

10.1.2. Transaction Documentation Requests. In some cases, before a Chargeback is initiated, the Issuer will request a copy of the Sales Draft, via a request for transaction documentation. We will forward the request to you. You must respond to the request within the time frame and manner set forth in the request. We will then forward your response to the Issuer. If you fail to timely respond, we will so notify the Issuer and a Chargeback may result. Upon receipt of a transaction documentation request, immediately retrieve the requested Sales Draft(s) using the following guidelines:

- Make a legible copy, centered on 8-1/2 x 11-inch paper (only one (1) Sales Draft per page).
- Write the 'case number' from the request for transaction documentation on each copy/page.
- If applicable, make copies of a hotel folio, car rental agreement, 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) and Credit Drafts, if applicable, 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 help determine where the documentation received originated from should additional research be required.
- Additionally, please set the scan resolution on your fax machine to the highest setting. The higher resolution setting improves the clarity of characters and graphics on the documentation transmitted and helps reduce the number of illegible fulfillments and/or Chargebacks.

If we do not receive a clear, legible and complete copy of the transaction documentation within the timeframe specified on the request, you may be subject to a Chargeback for which there may be no recourse.

A handling fee may be charged by the Issuer and will be debited from your Settlement Account or settlement funds if, a transaction documentation request results from a difference in the following information on the Sales Draft and the transmitted record: Merchant name or an incorrect city, state, foreign country and/or transaction date.

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 Issuer submits a Chargeback, we will send you a Chargeback notification, which may also include a request for transaction documentation. **Due to the short time requirements imposed by MasterCard, Visa, Discover Network and American Express, it is extremely important that you respond to a Chargeback notification and transaction documentation request within the time frame set forth in the notification.** Do not process a Credit transaction once a Chargeback is received; the Issuer will credit the Cardholder's account. Credits issued after a Chargeback has been received may not be recoverable and you may be financially responsible for the Credit as well as the Chargeback. If the information you provide is both timely and, in our sole discretion, sufficient to warrant a representation of the transaction and/or reversal of the Chargeback, we will do so on your behalf. However, representation and/or reversal is/are ultimately contingent upon the Issuer and/or Cardholder accepting the transaction under applicable Card Organization guidelines. Representation or reversal is not a guarantee that the Chargeback has been resolved in your favor.

For Visa Chargebacks: If we reverse the Chargeback and represent the transaction to the Issuer, the Issuer, at its sole discretion, may elect to submit the matter for arbitration before Visa. Visa currently charges a \$250 filing fee and a \$250 review fee. You will be responsible for all such fees and charges whether or not a decision is made in your favor, and any other applicable fees and charges imposed by Visa, as they may change from time to time. Such fees and charges will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

For MasterCard Chargebacks: If we reverse the Chargeback and represent the transaction to the Issuer, the Issuer, at its sole discretion, may elect to resubmit the Chargeback. In such event, at the discretion of Processor, we will debit your Settlement Account or settlement funds for the Chargeback. However, if you feel strongly that it is an invalid Chargeback, we may, on your behalf and at your request, submit the matter for arbitration before MasterCard. MasterCard currently charges a \$150 filing fee and a \$250 review fee. You will be responsible for all such fees and charges whether or not a decision is made in your favor and any other applicable fees and charges imposed by MasterCard as they may change from time to time. Such fees and charges will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

For Discover Network Chargebacks: If Discover Network 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 Network. Discover Network charges fees for representation requests and an arbitration fee as published in their fee schedule.

For American Express Chargebacks: You may request a Chargeback reversal if the Chargeback was applied in error. In order for us to consider your request, you must have responded to the original inquiry within the specified timeframe set forth in your dispute notification, and provide all supporting documentation to substantiate the error.

If the Chargeback is not disputed within the applicable time limits set forth by MasterCard, Visa, Discover Network and American Express rules and regulations, reversal rights are

forfeited. Our only alternative, for Visa and MasterCard non-fraud Chargeback reason codes, is to attempt a "good faith collection" from the Issuer on your behalf. This process can take up to six (6) months and must meet the Issuer's criteria (e.g., at or above a set dollar amount). Good faith collection attempts are not a guarantee that any funds will be collected on your behalf. Issuers normally charge good faith collection fees, which are deducted from the transaction amount if accepted in addition to any processing fees that are charged by us.

NOTE: Discover Network and American Express do not offer good faith collection for Acquirers.

MasterCard and Visa Card Organization Rules require that a merchant make a good faith attempt and be willing and able to resolve any disputes directly with the Cardholder. Discover Network 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 Network transactions, and require you and/or us to submit any responses to dispute notices directly to Discover Network.

Due to Card Organization Rules, you may not re-bill a Cardholder after a Chargeback is received for that transaction, even with Cardholder authorization.

We strongly recommend that you include a detailed rebuttal letter along with all pertinent documents when responding to a transaction request or a Chargeback notification (e.g., rental agreement, imprinted portion of the invoice or Sales Draft; the portion signed by the Cardholder; and the area where the authorization codes, with amounts and dates, are located).

Due to the short time frames and the supporting documentation necessary to successfully (and permanently) reverse a Chargeback in your favor, we strongly recommend the following:

- Avoid Chargebacks by adhering to the guidelines and procedures outlined in these Operating Procedures.
- If you do receive a Chargeback, investigate, and if you dispute the Chargeback, submit the appropriate documentation within the required time frame.
- Whenever possible, contact the Cardholder directly to resolve the dispute, unless the dispute relates to a Discover Network Cardholder, in which case direct contact with the Discover Network Cardholder regarding the dispute is prohibited by Discover Network Card Organization Rules.
- If you have any questions, call Customer Service.

10.1.4. Chargeback Reasons. This section outlines the most common types of Chargebacks. This list is not exhaustive. For ease of understanding, we have combined like Chargebacks into six groupings. We have included recommendations on how to reduce the risk of Chargebacks within each group. These are recommendations only, and do not guarantee that you will be able to prevent Chargebacks.

1. Authorization Issues: Proper Authorization procedures were not followed and valid Authorization was not obtained.

The following scenarios could cause an Authorization Related Chargeback to occur:

- Authorization not obtained.
- Authorization was declined.
- Transaction processed with an expired card and Authorization was not obtained.
- Transaction was processed with an invalid account number and Authorization was not obtained.
- Card Recovery Bulletin (CRB) or Exception File was not checked (transactions below floor limit).

To reduce your risk of receiving an Authorization Related Chargeback:

- Obtain valid Authorization on the day of the transaction.
 - Card Present Transactions-Authorization must be obtained on the transaction date for the amount settled.
 - Card Not Present Transactions-Authorization must be obtained on the transaction date for the amount settled. However, if merchandise is being shipped, Authorization must be obtained within seven calendar days of the transaction ship date.
- If a declined response is received, then request another form of payment from the Cardholder.
- If a Referral response is received, then follow proper voice procedures to obtain a valid Authorization and obtain an imprint of the card.
- "Pick-up" response indicates that the Issuer is requesting for the card to be retained and returned back to them. The Card should not be accepted for payment. Additionally, you can choose to retain the Credit Card and return it to the Acquirer.
- Merchants should not exceed any predetermined thresholds for specific terminal types as specified by each Card Organization.

2. Cancellations and Returns: Credit was not processed properly or the Cardholder has cancelled and/or returned items.

The following scenarios could cause a Cancellation and Return Related Chargeback to occur:

- Cardholder received damaged or defective merchandise.
- Cardholder continued to be billed for cancelled recurring transaction.
- Credit transaction was not processed.

To reduce your risk of receiving a Cancellation and Return Related Chargeback:

- Issue Credit to the Cardholder for the same account as the purchase in a timely manner.
 - Do not issue Credit to the Cardholder in the form of cash, check or in-store/merchandise Credit as we may not be able to recoup your funds in the event the transaction is charged back.
- Ensure customers are fully aware of the conditions for recurring transactions. Cancel recurring billings as soon as notification is received from the Cardholder or as a Chargeback, and Issue the appropriate Credit as needed to the Cardholder in a timely manner.
- Pre-notify the Cardholder of billings within 10 days (Domestic) and 15 (International) prior to billing, allowing the Cardholder time to cancel the transaction.
- Provide proper disclosure of your refund policy for returned/cancelled merchandise, or services to the Cardholder at the time of transaction in accordance with applicable law.
 - Card present, Cardholder signed the Sales Draft containing disclosure.
- If applicable, the words “NO EXCHANGE, NO REFUND,” etc. must be clearly printed in 1/4-inch lettering on the Sales Draft near or above the Cardholder signature.
 - Ecommerce, provide disclosure on website on same page as check out requiring Cardholder to 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 claims are unauthorized; the account number is no longer in use or is fictitious, or the merchant was identified as “high risk.”

The following scenarios could cause a Fraud Related Chargeback to occur:

- Multiple transactions were completed with a single card without the Cardholder’s permission.
- Counterfeit card was utilized and proper acceptance procedures were not followed.
- Authorization was obtained; however, full track data was not transmitted.
- Cardholder states that they did not authorize or participate in the transaction.

NOTE: Visa Fraud Chargebacks: Chargeback representation rights do not exist if you failed to fulfill a key entered retrieval request and/or provide a sales slip that contains all required data elements. To preserve Chargeback representation rights, respond to all retrieval requests with a clear legible copy of the transaction document that contains all required data elements within the required timeframe that is specified by the retrieval request.

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

- Pre-notify the Cardholder of billings within ten (10) days
- American Express customers have the option to receive written notification of the recurring transaction at least (10) days prior to submitting, or any time the Charge amount exceeds a maximum amount that has been set by the cardholder.
- Obtain an Authorization for all transactions.
- If you are utilizing an electronic device to capture card information, swipe, dip or wave all Card transactions through your electronic authorization device to capture Cardholder information. When applicable ensure the displayed Cardholder number matches the number on the Card.
- If you are unable to electronically capture the Card or if a Referral response is received, imprint the Card using a valid imprinting device that will capture the embossed Card and merchant information. Do not alter the imprint on the draft in any way. Manually entering the information into the terminal does not protect you from this type of Chargeback. All pertinent information relating to the transaction must be written on the manually imprinted draft (transaction date, dollar amount, authorization code and merchandise description) along with the Cardholder signature.

NOTE: Do not imprint on the back of a signed Sales Draft. The imprint must be on the transaction document that contains all transaction elements to prove the Card was present at the time of the transaction.

- Obtain the Cardholder signature for all transactions; ensure the signature on the Sales Draft matches the signature on the back of the Card.
- Process all transaction one time and do not Batch out transactions multiple times.
- Educate staff on procedures to eliminate point of sale (POS) fraud.

Card Not Present Transactions:

- Participation in recommended fraud mitigation tools:
 - Verified by Visa Program
 - MasterCard SecureCode
 - Address Verification Services
 - CVV2, CVC2 and CID Verification

NOTE: While transactions utilizing these tools may still be disputed, the service may assist you with your decision to accept the Card for the transaction.

- Ensure you ship to the AVS confirmed address (bill to and ship to should match).
- Obtain Authorization for all transactions.
- Ensure merchant descriptor matches the name of the business and is displayed correctly on the Cardholder statement.
- Ensure descriptor includes correct business address and a valid customer service number.

American Express offers fraud mitigation tools for both Card Present and Card Not Present transactions to help verify that a Charge is valid. These tools help you mitigate the risk of fraud at the point of sale, but are not a guarantee that a Charge is in fact valid or bona fide, or that you will not be subject to a Chargeback. For optimal use of the tools, please visit American Express’ Fraud Prevention Information at: www.americanexpress.com/fraudinfo.

4. Cardholder Disputes: Merchandise or services not received by the Cardholder, Merchandise defective or not as described.

The following scenarios could cause a Cardholder Dispute Chargeback to occur:

- Services were not provided or merchandise was not received by the Cardholder.
- The Cardholder was charged prior to merchandise being shipped or merchandise was not received by agreed upon delivery date or location.
- Cardholder received merchandise that was defective, damaged, or unsuited for the purpose sold, or did not match the description on the transaction documentation/verbal description presented at the time of purchase.
- Cardholder paid with an alternate means and their Card was also billed for the same transaction.
- Cardholder cancelled service or merchandise and their Card was billed.
- Cardholder billed for a transaction that was not part of the original transaction document.
- The Cardholder claims to have been sold counterfeit goods.
- The Cardholder claims the terms of sale were misrepresented by the merchant.

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 a 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.
- Ensure that a description of the service or merchandise provided is clearly defined.

5. Processing Errors: Error was made when transaction was processed or it was billed incorrectly.

The following scenarios could cause a Processing Error Chargeback to occur:

- Transaction was not deposited within the Card Organization specified timeframe.
- Cardholder was issue a Credit Draft; however, the transaction was processed as a sale.
- Transaction was to be processed in a currency other than the currency used to settle the transaction.
- The account number or transaction amount utilized in the transaction was incorrectly entered.
- A single transaction was processed more than once to the Cardholder’s account.
- Cardholder initially presented Card as payment for the transaction; however Cardholder decided to use an alternate form of payment.
- Limited amount or self-service terminal transaction was processed for an amount which is over the pre-determined limit.

To reduce your risk of receiving a Processing Error Related Chargeback:

- Process all transactions within the Card Organization specified timeframes.
- Ensure all transactions are processed accurately and only one time.

NOTE: In the event that a transaction was processed more than once; immediately issue voids, transaction reversals or Credits.

- Ensure that credit transaction receipts are processed as Credits and sale transaction receipts are processed as sales.
- Ensure all transactions received a valid Authorization Approval Code prior to processing the transaction and obtain a legible magnetic swipe or imprinted Sales Draft that is signed.
- Do not alter transaction documentation or make any adjustments unless the Cardholder has been contacted and agrees to any modifications of the transaction amount.

- Ensure limited amount, self-service and automated fuel dispenser terminals are set properly to conform to the pre-determined limits.

10.2. Summary (Deposit) Adjustments/Electronic Rejects. Occasionally, it is necessary to adjust the dollar amount of your summaries/Submissions (deposits) and credit or debit your Settlement Account or settlement funds accordingly. The following is a list of the most frequent reasons for Summary (Deposit) Adjustments/Electronic Rejects:

- Your summary reflected an arithmetic error.
- Submitted sales not included in your Agreement (e.g., American Express).
- The dollar amount is unreadable/illegible.
- The Cardholder's account number is unreadable/illegible.
- Duplicate Sales Draft submitted.
- Card number is incorrect/incomplete.
- Summary indicated credits, but no credits were submitted.

10.3. Disputing Other Debits and Summary Adjustments. In order to quickly resolve disputed debits and Summary Adjustments, it is extremely important that the items listed in this section be faxed or sent to the address listed on the notification.

If the Summary Adjustment is for an unreadable or incorrect Cardholder account number, resubmit the corrected Sales Draft with your next deposit. Also, if the transaction is over thirty (30) calendar days old, you must reauthorize and obtain a valid Authorization Approval Code.

A clear and legible copy of the Sales Draft containing the following should be obtained from your files:

- Date of sale/Credit;
- Cardholder's account number, name and signature;
- Total amount of the sale and description of goods and services; and
- Date and Authorization Approval Code.

Include a dated cover letter detailing the reasons for requesting a review of the debit or Summary Adjustment and documentation to support your dispute. (You should retain a copy of the correspondence and all documentation for your files.) If the inquiry is related to prior correspondence, be sure to include the control number we previously used.

Immediately fax or mail the Sales Draft or Credit Drafts to the fax number or address provided on your notification letter.

If you have any questions, please call the Customer Service number provided on the last page of this Program Guide. If a Customer Service Representative informs you that additional documentation is required in order to fully review the item, please immediately submit your rebuttal and transaction documentation to the fax number or address listed on the debit notification.

11. Account Maintenance

11.1. Change of Settlement Account Number. If you change the Settlement Account in which you receive the proceeds of your transactions, you must call Customer Service or your Relationship Manager immediately. If you accept payment types other than Visa, MasterCard and Discover Network (such as the American Express Card), you are also responsible for contacting the Card Organizations or companies governing those Cards to notify them of this change.

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

11.3. Change in Company DBA Name, Address or Telephone/Facsimile Number. To change your company or location DBA name, address (or e-mail address), or telephone/facsimile number, you must send the request in writing to the address on your statement.

11.4. Other Change(s) in Merchant Profile. You must immediately notify us of any change to the information on file with us in your merchant profile, including: (i) any new lines or types of business; (ii) change in ownership; (iii) the opening, closing or liquidation of business or any location; (iv) change in Card processing method (i.e., paper Sales Drafts to POS Device); (v) voluntary or involuntary party to a bankruptcy case; (vi) entry into a loan or other agreement with a Person that seeks to affect this Agreement; and/or (vii) change from a business that exclusively conducts Card-present retail sales to one that accepts Card sales by mail, telephone or Internet transactions. We retain the right to terminate this Agreement if you fail to notify us of any change to the information in your merchant profile.

11.5. Charges for Changes to Account Maintenance. You may be charged for any changes referenced in this section or any other changes requested by you or otherwise necessary related to account maintenance.

12. Card Organization Monitoring

MasterCard, Visa, Discover Network and American Express have established guidelines, merchant monitoring programs and reports to track merchant activity such as, but not limited to excessive Credit, reported fraud and Chargebacks, and increased deposit activity. In the event you exceed the guidelines or engage in practices that could circumvent such monitoring programs or submit suspicious transactions as identified by a Card Organization or any related program or reports, you may be subject to: (i) operating procedure requirement modifications; (ii) Chargebacks and/or increased fees; (iii) settlement delay or withholding; (iv) termination of your Agreement; or (v) audit and imposition of fines.

13. Supplies

Placing Orders.

- To order additional supplies, call Customer Service when you have two months' inventory left. We will ship you an adequate amount of supplies. The amount of supplies (based on usage) on hand should not exceed a three- to six-month supply.
- In an EMERGENCY, please contact Customer Service using the number provided on the last page of this Program Guide. If supplies are sent via an express delivery service, the delivery charges will be debited to your account.
- You are responsible for unauthorized use of sales/Credit and summary Media. We recommend that you store all supplies in a safe location.
- You may be charged for supplies and applicable shipping and handling charges.

14. Special Provisions For American Express

The provisions in this Section 14 apply to American Express Card acceptance and Transactions. Also refer to www.americanexpress.com/merchantguide.

14.1. American Express Transaction Data. The transaction data you collect to facilitate the Charge must be or have been provided directly to you by the Cardholder. You must not accept or have accepted transaction data from, nor shall you provide or have provided transaction data to, any third parties other than your covered parties. If you fail to comply with this requirement, in addition to other rights and remedies regarding "monitoring," you may be charged a fee as indicated on the Merchant Processing Application, we may suspend Card acceptance privileges at your establishments, or terminate the Agreement. Where Cardholders pay you using payment or "e-wallet" accounts (which Cardholders may have created by providing Card- member information when the account was established), the transaction data collected to facilitate the Card Not Present Charge has already been provided directly by the Cardholder. You are not required to have the Cardholder re-enter the transaction data. All information required by American Express evidencing one or more transactions, including information obtained at the point of sale, information obtained or generated during Authorization and Submission, and any Chargeback.

14.2. Treatment of American Express Cardholder Information. You acknowledge that any and all American Express Cardholder information is confidential and the sole property of the Issuer, American Express or any of its Affiliates. Except as otherwise specified in the Agreement, you must not disclose Cardholder information, nor use nor store it, other than to facilitate transactions at your establishments in accordance with the Agreement.

14.3. Disclosure and Use of Data Collected Under Agreement. We may disclose to American Express data and information that you provide on your Application and that we collect as part of performing American Express payment processing services or transaction related services including information about you. American Express may use the information that you provide in the Application at the time of setup to screen and/or monitor you in connection with Card marketing and administrative purposes. American Express also may use such information to perform its responsibilities in connection with American Express Card acceptance, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including marketing purposes. American Express may otherwise use and share your information for business purposes and as permitted by Applicable Law. American Express uses reasonable administrative, technical and physical security measures to protect Program Merchant information consistent with the sensitivity of the information.

14.3.1. Consent for American Express to Contact You by Phone, eMail, Text or Facsimile. American Express may use the information you provide in the Application (as such information may be updated) to call you or send you communications or materials via email, SMS, text or facsimile regarding American Express products, services and resources available to you. You consent and agree to receive autodialed, automated and/or prerecorded calls and communications (which may include SMS or text messages) at the telephone number(s) you have provided. If you provide a fax number, you consent and agree to receiving fax communications from American Express. In connection with the foregoing, you understand that the calls made or communications sent to you by American Express may be subject to charges or fees by your telecommunications or other applicable service provider that are your responsibility to pay. You understand that your consent under this Section 14.3.1 is not a condition of purchasing or receiving any product or service or entering into this Agreement.

Opt-Out: You may opt-out of receiving marketing related communications and materials from American Express by calling Processor at the Customer Service Number stated in Part III, Section A.5 of the Program Guide. If you have opted-out, you may still receive messages or communications from American Express related to important information about your account.

14.4. Conversion to a Direct Relationship with American Express. You acknowledge and agree that upon written notice from us, you will be converted to a direct American Express Card acceptance relationship with American Express if and when the annual American Express Card charges that you submit under this Agreement are greater than \$1,000,000. You agree that, upon conversion, (i) you will be bound by American Express' then-current Card Acceptance Agreement with respect to American Express Transactions; (ii) American Express will set pricing and other fees payable by you for American Express Card acceptance; and (iii) you will no longer be able to submit American Express Card transactions under this Agreement, but this Agreement will continue in full

force and effect with respect to other payments and services you elected to receive on your Application.

14.5. No Assignment of Payments. You acknowledge and agree that you shall not assign to any third party any payments due to you under this Agreement as the result of American Express Card transactions, and all indebtedness arising from American Express Card charges will be for bona fide sales of goods and services (or both) at your establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that you may sell and assign future transaction receivables to us, our Affiliates and/or any other funding source that partners with us or our Affiliates.

14.6. Third Party Beneficiary Rights. American Express is a direct and intended third-party beneficiary of this Agreement, and may enforce any terms of this Agreement that apply to American Express, including American Express Card acceptance and transaction processing, directly against you.

14.7. Your Right to Opt Out of American Express Card Acceptance. You may opt out of accepting American Express Cards at any time without directly or indirectly affecting your rights to accept any other payment products. In order to opt out you must complete the Limited Acceptance Form. To obtain a copy of this form you must call Processor at the Customer Service Number stated in Part III, Section A.5 of the Program Guide.

14.8. Collections from American Express Cardholder. You may not bill or collect from any American Express Cardholder for any purchase or payment on the American Express Card unless a Chargeback has been exercised, you have fully paid for such Charge, and you otherwise have the right to do so.

14.9. American Express-Excessive Disputes

You may be subject to various fees and assessments as set forth on the Application, including fees for excessive disputes. Some fees and assessments are for special products or services, while others may be applied based upon non-compliance of American Express policies and procedures. Many non-compliance fees and assessments can be avoided by correcting the actions that are causing such non-compliance.

14.10. American Express Right to Modify or Terminate Agreement.

American Express has the right to modify the Agreement with respect to American Express Card transactions or to terminate your acceptance of American Express Card transactions and to require Processor to investigate your activities with respect to American Express Card transactions.

14.11. American Express Marketing Opt Out.

You may opt out of future American Express marketing communications by contacting us at 866-739-8324.

14.12. American Express Program Threshold.

Merchants who process more than \$1,000,000 annually in AXP transactions must establish a direct relationship with AXP by calling 1-855-825-3297.

B. CARD GENERAL TERMS

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

15. Services

Subject to Card Organization Rules, Services may be performed by us, our Affiliates, our agents, or other third parties we may designate from time to time in connection with this Agreement.

16. Operating Procedures; Card Organization Rules and Compliance

You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Card Organization Rules, including without limitation, the data security requirements described in Section 4. From time to time, we may amend the Operating Procedures, by providing you with at least 20 days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the Card Organization Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there are any inconsistencies between the General Terms and the Operating Procedures, the General Terms will govern. You are responsible for staying apprised of all applicable changes to the Card Organization Rules and maintaining compliance with the Card Organization Rules. Card Organization Rules may be available on web sites such as

<http://usa.visa.com/merchants/merchant-support/international-operating-regulations.jsp> and <http://www.mastercard.com/us/merchant/support/rules.html>. These links may change from time to time.

17. Settlement of Card Transactions

17.1. 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.

17.2. Unless otherwise agreed to in writing to the contrary, all discount fees are deducted daily. All settlements for Visa, MasterCard, Discover Network and American Express Card transactions will be net of Credits, Summary Adjustments, applicable discount fees when due, Chargebacks and any other amounts then due from you. We may also set off from any payments otherwise due, any amounts owed to any of our respective Affiliates, whether or not arising out of or related to this Agreement.

17.3. All credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our right to deduct our fees, our final audit, Chargebacks (including our related losses), and fees, fines and any other charge imposed on us by the Card Organizations as a result of your acts or omissions. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees, pending Chargebacks and any other amounts owed to us or any of our respective Affiliates, or we may deduct such amounts from settlement funds or other amounts due to you from us, or our respective Affiliates. You further agree we can offset any amounts owed to us or our Affiliates related to activity in other accounts maintained in the name of or guaranteed by you, any of your principals, guarantors or authorized signors. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

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

17.5. In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 24.4) 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.

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

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

18. Exclusivity

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

19. Fees; Adjustments; Collection of Amounts Due

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

If a transaction fails to qualify for your anticipated interchange levels or you inadvertently or intentionally accept a transaction other than the type anticipated for your account (including a different Card type), then, as applicable to your pricing method, you will be charged a higher interchange, Discount Rate or Non-Qualified Interchange Fee, as well as any applicable surcharge for that transaction, all as further described in Section A.3 of Part III of this Agreement and in the Application. With respect to inadvertent or intentional acceptance of a transaction other than the type anticipated for your account (including a different Card type), you will also be subject to payment to us of our then-current transaction fee(s) with respect to such Card and/or transaction and be liable, obligated and responsible under this Agreement for any such transaction to the same extent as you would be if it was of a Card type elected and approved.

For more information on Visa's and MasterCard's interchange rates, please go to www.visa.com and www.mastercard.com.

19.2. All authorization fees will be charged for each transaction that you attempt to authorize. All capture fees will be charged for each transaction that you transmit to us for settlement. If you are being billed a combined fee for both the authorization and capture of a transaction, the authorization and capture must be submitted as a single transaction, otherwise the authorization and the capture will each be charged separately. You are responsible for utilizing software or services that will correctly submit these transactions to achieve the combined billing.

19.3. 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 discount fee and transaction fees without prior notice.

19.4. The fees for Services set forth in this Agreement may be adjusted to reflect increases, or new fees imposed by Card Organizations, including without limitation, interchange, assessments and other Card Organization fees, or to pass through increases or new fees charged to us by other Persons related to the Services. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change or addition is implemented by the applicable Card Organization or other Person as specified in our notice to you.

19.5. Subject to Section 24.3, we may also increase our fees or add new fees for Services for any reason at any time, by notifying you thirty (30) days' prior to the effective date of any such change or addition.

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

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

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

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

19.10. You agree to promptly and carefully review your merchants statements or other documents provided or made available to you (physically, electronically or otherwise provided by Us or others) reflecting Card transaction activity, including, activity in your Settlement Account. If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within sixty (60) days after any debit or credit is or should have been effected or such shorter period as provided in the terms and conditions that govern such account. If you notify us after sixty (60) days, we shall have

no obligation to investigate or effect any adjustments. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

19.11. If you do not pay us all fees and any other amounts due under this Agreement within thirty (30) days of the date of our merchant statement or other statement setting forth the amount due, then we may, in our sole discretion, charge you interest, for such time that the amount and all accrued interest remain outstanding at the lesser of (i) 12% APR, or (ii) the maximum rate permitted by applicable law.

19.12. Other Debits. We may also debit your Settlement Account or your settlement funds in the event we are required to pay Card Organization fees, charges, fines, penalties or other assessments as a consequence of your sales activities. Such debits shall not be subject to any limitations of time specified elsewhere in the Agreement, including, without limitation the following, which we may add to or delete from this list as changes occur in the Card Organization Rules or our Operating Procedures pursuant to Section 16:

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

20. Chargebacks

20.1. 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.

20.2. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21.1.13. you will use the Services only for your own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Person; (**NOTE:** Factoring is prohibited.)

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

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

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

21.2. 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.

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

21.4. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 27 or 22.5), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.

21.5. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 24), OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 17.4 AND 17.6, WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK, FROM TIME TO TIME, LESS ONE PERCENT (1%).

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

22. Confidentiality

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

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

22.2. 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 Person 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.

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

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

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

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

22.3.4. Client acknowledges that breach of the restrictions on use or disclosure of any our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

22.4. We may use data collected as part of performing payment processing or other transaction-related services for you ("Transaction Data") for the purpose of providing additional products and services to you, other merchants, or third parties. This includes collecting, using, and de-identifying cardholder information, dates, amounts, and other Transaction Data to provide you with analytic products and services as well as collecting and using Transaction Data anonymized and aggregated with other merchants' transaction data to provide you, other merchants, and third parties with analytic products and services.

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

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

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

23. Assignments

23.1. Any transfer or assignment of this Agreement by you, without our prior written

consent, by operation of law or otherwise, is voidable by us. Any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Agreement. Furthermore, you shall indemnify and hold us harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's Submission of Card transactions to us for processing. For purposes of this Section 23, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

23.2. The payment Services provided by us require access to a single bank account in which we may initiate both credits and debits. You may not enter into any agreement that would require, in any circumstance or event, the transfer of any payments or proceeds from Card transactions covered by this Agreement to the custody or control of any Person. 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.

23.3. Another Visa and MasterCard member may be substituted for Bank under whose sponsorship this Agreement is performed with respect to Visa and MasterCard transactions. Upon substitution, such other Visa and MasterCard member shall be responsible for all obligations required of Bank for Visa and MasterCard transactions, including without limitation, full responsibility for its Card program and such other obligations as may be expressly required by applicable Card Organization Rules.

Subject to Card Organization Rules, we may assign or transfer this Agreement and our rights, duties and obligations hereunder and/or may delegate or subcontract our rights, duties and obligations hereunder, in whole or in part, to any Person, whether in connection with a change in sponsorship, as set forth in the preceding paragraph, or otherwise, without notice to you or your consent.

23.4. 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.

24. Term; Events of Default

24.1. This Agreement shall become effective upon the date this Agreement is approved by our Credit Department. You acknowledge that our Credit Department maintains a list of business types that are unqualified for our Services. We reserve the right to immediately terminate your account if it has been inadvertently boarded notwithstanding such Credit policies.

24.2. The initial term of this Agreement shall commence and shall continue in force for three years after it becomes effective. Thereafter, it shall continue until we or you terminate this Agreement upon written notice to the other, or as otherwise authorized by this Agreement. Should you fail to notify us in writing of your request to terminate you acknowledge and agree you will continue to be charged fees pursuant to this Agreement notwithstanding non-use of your account. If you have an equipment lease, termination of this Agreement does not terminate that equipment lease.

24.3. Notwithstanding the above or any other provisions of this Agreement, we may terminate this Agreement at any time and for any reason by providing 30 days' advance notice to you. We may terminate this Agreement immediately or with shorter notice upon an Event of Default as provided under Section 24.4 of this Agreement. In the event we provide notice to you of any new fees or increases in existing fees for Services, pursuant to Section 19.5, you may terminate this Agreement without further cause or penalty by notifying us that you are terminating this Agreement prior to the effective date of such new fees or increases. However, maintaining your merchant account, or your continued use of the Services after the effective date of any such fee changes shall be deemed your acceptance of such fee changes for the Services, throughout the term of this Agreement.

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

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

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

24.4.3. a sale of all or a substantial portion of your assets; or

24.4.4. irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, or any Card Organization, or any other Person, or an actual or suspected data security breach, 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

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

24.4.6. you default in any material respect in the performance or observance of any term, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 25; or

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

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

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

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

24.4.11. a violation by you of any applicable law or Card Organization Rule or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury or your breach, as determined by Servicers, of Section 35.2 ("Compliance with Laws"), then, upon the occurrence of (1) an Event of Default specified in subsections 24.4.4, 24.4.9 or 24.4.11, 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.

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

24.6. If any Event of Default occurs, 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 25.

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

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

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

25. Reserve Account; Security Interest

25.1. You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 25. The amount of such Reserve Account shall be set by us, in our sole discretion, based upon your processing history and the potential risk of loss to us as we may determine from time to time.

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

transactions and Chargebacks in accordance with Card Organization Rules. We will hold funds pursuant to this Section 25 in master account(s) with your funds allocated to separate sub accounts. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in a Reserve Account.

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

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

25.4.2. For sake of clarification and notwithstanding anything in the Agreement to the contrary, in the event Servicers deduct, holdback, suspend, off set or set off any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement (collectively "Set Off Funds"), you acknowledge that such Set Off Funds will be held in a commingled Reserve Account(s) of Servicers.

25.4.3. 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.

26. Financial and Other Information

26.1. Upon request, you will provide us and our Affiliates, quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us and our Affiliates to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide, and/or cause to be provided, to us and our Affiliates, or our representatives or regulators (as well as those of the Card Organizations) reasonable access to your or your providers' facilities and records for the purpose of performing any inspection and/or copying of books and/or records deemed appropriate. In such event, you shall pay the costs incurred by us or our Affiliates for such inspection, including, but not limited to, costs incurred for airfare and hotel accommodations.

26.2. 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.

27. Indemnification

27.1. You agree to indemnify and hold us and the Card Organizations harmless from and against all losses, liabilities, damages and expenses: (a) resulting from the inaccuracy or untruthfulness of any representation or warranty, breach of any covenant or agreement or any misrepresentation by you under this Agreement; (b) arising out of your or your employees' or your agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders; (c) arising out of your use of the Services; or (d) arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Card Organization or Issuer).

27.2. Subject to the limitations set forth in Section 21.4, we agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under

this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall not apply to Bank with respect to Non-Bank Services.

28. Special Provisions Regarding Non-Bank Cards

28.1. Non-Bank Card transactions are provided to you by Processor and not by Bank and include transactions made using Discover Network, American Express, Voyager and WEX Card types. The Services provided, transactions processed and other matters contemplated under this Section 28 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 28 directly conflict with another provision of this Agreement, in which case the terms of this Section 28 will control; provided, however, that (i) Bank is not a party to this Agreement insofar as it relates to Non-Bank Card services, and Bank is not liable to you in any way with respect to such Services and (ii) you agree to pay Processor any per item processing, authorization and other fees described in the Application for any non-acquired transaction services you receive from Processor. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank. You authorize us to share information from your Application with American Express, Discover Network and any other Non-Bank Card Organization.

28.2. If you accept American Express, you understand that if, based upon your anticipated Card transaction volume you do not qualify for our full service program but have otherwise been approved for accepting American Express transactions, your authorizations will be obtained from 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.

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

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

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

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

- You shall provide, at your own expense, all equipment necessary to permit the electronic acceptance of the WEX Cards, including the operation and maintenance of the equipment, telecommunication link, and provision of all networking services;
- All authorization request data for WEX Card sales must include WEX Cardholder account number, vehicle number, Card expiration date, driver identification number; and the amount of the transaction, date and time of the transaction, quantity of goods sold, unit price, and product code (the "Authorization Request Data"). All manual WEX Card sales (i.e., sales facilitated by a card imprinter) must include an Authorization number or other approval code from WEX along with the aforementioned Authorization Request Data. The type of goods sold, quantity of goods sold, unit price/price per gallon (if applicable), taxes, and any coupons presented within the product detail of a transaction must be accurate. Product detail presented must also equal the total amount of the sale when calculated (i.e., Product qty x unit price must equal product amount. Sum of all product amounts including taxes minus any coupons must equal total transaction amount.);
- You shall not submit a WEX Card sale for processing when a WEX Card is not presented at the time of the WEX Card sale;
- You shall complete a WEX Card sale only upon the receipt of an Authorization approval message and not accept a WEX Card when an expired Card/decline message is received;
- You shall not submit a WEX Card sale for processing until the goods have been delivered or services performed;
- You shall not accept a WEX Card where the WEX Card appears to be invalid or expired or there is reasonable belief that the WEX Card is counterfeit or stolen;
- You shall provide a copy of the receipt for a WEX Card sale, upon the request of the Cardholder, to the extent permitted by applicable law, which shall not include the full account number or driver identification number;
- You shall require the Cardholder to sign a receipt when a WEX Card sale is not completed by an island Card reader;

- i) You shall take all commercially reasonable efforts to protect manual WEX Card sales data from fraud or misuse;
- j) You shall not divide the price of goods and services purchased in a single WEX Card sale among two or more sales receipts or permit a WEX Card sale when only partial payment is made by use of the WEX Card and the balance is made with another bank Card;
- k) Client acknowledges that fuel tax removal at the point of sale is not permitted. For all payment system product codes that are taxable, transaction dollar amount and price per gallon (PPG) must contain the sum of the fuel cost and PPG inclusive of all applicable Federal, State, County, Local and other fuel taxes.
- l) You shall securely maintain a record of all WEX Card sales, including the Authorization Request Data, for a period of one year and produce such records upon the reasonable request of WEX;
- m) You shall notify Processor of any errors contained within a settlement report within forty-five (45) days of receipt of such report. Processor will not accept reprocessing requests for WEX transactions older than 90 days;
- n) You shall allow WEX to audit records, upon reasonable advance notice, related to the WEX Full Service; and
- o) You shall retransmit WEX Card sales data when reasonably requested to do so.
- p) Client acknowledges and agrees that its sole remedies with respect to the WEX Full Acquiring services shall be against Processor for the WEX Full Acquiring Services and not WEX, except to the extent that WEX knows of any fraud related to the WEX Cards and fails to provide notice of such fraud or WEX commits fraud in respect to the WEX Full Acquiring Services.

28.7. If you accept Voyager Cards:

- In addition to the information stated in Section 1 (MasterCard, Visa, Discover Network, and American Express Acceptance) of the Operating Procedures, you should check Fleet Cards for any printed restrictions at the point of sale.
- In addition to the information provided under Section 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 Cardholder'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:
All authorization request data for Voyager Card sales must include Voyager Cardholder account number, Card expiration date, driver identification number; and the amount of the transaction, date and time of the transaction, quantity of goods sold, unit price, and product code (the "Authorization Request Data"). All manual Voyager Card sales (i.e., sales facilitated by a card imprinter) must include an Authorization number or other approval code from Voyager along with the aforementioned Authorization Request Data. The type of goods sold, quantity of goods sold, unit price/price per gallon (if applicable), taxes, and any coupons presented within the product detail of a transaction must be accurate. Product detail presented must also equal the total amount of the sale when calculated (i.e., Product qty x unit price must equal product amount. Sum of all product amounts including taxes minus any coupons must equal total transaction amount.)
- Client acknowledges that fuel tax removal at the point of sale is not permitted. For all payment system product codes that are taxable, transaction dollar amount and price per gallon (PPG) must contain the sum of the fuel cost and PPG inclusive of all applicable Federal, State, County, Local and other fuel taxes
- If an increase in the number of Voyager transaction authorization calls from you not due to our or Voyager system outages in excess of 15% for a given month as compared to the previous month occurs, we may, in our discretion, deduct telephone charges, not to exceed \$.25 (25 cents) per call, for the increased calls, from your settlement of your Voyager transactions.
- In addition to the information provided under Section 7 (Settlement) of the Operating Procedures, settlement of Voyager transactions will generally occur by the fourth banking day after we process the applicable card transactions. We shall reimburse you for the dollar amount of sales submitted for a given day by you, reduced by the amount of Chargebacks, tax exemptions, discounts, credits, and the fees set forth in the Application. Notify processor of any errors contained with the Settlement Reports within thirty (30) calendar days of receipt of such report. Neither we nor Voyager shall be required to reimburse you for sales submitted more than sixty (60) calendar days from the date of purchase.
- For daily transmission of sales data, you shall securely maintain true and complete records in connection with the information required to be provided under this paragraph for a period of not less than thirty-six (36) months from the date of the generation of the data. You may store records on electronic media, if secure. You are responsible for the expense of retaining sales data records and Sales Drafts.
- In addition to the scenarios identified in Section 10.1.4 of this Program 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 21 (Representations; Warranties; Covenants; Limitations of Liability; Exclusion of Consequential Damages) of the General Terms, in no event shall our cumulative liability to you for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions exceed the lesser of \$10,000.00 or the Voyager transaction fees paid by you to us for the two months prior to the action giving rise to the claim.
- Notwithstanding anything in this Agreement to the contrary, our obligation to provide services to you relating to any Fleet Card will terminate automatically without penalty to us or the related Card Organization upon the earlier of (i) the termination or expiration of our agreement with such Card Organization, (ii) at least twenty (20) days prior written notice by us to you; (iii) your failure to comply with material terms relating to such Fleet Card transactions, or (iv) written notice, if a Card Organization discontinues its Card.

29. Special Provisions for Debit Card

The special provisions outlined in this Section 29 apply only to those Debit Card transactions that are processed by a Cardholder entering a PIN unless the transaction is a network supported PINless transaction. A PINless transaction is a Debit card transaction that a merchant submits to us for settlement/funding transactions with neither a PIN nor Signature. The Services provided, transactions processed and other matters contemplated under this Section 29 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 29 directly conflict with another provision of this Agreement, in which case the terms of this Section 29 will control.

29.1. 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 Debit Card to determine if the Card participates in a PIN Debit network that you are authorized to accept. PIN Debit network Mark(s) are usually printed on the back of the Card. If the Debit Card is valid and issued by a financial institution Issuer participating in a PIN Debit network, you must comply with the following general requirements for all participating PIN Debit networks, in addition to the specific requirements of that PIN Debit network:

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

29.2. Transaction Processing. The following general requirements apply to all Debit Card transactions:

- All Debit Card transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for Debit Card transactions.
- You may not complete a Debit Card transaction that has not been authorized. If you cannot obtain an Authorization at the time of sale, you should request another form of payment from the Cardholder 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 Issuer to find out why a transaction has been declined.
- Unless the transaction is a network supported PINless transaction, you may not complete a Debit Card transaction without entry of the PIN by the Cardholder. The PIN must be entered into the PIN pad only by the Cardholder. You cannot accept the PIN from the Cardholder verbally or in written form.
- The PIN Debit network used to process your transaction will depend upon, among other things, our own business considerations, the availability of the PIN Debit network at the time of the transaction and whether a particular Debit Card is enabled for a particular PIN Debit network. The PIN Debit network utilized to route your transaction may or may not be the lowest cost network available. We may, in our sole discretion (i) utilize any PIN Debit network available to us for a given transaction (including a PIN Debit network affiliated with Processor) and (ii) add and/or remove PIN Debit networks available to you based on a variety of factors including availability, features, functionality and our own business considerations.
- You must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN Truncation on it.
- You may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, you must request another form of payment from the Cardholder.
- 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 CREDITS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.

29.3. 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 as long as it is supported by the PIN Debit Network.

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

29.5. Adjustments. An adjustment is a transaction that is initiated to correct a Debit Card transaction that has been processed in error. You will be responsible for all applicable adjustment fees that may be charged by a Debit Card network. Some PIN Debit 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 PIN Debit network, The Electronic Funds Transfer Act, Regulation E, and other applicable law.

30. Special Provisions Regarding EBT Transactions

If you elect to accept EBT Cards and engage in EBT transactions, the terms and conditions of this Section 30 shall apply.

EBT transactions are provided to you by Processor and not by Bank. The Services provided, transactions processed and other matters contemplated under this Section 30 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 30 directly conflict with another section of this Agreement, in which case the terms of this Section 30 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to EBT transactions, and Bank is not liable to you in any way with respect to such Services. For the purposes of this section, the words “we,” “our” and “us” refer only to the Processor and not to the Bank.

We offer electronic interfaces to EBT networks for the processing, settlement and switching of EBT transactions initiated through the use of a state-issued EBT card (“EBT Card”) at your POS Terminal(s) for the provision of United States Department of Agriculture, Food and Nutrition Service (“FNS”), Supplemental Nutrition Assistance Program (“SNAP”) and Women, Infants and Children Benefits (“WIC Benefits”) and/or government delivered Cash Benefits (Cash Benefits, together with FNS, SNAP and WIC Benefits, collectively are referred to as the “EBT benefits”) to EBT benefit recipients (“EBT customers”), subject to the terms below.

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

The “EBT Rules” means (i) all procedures that we establish and provide to you from time-to-time regarding your acceptance of EBT Cards and provision of EBT benefits to EBT customers; (ii) the Quest Rules, as amended from time-to-time, issued by the National Automated Clearing House Association and as approved by the Financial Management Service of the U.S. Treasury Department, as necessary (and any rules that succeed or replace the Quest Rules); and (iii) other such laws, rules, regulations and procedures that are applicable to the acceptance of EBT Cards and the provision of EBT benefits by you under this Section 30, including without limitation, laws pertaining to delivery of services to EBT customers and EBT customer confidentiality, the federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, regulations issued by the Department of Agriculture pertaining to Food Stamp Program, and, any additional procedures specified by the state regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by providing EBT customers with information such as telephone numbers and addresses of the state or other appropriate agencies. The “Food Stamp Program” is the government benefits program operated under the authority of the Food Stamp Act of 1964.

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

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

30.2. Manual EBT Vouchers. In accordance with the procedures set forth in this Section 30 and the EBT Rules, you will manually accept EBT Cards during periods of time when your Authorized Terminal is not working or the EBT system is not available; you will manually provide EBT benefits in the amount authorized through the applicable EBT service provider to the EBT customers at no cost to the EBT customers upon presentation by an EBT customer of his/her EBT Card. All manual voucher authorizations must be cleared on your POS terminal for payment of voucher to be made to you. In addition to any procedures set forth in the EBT Rules, the following limitations will apply to manual issuance of FS Benefits by merchant:

- i. An authorization number for the amount of the purchase must be received by you from the applicable EBT service provider while the respective EBT customer is present and before you provide such EBT customer with any FNS, SNAP and WIC Benefits, or Cash Benefits, as applicable. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to sign the voucher. The EBT customer must sign the voucher. A copy of the voucher should be given to the EBT customer at the time of authorization and you should retain one copy for your records.
- ii. Specified EBT customer, clerk and sales information, including the telephone authorization number, must be entered properly and legibly on the manual sales draft.
- iii. All manual voucher authorizations must be cleared on your Authorized Terminal before payment of voucher will be made to you. Vouchers must be cleared within 10 Business Days after the date of applicable voice authorization. Vouchers cannot be cleared by any manner except by your Authorized Terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your Authorized Terminal for payment, no further action can be taken to obtain payment for the voucher.
- iv. In the event that, due to EBT host failure, EBT benefit availability for an EBT customer cannot be determined at the time you request authorization, the maximum authorized manual transaction and benefit encumbrance will be \$40.00 or such other state specific floor limit as set forth in the most current version of the applicable EBT Rules.
- v. Except as specifically provided in the applicable EBT Rules, you will not be reimbursed and will be solely responsible for a manual transaction when you fail to obtain an authorization number from the applicable EBT service provider as set forth in this Section 30 or otherwise fail to process the manual transaction in accordance with the EBT Rules.
- vi. If you have not received an authorization number in accordance with paragraph 30.1 above, you may not “re-submit” a manual sales draft for payment for the same transaction.

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

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

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

30.6. Term and Termination. If you are disqualified or withdrawn from the Food Stamp Program, your authority to issue benefits will be terminated concurrently therewith. Such disqualification or withdrawal will be deemed a breach of this Agreement with respect to

your authority to issue Cash Benefits and, in the event of such disqualification, we have the right to immediately terminate the provision of service under this Section 30 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 will 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 these terms and conditions, including without limitation, your failure to support the issuance of EBT benefits during your normal business hours consistent with your normal business practices, your failure to comply with EBT benefit issuance procedures, your impermissible acceptance of an EBT Card, or your disqualification or withdrawal from the Food Stamp Program; or (iii) based on a state's or its EBT service provider's investigation of the relevant facts, evidence that you or any of your agents or employees are committing, participating in, or have knowledge of fraud or theft in connection with the dispensing of EBT benefits. If you fail to cure any breach as set forth above, you may appeal such suspension of termination to the applicable state for determination in its sole discretion.

In the event that your authority to accept benefits is suspended or terminated by a state or its EBT service provider, and you successfully appeal such suspension or termination to the state or its EBT service provider, we shall be under no obligation to reinstate the services previously provided under this Section 30 or the Agreement, as applicable.

The provision of services under this Section 30 shall terminate automatically if our agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

You will give prompt notice to us if you plan to stop accepting EBT Cards and providing EBT benefits or if you are unable to comply with the terms of this Section 30.

30.7. Confidentiality of EBT System Information. All information related to EBT customers and/or the issuance of EBT benefits shall be considered confidential information. Individually identifiable information relating to an EBT customer or applicant for EBT benefits will be held confidential and will not be disclosed by you or your directors, officers, employees or agents, without prior written approval of the applicable state.

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

The use of information obtained by you in the performance of your duties under this Section 30 will be limited to purposes directly connected with such duties.

30.8. EBT Service Marks. You will adequately display any applicable state's service Marks or other licensed marks, including the Quest Marks, and other materials supplied by us (collectively the "Protected Marks") in accordance with the standards set by the applicable state. You will use the Protected Marks only to indicate that EBT benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider endorse your goods or services. Your right to use such Protected Marks pursuant to this Agreement will continue only so long as this Section 30 remains in effect or until you are notified by us, any state or its EBT service provider to cease their use or display. You will not use the Marks of any EBT service provider without prior written approval from such EBT service provider.

30.9. Miscellaneous.

30.9.1. Errors. You will fully cooperate with us and any other participants in the EBT system in the resolution of errors and disputes regarding EBT transactions processed pursuant to this Section 30. You will promptly notify us of any such errors or disputes.

30.9.2. Issuance Records.

- i. You agree to make available such informational materials as may be required by the state, its EBT service provider or any applicable regulations pertaining to the issuance of Benefits.
- ii. You will retain all EBT-related records (including but not limited to manual sales drafts or vouchers) in the manner required by the EBT Rules or otherwise reasonably requested by us for three (3) years following the date of the applicable EBT transaction, or for such additional period as may be required by the EBT Rules. Records involving matters in litigation will be kept by you for a period of not less than three (3) years following the termination of the applicable litigation. Copies of any documents in media other than paper (e.g., microfilm, etc.) related to this Section 30 may be substituted for the originals to the extent permitted under applicable EBT Rules and provided that legible paper copies can be reproduced within a reasonable time after such records are requested.
- iii. You will make all EBT-related records available for audit upon request to representatives of the state or its EBT service provider, or other authorized state or federal government agency during normal business hours.
- iv. To assure compliance with this Agreement, including without limitation this Section 30, the state, its EBT service provider, or other authorized state or federal government agency, will at all times, upon advance notice except in the case of suspected fraud or

other similar activity, have the right to enter, during normal business hours, your premises to inspect or evaluate any work performed under this Agreement, or to obtain any other information required to be provided by you or otherwise related to this Agreement.

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

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

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

30.9.6. Reference to State. Any references to state herein will mean the state in which you accept EBT benefits pursuant to this Section 30. If you accept EBT benefit in more than one state pursuant this Section 30, then the reference will mean each such state severally, not jointly.

30.9.7. Third Party Beneficiaries. These terms and conditions, do not create, and will not be construed as creating, any rights enforceable by any person not having any rights directly under this Agreement, except that the state and its Issuer, as defined in the Quest Rules, will be deemed third party beneficiaries of the representations, warranties, covenants and agreements made by you under the Agreement, including without limitation this Section 30.

31. Special Provisions Regarding Wireless Service

If you elect to purchase the Wireless Services from us as indicated on the Application, then the following terms and conditions of this Section 31, referred to as the "**Wireless Services Terms**," shall apply. THE WIRELESS SERVICES ARE BEING SOLD TO YOU FOR USE IN BUSINESS AND ARE NOT BEING SOLD TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank. The Services provided, transactions processed and other matters contemplated under this Section 31 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 31 directly conflict with another section of this Agreement, in which case the terms of this Section 31 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Wireless Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank.

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

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

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

- Licenses. You agree to obtain any and all licenses, permits or other authorizations required by the Federal Communications Commission ("FCC") or any other regulatory authority, if any, for the lawful operation of Wireless Equipment used by you in connection with your receipt of Wireless Services. You will promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.
- Wireless Equipment. You agree that in order to access the Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by Processor from time to time in its sole discretion (the "Wireless Equipment"). If Wireless Equipment is purchased by you from us as indicated on the Application, then the terms of this Agreement apply to your use of such Wireless Equipment.
- Improvements/General Administration. We and the Wireless Vendor(s) reserve the right to make changes, from time to time, in the configuration of the Wireless Services, Wireless Networks, Wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms and designation of the control center serving you at the particular address. In addition, we reserve the right to schedule, from time to time, interruptions of service for maintenance activities.
- Suspension of Wireless Services. We or a Wireless Network may suspend the Wireless Services to: (a) prevent damages to, or degradation of, our or a Wireless Network's network integrity that may be caused by a third party; (b) comply with any law, regulation, court order or other governmental request which requires immediate action; or (c) otherwise protect us or a Wireless Network from potential legal liability. To the extent commercially

reasonable, we shall give notice to you before suspending the Wireless Services to you. If not commercially reasonable to give prior notice, we will give notice to you as soon as commercially practicable thereafter. Availability of the Wireless Services may vary due to events beyond the control of us or our Wireless Vendors. In the event of a suspension of the Wireless Services, we or the applicable Wireless Vendor will promptly restore the Wireless Services after the event giving rise to the suspension has been resolved.

31.2. Software Licenses. Processor hereby grants to you a non-exclusive, non-transferable, revocable limited sublicense to use any wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from Processor's systems onto the Wireless Equipment in connection with your purchase and use of the Wireless Services in accordance with the terms of this Agreement, including this Section 31. Anything in this Agreement to the contrary notwithstanding, we or certain third parties retain all ownership and copyright interest in and to all Wireless Software, related documentation, technology, know-how and processes embodied in or provided in connection with the Wireless Software, and you shall have only a nonexclusive, non-transferable license to use the Wireless Software in your operation of the Wireless Equipment for the purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Wireless Software to you or shall be construed as a sale of any rights in any such Wireless Software to you. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Wireless Software. You shall not reverse engineer, disassemble or decompile the Wireless Software. You shall not give any Person access to the Wireless Software without our prior written consent. Your obligations under this Section 31.2 shall survive the termination of this Agreement. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this Section.

31.3. 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 31.10, or for any Person's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services (including the Wireless Software), or Wireless Networks, regardless of the form of action (whether in contract, tort (including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor's, Bank's, and Wireless Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the lesser of the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services or \$50,000.00. In no event shall Servicers, Wireless Vendor(s) or our respective Affiliates be liable for any indirect incidental, special, consequential or punitive damages. The remedies available to you under these Wireless Services Terms will be your sole and exclusive remedies with respect to the Wireless Services.

31.4. Indemnification. In addition to any other indemnifications as set forth in this Agreement, you will indemnify and hold Servicers, Wireless Vendor(s) and our respective officers, directors, employees, and Affiliates harmless from and against any and all losses, claims, liabilities, damages, costs or expenses arising from or related to: (a) the purchase, delivery, acceptance, rejection, ownership, possession, use condition, liens against, or return of the Wireless Equipment or the Wireless Equipment (including the Wireless Software), as applicable; (b) your negligent acts or omissions; (c) any breach by you of any of your obligations under this Section 31; or (d) any Person's unauthorized access to Client's data and/or unauthorized financial activity occurring on your Merchant Account Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

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

31.6. Termination. In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 31 may terminate:

- a) Immediately upon termination of the agreement between us (or our Affiliates) and Wireless Vendor(s), provided that we will notify you promptly upon our notice or knowledge of termination of such agreement, provided further that if Wireless Vendor(s) loses its authority to operate less than all of the Wireless Services or if the suspension of any authority or non-renewal of any license relates to less than all of the Wireless Services, then these Wireless Services Terms will terminate only as to the portion of the Wireless Services affected by such loss of authority, suspension or non-renewal; or
- b) Immediately if either we or our Affiliates or Wireless Vendor(s) are prevented from providing the Wireless Services by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority (including without limitation the FCC).

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

determined as long as you continue to make timely payment of fees due under these Wireless Services Terms.

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

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

31.10. 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 we don't control may also cause failed transmissions or other problems. PROCESSOR, BANK, AND WIRELESS VENDOR(S) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATING TO WIRELESS SERVICES. WE CANNOT PROMISE UNINTERRUPTED OR ERROR-FREE WIRELESS SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF.

32. Special Provisions Regarding TransArmorSM Solution

This Section 32 and the benefits described shall apply only if you subscribe to the TransArmor Solution and pay the applicable fees. If you subscribe only to TransArmor Data Protection or TransArmor Solution PCI as set forth in the Application, you will not receive other parts of TransArmor Solution including, without limitation, Liability Waiver.

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

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

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

(a) Data Protection can only be used with a point of sale device, gateway and/or equipment that is certified by us as Data Protection eligible. It is your responsibility to ensure that you have eligible equipment in order to use Data Protection.

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

(c) You must deploy Data Protection (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your point of sale systems or any facility where you process and/or store transaction data ("Merchant Systems") including replacing existing Card numbers on your Merchant Systems with Tokens. Full Card numbers must never be retained, whether in electronic form or hard copy.

(c) You must use the Token in lieu of the Card number for ALL activities subsequent to receipt of the authorization response associated with the transaction, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.

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

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

(g) You are required to follow rules or procedures we may provide to you from time to time related to your use of Data Protection (“Data Protection Rules and Procedures”). We will provide you with advance written notice of any such rules or procedures or changes to such rules or procedures.

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

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

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

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

32.5. Disclaimer; TransArmor Solution Does Not Guarantee Compliance or Security.

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

32.5.2. USE OF THE TRANSARMOR SOLUTION DOES NOT (A) GUARANTEE COMPLIANCE WITH ANY OF THE RULES OR SECURITY STANDARDS ESTABLISHED BY THE CARD ORGANIZATIONS, INCLUDING PCI DSS; (B) ELIMINATE YOUR OBLIGATION TO COMPLY WITH SUCH REQUIREMENTS; OR (C) GUARANTEE SECURITY OR PREVENT A SECURITY BREACH OR COMPROMISE. WE MAKE NO WARRANTIES; EITHER EXPRESSED OR IMPLIED THAT PARTICIPATION AND/OR USE OF TRANSARMOR SOLUTION WILL DETECT EVERY VULNERABILITY ON YOUR SYSTEM, IF ANY, OR THAT OUR VULNERABILITY ASSESSMENTS, SUGGESTED SOLUTIONS OR ADVICE WILL BE ERROR-FREE OR COMPLETE. YOU AGREE THAT WE SHALL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY OR USEFULNESS OF ANY INFORMATION PROVIDED BY US, OR FOR ANY USE OF SUCH INFORMATION.

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

32.6. Intellectual Property Rights.

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

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

TransArmor Solution, Software or Documentation (or any part) or the Marks.

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

32.6.4. You shall not take any action inconsistent with the stated title and ownership in this Section 31. You will not file any action, in any forum that challenges the ownership of any part of the TransArmor Solution or any software, materials or Documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the TransArmor Solution in the event of a challenge by you.

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

32.7. Software Updates, Maintenance and Changes.

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

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

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

32.9. Access and Use of Services.

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

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

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

32.10. Indemnification. In addition to other indemnifications provided in this Agreement, you agree to indemnify and hold us, our Affiliates and third party service providers harmless from and against all losses, liabilities, damages and expenses arising from (a) your use of the TransArmor Solution, including any Software or Equipment provided under this Agreement; or (b) any other person’s authorized or unauthorized access and/or use of the TransArmor Solution (or any part), Software or Equipment, whether or not using your unique username, password, or other security features.

32.11. Liability Waiver.

32.11.1. Subject to your subscribing to the entire TransArmor Solution bundle and to the

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

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

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

32.11.3. In addition to Section 32.11.2., the maximum amount of Liability Waiver during any TransArmor Program Year for EMV Upgrade Costs is further limited as follows:

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

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

32.11.5. The Liability Waiver shall not apply in relation to:

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

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

32.12. Export Compliance

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

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

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

32.13. Definitions:

(a) Card Organization Assessment means a monetary assessment, fee, fine or penalty levied against you or us by a Card Organization as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event; provided, that The Card Organization Assessment shall not exceed the maximum monetary assessment, fee, fine or penalty permitted upon the occurrence of a Data Security Event by the applicable rules or agreement in effect as of the inception date of this Agreement for such Card Organization;

(b) Cardholder Information means the data contained on a Card, or otherwise provided to Client, that is required by the Card Organization or us in order to process, approve and/or settle a Card transaction;

(c) Card Replacement Expenses means the costs that the we or you are required to pay by the Card Organization to replace compromised Cards as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event;

(d) Data Protection is a TransArmor Solution service that provides encryption of cardholder data at your payment environment and replaces the data with a token or randomly generated number;

(e) Data Security Event means the actual or suspected unauthorized access to or use of Cardholder Information, arising out of your possession of or access to such Cardholder Information, which has been reported (i) to a Card Organization by you or us or (ii) to you or us by a Card Organization. All Security Event Expenses and Post Event Services Expenses resulting from the same, continuous, related or repeated event or which arise from the same, related or common nexus of facts, will be deemed to arise out of one Data Security Event;

(f) Documentation means any documents, instructions, web screen, layouts or any other materials provided by us relating to the Software or the TransArmor Solution;

(g) Equipment means equipment rented to or purchased by you under this Agreement and any documents setting out additional terms on which Equipment is rented to or purchased by you;

(h) EMV Upgrade Costs means cost to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled Card in a manner compliant with PCI Data Security Standards;

(i) Forensic Audit Expenses means the costs of a security assessment conducted by a qualified security assessor approved by a Card Organization or PCI Security Standards Council to determine the cause and extent of a Data Security Event;

(j) Liability Waiver has the meaning as set forth in Section 32.11.1 above;

(k) Marks means the names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations;

(l) Post Event Services Expenses means reasonable fees and expenses incurred by us or you with our prior written consent, for any service specifically approved by us in writing, including, without limitation, identity theft education and assistance and credit file monitoring. Such services must be provided by or on behalf of us or you within one (1) year following discovery of a Data Security Event to a Cardholder whose Cardholder Information is the subject of that Data Security Event for the primary purpose of mitigating the effects of such Data Security Event;

(m) Program Year means the period from November 1st through October 31st of each year;

(n) Security Event Expenses means Card Organization Assessments, Forensic Audit Expenses and Card Replacement Expenses. Security Event Expenses also includes EMV Upgrade Costs you agree to incur in lieu of a Card Organization Assessment;

(o) Software means all software, computer programs, related documentation, technology, know-how and processes embodied in the Equipment (i.e. firmware) or otherwise provided to you under this Agreement. For the avoidance of doubt, the term Software shall not include any third party software available as part of a service provided from someone other than us or our vendors or which may be obtained by you separately from the TransArmor Solution (e.g. any applications downloaded by you through an application marketplace);

(p) TransArmor PCI is a TransArmor Solution service that provides access to online PCI DSS Self-Assessment Questionnaires (SAQ) to validate PCI data standards; and

(q) TransArmor Solution is the suite of security services provided by us and known as TransArmor.

33. Special Provisions Regarding Clover Service

If you elect to use the Clover Service, the following additional terms and conditions of this Section 33 shall apply.

The Clover Service is provided to you by Processor and not Bank. The Clover Service, transactions processed, and other matters contemplated under this Section 33 are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Section 33 directly conflict with another provision of the Agreement, in which case the terms of this Section 33 will control; provided however, Bank is not a party to this Agreement insofar as it applies to the Clover Service, and you acknowledge that Bank is not liable to you in any way with respect to the Clover Service. For the purposes of this Section, 33, the words "we," "our" and "us" refer only to the Processor and not the Bank.

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

"Clover" means Clover Network, Inc.

"Clover Marks" means the trademarks or service marks of Clover, an affiliate of Processor.

"Clover Service" means the website associated with the Clover Service, the object code version of Clover software applications (whether owned or licensed by Clover) resident on a Device at the time we provide you with the Device and the object code version of the software that enables the applications resident on a Device at the time of provisioning, and any related updates (including software maintenance or bug fixes) that are designed to assist with the management of your business and enable payment processing at the point of sale, and any materials, documentation and derivative works released by Processor from time to time. For the avoidance of doubt, the term software in the preceding sentence does

not include any software that may be obtained by you separately from the Clover Service (e.g., any applications downloaded by you through an application marketplace). The Clover Service is deemed part of the “Services,” as defined in and provided under the Agreement.

“**Customer**” means a Person who makes a purchase of goods or services from you, the transaction for which utilizes the Clover Service.

“**Customer Information**” means information about your Customers (e.g., name, mailing address, e-mail address, telephone number) obtained in connection with your use of the Clover Service.

“**Device**” means a tablet, smartphone, or other mobile or fixed form factor identified by Processor from time to time as compatible with and capable of supporting the Clover Service.

“**Third Party Services**” are the services, products, promotions or applications provided by someone other than Processor.

33.2. License Grant. During the term of the Agreement, Processor grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense or assign in any way, to electronically access and use the Clover Service solely in the United States to manage your establishment and conduct associated point of sale activities within the United States in accordance with the terms of this Section 33. For purposes of this Section 33, “United States” does not include U.S. Territories or possessions. The Clover Service is for your internal business use only. This Section 33 does not grant you any rights to the Clover Marks. All intellectual property and proprietary rights in or related to the Clover Service and the Clover Marks are and will remain our, our affiliates’, our vendors’, or our licensors’ (as applicable) sole and exclusive property, and any and all right, title and interest associated with the Clover Service not expressly granted by Processor in this Section 33 are deemed withheld.

33.3. Restrictions. You may not, nor may you permit any third party to do any of the following: (a) access or attempt to access the Clover Service (or any part) that is not intended or made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Clover Service (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, the Clover Service (or any part) or the Clover Marks; (d) create derivative works of or based on the Clover Service (or any part) or the Clover Marks; (e) except for backup and archival purposes, directly or indirectly copy the Clover Service (or any part); (f) republish, upload, post, transmit, disclose, or distribute (in any format) the Clover Service (or any part) except as permitted herein; (g) access or use (in any format) the Clover Service (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer your license rights to any third party, whether by operation of law or otherwise; (i) use or ship the Clover Service (or any part) outside of the United States, or access the Clover Service (or any part) from outside the United States, without in any case obtaining our advance written consent; (j) remove, relocate, or otherwise alter any proprietary rights notices from the Clover Service (or any part) or the Clover Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of the Clover Service, prevent access to or use of the Clover Service by other users, or in our reasonable judgment impose an unreasonable or disproportionately large load on our infrastructure, network capability or bandwidth; or (l) use the Clover Service (or any part) except as permitted in subsection 33.2 above.

You shall not take any action inconsistent with the stated title and ownership in subsection 33.2 above. You will not file any action, in any forum that challenges the ownership of any part of the Clover Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the Clover Service in the event of a challenge by you.

33.4. Clover Service Limitations and Requirements.

33.4.1. You may access the Clover Service through your Device using a wired (ethernet) or wireless (wifi or cellular) connection to the Internet. You are solely responsible for the payment of any fees that may be imposed by your Internet/data provider. Your use of the Clover Service may be subject to: (a) the terms of your agreements with your Internet/data provider; and (b) the availability or uptime of the services provided by your Internet/data provider.

33.4.2. You may use the Clover Service to conduct point of sale activities offline; transactions initiated offline will be queued and submitted for authorization when Internet connectivity to the Clover System is restored. However, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Clover Service is used offline.

33.4.3. The Clover Service does not function with every mobile device. Processor may alter which Devices are approved as compatible with the Clover Service in our discretion from time-to-time.

33.4.4. We may perform maintenance on the Clover Service from time to time which may result in service interruptions, delays, or errors. We will not be liable for any such interruptions, delays, errors, or bugs. You agree that we may contact you in order to assist you with the Clover Service and obtain information needed to identify and fix any errors.

33.4.5. You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Clover Service that are posted on the Clover website or otherwise provided or made available to you (collectively, “Clover Ops Guide”).

33.4.6. You shall comply with the following requirements in connection with your use of the Clover Service:

- a) With respect to each Customer who requests the delivery of transaction receipts via text message or email, such Customer must enter his phone number or email address in the appropriate space displayed on the Device himself; you are NOT permitted to add or modify any Customer Information (including but not limited to phone number and email address) on behalf of a Customer.
- b) With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent check box displayed on the Device himself; you are NOT permitted to add or modify a Customer’s consent indication on his behalf.
- c) You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer’s provided phone number, street address, and/or email address if the Customer has specifically consented by checking (himself) the applicable box displayed on the Device.
- d) NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE CUSTOMER INFORMATION AND TO ALLOW YOUR CUSTOMERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM YOU, SOME STATES MAY LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED HIS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (I) YOUR USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) YOU WILL AT ALL TIME STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.
- e) If TransArmor software is resident on your Device at the time we provide you with the Device and therefore part of the Clover Service, it will be used to perform such encryption and tokenization (“TransArmor Service”) and the additional terms set forth in Section 32 apply. However you will only receive the applicable TransArmor service subscribed by you as set forth in the Application.
- f) You are responsible to provide and obtain any disclosures and consents related to the E-SIGN Act that may be required in connection with your communications and agreements with your Customers.

33.5. Fees. You shall pay Processor the fees for Clover Service as set forth on the Application.

33.6. Term and Termination. The Clover Service may be terminated at any time by either party upon thirty (30) days’ written notice to the other party. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, we may suspend or terminate the Clover Service if (a) we determine that you are using Clover Service for any fraudulent, illegal, or unauthorized purpose, (b) you violate the terms of this Section 33 or an Event of Default occurs under the Agreement, (c) we terminate our agreement with any third parties that are involved in providing the Clover Service, or (d) Processor otherwise decides to discontinue providing the Clover Service. You acknowledge and agree that an occurrence of (a) or (b) above may be deemed an Event of Default under the Agreement, thereby affording Processor and Bank all rights and remedies as set forth in the Agreement triggered by such an Event of Default, which may include immediate termination of the Agreement without notice.

33.7. Third Party Services. The Clover Service may contain links to Third Party Services (e.g., an application marketplace). If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). Your access of any Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Section 33 or the Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., APPLICATION MARKETPLACE AND ANY APPS AVAILABLE AT SUCH APPLICATION MARKETPLACE) IS DOWNLOADED AT YOUR OWN RISK. PROCESSOR WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND PROCESSOR EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. PROCESSOR DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY THIRD PARTY SERVICE OR PRODUCT ADVERTISED OR OFFERED THROUGH THE CLOVER SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND PROCESSOR WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

33.8. Account Registration. We may require you to register and create a “Member” or “Merchant” account to use the Clover Service. If and when prompted by our registration process, you agree to (a) provide true, accurate, current and complete information about yourself and/or your business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by you is untrue, inaccurate, not current or incomplete, we have the right to terminate your Clover Service account (“Account”) and refuse any and all current or future use of the Clover Service.

33.9. Privacy and Data Use. All data collected from you at www.clover.com or in connection with your use of the Clover Service, including Customer Information and information about your business and employees used with or stored in or by the Clover Services (collectively, "Account Data"), is collected by Clover and not Processor or Bank; therefore, the use and sharing of such Account Data is controlled by the Clover Privacy Policy (available at https://www.clover.com/privacy_policy). You acknowledge and agree that we may access your Account Data upon our request to Clover, and our use of your Account Data is governed by the terms set forth in the Agreement.

33.10. Protecting Your Information. You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access the Clover Service are kept safe and confidential. You must prevent unauthorized access to and use of any Account Data. You are responsible for all electronic communications sent to us or to any third party (including Clover) containing Account Data. When we receive communications containing Account Data, we assume you sent it to us. You must immediately notify us if you become aware of any loss, theft or unauthorized use of any Account Data. We reserve the right to deny you access to the Clover Service, in whole or in part, if we believe that any loss, theft or unauthorized use of any Account Data or access information has occurred.

33.11. Accuracy of Information. You are solely responsible for ensuring the accuracy of all information and data regarding your business that you provide to us or our service providers in connection with the Clover Service (e.g., menus loaded onto the Device). In addition, you are solely responsible for verifying that all information and data loaded onto a Device by us or our service providers at your request are accurate prior to your business use of such Device. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.

33.12. Clover Service Disclaimer. USE OF THE CLOVER SERVICE OR ANY EQUIPMENT PROVIDED WITH THE CLOVER SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOVER SERVICE IS PROVIDED "AS IS" AND PROCESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO THE CLOVER SERVICE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER SERVICE WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT THE CLOVER SERVICE IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

33.13. Indemnity. Without limiting your indemnification obligations in the Agreement, you agree to indemnify and hold us harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys' fees) arising out of or relating to:

- a) Your failure to comply with all terms and conditions in this Section 33, including but not limited to the Clover Ops Guide;
- b) Your use of any Customer Information obtained in connection with your use of the Clover Service;
- c) The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of the Clover Service; or
- d) Any other party's access and/or use of the Clover Service with your unique username, password, or other appropriate security code.

33.14. Notices. We may provide notices and other information regarding the Clover Service to you via the method(s) described in the Agreement or in the E-Sign Consent Agreement set forth below.

33.15. Amendment. We have the right to change or add to the terms of this Section 33 at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Clover Service with notice provided to you as set forth in subsection 33.14 above. Any use of the Clover Service after our publication of any such changes shall constitute your acceptance of this Agreement as modified.

33.16. Ideas. You may choose or we may invite you to submit comments or ideas about the Clover Service, including, without limitation, about how to improve the Clover Service ("Ideas"). By submitting any Idea, you agree that: (a) we expressly disclaim any confidentiality obligations or use restrictions, express or implied, with respect to any Idea, (b) your submission will be non-confidential, and (c) we are free to use and disclose any Idea on an unrestricted basis without notifying or compensating you. You release us from all liability and obligations that may arise from our receipt, review, use or disclosure of any portion of any Idea.

33.17. Third Party Beneficiaries. Processor's Affiliates and any Persons Processor uses in providing the Clover Service are intended third party beneficiaries of this Section 33, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this subsection 33.17, nothing in this Section 33 is intended to confer upon any Persons any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Section 33.

E-SIGN CONSENT AGREEMENT

I. Consent

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

- a. Processor can provide disclosures required by law and other information about your legal rights and duties to you electronically.

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

- c. Processor can send all communications, billing statements, amendments to the Clover Service, notices, and other disclosures or information regarding the Clover Service or your use of the Clover Service or the Services as defined in the Agreement (collectively defined as "Disclosures") to you electronically (1) via e-mail, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.

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

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

2. Legal Effect

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

34. Choice of Law; Venue; Waiver of Jury Trial

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

34.2. Venue. We have substantial facilities in the State of Illinois 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 Cook County, Illinois.

34.3. 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.

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 Person for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment or funds from a Person 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. You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq. as may be amended from time to time, those involving any Person listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at www.treas.gov/ofac) or the U.S. Department of State's Terrorist Exclusion List (available at www.state.gov), or for the processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control ("OFAC") or in connection with illegal activity of any kind.

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, if to you at your address appearing in the Application or by any electronic means, including but not limited to the e-mail address you have provided on the Application. If to us at our address appearing in Section A.5 of Part III of this Agreement, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065, and Notices shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to the your last known address (including e-mail address), as indicated in our records, shall constitute effective notice to the Merchant under this Agreement. If you change your

address (including your e-mail address), you must notify us at least 30 days prior of the effective date of any such change. Failure to provide us with a valid address (including e-mail address) may result in the termination of the Agreement. Notwithstanding the above, all bankruptcy or collection related notices must be sent to the following address Merchant Services Department, 5251 Westheimer Road, Fourth Floor, Houston, Texas 77056, Attn: Bankruptcy and Collection Notifications. All such notices must include the related merchant name and merchant number. Failure to provide Notice to this address or include this pertinent merchant information will be deemed ineffective. All notices must include your merchant name(s) and merchant number(s). Failure to provide notice in the manner described in this Section will be deemed ineffective.

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 twenty (20) days of receiving notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any early termination fee that might otherwise apply. For purposes of this section, an electronic or "click-wrap" notice intended to modify or amend this Agreement and which you check "I Accept" or "I Agree" or otherwise accept through an electronic process, shall constitute in writing as required herein. This Section 35.7 does not apply to fee changes, which are governed by Sections 19.4 and 19.5.

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

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

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

As used in this Agreement, the following terms mean as follows:

Acquirer: Bank in the case of MasterCard, Visa and certain debit transactions or Processor in the case of Discover Network transactions that acquire Card sale transactions from merchants such as yourself.

Address Verification Service ("AVS"): A service provided through which the merchant verifies the Cardholder's address, in whole or in part. Primarily used by Mail/Telephone/Internet order merchants, Address verification is intended to deter fraudulent transactions however, an AVS Match does not guarantee that a transaction is valid. An AVS request should generally be submitted with an authorization request. The AVS response, if available, however will not impact whether any associated authorization request is approved or denied. You may be charged an AVS fee for any AVS request you submit even if we are not able to provide a response to the request.

Affiliate: "Affiliate" of a Person means another Person that, directly or indirectly, (i) owns or controls such Person or (ii) is under common ownership or control with such Person.

Agreement: The Agreements among Client, Processor, and Bank, contained in the Application, the Program Guide and the Schedules thereto and documents incorporated therein, each as amended from time to time, which collectively constitute the Agreement among the parties.

Application: See Merchant Processing Application

Authorization: Approval by, or on behalf of, the Issuer to validate a transaction. An Authorization indicates only the availability of the Cardholder's Credit Limit or funds at the time the Authorization is requested. An Authorization Fee (see Fee Schedule) can be charged for each Authorization, whether approved or declined.

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

Authorization and Capture: Refers to the communication of instructions from your POS device or other systems to our computer systems, whether the communications are for authorization requests or any other capture of information. If your Service fee Schedule reflects and authorization and capture fee it may be applied to each communication you transmit to us.

Authorization Center: A department that electronically communicates a merchant's request for Authorization on Credit Card transactions to the Cardholder's bank and transmits such Authorization to the merchant via electronic equipment or by voice Authorization.

Bank: The bank identified on the Application signed by you.

Bankruptcy Code: Title 11 of the United States Code, as amended from time to time.

Batch: A single Submission to us of a group of transactions (sales and Credits) for settlement. A Batch usually represents a day's worth of transactions.

Business Day: Monday through Friday, excluding Bank holidays.

Card: See either Credit Card or Debit Card.

Cardholder: Means the Person whose name is embossed on a Card and any authorized user of such Card, including the Person that has entered into an agreement establishing a Card account with an Issuer.

Card Not Present Sale/Transaction: A transaction that occurs when the Card is not present at the point-of-sale, including Internet, mail-order and telephone-order Card sales.

Card Organization: Any entity formed to administer and promote Cards, including without limitation MasterCard Worldwide ("MasterCard"), Visa U.S.A., Inc. ("Visa"), DFS Services LLC ("Discover Network"), American Express Company, Inc. ("American Express Travel Related Services Company, Inc.") and any applicable debit networks.

Card Organization Rules: The rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBTs, the Quest Operating Rules).

Card Validation Codes: A three-digit value printed in the signature panel of most Cards and a four-digit value printed on the front of an American Express Card. Visa's Card Validation Code is known as CVV2; MasterCard's Card Validation Code is known as CVC2; the Card Validation Codes for Discover Network and American Express are known as a Card Identification Numbers (CID). Card Validation Codes are used to deter fraudulent use of an account number in a non-face-to-face environment, (e.g., mail orders, telephone orders and Internet orders).

Card Verification Value (CVV)/Card Validation Code (CVC)/Card Identification Data (CID): A unique value encoded on the Magnetic Stripe of a Card used to validate Card information during the Authorization process.

Cardholder Verification Method (CVM): A method used to confirm the identity of a Cardholder and to signify Cardholder acceptance of a transaction, such as signature, Offline PIN, and Online PIN.

Cash Benefits: An EBT account maintained by an Issuer that represents pre-funded or day-of-draw benefits, or both, administered by one or more government entities, and for which the Issuer has agreed to provide access under the EBT program. Multiple benefits may be combined in a single cash benefit account.

Cash Over Transaction: Dispensing of cash by a merchant in connection with a Card sale, other than a PIN Debit Card transaction, for the purchase of goods or services.

Charge or Charges: The total price, including all applicable taxes and gratuities, for the purchase of goods or services at a merchant for which a Cardholder has signed a Sales Draft or otherwise indicated intent to pay with a Card.

Chargeback: A Card transaction (or disputed portion) that is returned to us by the Issuer. Client is responsible for payment to us for all Chargebacks.

Chip: An integrated microchip embedded on a Card containing cardholder and account information.

Chip Card: A Card with an embedded EMV-compliant chip containing memory and interactive capabilities used to identify and store additional data about a Cardholder, an Account, or both.

Claim: Means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements or the relationship resulting therefrom.

Client: The party identified as “Client” on the Application. The words “Subscriber,” “you” and “your” refer to Client. Also, sometimes referred to as “Merchant.”

Contactless Payment: payment performed in a Card-Present Environment with a Contactless card or Payment Device (e.g., Mobile phone) at the Point-of-Transaction.

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

Credit Card: A device bearing a valid Organization Mark of Visa, MasterCard, Discover Network or American Express and authorizing the Cardholder to buy goods or services on credit and, to the extent the Schedules so provide, a valid device authorizing the Cardholder to buy goods or services on credit and issued by any other Card Organization specified on such Schedules.

Credit Draft: A document evidencing the return of merchandise by a Cardholder to a Client, or other refund or price adjustment made by the Client to the Cardholder, whether electronic, paper or some other form, all of which must conform to Card Organization Rules and applicable law.

Credit Limit: The credit line set by the Issuer for the Cardholder's Credit Card account.

Customer Activated Terminal (CAT): A magnetic stripe terminal or chip-reading device (such as an automatic dispensing machine, Limited Amount Terminal, or Self-Service Terminal) that is not an ATM.

Data Usage Charge: Charged to you for our processing of Sales Data sent to us.

Debit Card: See either PIN Debit Card or Non-PIN Debit Card.

Dial-Up Terminal: An Authorization device which, like a telephone, dials an Authorization Center for validation of transactions.

Discount Rate: A percentage rate and/or amount charged to a merchant for processing its qualifying daily Credit Card and Non-PIN Debit Card transactions, as set forth in the Application. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 19.1.

Discover International Service Fee: A fee assessed by Discover on the amount of Card Sales (excluding Cash Over) conducted at a Client location in the United States where the domicile of the Issuer of the Card used in the Card Sale is a country other than the United States. This fee is not applicable to Card Sales with JCB and China Union Pay cards.

Electronic Benefit Transfer (EBT): An Electronic Benefits Transfer system used to deliver certain government delivered benefits, including without limitation Cash Benefits and FNS, SNAP and WIC Benefits, to EBT customers.

Electronic Draft Capture (EDC): A process which allows a merchant's Dial-Up Terminal to receive Authorization and capture transactions, and electronically transmit them to the Processor. This eliminates the need to submit paper for processing.

EMV: Developed by Europay, MasterCard, and Visa. It is the global standard for chip based payments.

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

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

Fixed Acquirer Network Fee (FANF): Fee that applies to the acceptance of all Visa branded products and is based on both the size and the number of merchant locations. The fee will be assessed per merchant Taxpayer ID, based on the number of merchant locations, Merchant Category Code (MCC), and monthly Total Gross merchant Sales Volume associated with each Taxpayer ID.

Fraud Full Recourse: One of American Express's Chargeback programs

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

¹MasterCard Credit or Debit Card, Cirrus Card, or Maestro Card.

Gross: When referred to in connection with transaction amounts or fees, refers to the total amount of Card sales, without set-off for any refunds or Credits.

Imprinter: A manual or electric machine used to physically imprint the merchant's name and ID number as well as the Cardholder's name and Card number on Sales Drafts.

Issuer: The financial institution or Card Organization (or other Entity authorized by a Card Organization) which has issued a Card to a Person.

Limited Amount Terminal: A Customer Activated Terminal that has data capture only capability, and accepts payment for items such as parking garage fees, road tolls, motion picture theater entrance, or magnetic-stripe telephones.

Magnetic Stripe: A stripe of magnetic information affixed to the back of a plastic Credit or Debit Card. The Magnetic Stripe contains essential Cardholder and account information.

Marks: Names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations.

MasterCard Account Status Inquiry Service Fee: Zero dollar Account Status Inquiry Service requests (including AVS, CVC2 or both).

MasterCard CVC2 Fee: A fee assessed for transactions acquired in the U.S. Region with the CVC2 (Three digit code on the back of the MasterCard issued card) included in the transaction for authorization and where the CVC2 response value equals 'M' (Match) or 'N' (Invalid/did not match). The fee will not be applied to Account Status Inquiry (ASI) requests.

MasterCard Digital Enablement Fee: A fee assessed by MasterCard on select Card Not Present transactions.

MasterCard Processing Integrity Fee: The MasterCard Processing Integrity Fee is assessed in the event MasterCard cannot match an approved authorization to a settled transaction (within 120 days from the date the authorization was granted) or a reversal request (within a specific time frame). The Processing Integrity Fee can be avoided by settling transactions only with an approved authorization. If an authorization approval is no longer needed, it must be electronically reversed within 24 hours for a card-present transaction or within 72 hours for card not present transaction.

MC Cross Border Fee (USD): Assessed on any MasterCard¹ settled sale processed in USD Currency in which the country code of the merchant differs from the country code of the Cardholder (i.e., U.S. Merchant, Non U.S. Issued Card).

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

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

Merchant Identification Card: A plastic embossed card supplied to each merchant to be used for imprinting information to be submitted with each Batch of paper Sales Drafts. Embossed data includes Merchant Account Number, name and sometimes merchant ID code and terminal number.

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

Merchant Provider: Any Person engaged by you to provide services to you involving or relating to (i) access to Cardholder data, transaction data or information related to either Cardholder data or transaction data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs).

Non-Bank Services: Products and/or Services for which Bank is not responsible or a party to including American Express, PIN Debit Card, and Electronic Benefits Transfer Transactions, TeleCheck Check Services, and Transactions Involving Cards from other Non-Bank Card Organizations, such as Voyager Fleet Systems, Inc., Wright Express Corporation and Wright Express Financial Services Corporation, Discover, Leasing, TransArmor, Wireless, Global Gateway e4 Services, and other items as may be indicated in this Program Guide.

Non-PIN Debit Card: A device with a Visa, MasterCard or Discover Network 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 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, Section 19.1)

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

PAN Truncation: A procedure by which a Cardholder's copy of a Sales Draft or Credit Draft, or as required by applicable law, the Sales Draft or Credit Draft you retain, will only reflect the last four digits of the Card account number.

Person: A third party individual or Entity, other than the Client, Processor or Bank.

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

PIN Debit Card: A device bearing the Marks of ATM networks (such as NYCE or Star) used at a merchant location by means of a Cardholder-entered PIN in the merchant PIN Pad.

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

Point of Sale (POS) Terminal: A device placed in a merchant location which is connected to the Processor's system via telephone lines and is designed to authorize, record and transmit settlement data by electronic means for all sales transactions with Processor.

Processor: The entity identified on the Application (other than the Bank) which provides certain services under the Agreement.

Program Guide (also known as the Merchant Services Program Terms and Conditions): The booklet which contains Operating Procedures, General Terms, Third Party Agreements and Confirmation Page, which together with the Application and the Schedules thereto and documents incorporated therein, constitute your Agreement with Processor and Bank.

Recurring Payment Indicator: A value used to identify transactions for which a Cardholder provides permission to a merchant to bill the Cardholder's Card account at either a predetermined interval or as agreed by the Cardholder for recurring goods or services.

Referral: A message received from an Issuer when an attempt for Authorization requires a call to the Voice Authorization Center or Voice Response Unit (VRU).

Reserve Account: An account established and funded at our request or on your behalf, pursuant to Section 25 of the Agreement.

Resubmission: A transaction that the Client originally processed as a Store and Forward transaction but received a soft denial from the respective debit network or Card Organization. The resubmission transaction allows the merchant to attempt to obtain an approval for the soft denial, in which case Client assumes the risk that the transaction fails.

Retrieval Request/Transaction Documentation Request: A request for documentation related to a Card transaction such as a copy of a Sales Draft or other transaction source documents.

Sales/Credit Summary: The identifying form used by a paper Submission merchant to indicate a Batch of Sales Drafts and Credit Drafts (usually one day's work). Not a Batch header, which is used by electronic merchants.

Sales Draft: Evidence of a purchase, rental or lease of goods or services by a Cardholder from, and other payments to, Client using a Card, including preauthorized orders and recurring transactions (unless the context requires otherwise); regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Card Organization Rules and applicable law.

Schedules: The attachments, addenda and other documents, including revisions thereto, which may be incorporated into and made part of this Agreement concurrently with or after the date of this Agreement.

Self-Service Terminal: 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.

Servicers: Bank and Processor collectively. The words "we," "us" and "our" refer to Servicers, unless otherwise indicated in this Program Guide.

Services: The activities undertaken by Processor and/or Bank, as applicable, to authorize, process and settle all United States Dollar denominated Visa, MasterCard, Discover Network and American Express transactions undertaken by Cardholders at Client's location(s) in the United States, and all other activities necessary for Processor to perform the functions required by this Agreement for all other Cards covered by this Agreement.

Settlement Account: An account or account(s) at a financial institution designated by Client as the account to be debited and credited by Processor or Bank for Card transactions, fees, Chargebacks and other amounts due under the Agreement or in connection with the Agreement.

Split Dial: A process which allows the Authorization terminal to dial directly to different Card processors (e.g., American Express) for Authorization. In this instance, the merchant cannot be both EDC and Split Dial. Split Dial is also utilized for Check Guarantee companies.

Split Dial/Capture: Process which allows the Authorization terminal to dial directly to different Card processors (e.g., American Express) for Authorization and Electronic Draft Capture.

Store and Forward: A transaction that has been authorized by a merchant when the merchant cannot obtain an Authorization while the customer is present, typically due to a communications failure. The merchant will store the transaction electronically in their host system and retransmit the transaction when communications have been restored.

Submission: The process of sending Batch deposits to Processor for processing. This may be done electronically or by mail.

Summary Adjustment: An adjustment to your Submission and/or Settlement Accounts in order to correct errors. (See Sections 10.3 and 10.4).

Telecommunication Card Sale: Individual local or long-distance telephone calls, for which the telephone service provider is paid directly by use of a Card. These do not include, however, calls paid for with pre-paid telephone service cards. Telecommunication Card Sales are considered Card Not Present Sales.

Transaction Fees: Service costs charged to a merchant on a per transaction basis.

Transaction Integrity Fee: Fee assessed on Visa Debit Card and prepaid Card purchase transactions that either fail or do not request CPS qualification.

Us, We and Our: See Servicers.

Visa International Service Fee: Assessed on any Visa settled sale where the merchant is located in the U.S. and the Card is issued outside of the U.S. (i.e., U.S. Merchant, Non U.S. Issued Card).

Visa Misuse of Auth: Charged to Visa authorized transactions that are not followed by a matching Visa settled transaction (or in the case of a canceled transaction, not properly reversed). The fee can be avoided by settling your transactions within 10 days for Non Travel and Entertainment (T&E) Merchants Segments and 20 days for T&E merchants. If an authorization is not needed, the authorization must be electronically reversed within 24 hours for face to face authorizations and reversed within 72 hours for Card Absent authorizations.

Visa Zero \$ Verification: Charged for Visa Card verification requests (without an actual dollar authorization). This fee can be avoided by obtaining an authorization request for the amount of the sale. If the authorization is not needed, the authorization request must be electronically reversed within 24 hours for face to face authorizations and reversed within 72 hours for Card Absent authorizations (to avoid the Visa Misuse of Authorization System fee).

Visa Zero Floor Limit: Charged when a Visa sale is settled without the required authorization (transaction ID is used to match the authorization to settled sale). All transactions above zero dollars require an authorization approval. This fee can be avoided by only settling transactions that have been approved. If an authorization is declined, the merchant must request another form of payment.

You, Your: See Client

A.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.* nor BluePay Processing, LLC. can guarantee the time frame in which payment may be credited by Client’s financial institution where the Settlement Account is maintained.

Client hereby authorizes *Wells Fargo Bank, N.A.* and its authorized representative, including BluePay Processing, LLC., 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, fines and assessments and Chargeback amounts of whatever kind or nature due to BluePay Processing, LLC. or *Wells Fargo Bank, N.A.* 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 BluePay Processing, LLC. and *Wells Fargo Bank, N.A.* 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 thirty-five (\$35.00) for each ACH which cannot be processed, and all subsequent funding may be suspended until Client either (i) notifies BluePay Processing, LLC. 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.

A.2. Funding Acknowledgement

Automated Clearing House (ACH). Your funds for MasterCard, Visa, Discover Network and American Express transactions will ordinarily be processed and transferred to your financial institution within two (2) Business Days from the time a batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard, Visa, Discover Network and American Express transactions will ordinarily be processed via the Federal Reserve within two (2) Business Days from the time a batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

A.3. Additional Fees and Early Termination

If Client’s MasterCard, Visa and Discover Network transaction(s) fail to qualify for the discount level contemplated in the rates set forth in the Application, Client will be billed the fee indicated in the Mid-Qualified Discount field or Non-Qualified Discount field. If you are utilizing the Enhanced Recovery Reduced Discount option, the Client will be charged the Enhanced Recovery Reduced Rate on the volume of said transaction that failed to qualify, in addition to the difference between the MasterCard/ Visa/Discover Network/American Express Qualified Rate agreed to on the Service Fee Schedule and the actual interchange rate assessed to the downgraded transaction.

- a. Any increases or decreases in the interchange and/or assessment portion of the fees;
- b. The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Client;
- c. Increases in any applicable sales or telecommunications charges or taxes levied by any state, federal or local authority related to the delivery of the services provided by BluePay Processing, LLC. when such costs are included in the Service or other fixed fees.

The discount fees shown on the Service Fee Schedule shall be calculated based on the gross sales volume of all Visa, MasterCard, Discover and American Express volume.

A Monthly Minimum Processing Fee will be assessed immediately after the date Client’s Application is approved. (Refer to Service Fee Schedule, if applicable.)

In addition to the PIN 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.

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 initial term of the Agreement, or (b) this Agreement is terminated prior to the expiration of the initial 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, the parties have agreed that the amount described below is a reasonable pre-estimate of Servicers’ probable loss.

In the event that Client terminates this Agreement within three (3) years from the date of approval by BluePay Processing, LLC and *Wells Fargo Bank, N.A.* or this Agreement is terminated by Servicers within 3 years from the date of approval due to an Event of Default, Client will be charged a fee for such early termination of two hundred ninety-five dollars (\$295.00) per Client location. Client’s obligation with respect to the Monthly Minimum Processing Fee will end simultaneously with BluePay Processing, LLC’s receipt of Termination Fee.

A.4. 6050W of the Internal Revenue Code

Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return for each calendar year reporting all payment card transactions and third party network transactions with payees occurring in that calendar year. Accordingly, you will receive a Form 1099-K reporting your gross transaction amounts for each calendar year. Your gross transaction amount refers to the gross dollar amount of the card transactions processed through your merchant account with us. In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. Payors will be required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee’s taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.

A.5. Addresses For Notices

PROCESSOR:
BluePay Processing, LLC:
 184 Shuman Blvd.
 Suite 350
 Naperville, IL 60563
 Attn: Merchant Services

BANK:
Wells Fargo Bank N.A.:
 1200 Montego
 Walnut Creek, CA 94598
 Attn: Merchant Services
 (925) 746-4143

Important Phone Numbers:
(see also Sections 3.3 and 5.4)
 Customer Service
 1-866-739-8324