

## MERCHANT APPLICATION AND AGREEMENT

Agent Office (Print) \_\_\_\_\_ Agent Telephone \_\_\_\_\_ Lead No. \_\_\_\_\_

Sales Representative (Print) \_\_\_\_\_ Promo Code \_\_\_\_\_ Program Code \_\_\_\_\_

MERCHANT INFORMATION				
Legal Name of Business			DBA (Doing Business As) (only 22 characters including spaces)	
Street Address (Physical address—No P.O. Boxes)			City	State ZIP
Mailing Address (If different from Street Address)			City	State ZIP
Business Telephone	Business Fax Telephone	Merchant Customer Service Telephone	Tax ID No. (Required—9 digits)	Age of Business Yrs. Mos.
Merchant E-Mail		Merchant Customer Service E-Mail		
List Type of Business/Products/Services Sold and How (Be specific)		Merchant URL	Authorized Business Rep	

OWNERSHIP				
51% ownership for a corporation, 100% ownership for a partnership or proprietorship, must be accounted for on the application				
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Private Corp.	<input type="checkbox"/> Public Corp.	<input type="checkbox"/> Government (Federal/state/local)	<input type="checkbox"/> Medical or Legal Corporation
<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Liability Co.	<input type="checkbox"/> Non-Profit Corp.	<input type="checkbox"/> Associations/Estates and Trusts	<input type="checkbox"/> Tax-Exempt Org. (501C)
Principal's Name		Ownership %	Title	Home Telephone
Date of Birth (mm/dd/yy) (Required)	Social Security No. (Required)	Driver's License No. and State/State Issued ID (Required)		Expiration Date (Required)
Street Address (Physical Address—No P.O. Boxes)			City	State ZIP
Second Principal's Name		Ownership %	Title	Home Telephone
Date of Birth (mm/dd/yy) (Required)	Social Security No. (Required)	Driver's License No. and State/State Issued ID (Required)		Expiration Date (Required)
Street Address (Physical Address—No P.O. Boxes)			City	State ZIP

SETTLEMENT ACCOUNT (you MUST attach a voided check)				
We will automatically debit your Settlement Account for any amounts owed to us under the Merchant Agreement.				
Bank Name	Transit Routing No.	Account No.	Telephone	Bank Contact

MARKETING METHOD	EQUIPMENT/SOFTWARE	
Combined Estimated Monthly Volume (MasterCard/ Visa/Discover Network) \$ _____ Estimated Monthly Volume (American Express) \$ _____ Typical Ticket/Sales Amount \$ _____ Estimated Highest Ticket/Sales Amount \$ _____ Face to Face _____ % Mail Order (MO) _____ % Telephone Order (TO) _____ % Internet _____ % <b>Total 100%</b>	<input type="checkbox"/> NEW EQUIPMENT <input type="checkbox"/> REPROGRAM <input type="checkbox"/> Terminal _____ No. Units _____ <input type="checkbox"/> Printer _____ No. Units _____ <input type="checkbox"/> PIN Pad _____ No. Units _____ <input type="checkbox"/> Other _____ No. Units _____ <input type="checkbox"/> Software Product _____ <input type="checkbox"/> Turnkey/VAR _____ <input type="checkbox"/> Other _____ <input type="checkbox"/> TeleCharge IVR* <input type="checkbox"/> Purchasing Card/Level II Petroleum Integrated Equipment: <input type="checkbox"/> VeriFone Ruby <input type="checkbox"/> Gas Boy <input type="checkbox"/> Gilbarco <input type="checkbox"/> Auto Gas <input type="checkbox"/> Other: _____ <small>*Notwithstanding anything to the contrary in the Merchant Agreement, the term for a TeleCharge Merchant account is month to month</small>	<u>Select Platform:</u> <input type="checkbox"/> CARDnet Platform <input type="checkbox"/> Omaha Platform <input type="checkbox"/> Nashville Platform <input type="checkbox"/> Buypass Platform <u>Select Terminal Options:</u> <input type="checkbox"/> Auto-Close? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Retail Tips? <input type="checkbox"/> Yes or <input type="checkbox"/> No <input type="checkbox"/> Restaurant Tips? <input type="checkbox"/> Yes or <input type="checkbox"/> No Debit <input type="checkbox"/> Cash-Back Limit \$ _____
Swiped _____ % Keyed With Imprint _____ % Keyed Without Imprint _____ % <b>Total 100%</b>		

SITE INSPECTION	
1. Person/authorized company performing site visitation: _____	2. Visitation Date: _____
3. How Many Employees: _____	4. Location: <input type="checkbox"/> Mall <input type="checkbox"/> Office <input type="checkbox"/> Home <input type="checkbox"/> Shopping Area <input type="checkbox"/> Mixed <input type="checkbox"/> Apartment <input type="checkbox"/> Isolated
5. Zone: <input type="checkbox"/> Business District <input type="checkbox"/> Industrial <input type="checkbox"/> Residential	
6. Return Policy: <input type="checkbox"/> Full Refund <input type="checkbox"/> Exchange Only <input type="checkbox"/> None	
7. Do you have a refund policy for MasterCard/Visa/Discover Network/American Express Sales? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, check one: <input type="checkbox"/> Exchange <input type="checkbox"/> Store Credit <input type="checkbox"/> MC/Visa/Discover Network/American Express Credit	
8. If MC/Visa/Discover Network/American Express Credit, within how many days do you submit credit transactions? <input type="checkbox"/> 0-3 <input type="checkbox"/> 4-7 <input type="checkbox"/> 8-14 <input type="checkbox"/> Over 14	
9. What is the timeframe from the transaction to delivery of product/service? _____ % 0-7 days    _____ % 8-14 days    _____ % 15 – 30 days _____ % Over 30 days	

**PROCESSOR**

1. Are you now processing or have you ever processed MasterCard/Visa/Discover Network/American Express?  
 Yes  No (If yes, attach a previous processor's statement.)
2. Name of Processor: \_\_\_\_\_
3. Have you ever had a payment card processing relationship terminated?  
 Yes  No (If yes, attach explanation)
4. Do you use any third party to store, process or transmit cardholder data?  
 Yes  No If yes, give name and address: \_\_\_\_\_

**FEE SCHEDULE (Charged by Processor)**

All fees are subject to change as provided below. For further details, read this entire Merchant Application and Agreement.

DISCOUNT RATES FOR MASTERCARD/VISA/DISCOVER NETWORK	ADMINISTRATIVE FEES
<p>Acceptance of all MasterCard, Visa and Discover Network transactions is presumed unless you indicate which service(s) you do not want by checking that service below. (See Section 2 of your Merchant Agreement.)</p> <p><input type="checkbox"/> Visa Credit Transactions</p> <p><input type="checkbox"/> Visa Non-PIN Debit Transactions</p> <p><input type="checkbox"/> MasterCard Credit Transactions</p> <p><input type="checkbox"/> MasterCard Non-PIN Debit Transactions</p> <p><input type="checkbox"/> Discover Network Transactions</p> <p>MasterCard/Visa/Discover Network</p> <p>Qualified Rates</p> <p>Credit: _____ %</p> <p>Non-PIN Debit: _____ %</p> <p>Mid-Qualified Rates</p> <p>Credit: Qualified Rate plus _____ % + \$ _____</p> <p>Non-PIN Debit: Qualified Rate plus _____ % + \$ _____</p> <p>Non-Qualified Rates</p> <p>Credit: Qualified Rate plus _____ % + \$ _____</p> <p>Non-PIN Debit: Qualified Rate plus _____ % + \$ _____</p>	<p>Chargeback Fee for MasterCard/Visa/Discover Network/American Express (per occurrence) \$ 30.00</p> <p>Checking Account Change, ACH Reject, and Account Closure fees (per occurrence) \$ 30.00</p> <p>Compliance Svc Fee: <input type="checkbox"/> Monthly <input type="checkbox"/> Annually \$ _____</p> <p>Early Cancellation Fee*: An amount equal to your Monthly Minimum Fee for MasterCard/Visa/Discover Network/American Express, Monthly Customer Service Fee, and Monthly Account Fee multiplied by the number of months remaining in your initial term, as designated in the Initial Term of Merchant Agreement section of this Merchant Application and Agreement.</p> <p><i>*Not applicable to TeleCharge Merchant accounts.</i></p>
	MONTHLY FEES
	<p>Monthly Minimum Fee for MasterCard/Visa/Discover Network/American Express \$ _____</p> <p>Non-Receipt of PCI Data Validation Fee \$19.95 if applicable <i>(only charged after 6 months and each month thereafter if we have not received merchant's validation of PCI compliance – see glossary for details)</i></p> <p>Monthly Customer Service Fee \$ _____</p> <p>Monthly Account Fee \$ _____</p> <p>Merchant Statement Fee \$ 9.95 *</p> <p><i>* TeleCharge merchants who receive a paper statement will be charged \$5.00 per month. To discontinue your paper statement and to receive your Monthly Settlement Statement exclusively online at no charge, you must register at Mymerchantoffice.com.</i></p>
	AUTHORIZATION, AVS AND BATCH FEES
	<p>Authorization Fee for MasterCard/Visa/Discover Network \$ _____</p> <p>Authorization Fee for American Express* \$ _____</p> <p>Voice Auth Fee \$ _____</p> <p>AVS Fee (per inquiry) \$ _____</p> <p>Access Fee \$0.0269</p> <p>Batch Closure Fee \$ _____</p> <p>Batch Settlement Fee \$ _____</p> <p><input type="checkbox"/> AMEX Split Dial (Lodging, Auto Rental and Restaurant Only)(Does not apply to full service processing)  <i>Cross Border/International Service fees may apply.</i>  <i>*No AMEX Authorization fee is charged when Split Dial is selected.</i></p>
DISCOUNT RATE FOR AMERICAN EXPRESS ONE POINT/FULL SERVICE PROCESSING	
<p>(Merchants with existing American Express or Non-Full Service must complete the American Express section located on page 3)</p> <p><input type="checkbox"/> Check here to apply</p> <p>Discount Rate* _____ % + \$ _____</p> <p><i>* For Retail and Restaurant Card Not Present Transactions, a 0.30% surcharge will be charged.</i></p>	

**SPECIAL REQUESTS**

**INITIAL TERM OF MERCHANT AGREEMENT**

Length of Initial Term: \_\_\_\_\_ year(s) \_\_\_\_\_ months \_\_\_\_\_ (Init.)

**OPTIONAL SERVICES FEE SCHEDULE  
(Charged by Processor)**

**PIN DEBIT**

Debit Card    Debit Card Monthly Fee    \$ 5.00    Debit/ATM Transaction Fee    \$ \_\_\_\_\_    (Plus Debit Network Processing Fees)

**PETROLEUM INFORMATION**

Pay at the Pump:     Wright Express:    3.50% (charged by Wright Express)     Voyager Rate:    3.40%  
YES  NO     Transaction fee: \$ \_\_\_\_\_    Transaction fee: \$ \_\_\_\_\_

**GATEWAY**

Monthly Gateway Fee    \$ \_\_\_\_\_    Gateway Transaction Fee    \$ \_\_\_\_\_

Technical Support Name    \_\_\_\_\_    Technical Support Phone    \_\_\_\_\_    Technical Support Email    \_\_\_\_\_

**CART**

LinkPointCart Fee    \$ \_\_\_\_\_    No. Units \_\_\_\_\_

**ELECTRONIC BENEFITS TRANSFER (EBT)**

Food Stamps     Cash Benefit    FNS No. \_\_\_\_\_

Dial-Up     Wireless

EBT Authorization Fee: \$ \_\_\_\_\_    Balance Inquiry Fee \$ \_\_\_\_\_

EBT Transaction Fee: \$ \_\_\_\_\_

**WIRELESS ACCESS**

Monthly Wireless Access Fee    \$ \_\_\_\_\_    No. Units \_\_\_\_\_

**JCB**

New     Existing    Existing JCB Merchant No. \_\_\_\_\_

Discount Rate for JCB    3.35%    Authorization Fee for JCB  
(per item) \$ \_\_\_\_\_

**OTHER ENTITLEMENTS**

**AMERICAN EXPRESS (Existing or Non-Full Service)  
(Charged on American Express Statement)**

Initials \_\_\_\_\_     New (Non-Full Service)     Existing    Existing AMEX Merchant No. \_\_\_\_\_

Cap No. \_\_\_\_\_    Annual Volume    \$ \_\_\_\_\_    Estimated Average Ticket    \$ \_\_\_\_\_

Franchise Name    \_\_\_\_\_    AMEX Monthly Fee\*    \$ 5.95    AMEX Discount Rate\*\*    \_\_\_\_\_% + \$ \_\_\_\_\_

\*See Section 21.3 of your Merchant Agreement for Merchant applicability. \*\* For Retail and Restaurant Card Not Present Transactions, a 0.30% surcharge will be charged.

**EXISTING DISCOVER NETWORK**

Existing Discover Number \_\_\_\_\_    Franchise Number \_\_\_\_\_

**THIRD PARTY AGREEMENTS**

**FIRST DATA GLOBAL LEASING**

Lease Company: First Data Global Leasing    Lease Term: \_\_\_\_\_ mos    Annual Tax Handling Fee:    \$10.20

Total Monthly Lease Charge: \$ \_\_\_\_\_ w/o taxes, late fees, or other charges that may apply – See Section 30 of your Merchant Agreement for details.

**This is a non-cancellable lease for the full term indicated. First Data Global Leasing will automatically debit the Settlement Account identified on page 1 for all amounts owing under the lease. (Merchant's initials: \_\_\_\_\_)**

The equipment/products to be leased are referenced in the Equipment/Software section of this Merchant Application, located on page 1.

**TELECHECK®**

**ECA & CHECK WARRANTY**

ECA® Check Warranty     Check Warranty     Other \_\_\_\_\_

Monthly Minimum Fee    \$ \_\_\_\_\_    Charge per Transaction    \$ \_\_\_\_\_

Inquiry Rate    \_\_\_\_\_%    Setup Fee    \$ \_\_\_\_\_

Monthly Processing Fee    \$ \_\_\_\_\_    Flat Fee    \$ \_\_\_\_\_

Warranty Maximum\*    \$ \_\_\_\_\_    ECA Correction Fee    \$5.00

Customer Requested Operator    \$2.50    December Risk Surcharge    0.10%

Recovery Processing Fee    \$5.00    ECA Chargeback Fee    \$5.00

Warranty Research Fee    \$7.50    Other    \$ \_\_\_\_\_

Other    \$ \_\_\_\_\_     Daily \$15.00     Weekly \$10.00     Monthly (Included at No Charge)

**TELEPHONE ACCEPTANCE SERVICE (TAS)**

Warranty     Verification    Monthly Check Volume \$ \_\_\_\_\_    Average Dollar Amount \$ \_\_\_\_\_

Number of Websites/Call Centers \_\_\_\_\_    Setup Fee \$ \_\_\_\_\_    Discount Rate: \_\_\_\_\_%

Transaction Fee: \$ \_\_\_\_\_    Monthly Processing Fee: \$ \_\_\_\_\_    Monthly Minimum Fee: \$ \_\_\_\_\_

Order Confirmation Letter Fee\* (TAS only) \$0.60    Corporate check processing service add-on selected?  Yes  No

\* Opt-Out: Subscriber agrees to send written confirmation to consumer per NACHA    Maximum Warranty (IAS & TAS): \$1,000.00

**INTERNET ACCEPTANCE SERVICE (IAS)**

Warranty     Verification    Monthly Check Volume \$ \_\_\_\_\_    Average Dollar Amount \$ \_\_\_\_\_

Number of Websites/Call Centers \_\_\_\_\_    Setup Fee \$ \_\_\_\_\_    Discount Rate: \_\_\_\_\_%

Transaction Fee: \$ \_\_\_\_\_    Monthly Processing Fee: \$ \_\_\_\_\_    Monthly Minimum Fee: \$ \_\_\_\_\_

Order Confirmation Letter Fee\* (TAS only) \$0.60    Corporate check processing service add-on selected?  Yes  No

\* Opt-Out: Subscriber agrees to send written confirmation to consumer per NACHA    Maximum Warranty (IAS & TAS): \$1,000.00

**ADDITIONAL TELECHECK INFORMATION (Required for all TeleCheck Services)**

Merchant:

- 1. Is a publicly traded corporation.  Yes  No
- 2. Is a subsidiary of a publicly traded corporation.  Yes  No
- 3. Is federally-insured.  Yes  No
- 4. Is a government entity.  Yes  No
- 5. Sells anti-telemarketing devices.  Yes  No
- 6. Sells "credit enhancements" services/products.  Yes  No
- 7. Sells identity theft protection services/products.  Yes  No
- 8. Sells services/products that facilitate the obtaining of grant.  Yes  No
- 9. Has annual revenues of \$ \_\_\_\_\_.

- 10. Has been the subject of a law enforcement or government investigation. If yes, please explain on separate page.  Yes  No
- 11. Has had any state-issued or business license revoked. If yes, please explain on separate page.  Yes  No
- 12. Has used another TEL Processor within the past two (2) years. If yes, please explain why Company is now seeking the services of another TEL Processor on separate page.  Yes  No
- 13. Obtains \_\_\_\_\_% of annual revenues from sales solicitations initiated by Company via telephone, fax or e-mail to customers for which the Company has had no existing relationship with for the past two (2) years.
- 14. Describe Company's specific type of business and product lines for the past two (2) years:  
 \_\_\_\_\_  
 \_\_\_\_\_

**Term and Termination.** TeleCheck will provide the TeleCheck Services selected in the TeleCheck Application for an initial term of twelve (12) months from the effective date. Thereafter, the TeleCheck Services shall automatically renew for successive 12-month terms until terminated as provided for in the TeleCheck Service Agreement.

**Damages.** Upon your breach or unauthorized termination of the TeleCheck Services, TeleCheck shall be entitled to recover from you liquidated damages in an amount equal to ninety percent (90%) of the total aggregate charges payable for the unexpired portion of the then-current term of the TeleCheck Services.

**Payment.** All fees and charges are due upon receipt. You authorize TeleCheck to debit from your financial institution account as provided to TeleCheck by you, all payments and other amounts owed. You agree to pay TeleCheck a \$25.00 fee for any check or ACH debit that is not paid by your financial institution upon presentation.

*\*Warranty maximum for ECA is \$20,000; Check Warranty is face value of check; Grocery and Convenience Vertical Market program is \$100.*

**MERCHANT AGREEMENT**

**1 Requirements.**

The following rules are requirements strictly enforced by Visa, MasterCard and Discover Network: (a) You cannot establish minimum or maximum amounts as a condition for accepting a Card, except that for Discover Network transactions, you may limit the maximum amount a Discover Network Cardholder may spend if, and only if, you have not received a positive authorization response from the Card Issuer; (b) You cannot impose a surcharge or fee for accepting a Card; (c) You cannot establish any special conditions for accepting a Card; (d) You cannot establish procedures that discourage, favor or discriminate against the use of any particular Card. However, you may choose not to accept either U.S. issued Debit Cards or U.S. issued Credit Cards under the terms described in Section 2; (e) You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address; or driver's license number) unless instructed by the Authorization Center. The exception to this is for a mail/telephone/Internet order or delivery-required transaction, and zip code for a card-present key-entered transaction in order to obtain an Address Verification ("AVS"). Any information that is supplied by the Cardholder must not be in plain view when mailed; (f) Any tax required to be collected must be included in the total transaction amount and not collected in cash; (g) You cannot submit any transaction representing the refinance or transfer of an existing Cardholder obligation deemed uncollectible; (h) You cannot submit a transaction or sale that has been previously charged back; (i) You must create a Sales or Credit Draft for each Card transaction and deliver at least one copy of the Sales or Credit Draft to the Cardholder; (j) You cannot submit a transaction or sale to cover a dishonored check; (k) If you accept Card checks, your Card check acceptance policy must treat the acceptance of checks from all payment card brands that you accept equally. (e.g., if you accept MasterCard, Visa and Discover Network, your check acceptance policy must treat checks for all three payment card brands equally). You should handle these Card checks like any other personal check drawn upon a bank in the United States; (l) Failure to comply with any of the Association Rules may result in fines or penalties.

**2 Card Acceptance.** If you have indicated either in the Application or by registering with us at least thirty (30) days in advance that, as between Non-PIN Debit Card transactions and Credit Card transactions, you will limit your acceptance to either (i) only accept Non-PIN Debit transactions; or (ii) only accept Credit Card transactions, then the following terms in this Section 2 will apply:

**2.1** You will be authorized to refuse to accept for payment either Non-PIN Debit Cards or Credit Cards that are issued within the United

States. You will, however, continue to be obligated to accept all foreign issued Credit or Debit Cards issued by MasterCard, Visa or Discover Network so long as you accept any type of MasterCard, Visa or Discover Network branded Card.

**2.2** While many Debit Cards include markings indicating debit (such as "Visa Checkcard, Visa Buxx, Gift Card, DEBIT, or Mastermoney), many Debit Cards do not include any such markings and will not have such markings until January 2007. It will be your responsibility to determine at the point of sale whether a Card is of a type that you have indicated that you will accept. You agree to institute appropriate systems and controls to limit your acceptance to the Card types indicated. You may purchase a table of ranges of numbers currently associated with Debit Card transactions upon execution of confidentiality/non-disclosure agreements required by the Associations. You will be responsible for updating your systems to utilize such tables and to obtain updated tables.

**2.3** To the extent that you inadvertently accept a transaction that you are not registered to accept, such transaction will downgrade to a Non-Qualified Credit Transaction and the Discount Rate that will be applied to the transaction will be your Non-Qualified Rate.

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

**2.5** Even if you elect not to accept Non-PIN Debit Card transactions as provided above, you may still accept PIN Debit Card transactions if you have signed up for PIN Debit Card Services. The terms in Section 22 shall apply to such services.

**3 Deposits of Principals.** Owners, partners, officers and employees of your business establishment, and the guarantors who signed the Application, are prohibited from submitting Sales Drafts or Credit Drafts transacted on their own personal Cards, other than transactions arising from bona fide purchases of goods or services in the ordinary course of your business. Such use in violation of this Section 3 is deemed a cash advance, and cash advances are prohibited.

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

a financial institution with express authorization in writing in advance from Servicers.

## 5 Data Security

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

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

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

The Associations or we may impose fines or penalties, or restrict you from accepting Cards if it is determined that you are not compliant with the applicable data security requirements. We may in our sole discretion, suspend or terminate Card processing Services under your Merchant Agreement for any actual or suspected data security compromise.

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

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

Detailed information about MasterCard's SDP program can be found at the MasterCard SDP website: <https://sdp.mastercardintl.com>.

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

**5.2 You must comply with the data security requirements shown below:**

- (a) You must install and maintain a secure network firewall to protect data across public networks;
- (b) You must encrypt stored data and data sent across networks;
- (c) You must use and regularly update anti-virus software and keep security patches up-to-date;
- (d) You must restrict access to data by business "need to know", assign a unique ID to each person with computer access to data and track access to data by unique ID;
- (e) Don't use vendor-supplied defaults for system passwords and other security parameters;
- (f) You must regularly test security systems and processes;
- (g) You must maintain a policy that addresses information security for employees and contractors;
- (h) You must restrict physical access to Cardholder information;
- (i) You may not transmit Cardholder account numbers to Cardholders for Internet transactions;
- (j) You cannot store or retain Card Validation Codes (three-digit values printed in the signature panel of most Cards, and a four-digit code printed on the front of an American Express Card);
- (k) You cannot store or retain Magnetic Stripe data, PIN data or AVS data. Only Cardholder account number, Cardholder Name and Cardholder expiration date can be retained subsequent to transaction authorization;
- (l) You must destroy or purge all Media containing obsolete transaction data with Cardholder information;
- (m) You must keep all systems and Media containing Card account, Cardholder, or transaction information (whether physical or electronic) in a secure manner so as to prevent access by, or disclosure to any unauthorized party; and
- (n) For Internet transactions, copies of the transaction

records may be delivered to Cardholders in either electronic or paper format.

**5.3** You may be subject to ongoing validation of your compliance with PCI DSS standards. Furthermore, we retain the right to conduct an audit at your expense, performed by us or a third party designated by us to verify your compliance, or that of your agents or third party providers, with security procedures and these Operating Procedures.

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

**5.5** You must, at your own expense (i) perform or cause to be performed an independent investigation (including a forensics analysis) of any data security breach of Card or transaction data, (ii) perform or cause to be performed any remedial actions recommended by any such investigation, and (iii) cooperate with us in the investigation and resolution of any security breach.

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

**5.7 Third Parties.** The data security standards set forth above also apply to any agent or third party provider that you may use to store, process or transmit Cardholder data. In addition, such agents or third party providers must be registered with the applicable Association. Therefore, you must: (a) Notify us in writing of any agent or third party processor that engages in, or proposes to engage in, the storing, processing or transmitting of Cardholder data on your behalf, regardless of the manner or duration of such activities and; (b) Ensure that all such agents or third party processors are (i) registered with the applicable payment card brands; and (ii) comply with all applicable data security standards, including, without limitation, the PCI DSS.

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

## 6 Credit Card Operating Procedures; Association Rules

**6.1** You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Association Rules. From time to time, we may amend the Operating Procedures, by providing you with at least 20 days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the Association Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice.

**6.2** Our Agreement with you includes Operating Procedures which contain procedures, instructions and other directives relating to Card transactions. If you fail to follow any of the provisions of the Operating Procedures, you may incur certain liabilities or we may terminate the Agreement. You will receive the Operating Procedures at the time you sign your Merchant Agreement and you may request additional copies at anytime from your sales representative or by calling customer service. You agree that if you process Card transactions, you will comply with the Operating Procedures for all transactions you process. The current Operating Procedures are also available online at [www.firstdata.com/fdis/Merchants/Operatingprocedures/fdis0209.pdf](http://www.firstdata.com/fdis/Merchants/Operatingprocedures/fdis0209.pdf).

**6.3** If there are any inconsistencies between the Merchant Application and Agreement and the Operating Procedures, the Merchant Application and Agreement will govern. If any part of the Merchant Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

## 7 Settlement

Your funds for MasterCard/Visa/Discover Network transactions will be processed and transferred to your financial institution within two (2) Business Days from the time a Batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard/Visa/Discover Network transactions will 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.

## **8 Settlement Of Card Transactions**

**8.1** 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.

**8.2** All settlements for Visa, MasterCard and Discover Network Card transactions will be net of Credits/refunds, adjustments, applicable discount fees when due, Chargebacks and any other amounts then due from you. We may also set off from any payments otherwise due, any amounts owed to our affiliates (and/or affiliates of Bank) whether or not arising out of or related to this Agreement.

**8.3** All Credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our final audit, Chargebacks (including our related losses), fees and fines imposed by the Associations. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees and pending Chargebacks, or may deduct such amounts from settlement funds due to you. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

**8.4** We will not be liable for any delays in receipt of funds or errors in debit and Credit entries caused by third parties including but not limited to any Association or your financial institution.

**8.5** In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 17) 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.

## **9 Exclusivity**

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

## **10 Fees; Adjustments; Collection Of Amounts Due**

**10.1** You acknowledge that for Visa, MasterCard and Discover transactions, we will process your Card transactions at the Qualified Discount Rate only when your transactions meet certain criteria set by the applicable Association and us. When your Card transactions fail to meet those qualification criteria, we will process your transactions at the higher Non-Qualified Discount Rate (or, in certain circumstances, at an intermediate Mid-Qualified Discount Rate) indicated in this Merchant Application and Agreement. The current requirements for the Qualified Discount Rate and, if applicable, the Mid- and Non-Qualified Discount Rates will be to you upon acceptance of your application and are also available for your review by asking your sales representative, calling customer service, or online at [www.mymerchantoffice.com](http://www.mymerchantoffice.com) (registration required).

**10.2** 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.

**10.3** 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.

**10.4** The fees for Services set forth in this Agreement may be adjusted to reflect increases or decreases by Associations in interchange, assessments and other Association fees or to pass through increases charged by third parties for on-line communications and similar items. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change is implemented by the applicable Association or third party.

**10.5** Subject to Section 15.3, we may also increase our fees for Services for any other reason by notifying you 20 days prior to the effective date of any such change.

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

**10.7** A Client is charged a Batch Closure Fee when the Client transmits a batch to us for settlement. The Client is charged a Batch Settlement Fee for each batch of transactions settled with the Associations or the debit networks. The Batch Settlement Fee is separate from, and in addition to, the Batch Closure Fee. A Batch Settlement Fee is charged for each batch of transactions settled through the Associations for Credit Card and Non-PIN Debit transactions, and a separate Batch Settlement Fee is charged for each batch of transactions settled through the debit networks for PIN Debit transactions. For example, if a Client's batch includes both (i) Credit Card or Non-PIN Debit transactions and (ii) PIN Debit transactions, the Client will be charged two (2) Batch Settlement Fees.

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

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

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

**10.11** If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within 45 days after any debit or Credit is or should have been effected. If you notify us after such time period, we may, in our discretion, assist you, at your expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but we shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

## **11 Chargebacks**

**11.1** 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.

**11.2** 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.

**12 Representations; Warranties; Limitations On Liability; Exclusion Of Consequential Damages**

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

**12.1.1**The Card transaction represents a bona fide sale/rental of merchandise or services not previously submitted;

**12.1.2**The Card transaction represents an obligation of the Cardholder for the amount of the Card transaction;

**12.1.3**The amount charged for the Card transaction is not subject to any dispute, set-off or counterclaim;

**12.1.4**The Card transaction amount is only for the merchandise or services (including taxes, but without any surcharge) sold or rented and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Agreement, the merchandise or service was actually delivered to or performed for the person entering into the Card transaction simultaneously upon your accepting and submitting the Card transaction for processing;

**12.1.5**The Card transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to you by a Cardholder or arising from the dishonor of a personal check);

**12.1.6**You have no knowledge or notice of any fact, circumstances or defense which would indicate that the Card transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectability of the Cardholder's obligation arising from such Card transaction or relieve the Cardholder from liability with respect thereto;

**12.1.7**The Card transaction submitted to us was entered into by you and the Cardholder;

**12.1.8**The Card transaction was made in accordance with this Agreement, the Association Rules and the Operating Procedures; and

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

**12.2** 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.

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

**12.4** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 12.5 or 20), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR

LEGAL THEORY SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THE AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.

**12.5** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 20), OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS, AS ESTABLISHED BY THE FEDERAL RESERVE BOARD FROM TIME TO TIME, LESS ONE PERCENT (1%).

**12.6** 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 DISCOVER NETWORK CARD, AMERICAN EXPRESS CARD, JCB CARD, PIN DEBIT CARD, AND ELECTRONIC BENEFITS TRANSFER TRANSACTIONS, TELECHECK CHECK SERVICES, TRS COLLECTION SERVICES, GIFT CARD SERVICES, AND TRANSACTIONS INVOLVING CARDS FROM OTHER NON-BANK CARD ASSOCIATIONS SUCH AS VOYAGER FLEET SYSTEMS, INC., WRIGHT EXPRESS CORPORATION AND WRIGHT EXPRESS FINANCIAL SERVICES CORPORATION.

**13 Confidentiality**

**13.1** Unless you obtain consents from us and each applicable Association, Card Issuer and Cardholder, you must not use, disclose, store, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, Retrieval Requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. You shall use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. You may not retain or store Magnetic Stripe data or Card Validation Codes after a transaction has been authorized. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature except upon our specific request.

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

**14 Assignments**

**14.1** Any transfer or assignment of this Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable by us. Furthermore, you shall indemnify and hold us harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's Submission of Card transactions to us for processing. For purposes of this Section 14, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

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

make manually to fulfill such an assignment at the rate of \$100 per transfer.

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

**14.4** Subject to Association Rules, we may assign or transfer this Agreement and our rights and obligations hereunder and/or may delegate our duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without notice to you or your consent.

**14.5** 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.

#### **15 Term; Account Closure Fee**

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

**15.2** The initial term of this Agreement shall be for the initial term as designated in the Initial Term of Merchant Agreement section of your Merchant Application and Agreement and shall continue in force on a month to month basis until either party terminates the Agreement upon written notice to the other.

**15.3** 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 17 of this Agreement. In the event we provide notice to you of an increase in the fees for Services, pursuant to Section 10.5, you may terminate this Agreement without further cause or penalty by providing us 30 days advance written notice of termination. You must terminate within 30 days after we provide notice of the Section 10.5 fee increase. The Section 10.5 fee increase shall not take effect in the event you provide timely notice of termination. However, your continued use of our Services after the effective date of any increase shall be deemed acceptance of the increased fees for Services, throughout the term of this Agreement.

**15.4 Account Closure Fee.** YOU ACKNOWLEDGE THAT WE INCUR REASONABLE EXPENSES UPON THE CLOSURE OF A MERCHANT ACCOUNT AND AGREE TO PAY US \$30.00 AS AN ACCOUNT CLOSURE FEE AS INDICATED ON THE MERCHANT APPLICATION UPON THE TERMINATION OF THIS MERCHANT AGREEMENT WHETHER THE TERMINATION OCCURS DURING THE INITIAL TERM OR ANY TIME THEREAFTER.

#### **15.5 Early Cancellation Fee**

**15.6** If: a) you elect to cancel this Merchant Agreement prior to the expiration of the initial term, as designated in the Initial Term of Merchant Agreement section of your Merchant Application and Agreement; or b) this Merchant Agreement is terminated by us prior to the expiration of the initial term due to an Event of Default, we will suffer a substantial injury for which it is impracticable or extremely difficult to fix actual damages. In an effort to liquidate in advance the sum that should represent such damages, you agree to pay us as an "Early Cancellation Fee" an amount equal to your Monthly Minimum Fee for MasterCard/Visa/Discover Network and American Express, Monthly Customer Service Fee, and Monthly Account Fee multiplied by the number of months remaining in your initial term. This sum represents a reasonable pre-estimate of the losses that we will incur as a result of the cancellation of this Merchant Agreement prior to the expiration of the initial term of the Merchant Agreement. This amount is in addition to the Account Closure Fee as described in Section 15.4.

**16 Amendments.** Subject to Section 15, we may amend this Merchant Agreement at any time by providing written notice to you of

any amendment at least 20 days prior to the effective date of the amendment.

**17 Events of Default.** If any of the following events shall occur (each an "Event of Default") we may immediately terminate this Merchant Agreement without notice (a) a material adverse change in your business, financial condition, business procedures, prospects, products or services; (b) any assignment or transfer of voting control of you or your parent; or (c) a sale of all or a substantial portion of your assets; or (d) irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, of any Card Association, or any other entity, or an actual or suspected data security breach, 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 (e) any of your representations or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or (f) you shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 18; or (g) you shall default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our affiliates; or (h) you shall default in the payment when due, of any material indebtedness for borrowed money; or (i) you shall file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or (j) your independent certified accountants shall refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries; or (k) a violation by you of any applicable law or Association Rule or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury or your breach, as determined by Servicers, of Section 26.2 ("Compliance with Laws");

then, upon the occurrence of (1) an Event of Default specified in items (d), (i), or (k), 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.

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

**17.2** If any Event of Default shall have occurred and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, and this Agreement including, without limitation, exercising our rights under Section 18.

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



responsible for submitting an accounting supporting any adjustments that you may claim.

**17.4** The Associations often maintain lists of merchants who have had their Merchant Agreements or Card Acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Associations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa, MasterCard or Discover Network. 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.

**17.5** After termination of this Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, Credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

## **18 Reserve Account; Security Interest**

**18.1** You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 18. 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.

**18.2** 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 vested in the name of Client, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account; (ii) any payments otherwise due to you, including any amount due from TeleCheck; (iii) your delivery to us of a letter of credit; or (iv) if we so agree, your pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination or expiration of this Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination or expiration of this Agreement or for such longer period of time as is consistent with our liability for Card transactions and Chargebacks in accordance with Association Rules. Your funds will be held in an account commingled with reserve funds of our other Clients, without involvement by an independent escrow agent. Unless specifically agreed in writing by us or specifically required by applicable law, funds held by us in a Reserve Account shall not accrue interest. Notwithstanding the foregoing, we shall be entitled to accrued interest on any such funds held.

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

**18.3.1** To secure your obligations to Servicers and our affiliates under this Agreement and any other agreement for the provision of related equipment or related services (including any obligations for which payments on account of such obligations are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause), you grant to Servicers a first priority lien and security interest in and to (i) the Reserve Account; and (ii) any of your funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in the possession of Servicers, whether now or hereafter due or to become due to you from Servicers. Any such funds, money or amounts now or hereafter in the possession of Servicers may be commingled with other funds of Servicers, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of Servicers. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, Servicers are hereby authorized by you at any time and from time to time, without notice or demand to you or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup

and to appropriate and to apply any and all such funds against and on account of your obligations to Servicers and their affiliates under this Agreement and any other agreement with Servicers or any of Servicers' affiliates for any related equipment or related services (including any check services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to Servicers such instruments and documents as Servicers may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

**18.3.2** To the extent funds are held in a separate Reserve Account, the Reserve Account shall be subject to (i) Servicers' security interest pursuant to this subsection 18.3.2; and (ii) an account control agreement (as defined by the applicable sections of the Uniform Commercial Code, hereinafter referred to as "Control Agreement") among you, the institution at which the Reserve Account is held (such institution hereinafter referred to as "Settlement Account") and Servicers (such investment account hereinafter referred to as the "Control Account"). The Control Agreement shall be in form and substance satisfactory to Servicers. The Settlement Account shall be a National Association bank which is mutually acceptable to you and Servicers.

**18.3.3** For sake of clarification and notwithstanding anything in the Agreement to the contrary, in the event Servicers deduct, holdback, suspend, off set or set off (collectively "Set Off Funds") any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement, you acknowledge that such Set Off Funds will be held in a commingled Reserve Account (s) of Servicers (as described in this subsection 18.3.3) unless such Set Off Funds are wired or deposited by Servicers into any Control Account, pursuant to a Control Agreement in which case Servicers will transfer Set Off Funds from their commingled Reserve Account(s) to the Control Account as soon as practicable using commercially reasonable efforts.

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

## **19 Financial And Other Information**

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

**19.2** 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 3 days after you become aware of same.

## **20 Indemnification**

**20.1** You agree to indemnify and hold us harmless from and against all losses, liabilities, damages and expenses: (a) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by you under this Agreement; (b) arising out of your or your employees' or your agents' negligence or willful misconduct, in

connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders; (c) arising out of your use of our Service; or (d) arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Association or Issuer).

**20.2** We agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall not apply to Bank with respect to Discover Network Card Transactions, American Express Card Transactions and Other Services, including JCB Card, PIN Debit Card, and Electronic Benefits Transfer Transactions, TeleCheck check services, TRS collection services, Gift Card Services, and Transactions involving Cards from other Non-Bank Card Associations such as Voyager Fleet Systems, Inc., Wright Express Corporation and Wright Express Financial Services Corporation.

## **21 Special Provisions Regarding Non-Bank Cards**

**21.1** Non-Bank Card transactions are provided to you by Processor and not by Bank. 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. 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, JCB, or any other Non-Bank Card Association.

**21.2** You understand that American Express transactions are processed, authorized and funded by American Express. American Express will provide you with its own agreement that governs those transactions. You understand and agree that we are not responsible and assume absolutely no liability with regard to any such transactions, including but not limited to the funding and settlement of American Express transactions, and that American Express will charge additional fees for the services they provide.

**21.3** You understand that American Express is subject to separate approval—rates and fees as stated in your Merchant Application and Agreement are based on Client type and estimated volume and are subject to change. A Discount Rate will be collected by American Express. A \$5.95 Monthly Fee is mandatory for all American Express mail order, telephone order, home-based and Internet physical delivery Clients for up to \$5,000.00 in charge volume within any consecutive 12-month period and will be assessed by American Express. This monthly fee applies to online statements. Paper statements may be subject to additional fees. American Express pay frequency is three (3) days. For full service American Express Clients see Section 29 for further information.

**21.4** If you accept JCB Cards, you must securely retain original JCB Sales Drafts and JCB Credit Drafts for a period of at least 120 days from the date of the JCB Card transaction and you must retain microfilm or legible copies of JCB Sales Drafts and JCB Credit Drafts for a period of at least three (3) years following the date of the transaction.

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

**21.6** 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.

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

**21.8** If you accept Voyager Cards:

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- In addition to the information stated in Section 1 (MasterCard, Visa and Discover Network 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:

- Time of transaction
- Type of fuel sold
- As permitted by the applicable POS device, odometer reading
- For all cashier-assisted Sales Drafts and credit vouchers processed manually using a card Imprinter if required, the identification number

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

- In addition to the information provided under Section 6 (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 Merchant Application. Neither we nor Voyager shall be required to reimburse you for sales submitted more than sixty (60) days from the date of purchase.

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

- In addition to the scenarios identified in Section 9.1.4 of the Operating Procedures that could cause an authorization related Chargeback to occur, with respect to Voyager transactions, Chargebacks shall be made in accordance with any other Voyager rules. Notwithstanding termination or expiration of this paragraph or the Agreement, you shall remain liable for all outstanding Chargebacks on Voyager transactions.

- In addition to the information provided under Section 12 (Representations; Warranties; Limitations of Liability; Exclusion of Consequential Damages, in no event shall our cumulative liability to you for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions exceed the lesser of \$10,000.00 or the Voyager transaction fees paid by you to us for the two months prior to the action giving rise to the claim.

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

## **22 Special Provisions for PIN Debit Card**

The special provisions outlined in this Section 22 apply only to those PIN Debit Card transactions that are processed by a Cardholder entering a PIN. These provisions do not apply to Non-PIN Debit Card transactions which do not involve entry of a PIN.

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

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

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

- All PIN debit transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for PIN Debit Card transactions.
- You may not complete a PIN Debit Card transaction that has not been authorized. If you cannot obtain an Authorization at the time of sale, you should request another form of payment from the customer or process the transaction as a Store and Forward or Resubmission, in which case you assume the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuer to find out why a transaction has been declined.
- You may not complete a PIN Debit Card transaction without entry of the Personal Identification Number (PIN) by the Cardholder. The PIN must be entered into the PIN pad only by the Cardholder. You cannot accept the PIN from the Cardholder verbally or in written form.
- The PIN Debit Network used to process your transaction will depend upon, among other things, the availability of the network at the time of the transaction, whether a particular PIN Debit Card is enabled for a particular network and the routing requirements established by the networks and the card issuers. We may, at our sole discretion, utilize any PIN Debit Network available to us for a given transaction.
- You must issue a receipt to the Cardholder upon successful completion of a transaction. The Cardholder account number must be masked so that only the last four digits will appear. The masked digits must appear as a non-numeric character such as an asterisk. This is referred to as PAN truncation.
- You may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, you must request another form of payment from the customer.
- Any applicable tax must be included in the total transaction amount for which Authorization is requested. Tax may not be collected separately in cash.
- YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING REFUNDS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.

**22.3 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.

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

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

There are several reasons for adjustments being initiated:

- The Cardholder was charged an incorrect amount, either too little or too much.
- The Cardholder was charged more than once for the same transaction.
- A processing error may have occurred that caused the Cardholder to be charged even though the transaction did not complete normally at the point of sale.

All parties involved in processing adjustments are regulated by time frames that are specified in the operating rules of the applicable Debit Card network, The Electronic Funds Transfer Act, Regulation E, and other applicable law.

### **23 Special Provisions Regarding Electronic Benefit Transfer (EBT)**

If you elect to engage in EBT transactions, the terms and conditions of this Section 23 shall apply.

EBT Transactions are provided to you by Processor and not by Bank. 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. If you have agreed to issue Cash Benefits and will provide cash back or cash only transactions, you agree to maintain adequate cash on hand to issue confirmed Cash Benefits and will issue Cash Benefits to EBT customers in the same manner and to the same extent cash is provided to your other customers. You may not require that any EBT customers purchase goods or services as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate special checkout lanes restricted to use by EBT customers unless you also designate special checkout lanes for debit or Credit Cards and/or other payment methods.

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

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

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

**23.2 Manual EBT Vouchers.** All manual voucher authorizations must be cleared on your POS terminal for payment of voucher to be made to you. Vouchers must be cleared within 10 Business Days of voice authorization. Vouchers cannot be cleared by any manner except by your POS terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your POS for payment, no further action can be taken to obtain

payment for the voucher. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to sign the voucher. A copy of the voucher should be given to the EBT customer at the time of authorization and you should retain one copy for your records.

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

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

**23.5 Required Licenses.** If you issue benefits under this Agreement, you represent and warrant to us that you are properly authorized to enter such transactions and are not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by any applicable agency. You agree to secure and maintain at your own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenant that you will not issue benefits at any time during which you are not in compliance with the requirements of any applicable law.

**23.6 Term and Termination.** If you are disqualified or withdrawn from the food stamp program, your authority to issue benefits will be terminated contemporaneously therewith. Such disqualification or withdrawal will be deemed a breach of this Agreement with respect to your authority to issue Cash Benefits and, in the event of such disqualification; we shall have the right to immediately terminate the provision of service under this Section 23.6 or the Agreement in its entirety. With respect to the issuance of Cash Benefits only, your authority to issue Cash Benefits may be suspended or terminated immediately at the sole discretion of us, the state or its EBT service provider, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination if there shall be (i) any suspension, injunction, cessation, or termination of the EBT service provider's authority to provide EBT services to the state; (ii) failure by you, upon not less than thirty (30) days prior written notice, to cure any breach by you of the provisions of these terms and conditions, including without limitation, your failure to support the issuance of benefits during your normal business hours consistent with your normal business practices, your failure to comply with issuance procedures, impermissible acceptance of an EBT Card, or your disqualification or withdrawal from the food stamp program; or (iii) based on a state's or its EBT service provider's investigation of the relevant facts, evidence that you or any of your agents or employees are committing, participating in, or have knowledge of fraud or theft in connection with the dispensing of benefits. In the event you fail to cure any breach as set forth above, you may appeal such suspension or termination to the applicable state for determination in its sole discretion.

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

The provision of services under this Section 23.6 shall terminate automatically in the event that our Agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

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

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

The use of information obtained by you in the performance of your duties under this Section 23.7 will be limited to purposes directly connected with such duties.

**23.8 EBT Service Marks.** You will adequately display any applicable state's service marks or other licensed marks, including the Quest mark, and other materials supplied by us (collectively the "Protected Marks") in accordance with the standards set by the applicable state. You will use the Protected Marks only to indicate that benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider or we endorses your goods or services. Your right to use such Protected Marks pursuant to this Agreement will continue only so long as this Agreement remains in effect or until you are notified by us, any state or its EBT service provider to cease their use or display.

### 23.9 Miscellaneous

**23.10 Amendments.** If any of these terms and conditions are found to conflict with federal or state law, regulation or policy of the rules, these terms and conditions are subject to reasonable amendment by a state or its EBT service provider to address such conflict upon twenty (20) days written notice to you provided that you may, upon written notice, terminate your obligation under this Section 23 upon receipt of notice of such amendment.

**23.11 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.

### 24 Special Provisions Regarding Wireless Service

If you elect to purchase any Wireless Equipment from us as indicated on the Application, then the following terms and conditions of this Section 24, referred to as the Wireless Services Terms, shall apply. THE WIRELESS SERVICES ARE NOT BEING SOLD TO YOU FOR HOME OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank. 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 our affiliates, we have acquired the right to resell and sublicense certain wireless POS Terminals and accessories (the "Wireless Equipment") and wireless data communication services using radio base stations and switching offered by the various cellular telephone and data networks throughout the country (the "Wireless Networks") in order to allow you to capture and transmit to us certain wireless Credit and Debit Card Authorization transactions or to transmit other communications to our system.

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

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

**24.1 Purchase of Wireless Services.** In connection with your purchase of Wireless Equipment, you will purchase the Wireless Networks' service and obtain sublicenses to use any Wireless Software (as defined in Section 24.2) associated therewith (collectively "Wireless Services"). The prices that you will pay for the Wireless Services are set forth on the Schedule of Fees.

- **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.

• **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.

**24.2 Software Licenses.** We hereby grant to you a non-exclusive, non-transferable limited sublicense to use any Wireless Software solely in connection with your purchase and use of the Wireless Services. As used in this Section 24, "Wireless Software" means all software used in, for or in connection with the Wireless Equipment, the Wireless Services or the access thereto in whatever form, including without limitation source code, object code and microcode, including any computer programs and any documentation relating to or describing the Wireless Software. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this section.

**24.3 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 24.10, or for any third party's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services, or Wireless Networks, regardless of the form of action (whether in contract, tort (including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor's, Bank's, and Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services. In no event shall Servicers, Wireless Vendor(s) or our respective affiliates be liable for any indirect incidental, special or consequential damages. The remedies available to you under these Wireless Services Terms will be your sole and exclusive remedies.

**24.4 Indemnification.** In addition to any other indemnifications as set forth in this Agreement, you will indemnify and hold Servicers, 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 Services; (b) your negligent acts or omissions; (c) any breach by you of any of your obligations under this Section 24; or (d) any third party's unauthorized access to Client's data and/or unauthorized financial activity occurring on your Merchant Account Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

**24.5 Confidentiality.** All information or materials which could reasonably be considered confidential or competitively sensitive that you access from or relate to either 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.

**24.6 Termination.** In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 24 may terminate:

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

the portion of the Wireless Services affected by such loss of authority, suspension or non-renewal; or

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

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

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

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

**24.10 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 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.

**25 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.

## 26 Other Terms

**26.1 Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment or funds from a third party shall not excuse the performance of your obligations to us under this Agreement.

**26.2 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.

**26.3 Notices.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier), if to you at your address appearing in the Application and if to us at P.O. Box 5180, Simi Valley, CA 93062, facsimile: 805-552-8899, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065, and shall be deemed to have been given (i) if sent by mail or courier, when mailed or delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually

received. Notice given in any other manner shall be effective when actually received. Notices sent to the Merchant's last known address, as indicated in our records, shall constitute effective notice to the Merchant under this Agreement.

**26.4 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.

**26.5 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.

**26.6 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.

**26.7 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 Cancellation 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.

**26.8 No Third Party Beneficiaries.** Nothing in this Agreement is intended to confer upon any person or entity other than the parties any rights or remedies, and the parties do not intend for any third parties to be third-party beneficiaries of this Agreement.

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

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

## 27 Glossary

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

**Access Fee:** A per transaction fee charged as an allocation of various Association charges such as Base I and II access and kilobyte fees.

**Account Closure Fee:** A fee charged upon the termination of the Merchant Agreement, whether the termination occurs during the initial term, as designated in the Initial Term of Merchant Agreement section of your Merchant Application and Agreement, or any time thereafter.

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

**Address Verification:** A service provided through which the merchant verifies the Cardholder's address, in whole or in part. Primarily used by Mail/Telephone/Internet order merchants, Address verification is intended to deter fraudulent transactions. However, it is not a guarantee that a transaction is valid.

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

**Application:** See Merchant Application.

**Association:** Any entity formed to administer and promote Cards, including without limitation MasterCard International, Incorporated

("MasterCard"), Visa U.S.A., Inc. and Visa International ("Visa"), DFS Services, LLC ("Discover Network") and any applicable debit networks.

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

**Authorization:** Approval by, or on behalf of, the Card Issuer to validate a transaction for a merchant or another affiliate bank. An Authorization indicates only the availability of the Cardholder's Credit Limit at the time the Authorization is requested.

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

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

**Authorization Fee:** A Client is charged an Authorization Fee each time communication is made with the host (other than when a Merchant transmits a batch for settlement, for which the Client is charged a Batch Closure Fee) via the POS terminal, software or gateway.

**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.

**Batch Closure Fee:** A fee charged when the Client transmits a batch to us for settlement. The Batch Closure Fee is separate from and in addition to the Batch Settlement Fee.

**Batch Settlement Fee:** A fee charged for each batch of transactions settled with the Associations or the debit networks. The Batch Settlement Fee is separate from, and in addition to, the Batch Closure Fee. A Batch Settlement Fee is charged for each batch of transactions settled through the Associations for Credit Card and Non-PIN Debit Transactions, and a separate Batch Settlement Fee is charged for each batch of transactions settled through the debit networks for PIN Debit Transactions. For example, if a Client's batch includes both (i) Credit Card or Non-PIN Debit transactions; and (ii) PIN Debit Transactions, the Client will be charged two batch settlement fees.

**Business Day:** A day (other than Saturday or Sunday) on which Bank is open for business.

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

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

**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; Discover Network's Card Validation Code is known as a CID. Card Validation Codes are used to deter fraudulent use of an account number in a non-face-to-face environment, (e.g. mail orders, telephone orders and Internet orders).

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

**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.

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

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

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

**Chargeback:** The procedure by which a Sales Draft or other indicia of a Card transaction (or disputed portion) is returned to Bank, the Acquirer or the Issuer. Client is responsible for reimbursing us for all Chargebacks.

**Chargeback Fee:** A fee incurred each time a transaction is charged back to you

**Client:** The party identified as "Client" on the Application. The words "Subscriber," "you" and "your" refer to Client.

**Compliance Svc Fee:** For Clients in good standing, payment of the Compliance Fee will cover the costs of one PCI questionnaire per year, or if an Internet scan is required, four scans per year for one IP address from a data security vendor approved by Processor, while Client has an open account with Processor. If Client has more than one IP address that requires scanning, Client is responsible for any such scans. These benefits are subject to change without notice. The payment of the Compliance Svc Fee does not affect your compliance responsibilities and obligations associated with your Merchant Account.

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

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

**Credit Card Operating Procedures:** The manual prepared by Processor, containing operational procedures, instructions and other directives relating to Card transactions.

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

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

**Cross Border/International Service fees:** An Association-related charge applied to transactions in which country code of the Cardholder's account differs from the country of the Merchant's account.

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

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

**Debit Network Processing Fees:** Fees charged by PIN Debit networks for processing PIN Debit Transactions. In addition to any Debit Network Processing Fees, Client will also pay the Debit Card/ATM transaction fee as indicated in the Merchant Application and Agreement. Debit Network Processing Fees are subject to change without notice.

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

**Discount Rate:** An amount charged a merchant for processing its qualifying daily Credit Card transactions. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 10.1 and the "Discount Rates for MasterCard/Visa/Discover Network" section of the Merchant Application and Agreement.

**Early Cancellation Fee:** A fee in an amount equal to your Monthly Minimum Fee for MasterCard/Visa/Discover Network and American Express, Monthly Customer Service Fee, and Monthly Account Fee multiplied by the number of months remaining in your initial term, as designated in the Initial Term of Merchant Agreement section of your Merchant Application and Agreement, charged in the event that: a) you elect to cancel this Merchant Agreement prior to the expiration of the initial term of the Merchant Agreement; or b) the Merchant Agreement is terminated prior to the expiration of the initial term due to an Event of Default, except as provided in Section 15.3.

**Electronic Benefit Transfer (EBT):** An electronic system that allows a government benefit recipient to authorize the transfer of their benefits from a Federal, State or local government account to a merchant account to pay for products and services received.

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

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

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

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

**Issuer:** The bank or Association which has issued a Card to an individual. MasterCard and Visa only issue Cards through banks ("Issuing Banks") while Discover Network may issue Cards directly or issue Cards through an issuing bank.

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

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

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

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

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

**Merchant Agreement:** The agreement among Client, Processor and Bank contained in the Merchant Application and Agreement, any attachments, addenda, schedules thereto, each as amended from time to time, all of which collectively constitute the agreement among the parties. Bank is a party to this Merchant Agreement for Visa MasterCard and non-PIN debit purposes only.

**Merchant Application:** The Application portion of the Merchant Application and Agreement, sometimes referred to as the "Application".

**Monthly Account Fee:** A recurring monthly fee, as indicated in your Merchant Application and Agreement, for maintaining an account with Processor.

**Monthly Customer Service Fee:** A recurring monthly fee, as indicated in your Merchant Application and Agreement, for customer service access.

**Monthly Minimum Fee:** A fee, as indicated in the Merchant Application and Agreement, less the net Discount Rates, if any, for your applicable transactions during the month.

**Non-PIN Debit Card:** A Debit Card with either 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 Receipt of PCI Data Validation Fee:** Fee charged after 6 months and each month thereafter, if we have not received merchant's validation of PCI-DSS compliance. You must maintain PCI Compliance at all times and re-certify your compliance annually, quarterly or as otherwise required in order to avoid this fee in the future. We reserve all of our rights under the Merchant Agreement, including but not limited to terminating your services for non-compliance with association rules and regulations.

**Operating Procedures:** The then-current manual prepared by Processor, containing operating procedures, instructions and other directives relating to Card transactions. If you process Card transactions, you must comply with the Operating Procedures. The

current Operating Procedures are available online at [www.firstdata.com/fdis/Merchants/Operatingprocedures/fdis0209.pdf](http://www.firstdata.com/fdis/Merchants/Operatingprocedures/fdis0209.pdf).

**Other Services:** Other Services include all services related to , JCB Card, PIN Debit Card, and Electronic Benefits Transfer Transactions, TeleCheck check services, TRS collection services, Gift Card Services, and Transactions involving Cards from other Non-Bank Card Associations such as Voyager Fleet Systems, Inc., Wright Express Corporation and Wright Express Financial Services Corporation.

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

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

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

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

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

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

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

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

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

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

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

**Sales Draft:** Evidence of a purchase of goods or services by a Cardholder from Client using a Card, regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Association Rules and applicable law.

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

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

**Self-Service 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:** For Visa and MasterCard Credit and non-PIN debit Card transactions, Bank and Processor collectively. For all other Card transactions, Processor. The words "us" and "we" refer to Servicers

**Services:** The activities undertaken by Processor and Bank to authorize, process and settle all United States dollar denominated Visa and MasterCard 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 Discover Network and all other Cards covered by this Agreement.

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

**Split Dial:** A process which allows the Authorization terminal to dial directly to different Card processors (e.g., 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., Amex) for Authorization and Electronic Draft Capture.

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

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

**Summary Adjustment:** An adjustment to your Submission and/or Settlement Accounts in order to correct errors.

**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.

**Third Party Agreement(s):** If applicable, the agreements with third parties located in the Merchant Application and Agreement. These Third Party Agreements are separate and distinct from the Merchant Agreement with Processor and Bank and are subject to separate approvals.

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

**Us, We:** See Servicers.

**You, Your:** See Client.



## THIRD PARTY AGREEMENTS

The following Agreements are Third Party Agreements entered into between Client and the Third Parties identified in the Third Party Agreements.

If Client desires to receive the products and/ or services offered under a Third Party Agreement, Client must check the appropriate box or otherwise indicate such desire in the Merchant Application, in which case the terms and conditions of the Third Party Agreement shall be binding upon Client. The Signature page in the Merchant Application and Agreement shall also serve as a signature page to the Third Party Agreements.

Client acknowledges that the Third Parties are relying upon the information contained on the Merchant Application, all of which are incorporated by reference into the Third Party Agreements.

### 28 AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

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

#### 28.1 General Provisions

##### 28.1.1 SCOPE AND OTHER PARTS OF AGREEMENT; DEFINITIONS

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

**b. Other Parts of the Agreement. Merchant Regulations.** The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 28.8.j below. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call our agent's customer service center. We may charge you a fee for each copy that you request.

ii. **Schedule A.** Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.

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

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

**Agreement** means these General Provisions, Schedule A and any

other accompanying schedules and exhibits, and the Merchant Regulations, collectively.

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

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

**Charge** means a payment or purchase made on the Card. **Card Present Charge** means a Charge for which the Card is presented at the point of sale. **Card Not Present Charge** means a Charge for which the Card is not presented at the point of sale (e.g., Charges by mail, telephone, fax or the Internet), is used at unattended Establishments (e.g., customer activated terminals, called CATs), or for which the transaction is key-entered. **Disputed Charge** means a Charge about which a claim, complaint, or question has been brought.

**Chargeback** (sometimes called "full recourse" or "Full Recourse" in our materials), when used as a verb, means our reimbursement from you for the amount of a Charge subject to such right; when used as a noun, means the amount of a Charge subject to reimbursement from you. **Immediate Chargeback** (sometimes called "Immediate Full Recourse" in our materials) means our right to Chargeback immediately and irrevocably without first contacting you or sending you an Inquiry and for which you have no right to present any written response to dispute the Chargeback.

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

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

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

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

**Establishments** means any or all of you and your Affiliates' locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that you adopt in the future.

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

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

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

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

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

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

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

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

Company, Inc.

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

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

## 28.2 ACCEPTING THE CARD

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

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

**i. Format.** You must create a Charge Record for every Charge and a Credit Record for every Credit that complies with our requirements, as described in the Merchant Regulations. You may create multiple Charge Records for a single purchase placed on different Cards, but you must not create multiple Charge Records for a single purchase to the same Card, by dividing the purchase into more than one Charge.

**ii. Authorization.** You must obtain from and submit to us an Authorization Approval code for all Charges. Authorization does not guarantee that we will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

**iii. Submitting Charges and Credits.** Your Establishments must submit Charges and Credits in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card account used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations.

**iv. Payment for Charges.** We will pay you, through our agent, according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations. We may adjust any of these amounts and may change any other amount we charge you for accepting the Card.

**v. Chargeback.** We and our agent have Chargeback rights, as described in the Merchant Regulations. We and our agent may Chargeback by deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Account), or we or our agent may notify you of your obligation to pay us, which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Charge-back rights.

**vi. Protecting Cardmember Information.** You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI Standard performed by Qualified Security Assessors or Approved Scanning Vendors (or both).

## 28.3 PROTECTIVE ACTIONS

**a. Creating a Reserve.** Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to have some security for your or any of your Affiliates' obligations to us or any of our Affiliates, under the Agreement or any Other Agreement. If we so determine, we may (i) withhold and offset amounts from payments we otherwise would make to you under the Agreement or (ii) establish a Reserve, including by requiring you to deposit funds or other collateral with us.

**b. Trigger Events for Reserve.** Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion

of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties currently owning 25% or more of such interests), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business; (iv) your becoming insolvent; (v) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; or (vi) our reasonable belief that you will not be able to perform your obligations under the Agreement, under any Other Agreement, or to Cardmembers.

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

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

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

## 28.4 NOTICES

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

**b. Our Notice Address.** Unless we notify you otherwise, you shall send notices to us, through our agent, at: American Express Travel Related Services Company, Inc. c/o at P.O. Box 5180, Simi Valley, CA 93062, facsimile: 805-552-8899, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065.

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

## 28.5 INDEMNIFICATION AND LIMITATION OF LIABILITY

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

**b. Limitation of Liability.** In no event shall we or our Affiliates, agents, successors, or assigns be liable to you for any incidental, indirect,

speculative, consequential, special, punitive, or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory) arising out of or in connection with the Agreement, even if advised of such potential damages. Neither you nor we (and our agent) will be responsible to the other for damages arising from delays or problems caused by telecommunications carriers or the banking system, except that our (and our agent's) rights to create Reserves and exercise Chargebacks will not be impaired by such events.

## 28.6 TERM AND TERMINATION

**a. Effective Date/Termination Date.** The Agreement begins as of the date (i) you first accept the Card after receipt of the Agreement or otherwise indicate your intention to be bound by the Agreement or (ii) we approve your application to accept the Card, whichever occurs first. Either party can terminate the Agreement without cause (and notwithstanding any other rights established under the Agreement) at any time by notifying the other party. Termination will take effect according to the notice period specified in section 28.4.a above.

**b. Grounds for Termination.** In addition to our rights in sections 28.3.c and 28.6.a. above, we may terminate the Agreement at any time without notice to you and without waiving our other rights and remedies if you have not submitted a Charge within any twelve month period. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

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

**e. Effect of Termination.** Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 28.1, .3, .5, .6, .7, and .8 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our and our agent's right of direct access to the Demand Deposit Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

## 28.7 DISPUTE RESOLUTION

**a. Arbitration Rights.** All Claims shall be resolved, upon your or our election, through arbitration pursuant to this section 28.7 rather than by litigation.

**b. Arbitration Rules/Organizations.** The party asserting the Claim shall select one of the following arbitration organizations, which shall apply its rules in effect at the time the Claim is filed. In the event of an inconsistency between this section 28.7 and any rule or procedure of the arbitration organization, this section 28.7 controls. The party asserting the Claim shall simultaneously notify the other party of its selection. If our selection is not acceptable to you, then you may select another of the following organizations within thirty days after you receive notice of our initial selection. Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located.

- National Arbitration Forum (NAF): P.O. Box 50191, Minneapolis, MN 55404-0191; (800) 474-2371; [www.arbitration-forum.com](http://www.arbitration-forum.com)
- American Arbitration Association (AAA): 335 Madison Avenue, New York, NY 10017; (800) 778-7879; [www.adr.org](http://www.adr.org)

**c. Limitation of Rights.** IF ARBITRATION IS CHOSEN BY A PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE SHALL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES OR PROCEDURES OF NAF OR AAA, AS APPLICABLE. FURTHER, YOU SHALL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM. OTHER RIGHTS THAT

YOU WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. NOTWITHSTANDING ANY OTHER PROVISION IN THE AGREEMENT AND WITHOUT WAIVING EITHER PARTY'S RIGHT TO APPEAL SUCH DECISION, IF ANY PORTION OF THIS SECTION 28.7.c OR OF SECTION 28.7.d. BELOW IS DEEMED INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION 28.7 (OTHER THAN THIS SENTENCE) SHALL NOT APPLY.

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

**e. Application of Provision.** For the avoidance of any confusion, and not to limit its scope, this section 28.7 applies to any putative class action lawsuit that has been filed against us prior to the effective date of the Agreement relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the Agreement as described in sections 28.1 and .2 of these General Provisions and Chapter 3 (Card Acceptance) of the Merchant Regulations, or prior versions of a Card acceptance agreement.

**f. Equitable Relief.** The arbitrator shall have the power and authority to grant equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section 28.7, nor to determine any matter or make any award except as provided in this section 28.7.

**g. Small-Claims Court; Injunctive Relief.** We shall not elect to use arbitration under this section for any individual Claim that you properly file in a small claims court so long as the Claim is pending only in that court. Injunctive relief sought to enforce the provisions of sections 28.3.a and 28.8.b of these General Provisions is not subject to the requirements of this section 28.7. This section 28.7 is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

**h. Governing Law/Appeal/Entry of Judgment.** This section 28.7 is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. § 16 et seq. (FAA). The arbitrator shall apply New York law and applicable statutes of limitations, honor claims of privilege recognized by law and, at the timely request of either party, provide a written and reasoned opinion explaining his or her decision. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA or if the amount of the award exceeds US \$100,000, in which case either party can appeal that award to a three-arbitrator panel administered by NAF or AAA, as applicable, which shall reconsider de novo any aspect of the initial award requested by majority vote and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. The costs of such an appeal shall be borne by the appellant regardless of the outcome of the appeal. Judgment upon the award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

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

rendered inadmissible or non-discoverable as a result of its use in the negotiation or arbitration.

**j. Split Proceedings for Equitable Relief.** Either you or we may seek equitable relief in arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered. Except as otherwise provided in section 28.7.c. above, if any portion of this section 28.7 (other than section 28.7.c. or d.) is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this section 28.7, the Agreement, or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

## 28.8 MISCELLANEOUS

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

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

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

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

**e. Governing Law; Jurisdiction; Venue.** The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Notwithstanding the immediately preceding sentence, the parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 et seq. (*E-Sign Act*). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein. Subject to section 28.7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non

conveniens.

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

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

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

**i. Savings Clause.** Other than as set forth in the last sentence of section 28.7.c above, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.

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

**(1) Scheduled Changes.** The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:

- a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations, and
- a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.

Where a change is to take effect during the period between two editions of the Merchant Regulations, we shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change therein.

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

**k. Entire Agreement.** The Agreement is the entire agreement between you and us regarding the subject matter hereof and supersedes any previous agreements, understandings, or courses of dealing regarding the subject matter hereof.

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

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

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

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

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

**By:**

**Kim C. Goodman**  
**Executive Vice President**  
**Merchant Services, United States**

**29 Schedule A**

**Other Important Provisions for Card Acceptance**

**ACCEPTANCE AMERICAN EXPRESS ONEPOINT PROGRAM**

**29.1 OVERVIEW OF AMERICAN EXPRESS ONEPOINT PROGRAM**

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

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

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

**29.2 DOING BUSINESS WITH AMERICAN EXPRESS**

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

Payment Services or otherwise act as a Payment Service Provider.

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

**29.3 AUTHORIZATION**

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

**29.4 SUBMISSION**

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

**29.5 SETTLEMENT**

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

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

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

**29.6 PROTECTING CARDMEMBER INFORMATION**

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

**29.7 RISK EVALUATION**

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

evaluation procedures under the program.

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

### 29.8 INQUIRIES AND CHARGEBACKS

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

### 30 EQUIPMENT LEASE AGREEMENT

This Equipment Lease Agreement ("Lease Agreement") is being entered into by and between First Data Merchant Services Corporation (through its business unit First Data Global Leasing), and the Lessee identified on the signature panel of this Merchant Processing Application ("MPA"). In this Lease Agreement, the words "we," "our" and "us" refer to First Data Merchant Services Corporation and its successors and assigns and the words "you" and "your" refer to Lessee and its permitted successors and assigns.

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

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

#### 30.2 Effective Date, Term and Interim Rent.

(a) This Lease Agreement becomes effective on the earlier of the date we deliver any piece of Equipment to you (the "Delivery Date") or acceptance by us. This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Equipment to the site designated by you.

(b) The term of this Lease Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us (the "Commencement Date"), and continues for the number of months indicated on the MPA. THIS IS A NON-CANCELABLE LEASE FOR THE TERM INDICATED.

(c) You agree to pay an Interim Lease Payment in the amount of one-thirtieth (1/30<sup>th</sup>) of the monthly lease charge for each day from and

including the Delivery Date until the date preceding the Commencement Date.

(d) YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF YOUR MERCHANT PROCESSING AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS LEASE AGREEMENT WITH SAID SERVICE PROVIDER.

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

#### 30.4 Payment of Amounts Due.

(a) The monthly lease charge is due and payable monthly, in advance. You agree to pay all assessed costs for delivery and installation of Equipment.

(b) In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes, assessments on or arising out of this Lease Agreement or the Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, tax preparation, compliance expenses, but exclusive of taxes based on our net income. Property taxes are calculated and charged based on the average of the estimated annual property taxes over the course of the term of the lease. You will also be charged an annual Tax Handling Fee, as set forth in the MPA and/or applicable Fee Schedule.

(c) Your lease payments will be due despite dissatisfaction with the Equipment for any reason.

(d) Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than \$5.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of \$10.00 for any debit we attempt to make against your Settlement Account that is rejected.

(e) In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense charge of \$50.00 for each aggregate payment requiring a collection effort.

#### 30.5 Use and Return of Equipment; Insurance.

(a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.

(b) You shall not permit any physical alteration or modification of the Equipment, or change the installation site of the Equipment, without our prior written consent.

(c) You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment without our prior written consent.

(d) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility.

(e) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.

(f) The Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment evidencing our ownership.

(g) You shall keep the Equipment adequately insured against loss by fire, theft, and all other hazards.

(h) You shall provide proof of insurance. The loss, destruction, theft or damage of or to the Equipment shall not relieve you from your

obligation to pay the full purchase price or total monthly lease charges hereunder.

**30.6 Title to Equipment.** The Equipment is, and shall at all times be and remain, our sole and exclusive property, and you shall have no right, title or interest in or to the Equipment except as expressly set forth in this Lease Agreement or otherwise agreed in writing. Except as expressly provided in Section 30.8, no transference of intellectual property rights is intended by or conferred in this Lease Agreement. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Equipment, then we shall be deemed to have a first lien security interest on the Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto.

**30.7 Return or Purchase of Equipment at End of Lease Period.** Upon the completion of your lease term or any extension, you will have the option to; (a) return the Equipment to us, or (b) purchase the Equipment from us for the lesser of fair market value at the time (as determined in good faith by us) or an amount equal to ten-percent (10%) of the total lease payments under this Lease Agreement with respect to each item of Equipment. In the absence of an affirmative election by you to return or purchase the Equipment, this lease will continue on a month-to-month basis at the existing monthly lease payment; or (c) after the final lease payment has been received by FDGL, the Agreement will revert to a month by month rental at the existing monthly lease payment. If Client does not want to continue to rent the equipment, then Client will be obligated to provide FDGL with 30 day prior written notice to terminate and return the equipment to FDGL. If we terminate this Lease Agreement pursuant to Section 30.12 (b) due to a default by you, then you shall immediately return the Equipment to us no later than the tenth Business Day after termination, or remit to us the fair market value of the Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 30.7 by debiting your Settlement Account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

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

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

**30.10 Warranties.**

(a) All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment, or non-infringement.

(b) You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.

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

of the Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

**30.12 Default; Remedies.**

(a) If any debit of your Settlement Account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Lease Agreement or any agreement with any of our affiliates or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under a processing agreement with us or with an affiliate or joint venture to which we are a party will be treated as a default under this Lease Agreement. Such a default would include a default resulting from early termination of the MPA.

(b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this lease and our future obligations under this Lease Agreement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the Equipment (as determined by us), not as a penalty but as liquidated damages for our loss of the bargain. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment. In any case, you shall also be responsible for our costs of collection, court costs, as well as applicable shipping, repair and refurbishing costs of recovered Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by charging your Settlement Account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Without limiting the foregoing, you agree that we are entitled to recover amounts owed to us under this Lease Agreement by obtaining directly from an affiliate or joint venture to which we are a party and with which you have entered into an MPA any funds held or available as security for payment under the terms of the MPA, including funds available under the "Reserve Account; Security Interest" section of the MPA, if applicable.

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

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

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

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

**30.17 Entire Agreement.** This Lease Agreement constitutes the entire Agreement between the parties with respect to the Equipment, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Lease

Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Lease Agreement.

### 31 TELECHECK SERVICES.

TeleCheck will provide the services ("TeleCheck Services") selected by Client in the TeleCheck portion ("TeleCheck Application") of the Merchant Application and Agreement pursuant to the terms of Section 31 through 37 (these designated sections are, collectively, the "Agreement"; and within the Agreement Client is "Subscriber").

**31.1 Exclusivity.** Subscriber agrees that it will exclusively process all of its Electronic Checks related to Business Transactions from its US operations using the TeleCheck Services and authorization system during the term, or any renewal term, of this Agreement. Subscriber shall not resell the TeleCheck Services to any third party.

**31.2 Definitions.** The following definitions apply in this Agreement: "ACH" means the Automated Clearing House, including, without limitation, its network for transmitting electronic payments. "Authorization Receipt" means (i) for each ECA Check, a signed receipt (which may be electronic or paper) by which a Consumer authorizes the creation and use of an ECA Check from the Consumer's check; (ii) for each Phone Check, a verbal authorization (which must be recorded electronically, or, if Subscriber fails to make an electronic recording, Subscriber must provide a written confirmation notice of the verbal authorization to the Consumer using TeleCheck's required format prior to the settlement date of such Phone Check) by which a Consumer authorizes the creation and use of a Phone Check; and (iii) for each Internet Check (if the Internet Check is processed under the Message Based IAS), an electronic authorization by which a Consumer authorizes the creation and use of an Internet Check; all of which must be submitted to TeleCheck in the Consumer Authorization Format, in connection with a Business Transaction, and for processing pursuant to this Agreement. "Business Transaction" means a transaction for the contemporaneous purchase of goods or services (including, without limitation, taxes), the payment for which is processed using the TeleCheck Services; provided, it does not include any transactions for cash or payment on an account, debt or check already due Subscriber. "Check" means a paper check (including, without limitation, transactions processed as demand drafts) provided by Consumer at the point of sale for the payment of a Business Transaction. "Claim" means any arbitration award, assessment, charge, citation, claim, damage, demand, directive, expense, fine, interest, joint or several liability, lawsuit or other litigation, notice, infringement or misappropriation of any Intellectual Property Right, or violation of any law, and any consequential, indirect, special, incidental or punitive damages and any attorney's fees and expenses incurred in connection therewith (for purposes of the foregoing definition, a Claim shall be considered to exist even though it may be conditional, contingent, indirect, potential, secondary, unaccrued, unasserted, unknown, unliquidated, or unmatured). "Confidential Information" means, whether marked confidential or not, the Software; Documentation; Operational Procedures; terms and conditions of this Agreement (including any schedule, exhibit or addendum); the Merchant Application and Agreement; TeleCheck's data or information that is competitively sensitive material or not generally known to the public (including, without limitation, customer lists, technology, inventions, systems, operations, facilities, products, services, discoveries, ideas, concepts, research, development, processes, operating procedures, marketing, business and development plans, pricing, policies and financial information). Confidential Information does not include information that (i) is or becomes part of the public domain through no fault of Subscriber; (ii) is lawfully obtained by Subscriber from a third party free of any obligation of confidentiality; (iii) was already in the lawful possession of Subscriber prior to receipt thereof, directly or indirectly, from the disclosing party; or (iv) is independently developed by Subscriber without the use of the Confidential Information. "Consumer" means a Consumer, person, entity or other customer of Subscriber that authorizes an Item. "Consumer Authorization Format" means the required format (including, without limitation, all verbiage for payment authorization, Return Item fees, check approvals and declines, etc.) provided by TeleCheck to Subscriber, as amended from time to time by TeleCheck in its sole discretion, for processing Consumer payments to Subscriber using the TeleCheck Services. "Derivative Works" means any

modifications, derivatives, improvements, enhancements or extensions of or to the Software. "Documentation" means any and all manuals and other written materials in any form provided for use with the Software, as amended by TeleCheck from time to time, the terms of which are incorporated in this Agreement as if fully set forth herein. "ECA" means Electronic Check Acceptance. "ECA Batch" means a collection of saved ECA Check transactions that Subscriber transmits to TeleCheck for processing in connection with the Warranty Services that make up part of the TeleCheck Services. "ECA Check" means an electronic debit transaction or other electronic transaction (including, without limitation, an electronic debit transaction processed as a demand draft) initiated by Consumer using a check and converted using TeleCheck's ECA services at the point of sale in connection with the payment of a Business Transaction. "Electronic Check" means an ECA Check, Phone Check and/or Internet Check. "Electronic Check Maximum" means the lesser of (i) the face amount of the Electronic Check; (ii) \$5,000.00 for any Electronic Check Business Transaction; or (iii) the maximum set forth in the TeleCheck Application portion of the Merchant Application and Agreement. "Government" means the United States federal government. "Intellectual Property Rights" means any and all patents, copyrights, trademarks, trade secrets, service marks, and any other intellectual property rights; including, without limitation, any applications for any of the foregoing, in all countries in the world. "Internet Check" means an electronic debit transaction (including, without limitation, an electronic debit transaction processed as a demand draft) initiated by Consumer through an internet website operated or maintained by or on behalf of Subscriber for the payment of a Business Transaction. "Item" means an outstanding financial obligation created using a Check or Electronic Check in connection with a Business Transaction processed using the TeleCheck Services. "Item Requirements" means the requirements, representations and warranties set forth in Section 32.2 (Item Requirements) of this Agreement. "Legal Requirements" mean all federal, state, export and local laws, regulations and rules (including, without limitation, the NACHA Rules, network or other association rules); Office of Foreign Assets Control of the US Department of the Treasury ("OFAC") requirements; the Electronic Fund Transfer Act ("EFTA") and its Regulation E ("Reg E"); the Fair Credit Reporting Act ("FCRA"); and the Federal Trade Commission Telemarketing Sales Rule (16 C.F.R. Part 310). "Message Based IAS" is a type of Internet Acceptance Service (IAS) under which (i) the Consumer submits Internet Check data to and interfaces with an Internet website which is designed for obtaining the Internet Check data and which is operated or maintained by or on behalf of Subscriber; and (ii) such Internet Check data is transmitted from or on behalf of Subscriber to TeleCheck for processing. "NACHA" means the National Automated Clearing House Association. "NACHA Rules" means the rules, regulations and guidelines that govern the use of the Automated Clearing House network, which is published by NACHA and which may be amended from time to time. "Non-Compliance Item" means any Returned Item that fails to comply with the Item Requirements or other any provision of this Agreement, regardless of the reason for such noncompliance. "Operational Procedures" means TeleCheck's published policies and procedures, as amended from time to time by TeleCheck, which are contained in the various documents provided to Subscriber in connection with the TeleCheck Services and which are incorporated in this Agreement. "Phone Check" means an electronic debit transaction (including, without limitation, an electronic debit transaction processed as a demand draft) verbally authorized by the Consumer in a telephone communication with Subscriber for the payment of a Business Transaction. "Platform" means the TeleCheck information systems, electronic payment platform(s) and/or gateway(s) through which the TeleCheck Services contemplated under this Agreement are provided. "Price/Service Schedule" means that portion of the Merchant Application and Agreement that specifies the TeleCheck Services provided under this Agreement and the prices charged by TeleCheck therefore. The Price/Service Schedule may be on the front or back page of the Merchant Application and Agreement, or in such other written form(s) as the parties mutually agree. "Returned Item" means any Item that received a valid TeleCheck Approval Code in connection with a Warranty Service, but which is returned, reversed, dishonored or otherwise not paid by Subscriber's financial institution upon presentment, regardless of the reason for non-payment by Subscriber's financial institution. "Software" means the protocols, hardware, firmware or software components and other interfaces and software, and their Updates collectively, which permit data transfers between TeleCheck and Subscriber to enable Subscriber submitting



Items to TeleCheck for processing and TeleCheck to provide the TeleCheck Services. "Subscriber's Account" means Subscriber's bank account at its financial institution. "Subscriber Systems" means any web site(s) operated or maintained by or on behalf of Subscriber through which Electronic Checks are submitted to TeleCheck for processing, and all of Subscriber's other information technology related systems. "TeleCheck Approval Code" means the code provided by TeleCheck to Subscriber indicating that TeleCheck has authorized an Item for warranty coverage under this Agreement pursuant to a Warranty Service. "TeleCheck Parties" means TeleCheck and its officers, directors, employees, shareholders, agents and attorneys. "Updates" means an embodiment of the Software that provides enhancements and/or improvements thereto or to the TeleCheck Services. "Verification Services" means a Business Transaction submitted pursuant to one of the verification service programs offered in connection with the TeleCheck Services and selected by Subscriber on the TeleCheck Application portion of the Merchant Application and Agreement, or otherwise in connection with this Agreement. "Warranty Maximum" means: (A) for an Item processed as a non-ECA transaction, the lesser of (i) the face amount of the Item (up to \$99,999.00), or (ii) the amount set forth in the TeleCheck Application portion of the Merchant Application and Agreement; and (B) for an Item processed as an ECA transaction, the lesser of (i) the face amount of the Item, (ii) the amount set forth in the TeleCheck Application portion of the Merchant Application and Agreement, or (iii) \$25,000.00. "Warranty Services" means a Business Transaction submitted pursuant to one of the warranty service programs offered in connection with the TeleCheck Services and selected by Subscriber on the TeleCheck Application portion of the Merchant Application and Agreement, or otherwise in connection with this Agreement.

## 32 TELECHECK SERVICES: ITEM REQUIREMENTS

**32.1 Item Requirements: Acknowledgement.** The terms and conditions of Section 32 (Item Requirements) apply, as may be limited herein, to all of the TeleCheck Services selected by Subscriber in connection with the TeleCheck Services offered in the TeleCheck Application portion of the Merchant Application and Agreement.

**32.2 Item Requirements.** Subscriber represents and warrants the following with respect to each Item per Business Transactions that it submits to TeleCheck for processing under this Agreement: (A) If the Item is: (1) a Check, it is a first party check drawn on the Consumer's account at a United States, Canadian, Puerto Rican or U.S. Virgin Islands financial institution and payable to Subscriber. The Consumer completely filled out the Check and provided it to Subscriber. The name of the Consumer or company is imprinted or typed on the Check by the check manufacturer. If a PO Box is used or the address is not imprinted by the check manufacturer, a physical address description must be written on the Check according to the Operational Procedures; (2) an ECA Check, it is a first party check drawn on the Consumer's account at a United States financial institution and payable to Subscriber. The name of Consumer is imprinted or typed on the check by the check manufacturer; (3) an Internet Check, it is a first party personal or company check for which the Consumer authorized payment to Subscriber and that is drawn by electronic means on a United States, Puerto Rican or US Virgin Islands financial institution. The Consumer completely provided all required information, including, without limitation, name, physical address (no PO Box), telephone number (including area code), date of authorization, check number, type of check (personal or company), the Consumer's bank routing and account MICR number(s) for the financial institution account on which the Internet Check is authorized and to be drawn, and driver's license or other identification acceptable to TeleCheck; or (4) a Phone Check, the Consumer provided Subscriber with full and proper verbal authorization as required under the NACHA Rules and this Agreement to process the payment in the amount agreed to by the Consumer. The Consumer completely provided all required information, including, without limitation, name, physical address (no PO Box), telephone number (including area code), date of authorization, check number, type of check (personal or company), the Consumer's bank routing and account MICR number(s) for the financial institution account on which the Phone Check is authorized and to be drawn, and driver's license or other identification acceptable to TeleCheck. (B) The Consumer properly authorized debiting its financial institution account, and the debit entry associated with the Item is in all respects properly authorized and in an amount agreed to by the Consumer. (C) Subscriber made an inquiry to TeleCheck in strict accordance with the Operational Procedures (and properly indicated to TeleCheck that the

Item was an Internet Check or Phone Check when receiving both Telephone Acceptance Services and Internet Acceptance Services). (D) Subscriber obtained a valid TeleCheck Approval Code, and, if the Item is a Check, wrote the TeleCheck Approval Code on the Check. (E) Subscriber provided TeleCheck with its TeleCheck Subscriber Number and any other information that TeleCheck required related to the Consumer. (F) The Business Transaction represents an obligation of the Consumer presenting the Item for payment. The Business Transaction is for goods actually sold or rented, and/or services actually rendered by Subscriber for the actual price of such goods and/or services (including tax and shipping); and does not involve any element of credit for any purpose. (G) If the Item is not an Internet Check or Phone Check, the physical description of the Consumer, and their signature on the Check and the Authorization Receipt (if applicable) reasonably correspond to the description and the signature contained in the Consumer's identification. (H) If the Item is a Check, the signature in the signature block on the Check or the Authorization Receipt (if applicable) must not be substantially different from the name imprinted on the check. (I) The date of the Item and the Business Transaction must accurately coincide within one calendar day of both (i) the date of the inquiry call to TeleCheck and (ii) the date the Business Transaction actually occurred (Items may not pre-date or post-date by more than one calendar day the date of the inquiry call and the Business Transaction date); provided, however, Internet Checks and Phone Checks may not pre- or post-date their corresponding Business Transaction. (J) If the Item is a Check, the amount shown in words and figures on the Check and the Authorization Receipt (if applicable) must match exactly; provided, the amount shown in words and figures on the Check must be (i) less than or equal to the amount entered into the Platform; or (ii) no more than \$1.00 over the amount entered into the Platform. (K) If the Item is an Internet Check or Phone Check, the amount of the Item entered into the Platform and the amount authorized by the Consumer must agree. (L) If the Item is a Check, the Check must have been deposited in Subscriber's Account and received by TeleCheck for purchase within 30 days of the date of the Check. (M) Subscriber contacted TeleCheck for a single TeleCheck Approval Code, and the single TeleCheck Approval Code is for only one Item per Business Transaction. (N) Subscriber received a signed Authorization Receipt (if applicable) from the Consumer, and, if the Item is a Check, either the Consumer or Subscriber voided the signed Check to which the Business Transaction relates. (O) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of the Consumer's obligation or relieve the Consumer from liability for the Item. (P) If the Item is a Check, the Check is a personal check and not a business check. (Q) The Consumer signed a separate Authorization Receipt (if applicable) for each Business Transaction submitted to TeleCheck. (R) If the Item is an Internet Check or Phone Check, it is not submitted in connection with a Business Transaction resulting from Subscriber initiating an unsolicited telephone call to a Consumer with which Subscriber had no prior relationship. (S) Subscriber did not in any manner utilize any of the TeleCheck Services for any Business Transaction that, directly or indirectly, involves any: (i) product or service classified under a different SIC code than the code designated for Subscriber at the time this Agreement is executed by Subscriber (subject to any subsequent written agreement of the parties for a change in such SIC code); or (ii) sexually-oriented adult entertainment; gambling; or wagering service, product, business, entity or site. (T) In connection with the Authorization Receipt for a Phone Check, the Subscriber directly tape recorded the verbal telephonic authorization directly from the Consumer; or, alternatively, Subscriber sent the required written confirmation notice to the Consumer (unless TeleCheck has agreed to provide such written notice on behalf of Subscriber) for each Phone Check. (U) Subscriber authorized TeleCheck to produce a demand draft on behalf of Subscriber and to deposit the funds in TeleCheck's financial institution account if, for any reason, an Item for a Business Transaction cannot be processed as an Electronic Check. (V) Each Electronic Check submitted to TeleCheck pursuant to this Agreement is solely for the contemporaneous purchase of goods and/or services by the Consumer from Subscriber. (W) Subscriber used the Consumer Authorization Format in connection with processing Electronic Checks and did not alter or modify the text of such format. (X) Subscriber complied with all requirements for retention of the Authorization Receipt set forth in this Agreement. (Y) Subscriber and all Items submitted to TeleCheck for processing comply with applicable Legal Requirements (including, without limitation, those relating to Subscriber

authenticating the Consumer's identity, security of websites and computer systems, internet session security, and internet security audits).

**32.3 Retention of Authorization Receipts.** Subscriber shall cause the Consumer to sign an Authorization Receipt for each Electronic Check or ECA Check submitted to TeleCheck for processing (including for Warranty Services or ECA related Verification Services) pursuant to this Agreement. The Authorization Receipt shall be completed prior to Subscriber submitting an Electronic Check to TeleCheck for processing; and will be in the Consumer Authorization Format. Subscriber shall maintain a copy of the Authorization Receipt for a minimum period of 2 years from the date of the Business Transaction or for the period specified by the NACHA Rules, whichever is longer. Subscriber shall deliver a physical or electronic copy of an Authorization Receipt to TeleCheck within 7 days of TeleCheck's request for it. Subscriber, upon reasonable notice and during normal business hours, shall permit TeleCheck to audit Subscriber for its compliance with the recordkeeping requirements related to Authorization Receipts. Notwithstanding the foregoing, Subscriber will not be responsible for maintaining records of written confirmations for Phone Checks that are allowed under this Agreement if TeleCheck has agreed to provide such written confirmations to Consumers on Subscriber's behalf.

**32.4 Material Representations.** All of the terms of the Item Requirements and Authorization Receipt retention requirements are material terms of this Agreement. Subscriber acknowledges and agrees that it has full knowledge and understanding of the Item Requirements and retention of Authorization Receipt requirements as they pertain to the TeleCheck Services. Subscriber shall not be entitled to recover any amounts under this Agreement if Subscriber fails to timely satisfy any of the terms or conditions of, or breaches any representation contained in (i) the Item Requirements, or (ii) any other term, condition or limitation contained in this Agreement.

### **33 TELECHECK SERVICES: VERIFICATION PROGRAMS**

**33.1 Verification Programs: Acknowledgement.** The terms and conditions of Section 33 (Verification Programs) are additional terms to the General Terms and apply only to the Verification Services selected by Subscriber in connection with the TeleCheck Services offered in the TeleCheck Application portion of the Merchant Application and Agreement.

**33.2 Verification Services.** The sole purpose of the TeleCheck Verification Service is to provide coded information to assist Subscriber in deciding whether or not to accept an Item; and TeleCheck does not guarantee or warranty the accuracy or completeness of the information related to an Item that is provided in connection with the Verification Services. Subscriber acknowledges that the Item Requirements apply to all Items submitted to TeleCheck for processing under any of the Verification Services, and understands the Item Requirements must be met in order to facilitate TeleCheck's evaluation and processing of Items submitted for Verification Services. Subscriber agrees that (i) TeleCheck shall not pay or be liable to Subscriber for any loss from any Item related to Business Transactions processed through the Verification Services; (ii) Subscriber assumes all risks, and shall be solely responsible and liable for all Items accepted by it in connection with the Verification Services which may be returned, dishonored, reversed or otherwise unpaid for any reason; and (iii) Subscriber shall be solely responsible and fully liable to TeleCheck for all transactions submitted for Verification Services processing that are converted to ECA Checks that become Returned Items, regardless of the reason or timing, and TeleCheck may deduct or offset all ECA Check Returned Items that arise in connection with the Verification Services against any amounts to be paid to Subscriber under this Agreement. The Warranty Maximum on any Item processed through the TeleCheck Verification Service shall be deemed to be \$0.00. Subscriber shall only report Items to TeleCheck in connection with the Verification Services if the Items were made payable to Subscriber.

**33.3 Verification Services: Phone Check and Internet Check Processing.** For each Phone Check or Internet Check submitted to and accepted by TeleCheck using the Verification Services, TeleCheck will, on behalf of Subscriber, initiate ACH entries to Subscriber's Account from Consumers' accounts as authorized by each Consumer, and as directed by Subscriber in accordance with the Operational Procedures and any other procedures previously agreed to in writing between TeleCheck and Subscriber.

**33.4 Verification Services: Phone Check and Internet Check Returned Items.** Subscriber shall be fully responsible and liable to TeleCheck for all Phone Checks and Internet Checks processed using the Verification Services that become Returned Items. TeleCheck may deduct or offset Verification Service Returned Items against any amounts that TeleCheck is to pay Subscriber for Electronic Checks; or, alternatively, TeleCheck may initiate ACH debits to Subscriber's Account for all Verification Services related Returned Items.

**33.5 Verification Services: Phone Check and Internet Check Entry Processing.** TeleCheck is responsible only for processing Phone Checks or Internet Checks that have been transmitted by Subscriber in a timely manner and in the proper format. Subscriber understands that TeleCheck may rely solely on payment data provided by Subscriber or a Consumer to determine the Consumer's bank routing and account numbers, even if such numbers identify a bank or account holder different from the one identified by name.

**33.6 Verification Services: Phone Check and Internet Check Orders by Consumers.** Subscriber is solely responsible for accepting, processing, and filling any orders for goods and/or services purchased by Consumers, and for handling any inquiries arising therefrom. Subscriber shall use the highest standards in the industry in responding to complaints by Consumers. TeleCheck is not responsible or liable for any unauthorized access to Subscriber's data or Subscriber Systems by any means or device.

**33.7 Verification Services: Holds.** Notwithstanding anything to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend settlement or other payments of any and all funds, money and amounts now due or hereafter to become due ("Funds Hold") should an excessive amount of Returned Items or other questionable activity occur in connection with the Check or Electronic Check Verification Services as determined by TeleCheck in its discretion, or as otherwise required by law. In addition to placing a Funds Hold with respect to any Check or Electronic Check payment, TeleCheck may also freeze all processing activities related to the TeleCheck Services. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber also agrees that should it breach or fail to comply with any terms or conditions in this Agreement, TeleCheck may, upon notice, place a Funds Hold and/or processing freeze until such time as TeleCheck has had reasonable opportunity to investigate such event. In cases where TeleCheck, in its discretion, has reason to believe that there is fraudulent activity relating to one or more Check or Electronic Check transactions submitted by Subscriber, no notice of a Funds Hold and/or processing freeze shall be required.

### **34 TELECHECK SERVICES: WARRANTY PROGRAMS**

**34.1 Warranty Programs: Acknowledgement.** The terms and conditions of Section 34 (Warranty Programs) are additional terms to the General Terms and apply only to the Warranty Services programs selected by Subscriber in connection with the TeleCheck Services offered in the TeleCheck Application portion of the Merchant Application and Agreement.

**34.2 Warranty Services.** The sole purpose of the TeleCheck Warranty Services program is to provide information and processing services to Subscriber. TeleCheck warrants the accuracy of its information under the Warranty Services so long as all Item Requirements are strictly met; and will reimburse Subscriber for each Item submitted for processing under the Warranty Services, up to the Warranty Maximum, per Business Transaction that meets all of the Item Requirements. A Returned Item shall be deemed to be a breach of TeleCheck's warranty and, as Subscriber's sole and exclusive remedy for such breach, Subscriber may receive payment of the face amount of the Returned Item up to the Warranty Maximum, and subject to the terms, conditions, and limitations contained in this Agreement. TeleCheck's warranty does not apply where payment has been stopped due to a dispute over goods or services between Subscriber and the Consumer, or where Subscriber has contacted TeleCheck for a TeleCheck Approval Code on more than one Item per Business Transaction submitted for Warranty Services. This Agreement is solely between the Subscriber and TeleCheck; and Subscriber shall not provide or resell, directly or indirectly, the TeleCheck Services to any other third party. Except as allowed under this Agreement in connection with Internet Checks, Subscriber is not authorized to, and shall not in any manner, utilize the TeleCheck Services in connection with any transaction conducted, in whole or in part, over the Internet, in any other non-face to face transaction, or to conduct in any manner a debt collection service.

**34.3 Assignment of Electronic Checks.** By signing this Agreement, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's right, title and interest in any Item that TeleCheck accepts for processing and purchase in connection with the Warranty Services. Subscriber further authorizes TeleCheck to accept such Item (notwithstanding the payee) for deposit in TeleCheck's financial institution account. Subscriber will take all actions reasonably requested by TeleCheck to aid it in enforcing its rights associated with such Items.

**34.4 Reassignment and Chargeback.** TeleCheck may reassign or chargeback to Subscriber, and debit Subscriber's Account in the amount of, any Item submitted for processing and purchased by TeleCheck pursuant to the Warranty Services offered under this Agreement in any of the following circumstances: (A) The goods and/or services, in whole or in part, for which the Item was submitted to TeleCheck for authorization and processing have been returned to Subscriber, have not been delivered by Subscriber, are claimed by the Consumer to have been unsatisfactory, or are subject to any dispute, set-off or counterclaim by the Consumer, and/or the Consumer's authorization for an Electronic Check has been stopped, revoked, rescinded or reversed due to such dispute, set-off or counterclaim. (B) Subscriber received full or partial payment or security in any form whatsoever to secure payment of (i) the Item or (ii) the goods and/or services for which the Item was issued or authorized. (C) The Business Transaction for which the Item was tendered, or transfer to TeleCheck of the Item, is for any reason (i) not permitted by applicable Legal Requirements or (ii) a court of law determines that the Item is, in whole or in part, not due and payable by the Consumer (unless such determination results from the Consumer's bankruptcy proceeding). (D) The Item or associated funds transfer was not issued or authorized in connection with a Business Transaction. (E) Any of the representations and warranties made by Subscriber in connection with the Item Requirements are or become false or inaccurate. (F) Subscriber fails or failed to comply with any of the terms or conditions of this Agreement. (G) Subscriber, or any of its owners, agents or employees materially altered an Item or Authorization Receipt, or accepted or processed an Item with reason to know (i) that the Item was likely to be dishonored, (ii) that the Item was likely to become a Returned Item, or (iii) that the identification used to authorize the Item was forged, altered or did not belong to the Consumer. (H) The Authorization Receipt was incomplete or unsigned. (I) A duplicate Business Transaction relating to the same Item was received and processed or the original Check was deposited, thereby creating a duplicate entry against the Consumer's financial institution account. (J) A TeleCheck Approval Code was not issued for the Item. (K) The Item was not submitted to TeleCheck for settlement processing within 7 days from the date the TeleCheck Approval Code is issued. (L) A legible copy of the Authorization Receipt is not received by TeleCheck within 7 days of TeleCheck's request for it. (M) The Consumer disputes issuing or authorizing the Item or the validity or accuracy of the Business Transaction. (N) Subscriber receives notice that the Consumer associated with a Returned Item filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of receiving of such notice.

**34.5 Notification of Chargeback Circumstances.** Subscriber shall immediately notify TeleCheck upon the happening of any of the circumstances set forth in Section 34.4 (Reassignment and Chargeback). If an Item is reassigned or charged back as allowed for herein, TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the Item; or, upon request, Subscriber shall remit the amount of the Item to TeleCheck. TeleCheck may also chargeback to Subscriber any amount for which an Item exceeds the Warranty Maximum on any Business Transaction where TeleCheck has not received payment for such Item within 60 days of the date of the Business Transaction. Upon reassignment or chargeback of an Item, TeleCheck shall have no further liability to Subscriber on such Item. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks or adjustments made under the terms of this Agreement.

**34.6 "Goodwill" of a Returned Item.** TeleCheck, in its sole discretion, may voluntarily elect not to chargeback and to reimburse a Subscriber for any specific Returned Item(s). TeleCheck's election not to chargeback and to reimburse a Subscriber for any specific Returned Item(s) shall not act as a waiver of TeleCheck's right to decline to pay any other Returned Item.

**34.7 Warranty Services Processing.** For each Item submitted in connection with a Business Transaction for which TeleCheck issues a TeleCheck Approval Code and that otherwise meets the Item Requirements, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the full amount of such Item. For each Item submitted in connection with a Business Transaction for which TeleCheck issued a TeleCheck Approval Code and that otherwise meets the Item Requirements, TeleCheck will effect such credit regardless of whether or not the Item is paid by the Consumer's financial institution.

In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that if it breaches or fails to comply with any terms or conditions in this Agreement, TeleCheck may, upon notice, suspend settlement or other payments of any and all funds, money and amounts now due or hereafter to become due until TeleCheck has had reasonable opportunity to investigate such event. In cases where TeleCheck, in its discretion, has reason to believe that there is fraudulent activity relating to one or more **Items or Business Transactions submitted by Subscriber, no such notice will be required.**

**34.8 Account Reconciliation.** Subscriber must notify TeleCheck in writing within 45 days from the date of any Business Transaction for which TeleCheck processed an Item but failed to fund or otherwise pay the Item in accordance with this Agreement. If Subscriber fails to notify TeleCheck of its failure to fund or otherwise pay an Item as provided for in the preceding sentence, TeleCheck will have no liability and Subscriber is precluded from asserting any Claims against TeleCheck related to such failure.

**34.9 Collection and Returned Item Fees.** In connection with a Returned Item, Subscriber agrees that TeleCheck shall be entitled to collect from the Consumer and retain, in addition to the face amount of the Returned Item, any fees or exemplary damages that are allowed by law. Subscriber shall follow the Operational Procedures and provide Consumers with the notices which, at TeleCheck's direction and in its sole opinion, may be required for TeleCheck to collect such fees or exemplary damage amounts related to a Returned Item.

**34.10 ECA® Service.** The terms in Sections 34.10 (ECA Service) and 34.11 (ECA Processing) apply only if Subscriber uses the TeleCheck Electronic Check Acceptance® services in connection with the Warranty Services. The terms in Sections 34.10 (ECA Service) and 34.11 (ECA Processing) do not apply to Warranty Service Business Transactions that are not submitted and processed using TeleCheck Electronic Check Acceptance.

**34.11 ECA Processing.** Subscriber shall not submit any ECA Check exceeding \$20,000.00 to TeleCheck for processing in connection with a Business Transaction. For each ECA Check for which TeleCheck issues a TeleCheck Approval Code, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such ECA Check as part of an ECA Batch processing. Such credit shall occur (i) within 2 banking days following Subscriber's regular close-out of the point of sale terminal and transmission to TeleCheck for processing the saved ECA Checks, provided that the ECA Batch is closed and received by TeleCheck by 12:00 midnight Central Standard Time; and (ii) regardless of whether or not the Consumer's ECA Check is paid by its financial institution. TeleCheck reserves the right to decline to process any ECA Check.

## **35 TELECHECK SERVICES: EQUIPMENT**

**35.1 Equipment.** Title to all rental equipment or equipment loaned to Subscriber, if any, is retained by TeleCheck. Upon termination of this Agreement, Subscriber, at Subscriber's expense, shall return all equipment to TeleCheck in good repair, ordinary wear and tear excepted. Monthly rental fees will apply to all months or fractions of a month any equipment remains in use by or in the actual or constructive possession of Subscriber. TeleCheck will replace or repair equipment rented or supported by TeleCheck upon Subscriber's request; provided, however, that a swap fee of \$39.95 shall be charged per equipment item replaced for the Eclipse Payment Terminal and a swap fee of \$59.95 shall be charged per equipment item replaced for any other type of equipment. If replacement equipment is mailed to Subscriber, it is Subscriber's responsibility to return replaced equipment to TeleCheck's office within 20 business days or Subscriber shall be deemed to have purchased and be billed for such equipment. A fee of \$40.00 per hour, plus the cost of parts, shall be charged for repair of any damage to the equipment rented or supported by TeleCheck, ordinary wear and tear excepted. A reprogramming fee of

\$25.00 will be charged for each occasion that a piece of equipment is reprogrammed for additional features or different information. Subscriber shall not permit persons other than authorized representatives of TeleCheck to adjust, maintain, program or repair any equipment. Subscriber shall bear the entire risk of loss, theft or damage of or to equipment, whether or not owned by Subscriber. There is a 90 day manufacturer's warranty on purchased equipment. A fee for the shipping and handling of equipment and parts will be charged to the Subscriber.

## **36 TELECHECK SERVICES: GENERAL TERMS**

**36.1 General Terms Application; Acknowledgement.** The terms and conditions ("General Terms") in Section 36 (General Terms) are applicable to all TeleCheck Services offered under the Agreement; and incorporate (i) the specific terms governing the individual TeleCheck Services that Client selects (whether now or hereafter selected) on the TeleCheck Application, or in an exhibit or addendum to this Agreement, and (ii) the definitions in Section 31.2 (Definitions).

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

**36.3 Updating Information.** With regard to any Items submitted or reported to TeleCheck under this Agreement, Subscriber shall promptly notify TeleCheck if: (i) a Consumer makes any payment to Subscriber on a Returned Item; (ii) there is a return of goods and/or services, in whole or in part, which were paid with a Returned Item; or (iii) there is a dispute of any amount, notice of bankruptcy or any other matter with regard to a Returned Item.

**36.4 Fees and Charges.** Subscriber shall pay TeleCheck the fees and charges set forth on the face of the Merchant Application, attached rate schedule(s) (if any), or as otherwise set forth in this Agreement, including applicable taxes. The "Additional Inquiry Fees" are those fees for inquiries exceeding the dollar volume of inquiries included in the Monthly Minimum fee. The "Charge Per Transaction" is the per transaction fee for all transactions determined by the method by which the transaction is delivered to TeleCheck. The "Chargeback Fee" is a \$5.00 handling fee for each chargeback of an Item in connection with a Business Transaction. The "Correction Fee" is a \$5.00 fee payable on each Item that must be corrected due to Subscriber error or at the request of the Subscriber. The "Customer Requested Operator Call Charge" is an additional charge of \$2.50 per operator-assisted call that is not requested by TeleCheck. The "December Risk Surcharge" is an additional fee for each December that is: (i) 10 basis points (0.10%), or (ii) the percentage set forth on the face of this Agreement. The "ECA Charge Per Transaction" is the additional per transaction fee for all ECA transactions. The "ECA Conversion Fee" is the fee to convert Subscriber to the ECA services. The "Funding Report Fee" is an additional fee to receive daily or weekly funding reports. The "Inquiry Rate" is the percentage rate set forth in the Rate Schedule which shall apply to the face amount of each Item which is entered into the Platform whether by telephone, electronically or otherwise. The "Monthly Minimum Fee" is the minimum amount of inquiry fees that Subscriber shall pay on a monthly basis, and applies to each individual TeleCheck Service separately. If the total fees for Subscriber's inquiries for any month are less than the Minimum Monthly Fee, then the Minimum Monthly Fee shall apply. The "Non-Imaging Surcharge" is a per transaction fee for every ECA transaction that is not processed using a TeleCheck approved imaging device. The "Order Confirmation Notice Fee" is the fee for each Electronic Check for which TeleCheck sends the required written confirmation notice to the Consumer on behalf of Subscriber. The "POS Support Charge" is a monthly fee for point of sale support services. The "Processing Fee" is a monthly fee applied for handling each of Subscriber's accounts. The "Recovery Processing Fee" is a \$5.00 fee for each Return Item that fails to meet Item Requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a Goodwill Item. The "Reversal Fee" is a \$5.00 charge for any reversal of an Electronic Check that is requested by Subscriber. The "Setup Fee" (for first location and/or additional location(s)) is the set up fee charged to establish the TeleCheck Services at Subscriber's respective locations (the Set Up Fee First Location being the initial location, and Set Up Fee Additional Location(s) being for each additional location). The "Transaction Fee" is the base charge for each Item processing request submitted by Subscriber pursuant to this Agreement; and the Transaction Fee and

Inquiry Rate apply and are payable for each Item inquiry submitted to TeleCheck regardless of whether or not TeleCheck authorizes and processes such Item. The "Transaction Surcharge" is an additional fee for transactions going over third party networks. The "Warranty Research Fee" is a \$7.50 fee payable each time Subscriber requests substantiation of a warranty payment/non-payment. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement. The fees payable by Subscriber under this Agreement shall apply for all months or fractions of a month that TeleCheck materials, TeleCheck Marks, TeleCheck owned equipment or TeleCheck Services remain in use by Subscriber.

**36.5 Payment.** All fees and charges are due upon receipt of invoice. Subscriber authorizes TeleCheck or TeleCheck's designee to initiate debit entries, credit entries, transfers and/or adjustments to Subscriber's Account by electronic funds transfer via the ACH network or other funds transfer methods (e.g., Check or draft) for all charges, fees, payments or other amounts owed (including, without limitation, delinquency fees, chargebacks, or rejected and reassigned warranty Items) to TeleCheck or its affiliates under this Agreement or any other agreement between Subscriber and TeleCheck, or their respective affiliates. If there are insufficient funds in Subscriber's Account to pay amounts owed to TeleCheck or its affiliates; or if there are any amounts otherwise not paid by Subscriber when due (including, without limitation, delinquent fees, chargebacks or rejected and reassigned warranty Items), Subscriber shall immediately reimburse TeleCheck or its affiliates upon demand, or at TeleCheck's option, TeleCheck may offset such amounts against any amounts due from TeleCheck or its affiliates to Subscriber under this Agreement or any other agreement between Subscriber and TeleCheck or its affiliates. A delinquency charge of 1.50% per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account over 15 days delinquent. TeleCheck shall have the right to suspend all TeleCheck Services and obligations to Subscriber, including the payment of all warranties due and all transactions previously authorized, during any period in which Subscriber's account is delinquent. Subscriber agrees to pay to TeleCheck a \$25.00 fee for any check, ACH debit, paper check or draft that is not paid by Subscriber's financial institution upon presentment.

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

**36.7 Security Interest.** To secure Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement for the provision of related equipment or services (including any check or credit card processing services), Subscriber grants to TeleCheck a lien and security interest in and to any of Subscriber's funds pertaining to the transactions contemplated by this Agreement

now or hereafter in the possession of TeleCheck or its affiliates, whether now or hereafter due or to become due to Subscriber from TeleCheck. Any such funds, money or amounts may be commingled with other funds of TeleCheck, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other Subscribers of TeleCheck. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, TeleCheck is hereby authorized by Subscriber at any time and from time to time, without notice or demand to Subscriber or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement with TeleCheck or any of its affiliates, including, without limitation, fees for any related equipment or related services (including any check or credit card processing services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Subscriber agrees to execute and deliver to TeleCheck such instruments and documents as TeleCheck may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

**36.8 Term; Termination; Right to Amend.** The term of this Agreement is set forth in the TeleCheck Application portion of the Merchant Application and Agreement. Subscriber may terminate the Agreement for any reason during the first 30 days of the initial term. After the end of the initial term and during any renewal term, Subscriber may terminate this Agreement for any reason upon 30 days written notice to TeleCheck. TeleCheck may terminate this Agreement for any reason at any time upon notice to Subscriber. TeleCheck may amend any of the terms and conditions of this Agreement upon written notice to Subscriber; and such amendments will be effective 30 days from the date notice is mailed to Subscriber. Upon receipt of an amendment notice from TeleCheck, Subscriber may terminate this Agreement by providing written notice to TeleCheck within 30 days of receiving the amendment notice.

**36.9 Compliance with Law.** Subscriber shall comply with all applicable Legal Requirements, as may be amended from time to time, related to the operation of its business and use of the TeleCheck Services.

**36.9.1 Credit Reporting Law Compliance.** Further, Subscriber certifies that: (i) it has a legitimate business need, in connection with a Business Transaction initiated by the Consumer, for the information provided by TeleCheck under this Agreement about such Consumer; and (ii) the information provided by TeleCheck will only be used for permissible purposes as defined in the FCRA, and applicable state and federal laws; and, further, the information will not be used for employment purposes, and will not be used by Subscriber for any purpose other than a single Business Transaction between Subscriber and Consumer occurring on the date of the inquiry call to TeleCheck. Neither Subscriber, nor its agents or employees, shall disclose the results of any inquiry made to TeleCheck except to the Consumer about whom such inquiry is made and in no case to any other person outside the Subscriber's organization. If Subscriber decides to reject any Business Transaction, in whole or in part, because of information obtained from TeleCheck, Subscriber agrees to provide the Consumer with all information required by Legal Requirements and TeleCheck.

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

**36.9.3 Federal Acquisition Regulation Compliance.** If Subscriber is acquiring the Software on behalf of any part of the Government, the

following provisions apply: (A) 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) Contractor/manufacturer is TeleCheck, with the address set forth above. (C) Any use, modification, reproduction, release, performance, display or disclosure of the Software and/or the accompanying documentation by the Government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

**36.10 Disclaimer of Warranties.** SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE USE OF THE TELECHECK SERVICES AND ANY SOFTWARE PROVIDED THEREWITH ARE AT ITS SOLE RISK. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, TELECHECK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, RELATED TO THE TELECHECK SERVICES, SOFTWARE, DOCUMENTATION, EQUIPMENT OR OPERATIONAL PROCEDURES; INCLUDING, WITHOUT LIMITATION: (A) ANY WARRANTIES OF NON-INTERFERENCE OR NON-INFRINGEMENT OR (B) ANY WARRANTIES THAT THE TELECHECK SERVICES (INCLUDING BUT NOT LIMITED TO THE SOFTWARE) WILL (1) MEET SUBSCRIBER'S REQUIREMENTS; OR (2) OPERATE ACCORDING TO SUBSCRIBER'S EXPECTATIONS. TELECHECK DOES NOT WARRANT THAT ANY ERRORS WILL BE CORRECTED. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, ALL TELECHECK SERVICES AND SOFTWARE ARE PROVIDED ON AN "AS-IS, WITH ALL FAULTS" BASIS. TELECHECK DOES NOT WARRANT THAT SUBSCRIBER'S USE OF THE TELECHECK SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. ANY AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED BY TELECHECK AND WAIVED BY SUBSCRIBER. THIS AGREEMENT IS A SERVICE AGREEMENT. ANY EQUIPMENT PROVIDED TO CUSTOMER UNDER THIS AGREEMENT IS INCIDENTAL TO THE TELECHECK SERVICES OR SOFTWARE PROVIDED, AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE DO NOT APPLY TO IT. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THE AGREEMENT. All decisions to reject any Item, Business Transaction, driver's license or other form of identification, or payment for Subscriber's products and/or services are solely Subscriber's responsibility. Subscriber assumes all risks that any and all Items (including Checks processed as ECA transactions) accepted by Subscriber may be dishonored, whether or not TeleCheck has issued a TeleCheck Approval Code with respect to such check(s).

**36.11 Limitation of Liability.** TELECHECK WILL NOT BE LIABLE TO SUBSCRIBER OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT UNDER ANY THEORY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), EXEMPLARY OR PUNITIVE DAMAGES; REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, OR TELECHECK WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, TELECHECK'S CUMULATIVE LIABILITY TO SUBSCRIBER FOR ANY LOSSES OR DAMAGES FROM ANY CAUSE WHATSOEVER (RELATED OR UNRELATED) IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE LESSER OF (I) \$75,000.00; OR (II) THE AMOUNT OF FEES INCURRED FOR TELECHECK SERVICES PERFORMED IN THE PRECEDING 12 MONTHS. SUBSCRIBER WILL ACT TO MITIGATE ITS DAMAGES.

**36.12 Indemnification.** In the event Subscriber violates any terms or conditions of this Agreement, Subscriber shall indemnify, defend and hold harmless TeleCheck and its affiliates from and against any and all Claims arising therefrom; including, payment of all costs and reasonable attorneys' fees for actions taken by TeleCheck, whether by suit or otherwise, to defend TeleCheck or its affiliates from any Claims related thereto or to preserve or enforce TeleCheck's rights under this Agreement, and TeleCheck shall have the right to immediately repossess all equipment owned by TeleCheck. In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, Subscriber shall: (i) promptly notify TeleCheck of the Claim(s) or legal action; (ii)

reasonably cooperate with TeleCheck in the making of any Claim(s) or defense(s); and (iii) provide information, assist in the resolution of the Claim(s) and make available at least one employee or agent who can testify regarding said Claim(s) or defense(s). Subscriber shall indemnify, defend, and hold harmless the TeleCheck Parties from any Claim(s) arising from Subscriber's conduct of its business, any transaction submitted to TeleCheck for processing, any false or inaccurate representation made by Subscriber or from Subscriber's failure to strictly comply, in whole or in part, with any: (a) terms and conditions pursuant to this Agreement or any addenda hereto; (b) Operational Procedures; or (c) applicable Legal Requirements. Upon written notice from TeleCheck to Subscriber, Subscriber shall immediately undertake the defense of such Claim by representatives of its own choosing, subject to TeleCheck's reasonable approval; provided, however, that TeleCheck shall have the right to control and undertake such defense by representatives of its own choosing, but at Subscriber's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws. Further, Subscriber acknowledges that money damages may not be a sufficient remedy for a breach of its obligations under this Agreement. Accordingly, in addition to all other remedies to which it may be entitled, TeleCheck shall be entitled to seek injunctive or other equitable relief as a remedy for any breach by Subscriber of its obligations under this Agreement; and Subscriber agrees to waive any requirement for a bond in connection with any such injunctive or other equitable relief.

**36.13 Confidentiality.** Subscriber shall not disclose the Confidential Information to any third party, or use the Confidential Information in any manner except as explicitly authorized under this Agreement; provided, Confidential Information may be disclosed (a) as specifically allowed pursuant to the express written permission of TeleCheck; (b) to the extent necessary to comply with Legal Requirements; or (c) to the extent necessary to comply with a valid court or governmental order, provided Subscriber must notify TeleCheck prior to such disclosure so that TeleCheck has an opportunity to contest any such disclosure, seek a protective order or otherwise limit or prevent disclosure of its Confidential Information. Subscriber agrees to use the same degree of care to prevent disclosure of the Confidential Information as it uses to protect its own confidential information; but not less than commercially reasonable care. In the event of any unauthorized disclosure of Confidential Information, Subscriber shall immediately provide TeleCheck with written notice of the details of such disclosure (including but not limited to the identification of the receiving party).

**36.14 Information Security.** TeleCheck will use commercially reasonable efforts to maintain the security of the Software and the Platform. Subscriber will use commercially reasonable efforts to maintain the security of Subscriber Systems. Such steps by Subscriber will be taken at Subscriber's sole cost and expense, and shall include, without limitation: (i) creating firewalls to protect against unauthorized access to Subscriber Systems by Subscriber's employees, contractors, Consumers, or by any other person; and (ii) implementing reasonable protective techniques suggested by TeleCheck. If Subscriber utilizes any third parties to provide internet hosting, gateway or other services in connection with Subscriber's Business Transactions, Subscriber shall ensure and be responsible for such third parties complying with all requirements contained in this Agreement. Subscriber further agrees that it will be bound by and comply with all applicable NACHA Rules and TeleCheck information and other security rules and regulations as they now exist or as each may be amended or supplemented from time to time. Notwithstanding the foregoing, the parties recognize that there is no guarantee or absolute security of information that is communicated over the internet.

**36.15 Use of Information.** Subscriber agrees that: (i) any data and other information relating to an Item or a Consumer obtained by TeleCheck in connection with any service provided hereunder shall be owned by TeleCheck with all right, title and interest thereto; (ii) TeleCheck may use any credit information provided to a TeleCheck affiliate or a First Data Corporation alliance partner for TeleCheck's credit review of Subscriber; (iii) TeleCheck may provide or receive any experiential information regarding Subscriber or Subscriber's customers to or from any TeleCheck affiliate or First Data Corporation alliance partner; and (iv) TeleCheck is entitled to obtain Subscriber's credit card sales data from point of sale equipment or from any TeleCheck affiliate or First Data Corporation alliance partner for use in TeleCheck's aggregate reporting of retail sales trends.

## **36.16 Intellectual Property: Licenses.**

**36.16.1 TeleCheck Marks License.** Subject to this Agreement, TeleCheck grants to Subscriber, and Subscriber accepts, a limited, nonexclusive, nontransferable, revocable license, to use TeleCheck's marks and logo in the United States, including TELECHECK®, TELECHEQUE®, TELECHECK ELECTRONIC CHECK ACCEPTANCE®, ECA® and the TELECHECK LOGO® (collectively, the "TeleCheck Marks"); and to use and display decals, identification data and other materials provided by TeleCheck, whether in physical or electronic form, during the term of this Agreement solely in connection with the offering of the TeleCheck Service(s) authorized under this Agreement. The following shall appear on every piece of advertising or promotional material used by Subscriber: "The [insert applicable TeleCheck Mark(s)] is/are owned by TeleCheck International, Inc. and licensed for use by [insert Subscriber name]." All advertising or promotional materials in any media, including websites, using TeleCheck Marks or the TeleCheck name require the prior written approval of TeleCheck. Upon termination of this Agreement, Subscriber agrees that it shall either return or destroy all TeleCheck materials (including the prompt removal of any TeleCheck decals, electronic files, TeleCheck Marks or other materials that are affixed or displayed, electronically or otherwise, to the public), and TeleCheck reserves the right to request certification that this has been completed. **SUBSCRIBER SHALL ONLY USE THE TELECHECK NAME OR TELECHECK MARKS AS PERMITTED UNDER THIS AGREEMENT; AND, EXCEPT IN CONNECTION WITH TELECHECK'S INTERNET ACCEPTANCE SERVICE, WILL NOT USE THE TELECHECK NAME OR TELECHECK MARKS ON THE INTERNET.** Subscriber acknowledges TeleCheck International, Inc.'s ownership of the TeleCheck Marks, TeleCheck International Inc.'s grant of authority to TeleCheck to license the TeleCheck Marks, and agrees that it will not challenge the ownership of or rights in the TeleCheck Marks; nor adopt any confusingly similar marks. All use of the TeleCheck Marks by Subscriber will inure to the benefit of TeleCheck. Subscriber shall not use the TeleCheck Marks in any confusing, derogatory or defamatory manner, or in the context of illegal or immoral conduct or activity. Subscriber shall promptly bring to TeleCheck's attention any unauthorized use of the TeleCheck Marks by third parties of which Subscriber becomes aware. Further, Subscriber shall not permit any persons other than its own officers or employees at subscribing locations to use the TeleCheck subscriber number (if any) assigned to Subscriber by TeleCheck.

**36.16.2 Software License.** Subject to this Agreement, TeleCheck grants, and Subscriber accepts, a limited, nonexclusive, nontransferable, revocable license, without right to sublicense, to use the Software in the United States for the sole purpose of submitting Items to TeleCheck for processing under this Agreement.

**36.16.3 Documentation License.** Subject to this Agreement, TeleCheck grants, and Subscriber accepts, a limited, nonexclusive, nontransferable, revocable license, without right to sublicense, to use the Documentation in the United States for the sole purpose of supporting Subscriber's use of the Software. Subscriber shall strictly follow all Documentation provided to Subscriber, as may be amended from time to time by TeleCheck, in its sole discretion. To the extent that there is any conflict between the Documentation and the terms of this Agreement, the terms of this Agreement shall govern.

**36.16.4 License Use Restrictions.** Subscriber shall not, and shall not cause or permit any third party to: (i) use the Software or Documentation in any way other than in accordance with this Agreement or as otherwise instructed by TeleCheck in writing; (ii) use the Software or Documentation, either directly or indirectly, to develop any product or service that competes with the TeleCheck Services provided under this Agreement; (iii) disassemble, decompile, decrypt, extract, reverse engineer or modify the Software, or otherwise apply any procedure or process to the Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software or any algorithm, process, procedure or other information contained in the Software, except as otherwise specifically authorized in accordance with this Agreement; (iv) provide the Software or Documentation to any third party, other than to its authorized employees and contractors who are subject to a written confidentiality agreement, the terms of which are no less restrictive than the confidentiality provisions of this Agreement; (v) make any copies of the Software or Documentation, except as is incidental to the purposes of this Agreement, or for archival purposes (any copies made hereunder shall contain all appropriate proprietary notices); (vi) rent,

lease, assign, sublicense, transfer, distribute, allow access to, or time share the Software or Documentation; (vii) circumvent or attempt to circumvent any applicable security measures of the Software; or (ix) use the Software for any unlawful purpose.

**36.16.5 Underlying Licensors.** The licenses granted hereunder may be subject to other licenses currently held by TeleCheck. Should any license held by TeleCheck to certain technology or software be terminated or suspended, the corresponding license(s) granted to Subscriber hereunder may also be terminated or suspended in the sole and absolute discretion of TeleCheck. Subscriber acknowledges and agrees to such potential termination or suspension and hereby waives any and all damages, whether actual, direct, indirect, incidental or consequential resulting therefrom. Further, Subscriber acknowledges that an affiliate of TeleCheck has a limited, minority, non-controlling, equity interest in Ronald A. Katz Technology Licensing L.P., an entity owning certain patent applications and patents which may apply to interactive or automated voice response products or services provided by TeleCheck in connection with the TeleCheck Services.

### **36.17 Intellectual Property: Ownership.**

**36.17.1 Software and Documentation Ownership.** TeleCheck and/or its licensors shall retain all right, title and interest in and to the Software and Documentation, and any and all Intellectual Property Rights embodied therein or associated therewith, and Subscriber shall have no rights thereto except as expressly set forth herein. TeleCheck shall own all right, title, and interest in the Derivative Works, including any related Intellectual Property Rights, regardless of which party creates such Derivative Works. Subscriber hereby irrevocably transfers, conveys and assigns to TeleCheck in perpetuity all right, title, and interest in such Derivative Works, including without limitation all Intellectual Property Rights, including the right to make Derivative Works and collective works with respect thereto; it being understood, however, that Subscriber has, and transfers, no rights with respect to the Subscriber product (exclusive of the Software and Derivative Works). TeleCheck will have the exclusive right to apply for such Intellectual Property Rights as it wishes with respect to the Derivative Works. Subscriber agrees to execute such documents, render such assistance, and take such other action as TeleCheck may reasonably request, at TeleCheck's expense, to apply for, register, perfect, confirm, and protect TeleCheck's rights in the Derivative Works, including, without limitation, an assignment of copyright. Without limiting the foregoing, TeleCheck will have the exclusive right to commercialize, prepare and sell products based upon, sublicense, prepare derivative works from, or otherwise use or exploit the Software and/or Derivative Works. Subscriber hereby waives any and all moral rights, including any right to identification of authorship or limitation on subsequent modification that Subscriber (or its employees, agents or consultants) has or may have in any Software and/or Derivative Works. Subscriber will not remove, modify, or obscure any copyright or other proprietary notices on the Software, Derivative Works and/or the Documentation.

**36.17.2 Update Ownership.** From time to time TeleCheck may, at its discretion, release Updates. In the event TeleCheck so notifies Subscriber of any such Update, Subscriber shall integrate and install such Update into the Subscriber Systems within 30 days of its receipt of such notice. Subscriber acknowledges that failure to install Updates in a timely fashion may impair the functionality of the Platform or any services provided hereunder. TeleCheck will have no liability for Subscriber's failure to properly install the most current version of the Software or any Update, and TeleCheck will have no obligation to provide support or services for any outdated versions.

**36.17.3 Software Return or Destruction.** Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate, and within 5 days thereof, Subscriber shall either return to TeleCheck or destroy the Software and the Documentation, and shall so certify to TeleCheck in writing.

### **36.18 Platform Matters**

**36.18.1 Integration with Subscriber Systems.** While TeleCheck provides Software to Subscriber, Subscriber acknowledges that the Software itself may be insufficient to allow the Subscriber Systems to function with the Platform. Any programming, development and maintenance of the Subscriber Systems and their functionality are the sole responsibility of Subscriber. Subscriber has the sole responsibility to select and employ any competent programming agent(s) to accomplish the programming required to make the Subscriber Systems function correctly with the Platform and the TeleCheck Services

contemplated hereunder (collectively, "Integration"). Subscriber shall be responsible for all technical support for Subscriber Systems and Integration related issues. Subscriber agrees that it will use commercially reasonable efforts to complete the Integration as soon as possible. Subscriber will be responsible for all of its own development and implementation costs associated with the Integration. Notwithstanding any other provision of this Agreement, Subscriber acknowledges that unless and until Subscriber completes the Integration, no services need be provided by TeleCheck to Subscriber pursuant to this Agreement, except as otherwise specifically provided in Section 36.18.2 (Setup Assistance Services). Subscriber shall not permit any platforms, gateways, websites, software programs or other systems that have not been explicitly authorized by TeleCheck to be integrated or interface with the Platform.

**36.18.2 Set-Up Assistance Services.** Subject to Section 36.18.1 (Integration with Subscriber Systems), upon payment of any applicable Setup Fees, TeleCheck will provide Subscriber with services to assist with the Integration as are specified on an attached schedule (if any) or as are otherwise agreed in writing.

**36.18.3 Platform Shut Downs.** TeleCheck reserves the right, from time to time, without prior notice, to shut down and restart the Platform for maintenance and/or Software upgrades for reasonably short periods of time.

**36.19 Operational Procedures.** Subscriber shall strictly follow all Operational Procedures provided by TeleCheck, as may be amended from time to time in TeleCheck's discretion, including any procedures relating to the Consumer Authorization Format or TeleCheck Marks. To the extent that there is any conflict between the Operational Procedures and the terms of this Agreement, the terms of this Agreement shall govern. Subscriber is authorized to use TeleCheck-owned or TeleCheck-supplied equipment and/or ECA services pursuant to this Agreement only for the processing of completely filled out Checks (i.e., negotiable instruments) and/or other Items allowed for hereunder. Any other use of TeleCheck-owned or TeleCheck-supplied equipment or TeleCheck Services is unauthorized and Subscriber covenants not to make any such use of the equipment or TeleCheck Services. Should Subscriber make any use of TeleCheck-owned or TeleCheck-supplied equipment or TeleCheck Services other than those expressly authorized by this Agreement, Subscriber agrees to indemnify, defend and hold harmless TeleCheck as set out in this Agreement.

**36.20 Audit Rights.** Upon notice to Subscriber by TeleCheck, but in no event more than twice annually, TeleCheck may audit Subscriber's usage and records related to the Software and the TeleCheck Services to ensure that (i) Subscriber is using the Software and the TeleCheck Services in full compliance with the provisions of this Agreement; (ii) all applicable Fees have been paid; and (iii) Subscriber is in full compliance with all Legal Requirements. Any such audit shall be conducted during regular business hours at Subscriber's offices and shall not interfere unreasonably with Subscriber's business. TeleCheck will be responsible for the costs of such audit, provided that if such audit reveals that Subscriber has underpaid TeleCheck by more than 5% of applicable fees, then Subscriber shall reimburse TeleCheck for the reasonable costs associated with such audit, in addition to the underpaid amount. From time to time upon TeleCheck's request, Subscriber shall provide TeleCheck with copies of Subscriber's internet security audits. TeleCheck may perform audits more than twice annually if an audit determines that Subscriber is out of compliance with this Agreement or any Legal Requirements.

**36.21 Governing Law and Integration.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. This Agreement, plus any addenda attached hereto, constitute the entire Agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter.

**37 Severability and Interpretation.** If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. Neither this Agreement, nor any addenda or Operational Procedures, shall be interpreted in favor or against any party because such party or its counsel drafted this

Agreement, or such addenda or Operational Procedures. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement. This Agreement is solely for the benefit of TeleCheck (and its affiliates) and Subscriber and no other person or entity shall have any right, interest or claim under this Agreement. As used in this Agreement, (i) the term "include," or any derivative of such term, shall not mean that the items following such term are the only types of such items; (ii) the terms "shall" or "will" indicates a mandatory obligation; (iii) the term "may" indicates a permissive election and does not imply any duty to exercise such election; and (iv) the term "discretion" means the sole and absolute discretion of the party granted the discretion, absent an express limitation on such discretion.

**37.1 Headings.** Headings in this Agreement are for reference only.

**37.2 Amendment; Modification; Waiver.** Except as specifically provided otherwise, no amendment, modification or waiver of any of the terms and conditions of this Agreement shall be binding upon TeleCheck, whether written, oral, or in any other medium, unless made in writing and approved and signed by TeleCheck. All rights and duties within this Agreement are material and time is of the essence; no waiver by either party of a breach or any provision of this Agreement shall constitute a waiver of any prior or subsequent breach of the same or any other provision of this Agreement; no failure to exercise, and no delay in exercising, any right(s) hereunder on the part of either party shall operate as a waiver of any such right; all of TeleCheck's rights are cumulative; and no single or partial exercise of any right hereunder shall preclude further exercise of such right or any other right.

**37.3 Counterparts.** This Agreement may be executed in one or more counterparts, each of which is deemed an original; and all of which together constitute one and the same instrument. Facsimile, electronic or other copies of the executed Agreement are valid and effective.

**37.4 Assignment of Agreement.** This Agreement may be assigned by Subscriber only with the prior written consent of TeleCheck. TeleCheck may freely assign this Agreement, its rights, benefits or duties hereunder, either in whole or in part. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of TeleCheck and the heirs, executors, administrators, successors and assigns of Subscriber. Any sale, transfer, reorganization, merger or change in control of all or substantially all of the assets of Subscriber shall be deemed an assignment by Subscriber for purposes of this Section 37.4. Any assignment in violation of this Section 37.4.

**37.5 Subcontractors.** TeleCheck may subcontract all or any portion of the TeleCheck Services using vendors both within and outside the United States.

**37.6 Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing, addressed or transmitted to the party to be notified at such party's address or number as provided on the front of this Agreement or at such party's last known address or number, and shall be: (i) if sent by TeleCheck, hand delivered or delivered by facsimile transmission, overnight courier or certified, registered or regular mail; or (ii) if sent by Subscriber, certified or registered mail, postage prepaid return receipt requested. Any notice delivered hereunder shall be deemed effective, as applicable, upon delivery, if hand delivered or sent by overnight courier; upon receipt as evidenced by the date of transmission

indicated on the transmitted material, if by facsimile transmission; on the date of delivery indicated on the return receipt, if mailed by certified or registered mail; or 10 days after mailing, if by regular mail (or as otherwise required by applicable law). The parties' addresses may be changed by written notice to the other party as provided herein.

**37.7 Independent Contractors.** TeleCheck and Subscriber are independent contractors. Nothing in this Agreement will be deemed to create a joint venture, partnership, employment or similar relationship between the parties. Neither party is an agent nor representative of the other, except as specifically provided for in this Agreement; and neither party will represent otherwise.

**37.8 Publicity; Promotion of Internet Acceptance Services.** TeleCheck may use Subscriber's name in publicity indicating that TeleCheck and Subscriber have entered into a contractual relationship. If Internet Acceptance Services are provided hereunder, Subscriber will promote Internet Acceptance Services on its web site (including the TeleCheck Marks on the point of sale and/or the checkout pages), and Subscriber may include a short description and promotion of the Internet Acceptance Services in a weekly/monthly email and periodic direct mail to its customer base. TeleCheck may become a member of any affiliate marketing program of Subscriber. Additional marketing arrangements may be discussed by the parties from time to time, and the parties will cooperate in promoting use of the internet acceptance services on the Subscriber's web site.

**37.9 Force Majeure.** TeleCheck shall not be held responsible for any delays in or failure or suspension of service caused by mechanical or power failure, computer malfunctions (whether software, hardware and firmware related); transmission link failures; communication failures; failed attempts by Consumers or Subscriber to access any Subscriber systems or to complete transactions; failure to transmit, obtain or collect data from Consumers; faulty or erroneous Consumer or Subscriber input or payment data provided; failure, delay or error in clearing or processing a transaction through the ACH or Federal Reserve system; failure, delay or error by any third party or in any other third party system; strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, acts of God or other causes reasonably beyond TeleCheck's control.

**37.10 Damages.** Upon Subscriber's breach or unauthorized termination of this Agreement, TeleCheck shall, in addition to any other remedies available under this Agreement, in equity or at law, be entitled to recover from Subscriber liquidated damages in an amount equal to 90% of the total aggregate charges payable for the unexpired portion of the then current term of this Agreement. TeleCheck and Subscriber hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of Subscriber's breach or unauthorized termination of this Agreement, to the possibility that TeleCheck will not be able to mitigate its damages, and to the expense savings that TeleCheck may obtain by not having to provide the TeleCheck Services, equipment or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach or unauthorized termination of this Agreement and will not be construed as a penalty.

**37.11 Survival.** All representations, warranties, indemnities, covenants, rights and obligations of the parties that would be intended to survive by their nature or context will survive expiration or termination of this Agreement.



**AUTHORIZATIONS AND REPRESENTATIONS**

I understand that this signature page also serves as a signature page to the Third Party Agreements contained in this Merchant Application and Agreement, as applicable. I further understand that, if applicable, the Third Party Agreements are separate and distinct from my Merchant Agreement with Processor and Bank and are subject to separate approvals.

Each of the undersigned authorize Bank/Processor and, if applicable, TeleCheck and/or First Data Global Leasing to use credit bureau/reporting agencies and/or their own agents to verify the accuracy of all information provided herein and to assess and monitor each of the undersigned's credit status. Each of the undersigned authorizes all such credit bureau/reporting agencies to release any information they may have pertaining to him/her to Bank/Processor and, if applicable, TeleCheck and/or First Data Global Leasing. No sales agent of Bank/Processor and, if applicable, TeleCheck and/or First Data Global Leasing is authorized to make any verbal or written modification to this Merchant Application and Agreement and Operating Procedures.

By signing below, I represent that I have read and am authorized to sign and submit this application for the above entity which agrees to be bound by the American Express® Card Acceptance Agreement ("Agreement"), and that all information provided herein is true, complete, and accurate. I authorize Processor and American Express Travel Related Services Company, Inc. ("AXP") and AXP's agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies, and disclose such information to their agent, subcontractors, Affiliates and other parties for any purpose permitted by law. I authorize and direct Processor and AXP and AXP agents and Affiliates to inform me directly, or through the entity above, of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize AXP to use the reports from consumer reporting agencies for marketing and administrative purposes. I understand that upon AXP's approval of the application, the entity will be sent the Agreement and materials welcoming it, either to AXP's program for Processor to perform services for AXP or in AXP's standard Card acceptance program which has different servicing terms (e.g. different speeds of pay). I understand that if the entity does not qualify for the Processor servicing program, which the entity may be enrolled in AXP's standard Card acceptance program and the entity may terminate the Agreement. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Agreement.

I understand that upon American Express' approval of the entity to accept the American Express Card, it will be sent a copy of the Agreement and materials welcoming it, either as a participant in American Express's program for Bank/Processor to perform services on behalf of American Express or in American Express's standard Card acceptance program which has different servicing terms (e.g. different speeds of pay). I further understand that if the entity does not qualify for the Bank/Processor servicing program, that the entity may be enrolled in American Express's standard Card acceptance program, and the entity has the right to terminate the applicable Agreement at any time.

Do not sign below unless and until you have received and reviewed all pages of this Merchant Application and Agreement. I understand that the term of this Merchant Agreement is designated in the Initial Term of Merchant Agreement section of my Merchant Application and Agreement, continuing month to month thereafter, and that account termination prior to the expiration of the initial term shall require Client to pay an Early Cancellation Fee in an amount equal to the Monthly Minimum Fee, Monthly Customer Service Fee, and Monthly Account Fee multiplied by the number of months remaining in the initial term. I acknowledge that this complete and legible Merchant Application and Agreement has been provided to me, and I agree to be bound by its provisions. I understand that if this Merchant Application and Agreement is approved by Processor, I will be provided Operating Procedures, which contain the operating procedures, instructions and other directives relating to Card transactions; if I select TeleCheck, TeleCheck policies and procedures (also referred to as "TeleCheck Operational Procedures" in the TeleCheck Agreement) will be provided separately. I agree that if I process Card transactions, I will comply with the Operating Procedures for all transactions I process. The current Operating Procedures are available online at [www.firstdata.com/fdis/Merchants/Operatingprocedures/fdis0209.pdf](http://www.firstdata.com/fdis/Merchants/Operatingprocedures/fdis0209.pdf). I understand that I also may request a copy of the Operating Procedures from my sales representative at any time. I further understand that a sample copy of this Merchant Application and Agreement (version number c1109wall) is available for me to view or copy online at [www.firstdata.com/fdis/Merchants/Agreement/c1109wall.pdf](http://www.firstdata.com/fdis/Merchants/Agreement/c1109wall.pdf). I further understand that no strikeouts, interlineations, additions or modifications to this preprinted Merchant Application and Agreement may be made and that this Merchant Application and Agreement may be transmitted to or from Processor and/or retained electronically by Processor, which will constitute an original. I understand that this Merchant Application and Agreement is subject to approval by Processor and Bank. I further acknowledge and agree that I will not use my 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.

I declare under penalty of perjury under the laws of the state of California and under the laws of the state in which my business is located that all of the information contained in this Application is true and complete.

\_\_\_\_\_  
Print Name of Principal or Corporate Officer

\_\_\_\_\_  
Signature (Title) Date

\_\_\_\_\_  
Print Name of Principal or Corporate Officer

\_\_\_\_\_  
Signature (Title) Date

**PERSONAL GUARANTOR**

**All corporations and limited liability companies must have their obligations guaranteed.** As a primary inducement to Bank/Cardservice and TeleCheck and/or First Data Global Leasing, if applicable, to enter into this Merchant Agreement and/or Third Party Agreement(s) and any addendum, or attachment thereto, with Client, the undersigned Guarantor(s), by signing this Merchant Application and Agreement and any addendum or attachment thereto, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Client of each of its duties and obligations to Bank/Cardservice and TeleCheck and/or First Data Global Leasing, if applicable, pursuant to this Merchant Agreement and/or Third Party Agreement(s), as it now exists or as it may be amended from time to time, whether before or after termination or expiration and whether or not Guarantor has received notice of any amendment. If Client breaches its Merchant Agreement and/or Third Party Agreement(s), Bank/Cardservice as well as TeleCheck and/or First Data Global Leasing, as applicable, may proceed directly against Guarantor or any other person or entity responsible for the performance of the Merchant Agreement and/or Third Party Agreement(s), without first exhausting their remedies against any other person or entity responsible therefore to them, or any security held by Bank.

\_\_\_\_\_  
Print Name of Personal Guarantor

\_\_\_\_\_  
Signature, as an individual (No title) Date

\_\_\_\_\_  
Print Name of Personal Guarantor

\_\_\_\_\_  
Signature, as an individual (No title) Date

\_\_\_\_\_  
Cardservice International d/b/a First Data Independent Sales on behalf of itself and on behalf of Wells Fargo Bank, N.A. (for Visa and MasterCard transactions)

For internal use only: SIC/MCC Code \_\_\_\_\_

\_\_\_\_\_  
Signature

fdis0209

**Bank Information and Client Responsibilities Disclosure Page**

**Member Bank (Acquirer) Information**

Acquirer Name: Wells Fargo Bank, N.A.  
Acquirer Address: 1200 Montego Way, Walnut Creek, CA 94598  
Acquirer Phone: 925-746-4143

**Important Member Bank (Acquirer) Responsibilities**

1. A Visa Member is the **only entity** approved to extend acceptance of Visa products directly to a Client.
2. A Visa Member must be a principal (signer) to the Merchant Agreement.
3. The Visa Member is responsible for educating Clients on pertinent Visa Operating Regulations with which Clients must comply.
4. The Visa Member is responsible for and must provide settlement funds to the Client.
5. The Visa Member is responsible for all funds held in reserve that are derived from settlement.

**Client Information**

Client Name: \_\_\_\_\_  
Client Address: \_\_\_\_\_  
Client Phone: \_\_\_\_\_

**Important Client Responsibilities**

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below thresholds.
3. Review and understand the terms of the Merchant Agreement.
4. Comply with Visa Operating Regulations.

The responsibilities listed above do not supercede terms of the Merchant Agreement and are provided to ensure the Client understands some important obligations of each party and that the Visa Member (Acquirer) is the ultimate authority should the Client have any problems.

\_\_\_\_\_  
Client Signature Date

\_\_\_\_\_  
Client's Printed Name & Title