O.D. Item, and
  - (v) the check submitted for processing as a C.O.D. Item is received by TeleCheck for purchase within 45 days from the date of the inquiry call (a copy of the invoice for the merchandise paid for using the check submitted for processing as a C.O.D. Item must accompany the check when sent to TeleCheck);
- k. If the check is provided in connection with a Hold Check Item:
  - (i) Subscriber has not accepted more than 4 checks as Hold Check Items for any transaction involving the Consumer's purchase of a particular vehicle,
  - (ii) the first check submitted for processing as a Hold Check Item must be deposited within 2 days of the vehicle's purchase,
  - (iii) the aggregate dollar amount of TeleCheck's warranty for the Hold Check Item and the aggregate dollar amount of checks submitted for processing as Hold Check Items accepted by Subscriber shall be the lesser of (A) the aggregate amount of the checks submitted for processing as Hold Check Items accepted by Subscriber for the purchase, (B) the Warranty Maximum, or (C) 25% of the total purchase price of the vehicle;
  - (iv) the check submitted for processing as a Hold Check Item must be dated the same date as the purchase agreement and coincide with the date of inquiry to TeleCheck (the inquiry to TeleCheck must be made using Subscriber's Hold Check subscriber number);
  - (v) the check writer must be (A) the purchaser of the vehicle, (B) the person whose name is to be on the title of the vehicle, and (C), if the vehicle is being financed, the person listed on the finance related documents;
  - (vi) a Check Writer Hold Agreement, as provided by TeleCheck, outlining the Hold Check Item amounts and deposit dates must be completed and agreed upon by Subscriber and the check writer. For California Subscribers only: A Check Writer Hold Agreement, as provided by TeleCheck, outlining the amounts of the checks submitted for processing as Hold Check Items and deposit dates (A) must be completed and agreed upon by Subscriber and the check writer, (B) shall not be executed by Subscriber and the check writer, (C) shall have the following, or a substantially similar provision, printed or written on the agreement: "Incorporated by reference into Sales Contract"; and (D) shall be stapled to the sales contract for the vehicle. In addition, the sales contract for the purchase of the vehicle shall (1) include total amount of checks submitted for processing as Hold Check Items, and (2) have the following, or a substantially similar provision, printed or written on the contract: "See attached Check Writer Hold Check Agreement incorporated by this reference";
- (vii) the request for processing a Hold Check Item must be submitted to TeleCheck within 45 days from the date of the check submitted for processing as a Hold Check Item, and must be accompanied by (A) a copy of the purchase agreement, (B) a copy of the Check Writer Hold Check Agreement, (C) a copy of the credit application, (D) proof of purchaser's insurance, and (E) a TeleCheck Warranty Request form, and;
- (viii) notwithstanding the foregoing representations in this Section 1.4.2(k), the Hold Check Item Warranty Services will not be available if (A) the vehicle has not left Subscriber's possession, (B) the vehicle has been returned to Subscriber's possession, (C) an attempt has been made by Consumer to return the vehicle to Subscriber, but, Subscriber has not accepted return of the vehicle, or (D) the Consumer has attempted to rescind the purchase;
- l. If the check is provided in connection with a Mail Order Item:
  - (i) the date of the check submitted for processing as a Mail Order Item and the date of the inquiry call to TeleCheck are no later than the date of the deposit of the check submitted for processing as a Mail Order Item;
  - (ii) the goods purchased through mail order are not mailed to a P.O. Box address (unless the order is mailed to a post office box located in Alaska);
  - (iii) the date of the inquiry call to TeleCheck is written on the check submitted for processing as a Mail Order Item; and
  - (iv) the check submitted for processing as a Mail Order Item is received by TeleCheck for purchase within 45 days from the date of the inquiry call (a copy of the invoice for the goods must accompany each warranty request); and
- m. 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 Services, 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 Services provisions of this Agreement, in any of the following circumstances:
    - a. The goods or services, in whole or in part, for which the check was issued 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 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 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

- 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, Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the face of this Agreement 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. The **"Transaction Fee"** is the additional per transaction charge for each transaction. The **"One Rate"** is a monthly fee for the TeleCheck service, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee, Monthly Processing/Statement Fee and December Risk Charge. 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 Volume as stated in the face of this Agreement is accurate. Subscriber acknowledges that the fee is tied to monthly check volume and recognizes that TeleCheck may, in accordance with Section 1.1.1, increase the fee or institute traditional billing if Subscriber's monthly check volume exceeds TeleCheck's parameters. The **"Flat Rate"** is a monthly fee for the ECA Warranty services, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee and December Risk Charge. 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"** is an additional fee per operator-assisted call not requested by TeleCheck. The **"December Risk Surcharge"** is an additional percentage charge for each transaction 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 locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The **"Dual ID Surcharge"** is an additional 85 basis points (0.85%) charge for each transaction if the amount of the Item exceeds the MICR floor limit established by TeleCheck for Subscriber, and Subscriber is prompted for but does not obtain a second form of identification. The **"POS Support Fee"** is a \$10.00 monthly fee 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 **"Warranty Research Fee"** of \$7.50 may be charged each time Subscriber requests substantiation of a warranty payment/non-payment. 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. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

## TERMS APPLICABLE ONLY TO TELECHECK PAPER CHECK ACCEPTANCE VERIFICATION SERVICES

### 1.5. Paper Verification Services.

**1.5.1. Description.** The TeleCheck Paper Check Acceptance Verification services provide Subscriber with coded information to assist Subscriber in deciding whether or not to accept a check. TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber for any loss from transactions processed through the Paper Verification services. Subscriber assumes all risks that checks accepted by Subscriber may result in Return Items.

**1.5.2. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the face of this Agreement and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The **"Transaction Fee"** is the per transaction charge for each Item for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The **"Flat Rate"** is a monthly fee for the Paper Verification service, and is intended to replace the Transaction Fee and Monthly Minimum Fee. The **"Monthly Minimum Fee"** is the minimum aggregate amount of Transaction Fees that Subscriber shall pay on a monthly basis. If the total Transaction 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"** is an additional fee per operator-assisted call not requested by TeleCheck. 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 locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The **"POS Support Fee"** is a \$10.00 monthly fee for point of sale support services. 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. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

### GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES

**1.6. Equipment.** Title to all rental equipment or equipment loaned to Subscriber, if any, is retained by TeleCheck. Upon termination of this Agreement, Subscriber, at Subscriber's expense, shall return all equipment to TeleCheck in good repair, ordinary wear and tear excepted. 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. TeleCheck will replace or repair equipment rented or supported by TeleCheck upon Subscriber's request; provided, however, that a swap fee of \$39.95 shall be charged per equipment item replaced for the Eclipse Payment Terminal and a swap fee of \$59.95 shall be charged per equipment item replaced for any other type of equipment. If replacement equipment is mailed to Subscriber, it is Subscriber's responsibility to return replaced equipment to TeleCheck's office within twenty (20) business days or Subscriber shall be deemed to have purchased and be billed for such equipment. A fee of \$40.00 per hour, plus the cost of parts, shall be charged for repair of any damage to the equipment rented or supported by TeleCheck, ordinary wear and tear excepted. A reprogramming fee of \$25.00 will be charged for each occasion that a piece of equipment is reprogrammed for additional features or different information. Subscriber shall not permit persons other than authorized representatives of TeleCheck to adjust, maintain, program or repair any equipment. Subscriber shall bear the entire risk of loss, theft or damage of or to equipment, whether or not owned by Subscriber. There is a 90-day manufacturer's warranty on purchased equipment. A fee for the shipping and handling of equipment and parts will be charged to the Subscriber.

**1.7. 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).

**1.8. 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.

**1.9. 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.

**1.10. 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.

**1.11. 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 TeleCheck 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 you 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.

**1.12. 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 Services, 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")."

**1.13. 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.

**1.14. 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.

**1.15. 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.

**1.16. 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 TELECHECK 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.

**1.17. 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, request to 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, request to 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 request to increase its fees to cover such increases. If TeleCheck makes such request and the parties are unable to agree upon corresponding changes to the terms and conditions of this Agreement within 30 days of such request, TeleCheck may terminate this Agreement upon 30 days written notice.

**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 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 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 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 face of this Agreement 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. The parties' addresses may be changed by written notice to the other party as provided herein.

**1.23. 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.

**1.24. Compliance with Laws, Governing Law and Integration.** The parties agree to comply with all applicable federal and state laws, regulations and rules, including NACHA Rules, relating to the services provided hereunder. Subscriber certifies that it has not been suspended by NACHA or any credit card association, 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.**

**1.25. Severability and Interpretation.** 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.

**1.26. 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.

**1.27. 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 and shall not be construed as a penalty.

**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.

## 2.0. AMERICAN EXPRESS® CARD ACCEPTANCE AGREEMENT

### Agreement for American Express® Card Acceptance American Express OnePoint® Program

The Agreement is by and between American Express Travel Related Services Company, Inc., a New York corporation, and you, the Merchant. By accepting the American Express® Card, you agree to be bound by the Agreement.

#### GENERAL PROVISIONS

##### 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 below. 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: [www.wellsfargo.com/biz/americanexpress](http://www.wellsfargo.com/biz/americanexpress). 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.

**Card Not Present Charge** means a Charge for which the Card is not presented at the point of sale (e.g., Charges by mail, telephone, fax or the Internet), is used at unattended Establishments (e.g., customer activated terminals, called CATs), or for which the transaction is key-entered.

**Card Present Charge** means a Charge for which the Card is presented at the point of sale.

**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.

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

**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).

**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.

**Immediate Chargeback** (sometimes called "Immediate Full Recourse" in our materials) means our right to Chargeback immediately and irrevocably without first contacting you or sending you an Inquiry and for which you have no right to present any written response to dispute the Chargeback.

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

**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.

**Merchant Regulations** means the American Express Merchant Regulations – U.S., which are available from your Service Agent.

**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 jointly and severally liable for the 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 Standard 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 have some security for your or any of your Affiliates' obligations to us or any of our Affiliates, under the Agreement or any Other Agreement. If we so determine, we may (i) withhold and offset amounts from payments we otherwise would make to you under the Agreement or (ii) establish a Reserve, including by requiring you to deposit funds or other collateral with us.

**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; or (vi) our reasonable belief that you will not be able to perform your obligations under the Agreement, under any Other Agreement, or to Cardmembers.

**c. Establishing a Reserve.** If an event leads us to believe that we need to create a Reserve, then we may immediately establish a Reserve or terminate the Agreement. We shall inform you if we establish a Reserve. We may increase the amount of the Reserve at any time as 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 from Charges submitted by you for goods or services not yet received by Cardmembers) or to us or our Affiliates under any Other Agreement, or to Cardmembers.

**d. Other Protections.** We may deduct and withhold from, and recoup and offset 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 administration of the Reserve, including legal 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 legal fees. We may take other reasonable actions to protect our rights or those of any of our Affiliates, including changing the speed or method of payment for Charges, exercising immediate Chargeback, or charging you fees for Disputed Charges. If we deem it necessary based on our assessment of risk posed by your business, we may require you at any time to deposit funds or other collateral with us as security to protect our financial risk hereunder as a condition of your accepting the Card. These funds and collateral shall be treated as a Reserve under the Agreement.

**e. Providing Information.** You must provide to us promptly, upon request, information about your finances, creditworthiness, and operations, including your most recent certified financial statements.

## 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 above.

**b. Grounds for Termination.** In addition to our rights in Sections 2.3.c and 2.6.a above, 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 2.7 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)

**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.

**d. 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 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 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 2.7 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, 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 2.7.c. above, if any portion of this Section 2.7 (other than Section 2.7.c or d) is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this Section 2.7, the Agreement, or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

## 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 noncooperative 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 2.7, 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. 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 above, 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 entire agreement between you and us regarding the subject matter hereof and supersedes any previous agreements, understandings, or courses of dealing regarding the subject matter hereof.

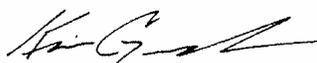
l. **Disclaimer of Warranties.** WE DO NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE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

n. **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  
Executive Vice 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

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.

#### 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.

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 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 45 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 37.3 under "Additional Important Information".
9. **If you lease equipment from Processor**, it is important that you review Section 32. This lease 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. Association 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 Association 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 Association thresholds.
- (c) Review and understand the terms of the Merchant Agreement.
- (d) Comply with Association rules.

Print Client's Business Legal 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 WFB1301) consisting of 50 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

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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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 37.3 under "Additional Important Information".
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- (b) Maintain fraud and chargebacks below Association thresholds.
- (c) Review and understand the terms of the Merchant Agreement.
- (d) Comply with Association rules.

Print Client's Business Legal 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 WFB1301) consisting of 50 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

**EXHIBIT "B"**  
**CONTRACTOR'S PROCESSING FEES**

**Credit Card Processing Fees**  
**Interchange Plus the Following Fees**

**TABLE 1 – VOLUME DISCOUNT TIERS AND APPLICABLE RATES**

<b>Tiers</b>	<b>Annual Net Visa/MasterCard/Discover Network Card Transaction Volume</b>	<b>Visa/MasterCard/Discover Network Card (Credit &amp; Non-PIN Debit) Authorization Fee</b>
<b>1</b>	<b>380,000 to 500,000</b>	<b>\$0.07</b>
<b>2</b>	<b>500,001 to 700,000</b>	<b>\$0.065</b>
<b>3</b>	<b>700,001 and up</b>	<b>\$0.055</b>

**TABLE 2 - OTHER PROCESSING FEES**

<b>Chargeback Fee</b>	<b>\$5.00 per chargeback</b>
<b>Monthly Internet Service fee per location</b>	<b>\$20 per month</b>
<b>ACH reject fee</b>	<b>\$10.00 per reject</b>
<b>Voice Authorization Fee</b>	<b>50 cents per attempt</b>
<b>Authorization/Electronic Data Capture (EDC) fee for Visa, Discover or MasterCard</b>	<b>50 cents per attempt</b>
<b>American Express Authorization/EDC</b>	<b>No fee</b>
<b>Foreign Handling Fee on Visa/MasterCard foreign card transactions</b>	<b>0.10% on foreign card sales</b>
<b>Non Bank Card Authorization Applies only to American Express (External Sales Agent &amp; EDC) and Discover External Agent Sales Incentive (EASI) only</b>	<b>7 cents per attempt</b>
<b>Non Bank Card Capture Fee American Express (EA/EDC), Discover EASI</b>	<b>No fee per attempt</b>
<b>Terminal Reprogramming Fee</b>	<b>\$75.00 per terminal</b>
<b>Integrated Terminal Reprogramming Fee</b>	<b>\$150.00 per terminal</b>
<b>ADDITIONAL PASS THROUGH FEES</b>	
<b>Visa Assessment Fee</b>	<b>0.0925% on Gross Visa Sales</b>
<b>MasterCard Assessment fee</b>	<b>0.11% on Gross MasterCard Sales</b>
<b>Discover Network Card Assessment Fee</b>	<b>0.0925% of gross Discover Network sales</b>
<b>Visa International Service Fee</b>	<b>0.40% per Non-US issued Visa transaction</b>
<b>MasterCard Cross Border Fee</b>	<b>0.40% per Non-US issued MasterCard transaction settled in US dollars</b>
<b>MasterCard Cross Border Fee (non US\$)</b>	<b>0.80% per Non-US issued MasterCard transaction settled in non-US dollars</b>
<b>Visa Misuse of Authorization Fee</b>	<b>\$0.045 per attempt</b>
<b>Visa Zero Amount Fee / Visa Zero Amount Fee and AVS</b>	<b>\$0.025 per attempt</b>
<b>Visa Zero Floor Limit Fee</b>	<b>\$0.10 per transaction</b>
<b>Visa Authorization Processing Fee</b>	<b>\$0.0195 per attempt</b>
<b>MasterCard Network Access Usage Fee</b>	<b>\$0.0185 per US acquired MasterCard gross sales and return transaction</b>

## Wells Fargo Merchant Services Debit Network Schedule Effective 08/1/2010



Applicable Debit Network, Switch, Service and Administrative fees are passed through on all PIN Debit transactions (completed and declined). Applicable Debit Network Interchange fees are passed through on completed PIN Debit transactions only.<sup>1</sup>

Debit Network	Categories	2010 Interchange Rates and Fees	2010 Switch Fee
<b>Accel*</b>	All Other Merchant Types	.80% of gross transaction amount + \$0.18, (No Cap)	\$0.03
	Petroleum (MCCs 5541, 5542)	.80% of gross transaction amount + \$0.16, (No Cap)	\$0.03
	QSR (MCC 5814)	.95% of gross transaction amount + \$0.15, (No Cap)	\$0.03
	Supermarket (MCCs 5300, 5411)	\$0.28	\$0.03
<b>AFFN</b>	All other MCCs	.65% of transaction amount (exclusive of cash back) + \$0.12, capped at \$0.50	\$0.035
	National / Major Merchants (MCCs 5310, 5499, 5541, 5542, 5912, 7511, 9399, 9402)	.50% of transaction amount (exclusive of cash back) + \$0.065, capped at \$0.40	\$0.035
	Supermarket (MCCs 5300, 5411)	\$0.17	\$0.035
<b>Alaska Option*</b>	All MCCs	\$0.19	\$0.07
<b>Credit Union 24 (CU24)</b>	All other MCCs	.85% of gross transaction amount + \$0.16, capped at \$0.80	\$0.030
	Petroleum (MCCs 5541, 5542, 7511)	.75% of gross transaction amount + \$0.18, (No Cap)	\$0.030
	QSR (MCCs 5812, 5814)	1.25% of gross transaction amount + \$0.03, capped at \$0.70	\$0.030
	Supermarket (MCCs 5300, 5411)	\$0.275	\$0.030
<b>Interlink*</b>	Petroleum (MCCs 5541, 5542)	.75% of gross transactions amount + \$0.17, capped at \$0.95	\$0.035
	Quasi Cash (MCCs 4829, 6051, 7995)	2.30% of gross transaction amount + \$0.10, (No Cap)	\$0.035
	Retail	.95% of gross transaction amount + \$0.20, (No Cap)	\$0.035
	Supermarket (MCC 5411)	.95% of gross transactions amount + \$0.20, capped at \$0.35	\$0.035
	International Service Assessment (ISA) Fee	An additional .40% on foreign issued cards for all categories	
<b>Jeanie</b>	Non Supermarket	.80% of gross transaction amount + \$0.185, (No Cap)	\$0.05
	QSR	1.25% of gross transaction amount + \$0.15, capped at \$0.75	\$0.04
	Supermarket	\$0.35	\$0.05
<b>Maestro*</b>	QSR (MCCs 5499, 5541, 5542, 5814, 7832)	.75% of gross transaction amount + \$0.17, capped at \$0.95	\$0.025
	Retail	.90% of gross transaction amount + \$0.15, (No Cap)	\$0.025
	Supermarket (MCCs 5300, 5411)	1.05% of gross transaction amount + \$0.15, capped at \$0.35	\$0.025
	Cross Border / Foreign Fee	1.50% of gross transaction amount on foreign issued cards, (No Cap)	\$0.025
<b>NYCE*</b>	All Other	.90% of gross transaction amount + \$0.12, Minimum fee \$0.21, (No Cap)	\$0.0425
	All Other Premier Issuer <sup>2</sup>	.90% of gross transaction amount + \$0.18, Minimum fee \$0.27, (No Cap)	\$0.0425
	Petroleum	.85% of gross transaction amount + \$0.10, Minimum fee \$0.22, capped at \$0.85	\$0.02 on pre-auth \$0.0425 on completion
	Petroleum Premier Issuer <sup>2</sup>	.85% of gross transaction amount + \$0.15, Minimum fee \$0.27, capped at \$0.90	\$0.02 on pre-auth \$0.0425 on completion
	Small Ticket (MCC 5814)	1.25%	\$0.0425
	Small Ticket Premier Issuer <sup>2</sup>	1.25% + \$0.04	\$0.0425
	Supermarket (MCCs 5300, 5411)	.90% of gross transaction amount + \$0.14, Minimum fee \$0.21, capped at \$0.29	\$0.0425
	Supermarket Premier Issuer <sup>2</sup>	.90% of gross transaction amount + \$0.20, Minimum fee \$0.27, capped at \$0.35	\$0.0425
<b>Pulse*, TYME*</b>	Petroleum (MCCs 5541, 5542)	.70% of gross transaction amount + \$0.13, capped at \$0.95 Network Security Fee .01%	\$0.02 on pre-auth \$0.08 on completion
	Retail	.85% of gross transaction amount + \$0.13, (No Cap) Network Security Fee .01%	\$0.08
	Retail Pulse Pay* Choice <sup>3</sup>	.85% of gross transaction amount + \$0.18, (No Cap) Network Security Fee .01%	\$0.08
	Small Ticket (MCCs 3581, 4111, 4121, 4131, 4784, 5812, 5814, 5994, 7211, 7216, 7334, 7523, 7542, 7832, 7841)	1.55% of gross transaction amount, (No Cap) Network Security Fee .01%	\$0.03
	Supermarket (MCC 5411)	\$0.26 Network Security Fee \$0.005	\$0.08
	Supermarket Pulse Pay* Choice <sup>3</sup>	\$0.31 Network Security Fee \$0.005	\$0.08

(continued on back)

## Wells Fargo Merchant Services Debit Network Schedule Effective 08/1/2010 *(continued)*



Applicable Debit Network, Switch, Service and Administrative fees are passed through on all PIN Debit transactions (completed and declined). Applicable Debit Network Interchange fees are passed through on completed PIN Debit transactions only.<sup>1</sup>

Debit Network	Categories	2010 Interchange Rates and Fees	2010 Switch Fee
<b>Shazam</b>	Petroleum (MCCs 5541, 5542)	.75% of transaction amount (exclusive of cash back) + \$0.13, (No Cap)	\$0.04
	QSR (MCC 5814)	1.25% of transaction amount (exclusive of cash back) + \$0.05, (No Cap)	\$0.04
	Retail	.75% of transaction amount (exclusive of cash back) + \$0.15, (No Cap)	\$0.04
	Small Ticket (MCCs 4111, 5499, 5814, 5994, 7211, 7338, 7523, 7542, 7832, 7841)	1.25% of transaction amount (exclusive of cash back) + \$0.05, (No Cap)	\$0.04
	Supermarket (MCCs 5300, 5411)	\$0.21	\$0.04
<b>STAR<sup>SM</sup>, Cash Station<sup>®</sup>, Honor<sup>®</sup>, MAC<sup>®</sup></b>	Medical Retailers (MCCs 5912, 8011, 8062, 8099) Transactions less than or equal to \$15	1.20% of gross transaction amount + \$0.20, (No Cap) Administrative Fee \$0.01	\$0.0325
	Medical Retailers Transactions less than or equal to \$15 All Star Issuer <sup>4</sup>	1.20% of gross transaction amount + \$0.225, (No Cap) Administrative Fee \$0.01	\$0.0325
	Medical Retailers (MCCs 5912, 8011, 8062, 8099) Transactions greater than \$15	.80% of gross transaction amount + \$0.17, (No Cap) Administrative Fee \$0.01	\$0.0325
	Medical Retailers Transactions greater than \$15 All Star Issuer <sup>4</sup>	.80% of gross transaction amount + \$0.195, (No Cap) Administrative Fee \$0.01	\$0.0325
	Petroleum (MCCs 5541, 5542)	.80% of gross transaction amount + \$0.13, (No Cap) Administrative Fee \$0.01 on completion	\$0.0325 on pre-auth and completion
	Petroleum All Star Issuer <sup>4</sup>	.80% of gross transaction amount + \$0.155, (No Cap) Administrative Fee \$0.01 on completion	\$0.0325 on pre-auth and completion
	QSR (MCC 5814)	1.25% of gross transaction amount + \$0.15, (No Cap) Administrative Fee \$0.01	\$0.0325
	QSR All Star Issuer <sup>4</sup>	1.25% of gross transaction amount + \$0.175, (No Cap) Administrative Fee \$0.01	\$0.0325
	Retail (All Other MCCs)	.80% of gross transaction amount + \$0.17, (No Cap) Administrative Fee \$0.01	\$0.0325
	Retail All Star Issuer <sup>4</sup>	.80% of gross transaction amount + \$0.195, (No Cap) Administrative Fee \$0.01	\$0.0325
	Small Ticket Retailers (MCCs 4111, 5499, 5994, 7211, 7338, 7523, 7542, 7832, 7841) Transactions less than or equal to \$10	1.25% of gross transaction amount + \$0.15, (No Cap) Administrative Fee \$0.01	\$0.0325
	Small Ticket Retailers Transactions less than or equal to \$10 All Star Issuer <sup>4</sup>	1.25% of gross transaction amount + \$0.175, (No Cap) Administrative Fee \$0.01	\$0.0325
	Small Ticket Retailers (MCCs 4111, 5499, 5994, 7211, 7338, 7523, 7542, 7832, 7841) Transactions greater than \$10	.80% of gross transaction amount + \$0.17, (No Cap) Administrative Fee \$0.01	\$0.0325
	Small Ticket Retailers Transactions greater than \$10 All Star Issuer <sup>4</sup>	.80% of gross transaction amount + \$0.195, (No Cap) Administrative Fee \$0.01	\$0.0325
	Supermarket (MCCs 5300, 5411)	\$0.26 Administrative Fee \$0.01	\$0.0325
	Supermarket All Star Issuer <sup>4</sup>	\$0.285 Administrative Fee \$0.01	\$0.0325

<sup>1</sup> This Debit Network Fee Schedule is accurate as of the Effective Date printed herein. The Debit Networks may change their fee(s) at any time, in their sole discretion, and you will be responsible for paying the Debit Network fees in effect on the date of the subject transaction. The Debit Network fees provided herein are the highest fees chargeable by the subject network as of the Effective Date; your actual fee(s) may be less than the disclosed amount if you qualify for a lower Debit Network fee. You may obtain a copy of the most current Debit Network Fee Schedule online at <https://www.wellsfargo.com/biz/merchantdebitfees> or by calling Wells Fargo Merchant Services at 1-800-451-5817 and requesting that a copy be mailed or faxed to you.

<sup>2</sup> NYCE<sup>®</sup> Premier Issuer refers to debit cards that are issued under a special agreement between the NYCE<sup>®</sup> Network and the NYCE<sup>®</sup> member financial institution.

<sup>3</sup> PULSE PULSE PAY<sup>®</sup> Choice refers to debit cards that are issued under a special agreement between the PULSE Network and the PULSE member financial institution.

<sup>4</sup> STAR<sup>SM</sup> All Star Issuer refers to debit cards that are issued under a special agreement between the STAR<sup>SM</sup> Network and the STAR<sup>SM</sup> member financial institution.

**EXHIBIT "C"**  
**EQUAL EMPLOYMENT OPPORTUNITY**

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

**EXHIBIT "D"**  
**DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_ as an owner or officer of  
(Name) (Print/Type) (Title)

\_\_\_\_\_  
(Contractor) (Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

\_\_\_\_\_  
Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

\_\_\_\_\_  
Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

\_\_\_\_\_  
Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is \_\_\_\_\_.

\_\_\_\_\_  
Initials From \_\_\_\_\_ to \_\_\_\_\_ the following test has occurred  
(Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

\_\_\_\_\_  
Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

\_\_\_\_\_  
Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

(Title)

(Remainder of this page intentionally left blank)

EXHIBIT "E"

**Contractor's Certification Of No Safety Impact Positions In Performance Of A City Contract**

I, Joyce Meer Vice President  
(Name) (Print/Type) (Title)

as an owner or officer of Wells Fargo Merchant Services (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

8/24/2010  
Date

Wells Fargo Merchant Services  
Contractor Name  
Joyce Meer  
Signature  
Vice President  
Title

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**CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF  
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES  
FOR CONTRACTORS**

I \_\_\_\_\_ as an owner or officer of \_\_\_\_\_  
(NAME) (PRINT/TYPE) (Contractor) have

authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR'S NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

**EXHIBIT "F"**  
**FORM POP 2**  
**CERTIFICATION OF AGREEMENT TO COMPLY WITH**  
**PAY OR PLAY PROGRAM**

Available at <http://www.houstontx.gov/aacc/popforms.html>