

## MASTER SERVICES AGREEMENT

This Master Services Agreement is by and between Office of State Treasurer ("OST") of the State of Georgia, on behalf of Customers (as defined below), and Wells Fargo Merchant Services, L.L.C. ("Processor") and Wells Fargo Bank, N.A. ("Bank"), (collectively referred to herein as "Servicers"). OST, Customer (as defined below) and Bank and Processor may be referred to in this Master Services Agreement individually as a "Party" and collectively as the "Parties."

### GENERAL TERMS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OST (on behalf of Customers) and Servicers agree as follows:

#### I. MASTER SERVICES AGREEMENT STRUCTURE

- A. **Master Services Agreement.** This Master Services Agreement between OST (on behalf of Customers) and Servicers (the "MSA") is composed of these General Terms, the Card Processing Terms Addendum (See Exhibit 1), and specific product and service attachments (containing any other product and/or service-specific terms (each a "Product Addendum", and collectively, "Product Addenda", see Exhibit 1), and the Participation Agreement, (collectively, the "Agreement").
- B. **Participating Entities.** Any State of Georgia government agencies, departments, commissions, boards, bureaus, authorities, institutions and local government entities (each, a "Customer", or collectively, "Customers") that execute an agreement with Servicers for the Services under this MSA, the Card Processing Terms Addendum and any applicable Product Addenda (each a "Participation Agreement", see Exhibit 2), may each be referred to as either "Customer" or a "Participating Entity", and collectively may be referred to as the "Participating Entities". Each Customer executing a Participation Agreement shall be responsible for its own individual performance and compliance with the terms of its Participation Agreement, and the OST may serve as a coordinator for Servicers' Services under, but shall not be a party to any such Participation Agreement.
- C. **Order of Precedence.** In the event of contrary or inconsistent terms and conditions within documents comprising the Agreement, the following order of precedence will apply: (1) Participation Agreement; (2) the applicable Product Addenda; (3) the Card Processing Terms Addendum; and (4) the MSA, but (1) through (3) will only take priority over the MSA with respect to the specific Services described in such Participation Agreement. Modifications intended to affect all documents comprising the Agreement, or any Customer's Participation Agreement and the documents comprising such Participation Agreement, may only be made by a written amendment to the MSA.

#### II. TERM AND TERMINATION

- A. **General.** The MSA and any attachments commence upon complete execution, and shall remain in effect for an initial term of three (3) years (the "Initial Term") and shall automatically renew for successive one (1) year periods until terminated by either Party upon at least ninety (90) days written notice prior to the end of the then-existing Term. Each Participation Agreement will have the Effective Date and term set forth in such document.
- B. **Definitions.** Any capitalized term used, but not defined in these General Terms shall have the meaning set forth elsewhere in the Agreement, including without limitation the Card Processing Terms Addendum, the Operating Procedures or Product Addenda, as applicable.
- C. **Survival of Certain Provisions.** Those provisions of the Agreement which would require that they survive the termination of the Agreement, in whole or part, in order to give them full force and effect will survive the termination of the Agreement in whole or part for any reason, regardless of the date, cause or manner of such termination.

#### III. SERVICES

- A. **Services.** The Services shall be as defined in the Card Processing Terms Addendum and the Product Addenda.

#### IV. CONFIDENTIALITY AND SECURITY

- A. Unless Customer obtains consents from Servicers and each applicable Card Organization, Issuer and Cardholder, Customer 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. Customer shall use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. Customer may not retain or store Magnetic Stripe data or Card Validation Codes after a transaction has been authorized. If Customer stores any electronically captured signature of a Cardholder, Customer may not reproduce such signature except upon Servicers' specific request.
- B. Customer acknowledges that Customer 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 Customer's business. Upon a bankruptcy, insolvency or

failure of Customer'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.

- C. Customer will treat this Agreement, the Card Organization Rules and any information supplied or otherwise made accessible by Servicers or their agents as confidential, including without limitation, (i) information about the products, services, operations, procedures, customers, suppliers, sales, pricing, business plans and marketing strategies of Servicers, their respective Affiliates and the customers, clients and suppliers of any of them; (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords Servicers a competitive advantage over its competitors; and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable and will not disclose the same to any third parties, provided, however, that these restrictions do not apply to information: (a) rightfully obtained on a non-confidential basis from a Person, and which Person was not subject to a duty of confidentiality, (b) rightfully and independently known by Customer on a non-confidential basis prior to its disclosure or (c) generally available to the public (including under the Georgia Open Records Act OCGA 50-18-70 et. Seq.) other than through any disclosure by or fault of Customer, or Customer's agents or representatives.
1. Servicers' confidential information shall be used by Customer only to exercise Customer's rights and to perform Customer's obligations hereunder. Customer shall receive Servicers' confidential information in confidence and not disclose the confidential information to any third party, except as may be agreed upon in writing by Servicers. Customer shall safeguard all of Servicers' confidential information using a reasonable degree of care, but not less than that degree of care used by Customer in safeguarding its own similar information or material. Upon request by us or upon termination of the Agreement, and/or Customer's Participation Agreement, Customer shall return to us or destroy all of our confidential information in its possession or control.
  2. The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the date of the Participation Agreement or subsequently came into the public domain through no fault of Customer; (ii) was received from a third party free of any obligation of confidence of Customer to the third party and which third party, to Customer's knowledge, was not under an obligation to keep the information confidential; (iii) was already in Customer's possession prior to receipt from us; (iv) is required to be disclosed by law (including the Georgia Open Records Act OCGA 50-18-70 et Seq.), regulation or court order after giving us as much advance notice as practical of the possibility of disclosure; or (v) is subsequently and independently developed by Customer's employees, consultants or agents without use of or reference to our confidential information.
  3. Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under our confidential information to Customer. Except as specifically provided for herein, no license is hereby granted to Customer under any patent, trademark, copyright, trade secret or other proprietary rights of Servicers'.
  4. Customer acknowledges that breach of the restrictions on use or disclosure of any of Servicers' confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm.
- D. With respect to any information received by Servicers from Customer via its use of the Services, Servicers will keep such information confidential in accordance with applicable law; provided, that Servicers may disclose such information (i) to third parties as Servicers deem appropriate to provide the Services, (ii) Servicers' auditors and attorneys (internal and external) and regulators, (iii) as required or permitted by law, regulation or court order (iv) to Servicers' respective Affiliates as Servicers deem appropriate. In addition, Servicers may use data collected as part of performing payment processing or other transaction-related services for Customer for the purpose of providing additional products and services to Customer, other merchants, or third parties. As permitted by law this includes collecting, using, and anonymizing cardholder information, dates, amounts, and other data from Customer transactions ("Transaction Data") to provide Customer with analytic products and services as well as collecting and using Transaction Data anonymized and aggregated with other merchants' transaction data to provide Customer, other merchants, and third parties with analytic products and services.
- E. Customer shall not assign to any Person, the rights to use the Marks of Servicers, Servicers' agents or the Card Organizations.
- F. All rights, title, and interest in and to all intellectual property related to the Services (including without limitation, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods), owned, developed or licensed by Servicers prior to, during the term of, or after the Agreement, or employed by Servicers in connection with the Services and any updates, changes, alterations, or modifications to or derivative works from such intellectual property, shall be and remain, as among the Parties, Servicers' exclusive property.

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

**V. REPRESENTATIONS; WARRANTIES; COVENANTS; DISCLAIMER; EXCLUSION OF DAMAGES; LIMITATIONS ON LIABILITY**

- A. **E-Verify.** Servicers represent that Servicers participate in E-Verify, and Servicers' certify that Servicers are not currently engaged in, and agree for the duration of this contract not to engage in, a boycott of Israel.
- B. **Disclaimer.** THIS AGREEMENT IS A SERVICE AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, SERVICERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO OST OR CUSTOMER 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. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, BANK IS NOT RESPONSIBLE, AND SHALL HAVE NO LIABILITY, TO OST OR ANY CUSTOMER IN ANY WAY WITH RESPECT TO NON-BANK CARD SERVICES.
- C. **Exclusion of Damages.** IN NO EVENT SHALL EITHER PARTY, OR THEIR AFFILIATES OR ANY OF SERVICERS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- D. **Limitation on Liability.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SERVICERS' CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY SERVICERS PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS. FURTHER, AND NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SERVICERS' LIABILITY TO ANY DELAY IN FUNDING TRANSACTIONS TO CUSTOMER FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 3.4 OR 3.6 OF THE CARD PROCESSING TERMS ADDENDUM, WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT SERVICERS FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS, AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK FROM TIME TO TIME.

**VI. INDEMNIFICATION**

- A. **Customer Reimbursement Obligations.** Each Customer agrees to be responsible for, and will reimburse Servicers (and the Card Organizations) from and against all losses, liabilities, damages and expenses: (i) resulting from the inaccuracy or untruthfulness of any representation or warranty, breach of any covenant or agreement or any misrepresentation by Customer under the; (ii) arising out of Customer's or Customer's employees' or Customer's agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from Customer's provision of goods and services to

Cardholders; (iii) arising out of Customer's use of the Services; or (iv) arising out of any payments Servicers are obligated to make to a third party as result of Customer's actions (including funds owed to any Card Organization or Issuer).

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

#### VII. REFERRAL FEES

- A.** Servicers will pay the OST of the State of Georgia an ongoing fee equal to \$0.005 for Net Visa/Mastercard/Discover® Network Cards Transaction Volume that Servicers receive for the Services for the State of Georgia Participating Entities that also have a Participation Agreement with Servicers (the "Referral Fees"). For the purposes of this Section VII(A), for the relevant period of time, "Net Visa/MasterCard/ Discover® Network Cards Transaction Volume" is "Gross Visa/MasterCard/ Discover® Network Card Sales Transaction less returns." Servicers will calculate and pay the OST of the State of Georgia the Referral Fees on a quarterly basis within forty-five (45) days of the end of the applicable calendar quarter via an ACH deposit into the OST of the State of Georgia's designated account.

#### VIII. GENERAL PROVISIONS

- A. Publicity.** Neither OST nor any Customer will use Servicers' logos, names, trademarks, or service marks in any manner, including, without limitation, in advertisements, displays, or press releases except as expressly set forth in the MSA, without the express written consent of Servicers.
- B. Notice.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, to OST or any Customer at OST's or Customer's address appearing in the Participation Agreement, or via Electronic Communications (as further described below), including but not limited to the e-mail addresses OST or Customers have provided in the Participation Agreement. If to Servicers at our address appearing below, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065. Notices shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing of when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to OST's or a Customer's last known address (including e-mail address), as indicated in Servicer's records, shall constitute effective notice to OST or a Customer under this Agreement. Notwithstanding the above, all bankruptcy or collection related, notices must be sent to the following address – Merchant Services Dept., 5251 Westheimer Road, Fourth Floor Houston, Texas 77056 Attn: Bankruptcy, and Collection Notifications. All such notices must include the related merchant name and merchant number. Failure to provide Notice to this address or include this pertinent merchant information will be deemed ineffective. All notices must include merchant name(s) and merchant number(s). Failure to provide notice in the manner described in this Section will be deemed ineffective.

Addresses for Notices:

**PROCESSOR:**

Wells Fargo Merchant Services, L.L.C.:  
P.O. Box 6079  
Concord, CA 94524  
Attn: Sales Manager

**BANK:**

Wells Fargo Bank:  
P.O. Box 6079  
Concord, CA 94524  
Attn: Merchant Services

**Important Contact Information:**

Customer Service: 1-800-451-5817 press 1

Mastercard/Visa/Discover Authorization – 1-800-626-4480

POS Help Desk: 1-800-622-0842

- C. Assignment.** Any transfer or assignment of the Agreement by OST, without our prior written consent, by operation of law or otherwise, is voidable by Servicers.

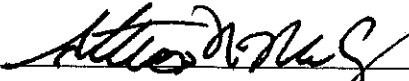
- D. No Third Party Beneficiaries.** Except as otherwise stated in this Agreement, this Agreement does not create any right or cause of action in or on behalf of any person or entity other than the Parties.
- E. No Partnership.** The Parties are independent entities, entering into a commercial arrangement, and do not intend to create a partnership, joint venture or other legal personality.
- F. Modification and Waiver.** Except as explicitly set forth in a Participation Agreement or any Product Addendum, no modification of this Agreement is effective unless signed by OST, and/or Customer and Servicers, and no waiver of any breach of this Agreement will be effective unless in writing and signed by an authorized representative of the Party that is waiving such breach. No waiver of any breach of this Agreement, and no course of dealing between the Parties, will be construed as a waiver of any subsequent breach of this Agreement.
- G. 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.
- H. Interpretation.** Each Party acknowledges and agrees that the Agreement: (1) resulted from an "arms' length" negotiation, and (2) will not be construed in favor of or against a Party by reason of the identity of the drafter or the extent to which any party or its advisors participated in its preparation. Article and Section headings, and cross-document section references within and among the Agreement, are provided for convenience only and are not to be used to definitively construe or interpret the Agreement. The term "including" as used in the Agreement means "including, but not limited to." References to (a) a time period or to a point in time will be to the local jurisdiction where Services are provided, (b) words or defined terms in the singular include the plural case, and vice versa, and (c) a dollar amount or currency will be such amount in United States Dollars unless stated otherwise in such reference.
- I. Choice of Law, Venue.** Unless stated otherwise in the Agreement, this Agreement shall be governed by and construed in accordance with the laws of the State of Georgia (without regard to its choice of law provisions). The exclusive venue for any actions or claims arising under or related to the Agreement, shall be located in the Superior Court of Fulton County, Georgia.
- J. Remedies.** Unless otherwise expressly limited in this Agreement, in the event of breach by one Party, the other Party will be entitled to exercise any and all rights and remedies available to it at law or in equity, whether concurrently or separately, and the exercise of one remedy will not be deemed an election of such remedy or preclude the right to exercise any other remedy. Without limiting the generality of the foregoing, either Party may offset any fees it owes to the other Party against amounts it is otherwise owed.
- K. Fees.** In all disputes, the prevailing Party is entitled to recover its reasonable legal expenses from the non-prevailing Party.
- L. Execution.** To facilitate execution, the documents that comprise this Agreement may be executed by a Party in the form of an "Electronic Record" (as such term is defined in the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq. ("ESIGN Act")). This Agreement and any portion thereof may be executed in as many counterparts as may be required to reflect all Parties' assent, and all counterparts will collectively constitute a single agreement. An "Electronic Signature" (as defined in the ESIGN Act) that can be authenticated will constitute an original and binding signature of a Party. The fact that a document is in the form of an Electronic Record or is signed using an Electronic Signature will not, in and of itself, be grounds for invalidating such document.
- M. Entire Agreement.** This MSA, the Card Processing Terms Addendum, a Participation Agreement, and any Product Addenda, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersedes any previous agreements and understandings between the same parties related to that subject matter.
- N. Compliance with Laws.** In performing its obligations under this Agreement, the parties agree to comply with all applicable law, including as may be further and more explicitly set forth in the Card Processing Terms Addendum, a Participation Agreement or any Product Addenda.
- O. Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement, if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a Person for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, a Customer's failure to receive payment of funds from a Person shall not excuse the performance of OST's or such Customer's obligations to Servicers under the Agreement.

[SIGNATURE PAGE TO FOLLOW]


IN WITNESS WHEREOF, OST and Servicers, by the signatures of their duly-authorized representatives below, intending to be legally bound, agree to all of the provisions of the Master Services Agreement.

**AGREED TO AND ACKNOWLEDGED BY:**


Office of the State Treasurer of the State of Georgia (OST)

By:   
Name (Print): Steven N. McCoy  
Title: State Treasurer  
Date: 11-17-17

Wells Fargo Merchant Services, L.L.C.

By:   
Name (Print): David Wong  
Title: Vice President  
Date: 11-6-2017

Wells Fargo Bank, N.A.

By:   
Name (Print): Laurel Hill  
Title: Senior Vice President  
Date: 11-6-2017

**Exhibit 1**  
**Card Processing Terms Addendum**  
**To**  
**Master Services Agreement**

	23.	Reserved
<b>A. Card General Terms</b>	24.	Choice of Law, Venue
1. Services	25.	Other Terms
2. Operating Procedures; Card Organization Rules and Compliance	<b>B. Operating Procedures</b>	
3. Settlement of Card Transactions	29.	Data Security
4. Reserved	29.1.	Payment Card Industry Data Security Standards (PCI DSS)
5. Fees; Adjustments; Collection of Amounts Due	29.2.	Data Security Requirements
6. Chargebacks	29.3.	Compliance Audits
7. Representations; Warranties; Covenants; Limitations on Liability; Exclusion of Consequential Damages	29.4.	Immediate Notice Required
8. Confidentiality	29.5.	Investigation
9. Assignments	29.6.	Required Information for Discover Network Security Breaches
10. Term; Events of Default	29.7.	Merchant Providers
11. Customer Obligations; Security Interest	29.8.	Noncompliance Fees
12. Financial and Other Information	29.9.	Costs
13. Indemnification	40.	Glossary
14. Reserved	41.	<b>Additional Important Information</b>
15. Reserved	41.1.	Electronic Funding Authorization
16. Reserved	41.2.	Funding Acknowledgement
17. Reserved	41.3.	Additional Fees, Fees Related Information
18. Reserved	41.4.	Addresses For Notices
19. Reserved		
20. Reserved		
21. Reserved		
22. Reserved		

## **A. Card General Terms**

### **1. Services**

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

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

Customer agrees to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Card Organization Rules, including, without limitation, the data security requirements described in Section 29. From time to time, we may amend the Operating Procedures, by providing Customer with at least twenty (20) days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the Card Organization Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there are any inconsistencies between the General Terms and the Operating Procedures, the General Terms will govern. Customer are responsible for staying apprised of all applicable changes to the Card Organization Rules and maintaining compliance with the card Organization Rules. Card Organization Rules may be available on the web sites such as [http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.html) and <http://mastercardmerchant.com>. These links may change from time to time.

### **3. Settlement of Card Transactions**

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

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

3.3. All credits to Customer's Settlement Account or other payments to Customer are provisional and are subject to, among other things, our right to deduct fees, our final audit, Chargebacks (including our related losses), fees and fines imposed on us by the

Card Organizations as a result of Customer's acts or omissions. Customer agrees that we may debit or credit Customer's Settlement Account for any deficiencies, overages, fees and pending Chargebacks and any other amounts owed to us or any of our respective Affiliates, or we may deduct such amounts from settlement funds or other amounts due to Customer from us, or our respective Affiliates. Customer further agree we can offset any amounts owed to us or our Affiliates related to activity in other accounts maintained in Customer's name or accounts guaranteed by Customer, any of Customer's principals, guarantors or authorized signors. Alternatively, we may elect to invoice Customer for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

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

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

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

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

### **4. Reserved**



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

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

If a transaction fails to qualify for Customer's anticipated interchange levels or Customer inadvertently or intentionally accept a transaction other than anticipated for Customer's account (including a different Card type), then, as applicable to Customer's pricing method, Customer will be charged a higher interchange, Discount Rate or a Non-Qualified Interchange Fee, as well, any applicable surcharge for that transaction, all as further described in Section 41.3 of this Agreement and in the Application. With respect to inadvertent or intentional acceptance of a transaction other than the type anticipated for Customer's account (including a different Card type), Customer will also be subject to payment to us of our then-current transaction fee(s) with respect to such Card and/or transaction and be liable, obligated and responsible under this Agreement for any such transaction to the same extent as Customer would be if it was of a Card type elected and approved. For more information on Visa's and MasterCard's interchange rates, please go to [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com).

### **5.2. Reserved.**

**5.3.** All Authorization fees will be charged for each transaction that Customer attempts to authorize. All capture fees will be charged for each transaction that Customer transmits to us for settlement. If Customer is billed a combined fee for both the authorization and capture of a transaction, the authorization and capture must be submitted as a single transaction, otherwise the authorization and the capture will each be charged separately. Customer are responsible for utilizing software or services that will correctly submit these transactions to achieve the indicated billing.

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

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

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

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

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

**5.9.** Customer agrees to pay any fines imposed on us by any Card Organization resulting from Chargebacks and any other fees or fines imposed by a Card Organization with respect to Customer's acts or omissions. Customer is responsible for any fines or fees imposed on us as a result of acts or omissions by Customer's agents or third parties.

**5.10.** If Customer's Chargeback percentage for any line of business exceeds the estimated industry Chargeback Percentage, Customer shall, in addition to the chargeback fees and any applicable Chargeback handling fees or fines, pay us an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business.

Each estimated industry Chargeback Percentage is subject to change from time to time by us in order to reflect changes in the industry Chargeback Percentages reported by Visa, MasterCard, American Express or Discover. Customer's Chargeback Percentage will be calculated as the larger of (a) the total Visa, MasterCard, American Express and Discover Chargeback items in any line of business in any calendar month divided by the number of Visa, MasterCard, American Express and Discover transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, MasterCard, American Express and Discover Chargebacks in any line of business received in any calendar month divided by the total dollar amount of Customer's Visa, MasterCard, American Express and Discover transactions in that line of business submitted in that month.

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

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

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

- Card Organization fees, charges, fines, penalties, registration fees, or other assessments including

any fees levied against us or any amount for which Customer is obligated to reimburse us.

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

## **6. Chargebacks**

**6.1.** Customer shall be responsible for reimbursing us for all transactions Customer submits that are charged back. See the Operating Procedures for additional information regarding Chargebacks and Chargeback procedures.

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

**7. Representations; Warranties; Covenants; Limitations on Liability; Exclusion of Consequential Damages (See also MSA)**

**7.1.** Without limiting any other warranties hereunder, Customer represents, warrants to and covenants with us, and with the submission of each sales Draft reaffirm, the following representations, warranties and/or covenants:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**7.1.15.** Customer owns and controls the Settlement Account, and no third party security interest or lien of any type exists regarding the Settlement Account or any Card transaction.

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

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

**8. Confidentiality – See MSA**

**9. Assignments**

**9.1.** Any transfer or assignment of a Participation Agreement by a Customer, without our prior written consent, by operation of law or otherwise, is voidable by Servicers. Furthermore, Customer shall reimburse us for all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's Submission of Card transactions to us for processing.

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

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

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

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

**10.1.** Customer's Participation Agreement shall become effective upon the date set forth therein.

**10.2.** The initial term of Customer's Participation Agreement shall commence as of the date set forth therein and shall continue in force for three years after it becomes effective. Thereafter, it shall renew for successive one year terms unless and until Customer provides written notice at least ninety (90) days prior to the end of the then current term or we provide Customer with notice in accordance with the Agreement. Should Customer fails to notify us in writing of Customer's request to terminate Customer acknowledges and agrees Customer will continue to be charged fees pursuant to this Agreement notwithstanding non-use of Customer's account. If Customer has an equipment lease, termination of this Agreement does not terminate that equipment lease.

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

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

**10.4.1.** a material adverse change in Customer's business, financial condition or business prospects; or

**10.4.2.** any assignment or transfer of voting control of Customer or Customer's parent; or

**10.4.3.** a sale of all or a substantial portion of Customer's assets; or

**10.4.4.** irregular Card sales by Customer, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, or any Card Organization, or any other Person, or an actual or suspected data security breach, nonconformance with any applicable data security standards, as determined by Servicers, any Card Card Organization, or any other entity, or an actual or suspected data security breach, or any other

circumstances which, in our sole discretion, may increase our exposure for Customer's Chargebacks or otherwise present a financial or security risk to us (including Customer's processing transactions for a business type we have designated as unqualified for processing with us); or

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

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

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

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

**10.4.9.** Customer files a petition or have a petition filed by another party under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against Customer 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 Customer or of a substantial part of Customer's property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or

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

**10.4.11.** a violation by Customer of any applicable law or Card Organization Rule or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury or Customer's breach, as determined by Servicers, of Section 25.2 ("Compliance with Laws");

then, upon the occurrence of (1) an Event of Default specified in subsections 10.4.4, 10.4.9 or 10.4.11, we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in

full without demand or other notice of any kind, all of which are expressly waived by Customer, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to Customer, and upon such notice all amounts payable hereunder shall be due and payable on demand.

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

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

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

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

**10.9.** After termination of this Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, Card Organization fines imposed on us as a result of

Customer's acts or omissions, Credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

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

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

## **11. Customer Obligations; Security Interest**

**11.1.** Reserved.

**11.2.** Reserved.

**11.3.** If Customer's funds are not sufficient to cover the Chargebacks, adjustments, fees and other charges and amounts due from Customer, Customer agrees to promptly pay us such sums upon request.

**11.4.1.** To secure Customer's obligations to us and our respective Affiliates under this Agreement and any other agreement for the provision of equipment products or services (including any obligations for which payments on account of such obligations are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause), Customer grants to us a first priority lien and security interest in and to any of Customer's funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in our possession, whether now or hereafter due or to become due to Customer from us. Any such funds, money or amounts now or hereafter in our possession may be commingled with other funds of ours, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of ours. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, we are hereby authorized by Customer at any time and from time to time, without notice or demand to Customer 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 Customer's obligations to us and our respective Affiliates under this Agreement and any other agreement with us or any of our respective Affiliates for any related equipment or related services (including any check warranty and check verification services), whether such obligations are liquidated, unliquidated, fixed, contingent,

matured or unmatured. Customer agrees to duly execute and deliver to us such instruments and documents as we may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

**11.4.2.** Reserved.

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

**11.4.4.** Reserved.

## **12. Financial and Other Information**

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

Services upon request. In the event Customer terminates Customer's commercial lending relationship with Wells Fargo Bank, N.A., Customer shall be obligated to satisfy the requirements of this Section 12.1.

12.2. Customer 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 Customer's total assets not later than three (3) days after Customer becomes aware of same.

**13. Reimbursement and Indemnification – See MSA**

14. Reserved.

15. Reserved.

16. Reserved

17. Reserved.

18. Reserved.

19. Reserved.

20. Reserved.

21. Reserved.

22. Reserved.

23. Reserved.

24. **Choice of Law; Venue; Limitation on Claims – See MSA.**

**25. Other Terms**

25.1. **Force Majeure. See MSA.**

25.2. **Compliance with Laws.** In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it. Customer further agrees to cooperate and provide information requested by Servicers, as Servicers determine necessary, to facilitate Servicers compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury. Without limiting the foregoing, Customer acknowledges and agrees that "restricted transactions" as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulations GG ("Restricted Transactions") issued thereunder are prohibited from being processed through Customer's Account or any relationship between Customer and the Bank. Customer represents and warrants that Customer will not submit such Restricted Transactions for processing through Customer's Account. Customer further acknowledges

and agrees that Customer will not use Customer's merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or those involving any Person listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)) or the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)) or the processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control ("OFAC") or in connection with illegal activity of any kind.

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

25.3. **Notices. See MSA.**

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

25.5. **Severability. See MSA.**

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

25.7. **Amendment.** We may modify any provision of this Agreement by providing written notice to Customer. Customer may choose not to accept the requirements of any such change by terminating the Agreement within twenty (20) days of receiving notice. If Customer chooses to do so, notify us that Customer is terminating for this reason so that we may waive any early termination fee that might otherwise apply. For purposes of this section, in addition to Electronic Communications (as further described in Section 25.12) an electronic or "click-wrap" notice intended to modify or amend this Agreement and which Customer checks "I Accept" or "I Agree" or otherwise accept through an electronic process, shall constitute a writing as required herein. This section 25.7 does not apply to fee changes, which are governed by Sections 5.5 and 5.6.

25.8. **Third Party Beneficiaries.** Our respective Affiliates and any Persons we use in providing the

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

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

**25.10. Publicity. See MSA.**

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

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

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

**25.12 Electronic Communications.** Customer consents to receiving documents, notices and other communications from us electronically (collectively, "Electronic Communications") rather than in paper form. We may send such Electronic Communications

to Customer directly at the last known email address that Customer provides to us, or we may notify Customer that an Electronic Communication is available at a website designated by us **and provide Customer with instructions on accessing the Electronic Communication.** Customer agrees that such notification will be sent to Customer at the last known e-mail address that Customer provides to us, which will be the email address identified on Customer's Application unless Customer subsequently notifies us that Customer has a new email address. **Customer agrees to maintain a valid email address and keep Customer's email address current with us at all times.** Customer understands and acknowledges that access to the Internet, e-mail and the worldwide web are required for Customer to access an Electronic Communication, and Customer confirms that Customer has such access. Customer understands that there may be costs related to accessing Electronic Communications (e.g. Customer may have to purchase internet services, **software or hardware**), and Customer agrees that Customer is responsible for any such related access costs. At our discretion, we may choose to discontinue or resume sending Electronic Communications at any time provided that if we elect not to send a document, notice or communication electronically, we will instead send the same in paper form. Customer acknowledges that if for any reason Customer is not able to open a readable version of an Electronic Communication that we send to Customer, it is Customer's responsibility to contact us to notify us of the same and to request a copy in paper form.

## **B. OPERATING PROCEDURES**

The Operating Procedures describe the procedures and methods for submitting Credit Card transactions for payment, obtaining Authorizations, responding to Chargebacks and Media Retrieval Requests, and other aspects of the operations of our services, and are set forth in the following link, and any updates made thereto during the term of the Agreement: <https://www08.wellsfargomedia.com/assets/pdf/small-business/merchant/guide-operating.pdf?https://www.wellsfargo.com/assets/pdf/small-business/merchant/guide-operating.pdf>.

Processor is a full-service financial transaction processor dedicated, among other processing services, to facilitating the passage of Customer's Sales Drafts back to the thousands of institutions who issue the MasterCard,® Visa® and Discover Cards carried by your customers, as well as to the independent Card Issuers of American Express®. The Operating Procedures focus primarily on the MasterCard, Visa and Discover Card Organization Rules, and seek to provide Customer with the principles for a sound Card program; however, Customer should consult the Card Organization Rules for complete information and to ensure full



compliance with them. They are designed to help Customer decrease Customer's chargeback liability and train Customer's employees. (In the event we provide Authorization, processing or settlement of transactions involving Cards other than MasterCard, Visa and Discover, Customer should also consult those independent Card Issuers' proprietary rules and regulations.)

The requirements set forth in the Operating Procedures will apply unless prohibited by law. Customer are responsible for following any additional or conflicting requirements imposed by Customer's state or local jurisdiction.

26. Reserved.

27. Reserved.

28. Reserved.

## 29. Data Security

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

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

- All external connections into your network (i.e., employee remote access, third party access for processing, and maintenance).
- All connections to and from the Authorization and settlement environment (i.e., connections for

employee access or for devices such as firewalls, and routers); and

- Any data repository outside of the Authorization and settlement environment.

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

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

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

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

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

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

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

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

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

- Customer must install and maintain a secure network firewall to protect data across public networks.
- Customer must protect stored data and data sent across networks using methods indicated in the PCI DSS.
- Customer must use and regularly update anti-virus software and keep security patches up-to-date.
- Customer 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.
- Customer must not use vendor-supplied defaults for system passwords and other security parameters.
- Customer must regularly test security systems and processes.
- Customer must maintain a policy that addresses information security for employees and contractors.
- Customer must restrict physical access to Cardholder information.
- Customer may not transmit Cardholder account numbers to Cardholders for Internet transactions.
- Customer cannot store or retain Card Validation Codes (three-digit values printed in the signature panel of most Cards, and a four digit code printed on the front of an American Express Card) after final transaction authorization.
- Customer 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.
- Customer must destroy or purge all Media containing obsolete transaction data with Cardholder information.
- Customer must keep all systems and Media containing Card account, Cardholder or transaction information (whether physical or electronic) in a secure manner so as to prevent access by, or disclosure to any unauthorized party.
- For Internet transactions, copies of the transaction records may be delivered to Cardholders in either electronic or paper format.

- Customer must use only services and Customer Equipment that have been certified as PCI DSS compliant by the Card Organizations.

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

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

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

**29.6. Required Information for Discover Security Breaches.** For security breaches involving Discover transactions and/or track data, Customer must provide us and/or Discover with the following information: (i) the date of breach; (ii) details concerning the data compromised (e.g., account numbers and expiration dates, Cardholder names and addresses, etc.); (iii) the method of such breach; (iv) Customer's security personnel contacts; (v) the name of any person (including law enforcement) assisting Customer with Customer's investigation of such breach; and (vi) any other information which we reasonably request from Customer concerning such breach, including forensics reports. Customer 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 Customer's initial notification to us of the breach.

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

Customer's use of the Services, equipment, software, systems, materials, supplies or resources of third parties regarding Customer's Card transactions processing, including, without limitation, Customer Providers and any third party lessors or licensors, will not affect Customer's obligations under this Agreement to us which will apply to the same extent as if Customer had not used them. We have no liability or responsibility to Customer or others regarding these third parties, even if we referred them to Customer. These third parties are Customer's agents, and Customer is solely responsible for (i) determining whether they can meet Customer's needs and standards, (ii) their actions, inactions and compliance with the terms of this Agreement and the Card Organization Rules and (iii) any and all fees, costs, expenses and other obligations owed to them by Customer or owed by them to us or to Card Organizations.

**29.8. Reserved.**

**29.9. Costs.** If Customer or a Customer Provider (or other Person used by Customer) are determined by any Card Organization, regardless of any forensic analysis or report, to be the likely source of any loss, disclosure, theft or compromise of Cardholder data or

Card transaction information (together, "**Compromised Data Events**") and regardless of Customer's belief that Customer has complied with the Card Organization Rules or any other security precautions and are not responsible for the Compromised Data Event, Customer must promptly pay us for all related expenses, claims, assessments, fines, losses, costs, and penalties and Issuer reimbursements imposed by the Card Organizations against us (together, "Data Compromise Losses"). In addition to the foregoing, Customer must also pay us promptly for all expenses and claims made by Issuers against us alleging Customer's responsibility for the Compromised Data Event, apart from any claim procedures administered by the Card Organizations.

**30. Reserved.**

**31. Reserved.**

**32. Reserved.**

**33. Reserved.**

**34. Reserved.**

**35. Reserved.**

**36. Reserved.**

**37. Reserved.**

**38. Reserved.**

**39. Reserved.**

#### **40. Glossary**

As used in this Card Processing Terms Addendum (including without limitation the Operating Procedures), the following terms are defined as follows:

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

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

submits even if we are not able to provide a response to the request.

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

**Agreement:** The Agreements among Customer, Processor and Bank contained in the Application, the Card Processing Terms Addendum and the Schedules thereto and documents incorporated therein, each as amended from time to time, which collectively constitute the Agreement among the parties.

**Annualized Sales Volume:** Annualized Sales Volume is the greater of (1) the sum of the monthly Sales Volume since the account was activated, divided by the number of months the account has been active, and then multiplied by twelve (12), or (2) the estimated annual Sales Volume listed in the Agreement. An active account is defined as an account having a Sales Volume of fifty dollars (\$50.00) or greater for that month. If the Customer has three months or less of Sales Volume, the "Annualized Sales Volume" is the estimated annual Sales Volume provided by the Customer in the Agreement.

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

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

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

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

**Authorization /EDC Fees:** A fee that applies to all Visa, MasterCard and Discover Card approvals (pre-authorizations, authorizations & authorization reversals), denials, batch inquiries, and batch entry transactions and includes any transaction fees and capture fees.

**Bank:** The bank identified on the Application signed by Customer.

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

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

**Business Day:** Monday through Friday, excluding Bank holidays.

**Buyer Initiated Payment (BIP):** A payment that occurs when a cardholding business approves an invoice (or invoices) and submits an electronic payment instruction causing funds to be deposited directly into a their supplier's merchant account.

**Card:** Means a Credit Card and/or a Debit Card.

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

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

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

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

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

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

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

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

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

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

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

**Check Warranty:** A service provided through a merchant's POS equipment which guarantees payment up to a defined limit, provided the merchant follows proper steps in accepting the check.

**Check Verification:** A service provided in which a merchant accesses a national negative file database through its terminal/register to verify or authorize that a person has no outstanding bad check complaints at any of the member merchants. This is not a guarantee of payment to the merchant.

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

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

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

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

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

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

**Debit Card:** Means a PIN Debit Card and/or a Non-PIN Debit Card.

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

**Discount Rate:** A percentage rate and/or amount charged a merchant for processing its qualifying daily Credit Card, Non-PIN and PIN Debit Card transactions, as set forth in the Application. Credit Card and Non-PIN Debit Card transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 5.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Non-Bank Services:** Products and/or Services for which Bank is not responsible, or a party to, including American Express, PIN Debit Card, and Electronic Benefits Transfer Transactions, Telecheck Check Services, Gift Card Services and Transactions involving Cards from other Non-Bank Card Organizations, such as Voyager Fleet Systems, Inc., WEX, Inc. and WEX Bank, Discover, Leasing,

TransArmor, Fraud Services, Wireless, Payeezy Gateway Services, and other items as may be indicated in this Card Processing Terms Addendum.

**Non-PIN Debit Card:** A device with either a Visa, MasterCard or Discover Mark that is tied to a Cardholder's bank account or a prepaid account and which is processed without the use of a PIN.

**Non-Qualified Interchange Fee:** The difference between the interchange fee associated with the Anticipated Interchange Level and the interchange fee associated with the more costly interchange level at which the transaction actually was processed.

**Non-Qualified Surcharge:** A surcharge applied to any transaction that fails to qualify for the Anticipated Interchange Level and is therefore downgraded to a more costly interchange level. The Non-Qualified Surcharge (the amount of which is set forth on the Service Fee Schedule) is in addition to the Non-Qualified Interchange Fee, which is also Customer's responsibility (see above and Section 5.1).

**Operating Procedures:** The information prepared by Processor, containing operational procedures, instructions and other directives relating to Card transactions. The current Operating Procedures are set forth in Part B of the Card Processing Terms Addendum.

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

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

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

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

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

**PINless Transaction:** A Debit Card transaction that a merchant submits to us for settlement/funding transactions with neither a PIN nor Signature.

**Point of Sale (POS) Terminal:** A device placed in a merchant location which is connected to the Processor's system via telephone lines and is designed to authorize, record and transmit settlement

data by electronic means for all sales transactions with Processor.

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

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

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

**Reserve Account:** An account established and funded at our request or on behalf, pursuant to Section 11 of the Agreement.

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

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

**Revenue:** Total Fees for Services minus the amount of interchange, assessments and other pass through fees paid by Customer and passed through to payment networks by us. Total fees for Services includes Credit Card and Non-PIN Debit processing fees, PIN debit, non-bank, chargeback and other fees listed in the Pricing Terms.

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

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

**Sales Volume:** The total combined amount of Credit Card, PIN Debit and Non-PIN Debit (MasterCard, Visa, Discover and American Express) payment transactions processed by us minus any amounts attributable to returned items.

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

**Self Service Terminals:** A Customer Activated Terminal that accepts payment of goods or services such as prepaid cards or video rental, has electronic capability, and does not accept PIN's.

**Servicers:** Bank and Processor collectively. The words "we," "us" and "our" refer to Servicers, unless otherwise indicated in this Card Processing Terms Addendum.

**Services:** The activities undertaken by Processor and/or Bank, as applicable to authorize, process and settle all United States Dollar denominated Visa, MasterCard, Discover and American Express transactions undertaken by Cardholders at Customer's location(s) in the United States, and all other activities necessary for Processor and Bank to perform the functions required by this Agreement for all other Cards covered by this Agreement. For the avoidance of doubt, and without limiting the foregoing, "Services" shall include any ancillary products or services provided to Customer by Processor and/or Bank in connection with this Agreement to the extent such products or services are not provided to Customer pursuant to a separate agreement with Processor and/or Bank.

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

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

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

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

their host system and retransmit the transaction when communications have been restored.

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

**Summary Adjustment:** An adjustment to Customer's Submission and / or Settlement Accounts in order to correct errors. (See Sections 35.3 and 35.4.)

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

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

**Us, We and Our:** See Servicers.

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

##### 1.1. Electronic Funding Authorization

All payments to Customer shall be through the Automated Clearing House ("ACH") and shall normally be electronically transmitted directly to the Settlement Account Customer has designated or any successor account designated to receive provisional funding of Customer's Card sales pursuant to the Agreement. Customer agrees that any Settlement Account designated pursuant to the preceding sentence will be an account primarily used for business purposes. Neither Wells Fargo Bank, N.A. ("Wells Fargo Bank") nor Wells Fargo Merchant Services, L.L.C. can guarantee the timeframe in which payment may be credited by Customer's financial institution where the Settlement Account is maintained.

Customer hereby authorizes Wells Fargo Bank and its authorized representative, including Wells Fargo Merchant Services, L.L.C., to access information from the Settlement Account and to initiate credit and/or debit entries by bankwire or ACH transfer and to authorize Customer's financial institution to block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement Account and to authorize Customer's financial institution to provide such access and to credit and/or debit or to block the same to such account. This authorization is without respect to the source of any funds in the Settlement Account, is irrevocable and coupled with an interest. This authority extends to any equipment rental or purchase agreements which may exist with Customer as well as to any fees and assessments and chargeback amounts of whatever kind or nature due to Wells Fargo Merchant Services, L.L.C. or Wells Fargo Bank under terms of this agreement whether arising during or after termination of the Agreement. This authority is to remain in full force and effect at all times unless and until Wells Fargo Merchant Services, L.L.C. and Wells Fargo Bank have consented to its termination at such time and in such a manner as to afford them a reasonable opportunity to act on it. In addition, Customer shall be charged ten dollars (\$10.00) for each ACH which cannot be processed, and all subsequent funding may be suspended until Customer either (i) notifies Wells Fargo Merchant Services, L.L.C. that ACH's can be processed or (ii) a new electronic funding agreement is signed by Customer. Customer's Settlement Account must be able to process or accept electronic transfers via ACH.

##### 1.2. Funding Acknowledgement Automated Clearing House (ACH).

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

##### 1.3. Additional Fees

The fees for Services as shown on Customer's pricing disclosure are based on the assumption that Customer's Credit Card and Non-PIN Debit transactions will qualify at the Anticipated Interchange Levels associated with Customer's account.



Non-Qualified Surcharge for each such non-qualifying transaction (see Section 5.1 and Glossary).

Customer's initial fees for Services are stated in Customer's Participation Agreement and may be adjusted from time to time to reflect:

- Any increases or decreases in the interchange and/or assessment portion of the fees,

- The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Customer, and

- Increases in any applicable sales or telecommunications charges or taxes levied by any state, federal or local authority related to the delivery of the services provided by Wells Fargo Merchant Services, L.L.C. when such costs are included in the Service or other fixed fees.

In addition to the Debit Card transaction fees set forth in the Participation Agreement, Customer shall be responsible for the amount of any fees imposed upon a transaction by the applicable debit network.

Monthly Minimum Processing Fee will be calculated beginning thirty (30) days after the date Customer's Participation Agreement is effective. (Refer to Customer's pricing disclosures.)

Authorization Fees are charges that apply each time Customer communicates directly with Processor.

Authorization /EDC Fee applies to all Visa, MasterCard and Discover Card approvals (pre-authorizations, authorizations and authorization reversals), denials, batch inquiries, and batch entry transactions and includes any transaction fees and capture fees.

Equipment rental fee will be charged each month for each piece of equipment rented, plus tax as applicable. Customer will be charged for actual shipping fees for equipment and cost of supplies.

#### **1.4. Addresses for Notices – See Participation Agreement and MSA.**

If the Participation Agreement (i.e., application for business credit) is denied Customer may obtain a written statement of the specific reasons for the denial. To obtain the statement, please contact Credit Initiation, 1307 Walt Whitman Road, Melville, NY 11747, 1-800-767-2484 ext. 32900, within sixty (60) days from the date Customer is notified of our decision. We will send Customer a written statement of reasons for the denial within thirty (30) days of receiving Customer's request.

**Member Bank Information: Wells Fargo Bank**

The Bank's mailing address is Wells Fargo Bank, 1200 Montego, Walnut Creek, CA 94598 and its phone number is 1-800-451-5817.

**Important Member Bank Responsibilities:**

- 1) The Bank is the only entity approved to extend acceptance of Card Organization products directly to a merchant.
- 2) The Bank must be a principal (signer) to the Agreement.
- 3) The Bank is responsible for educating merchants on pertinent Visa and MasterCard Rules with which merchants must comply; but this information may be provided to you by Processor.
- 4) The Bank is responsible for and must provide settlement funds to the merchant.
- 5) The Bank is responsible for all funds held in reserve that are derived from settlement.

**Important Customer Responsibilities:**

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

**Print Customer's IRS Filing Name: [State of Georgia][State of Georgia Customer Name]**

**By its signature below, Customer acknowledges that it received the Agreement, and agrees to comply with all terms set forth therein.**

**CUSTOMER'S BUSINESS PRINCIPAL:**

**Signature (Please sign below):**

X \_\_\_\_\_

\_\_\_\_\_

Title

Date

\_\_\_\_\_

Please Print Name of Signer

**Attachment 1**  
**Additional Product Addenda**  
**To**  
**Card Processing Terms Addendum**  
**of the**  
**Master Services Agreement**

- 1. Special Provisions Regarding Non-Bank Cards**
- 2. Special Provisions for Debit Card**
- 3. Special Provisions Regarding Wireless Service**
- 4. Terms of Equipment Purchase or Rental**
- 5. Equipment Lease Agreement**
- 6. Special Provisions Regarding TransArmor® Services**
- 7. Special Provisions Regarding Fraud Detection Services**
- 8. Special Provisions Regarding Payeezy Gateway Services**
- 9. TeleCheck Services Agreement**
- 10. Special Provisions Regarding Clover Services**
- 11. Service Fee Addendum**

## Special Provisions Regarding Non-Bank Cards

1. Non-Bank Card transactions are provided to Customer by Processor and not by Bank and include transactions made using Discover, American Express, Voyager and WEX Card types. Services provided, transactions processed and other matters contemplated under these Special Provisions Regarding Non-Bank Cards are subject to the rest of the Agreement, as applicable, except to the extent the terms of these Special Provisions Regarding Non-Bank Cards directly conflict with another provision of this Agreement, in which case the terms of these Special Provisions Regarding Non-Bank Cards will control; provided, however, that (i) Bank is not a party to these Special Provisions Regarding Non-Bank Cards insofar as it relates to Non-Bank Card services, and Bank is not liable to Customer in any way with respect to such Non-Bank Card services and (ii) Customer agrees to pay Processor any per item processing, authorization and other fees described in the application for any non-acquired transaction services Customer receives from Processor. For the purposes of this section, the words "we," "our" and "us" refer only to Processor and not to the Bank. Customer authorizes us to share information from Customer's Application with American Express any other Non-Bank Card Organization.

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

3. If Customer accepts JCB, Diners Club International, UnionPay, BCcard, and Dinacard cards, Customer agrees to be bound by the Discover provisions of this Agreement. Customer also acknowledges and agree that JCB, Diners Club International, UnionPay, BCcard, and Dinacard transactions will be processed under and will be subject to Discover Card Organization Rules.

4. If Customer accepts Voyager and/or WEX Cards, Customer agrees to be bound by the WEX and/or Voyager rules. Customer also agrees to be bound by all other provisions of this Agreement which are applicable to WEX and/or Voyager.

5. If Customer executes a separate WEX Merchant Agreement, (WEX Non Full Service Program), Customer understands that we will provide such agreement to WEX, but that neither we nor WEX shall have any obligation whatsoever to Customer with respect to processing WEX Cards unless and until WEX executes Customer's WEX Merchant Agreement. If WEX executes Customer's WEX Merchant Agreement and Customer accepts WEX Cards, Customer understand that WEX transactions are processed, authorized and funded by WEX. You understands 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. Customer understands that WEX will charge additional fees for the services that it provides.

6. **If Customer elects to participate in the WEX Full Service Program, the following terms and conditions shall apply:**

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

b) All authorization request data for WEX Card sales must include WEX Cardholder account number, vehicle number, Card expiration date, driver identification number; and the amount of the transaction, date and time of the transaction, quantity of goods sold, unit price, and product code (the "Authorization Request Data"). All manual WEX Card sales (i.e., sales facilitated by a card imprinter) must include an Authorization number or other approval code from WEX along with the aforementioned Authorization Request Data;

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

- d) Customer shall complete a WEX Card sale only upon the receipt of an Authorization approval message and not accept a WEX Card when an expired Card/decline message is received;
- e) Customer shall not submit a WEX Card sale for processing until the goods have been delivered or services performed;
- f) Customer shall not accept a WEX Card where the WEX Card appears to be invalid or expired or there is reasonable belief that the WEX Card is counterfeit or stolen;
- g) Customer shall provide a copy of the receipt for a WEX Card sale, upon the request of the Card holder, to the extent permitted by applicable law, which shall not include the full account number or driver identification number;
- h) Customer shall require the Cardholder to sign a receipt when a WEX Card sale is not completed by an island Card reader;
- i) Customer shall take all commercially reasonable efforts to protect manual WEX Card sales data from fraud or misuse;
- j) Customer shall not divide the price of goods and services purchased in a single WEX Card sale among two or more sales receipts or permit a WEX Card sale when only partial payment is made by use of the WEX Card and the balance is made with another bank Card;
- k) Customer shall securely maintain a record of all WEX Card sales, including the Authorization Request Data, for a period of one year and produce such records upon the reasonable request of WEX;
- l) Customer shall notify Processor of any errors contained within a settlement report within forty five (45) days of receipt of such report. Processor will not accept reprocessing requests for WEX transactions older than 90 days;
- m) Customer shall allow WEX to audit records, upon reasonable advance notice, related to the WEX Full Service; and
- n) Customer shall retransmit WEX Card sales data when reasonably requested to do so.
- o) Customer acknowledges and agrees that its sole remedies with respect to the WEX Full Acquiring services shall be against Processor for the WEX Full Acquiring Services and not WEX, except to the extent that WEX knows of any fraud related to the WEX Cards and fails to provide notice of such fraud or WEX commits fraud in respect to the WEX Full Acquiring Services.

**7. If Customer accepts Voyager Cards:**

- In addition to the information stated in the Operating Procedures, Customer should check Fleet Cards for any printed restrictions at the point of sale.
- In addition to the information provided under the Operating Procedures, Customer shall establish a fair policy for the exchange and return of merchandise. Customer shall promptly submit Credits to us for any returns that are to be credited to a Voyager Card holder's account. Unless required by law, Customer shall not give any cash refunds to any Voyager Card holder in connection with a sale.
- In addition to the information required under the Operating Procedures, the following information must be contained on the single page document constituting the Sales Draft for Voyager transactions:
  - Time of transaction.
  - Type of fuel sold.
  - As permitted by the applicable POS device, odometer reading.
  - For all cashier-assisted Sales Drafts and Credit Drafts processed manually using a card Imprinter if required, the identification number from the source credentials provided by Cardholder to validate Cardholder's identity (e.g., Driver's License number).

- If an increase in the number of Voyager transaction authorization calls from Customer 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 Customer's settlement of Customer's Voyager transactions.
- In addition to the information provided under 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 Customer for the dollar amount of sales submitted for a given day by Customer, reduced by the amount of Chargebacks, tax exemptions, discounts, Credits, and the fees set forth in the Application. Neither we nor Voyager shall be required to reimburse Customer for sales submitted more than sixty (60) days from the date of purchase.
- For daily transmission of sales data, Customer shall securely maintain true and complete records in connection with the information required to be provided under this paragraph for a period of not less than thirty-six (36) months from the date of the generation of the data. Customer may store records on electronic media, if secure. Customer is responsible for the expense of retaining sales data records and Sales Drafts.
- In addition to the scenarios identified in 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, Customer shall remain liable for all outstanding Chargebacks on Voyager transactions.
- In addition to the information provided under Section V of the MSA, or Section 7 of the Card Processing Terms Addendum, in no event shall our cumulative liability to Customer 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 Customer 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 Customer relating to any Fleet Card will terminate automatically without penalty to us or the related Card Organization upon the earlier of (i) the termination or expiration of our agreement with such Card Organization, (ii) at least twenty (20) days prior written notice by us to Customer; (iii) Customer's failure to comply with material terms relating to such Fleet Card transactions, or (iv) written notice, if an Card Organization discontinues its Card

## Special Provisions for Debit Card

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

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

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

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

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

Customer based on a variety of factors including availability, features, functionality and our own business considerations.

- Customer must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN Truncation on it.
- Customer may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, Customer 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.
- **CUSTOMER IS RESPONSIBLE TO SECURE CUSTOMER'S 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.**

**3. Cash Back From Purchase.** Customer has the option of offering cash back to Customer's customers when they make a PIN Debit Card purchase, if cash back is supported by the PIN Debit Network associated with the PIN Debit Card presented by Customer's customer. Customer may set a minimum and maximum amount of cash back that Customer will allow. If Customer is not now offering this service, Customer's terminal may require additional programming to begin offering cash back.

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

**5. Adjustments.** An adjustment is a transaction that is initiated to correct a Debit Card transaction that has been processed in error. Customer 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.



## Special Provisions Regarding Wireless Services

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

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

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

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

- **Licenses.** Customer agrees 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 Customer in connection with Customer's receipt of Wireless Services. Customer will promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.

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

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

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

or the applicable Wireless Vendor will promptly restore the Wireless Services after the event giving rise to the suspension has been resolved.

**2. Software Licenses.** Processor hereby grants to Customer a non-exclusive, nontransferable, revocable limited sublicense to use any wireless software (including any documentation relating to or describing the wireless software) downloaded by Customer or Customer's designee from Processor's systems onto the Wireless Equipment in connection with Customer's purchase and use of the Wireless Services in accordance with the terms of these Special Provisions Regarding Wireless Services ("Wireless Software"), including these Special Provisions Regarding Wireless Services and Terms of Equipment Purchase or Rental. Anything in this Agreement to the contrary notwithstanding, we or certain third parties retain all ownership and copyright interest in and to all Wireless Software, related documentation, technology, know-how and processes embodied in or provided in connection with the Wireless Software, and Customer shall have only a nonexclusive, non-transferable license to use the Wireless Software in Customer's operation of the Wireless Equipment for the purposes set forth in these Special Provisions Regarding Wireless Services. Nothing in these Special Provisions Regarding Wireless Services confers any title or ownership of any such Wireless Software to Customer or shall be construed as a sale of any rights in any such Wireless Software to Customer. Customer agrees to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Wireless Software. Customer shall not reverse engineer, disassemble or decompile the Wireless Software. Customer shall not give any Person access to the Wireless Software without our prior written consent. Customer's obligations under this Section 2 shall survive the termination of these Special Provisions Regarding Wireless Services. Customer acknowledges that the only right Customer obtains to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this Section.

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

**4. Reimbursement.** In addition to any other similar obligations as set forth in these Special Provisions Regarding Wireless Services, Customer will reimburse Servicers, Wireless Vendor( s) and us and our respective officers, directors, employees, and Affiliates for any and all losses, claims, liabilities, damages, costs or expenses arising from or related to:

- (a) the purchase, delivery, acceptance, rejection, ownership, possession, use condition, liens against, or return of the Wireless Equipment or the Wireless Equipment (including the Wireless Software), as applicable;
- (b) Customer's negligent acts or omissions;
- (c) any breach by Customer of any of Customer's obligations under these Special Provisions Regarding Wireless Services; or
- (d) any Person's unauthorized access to Customer's data and/or unauthorized financial activity occurring on Customer's Merchant Account Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

**5. Confidentiality.** All information or materials which could reasonably be considered confidential or competitively sensitive that Customer accesses from or relate to either Wireless Vendor(s) or Servicers related to the subject matter of these Wireless Services Terms will be considered confidential information.

Customer will safeguard our confidential information with at least the same degree of care and security that Customer uses for Customer's confidential information, but not less than reasonable care.

**6. Termination.** In addition to any other provision in these Special Provisions Regarding Wireless Services, the Wireless Services being provided under these Special Provisions Regarding Wireless Services may terminate:

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

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

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

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

**9. Other Applicable Provisions.** Customer also agrees to be bound by all other terms and conditions of these Special Provisions Regarding Wireless Services.

**10. Disclaimer.** Wireless Services use radio transmissions, so Wireless Services can't be provided unless Customer's 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, Customer's Wireless Equipment, and other conditions that we do not control may also cause failed transmissions or other problems. PROCESSOR, BANK, AND WIRELESS VENDOR(S) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATING TO WIRELESS SERVICES. WE CANNOT PROMISE UNINTERRUPTED OR ERROR FREE WIRELESS SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF.

## Terms of Equipment Purchase or Rental

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

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

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

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

**1. Purchased Equipment; Supplies.** We will sell to Customer, and Customer will buy from us the Equipment identified in the Equipment Documents throughout the term of this Agreement as being purchased by Customer (individually and collectively the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 7 below), except that any "Software" (as defined in 8 below) will not be sold to Customer outright but instead will be provided to Customer pursuant to, and subject to the conditions of Section 8 of these Terms of Equipment Purchase or Rental. Customer shall pay the purchase price specified for the Purchased Equipment and the related software license(s), including all applicable tax and shipping and handling charges, prior to the effective date of these Terms of Equipment Purchase or Rental or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 5 (below). We will provide Customer supplies as requested by Customer from time to time. Customer shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 5 (below). (Maintenance and repair of merchant-owned equipment is Customer's responsibility). Should Customer's terminal become inoperable, we can provide Customer with equipment at a monthly rental fee. There will also be a nominal shipping and handling fee. For such rental equipment contact the POS Help Desk.)

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

**3. Effective Date and Term of Section 18.** These Terms of Equipment Purchase or Rental shall become effective on the first date Customer receives any piece of Equipment covered by these Terms of Equipment Purchase or Rental. These Terms of Equipment Purchase or Rental 18 will remain in effect until

all of Customer's obligations and all of our obligations under these Terms of Equipment Purchase or Rental have been satisfied. We will deliver the Equipment to the site designated by Customer. Customer shall be deemed to have accepted each piece of Equipment at the earlier of: (a) Customer's actual acceptance after installation, (b) delivery to Customer if Customer's site is not prepared and ready for installation or (c) for Equipment that we have not agreed to install for Customer, seven (7) days after shipment of each such piece of Equipment. The rental period with respect to each piece of Equipment shall commence on the date such Equipment is deemed accepted and shall terminate at the scheduled termination date (but not upon any early termination) of this Agreement and/or any other agreement then in effect with us for Card services. The provisions of these Terms of Equipment Purchase or Rental shall survive the termination or expiration of this Agreement and continue until all Rental Equipment is returned or paid for.

**4. Site Preparation; Installation & Maintenance.** Customer 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. Customer will support the installation in accordance with our requirements.

- Upon request, Customer must allow us (or our agents) reasonable access to the premises where authorization terminals or other communications equipment (e.g., printers) are or will be located.

- Any alterations required for installation of authorization terminal(s) or other communications equipment will be done at Customer's expense.

- Only we or our agents can alter or modify authorization terminal(s) or other communications Equipment owned by us.

- If a terminal or printer appears to be defective, Customer must immediately call the POS Help Desk.

- Customer is responsible for safeguarding authorization terminals or other Equipment from loss, damage, unauthorized use, misuse or theft. We should be notified immediately regarding any damage to or loss of communications equipment.

- If necessary, we will assist Customer in obtaining replacement Equipment. If Customer fails to return any defective Equipment, Customer may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.

- Customer is responsible for keeping all communication Equipment free of any claims, liens and legal processes initiated by creditors.

- Equipment may not be subleased at any time. The cost of comparable new Equipment, as well as any associated legal and/or collection costs incurred by us or the owner of the Equipment, will be assessed to Customer for each piece of equipment not returned upon termination of the Agreement by either party, or upon request for the return of the Equipment for any reason.

- Customer may not relocate, remove, disconnect, modify or in any way alter any Equipment used in connection with the services we are providing to Customer without first obtaining our permission.

- Customer must provide us with thirty (30) days prior written notice to request the relocation of any Equipment.

- Should Customer require additional Equipment, Customer must contact Relationship Management or Customer Service (there may be additional costs or fees charged to Customer in connection with any new Equipment ordered, including download fees).

**5. Payment of Amounts Due.**

a) Customer agrees to pay the monthly rental charge specified in the Equipment Documents which shall be due and payable on the first day of each month of the rental period for each piece of Rental Equipment, except that the first payment of the monthly rental charge for each piece of Rental Equipment shall be due and payable upon acceptance of such Equipment by Customer at the location designated in the Equipment Documents or, upon delivery if the site is not prepared for installation (as provided in Section 3 (above)). The monthly rental charge for fractions of a calendar month shall be prorated based on a thirty (30) day month.

b) Customer hereby authorizes us to collect all amounts due from Customer under these Terms of Equipment Purchase or Rental by initiating debit entries for such amounts to Customer's account designated pursuant to the Agreement to be debited and credited for amounts due from and to the Settlement Account or by deducting such amounts from amounts due to Customer from TeleCheck or Servicers.

c) In addition to the purchase price or monthly rental charge due hereunder, Customer shall pay, or reimburse us for, amounts equal to any taxes, levies, shipping fees, duties or assessments, however designated, levied or based on such charges, or on this Agreement or the Equipment and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income.

d) Separate charges will apply for supplies; they are not included in monthly rental charges.

#### **6. Use and Return of Equipment; Insurance.**

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

b) Customer shall not permit any physical alteration or modification of the Equipment without our prior written consent.

c) Customer shall not change the installation site of the Equipment without our prior written consent, which consent we will not unreasonably withhold.

d) Customer shall not assign Customer's rights or obligations under this Agreement, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Rental Equipment to any other person, firm or organization without our prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of such consent shall be void.

e) Customer shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. Customer is also responsible for obtaining all legally required permits for the Equipment.

f) We or our representatives may, at any time, enter Customer's premises for purposes of inspecting, examining or repairing the Equipment.

g) Promptly upon termination of all applicable rental periods or promptly following any action by us pursuant to Section 11(b) (below), Customer shall deliver possession of the Rental Equipment (including all attachments and parts) to us at Customer's cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to Customer, reasonable wear and tear excepted.

h) For each item of Rental Equipment that Customer fails to return to us at Customer's cost in the same operating order, repair, condition and appearance that it had at the time of delivery to Customer, reasonable wear and tear excepted, by the 10th Business Day after (i) termination of the applicable rental period, or (ii) any action by us pursuant to Section 11(b) (below), Customer agrees to pay us the greater of \$250 or the fair market value of such item of Equipment if it were in the condition described above, as determined by us. We may collect such amounts in the manner provided in Section 5 (above) and to the extent we are unable to do so, Customer agrees to pay us the amounts owed promptly.

i) Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to Customer's real estate. Customer shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.

j) Customer shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the Rental Equipment shall not relieve Customer from Customer's obligation to pay the full purchase price or rent payable hereunder.

k) Except for Purchased Equipment that has been paid in full, the Equipment shall be kept at the address indicated in the Equipment Documents and shall not be removed from there without our prior written consent (except where normal use of the Equipment requires temporary removal).

l) In order to return equipment, Customer should:

- Call Customer Service for the address of the location to send the equipment.
- The following information must be included within the shipping box:
  1. Customer name, complete address and phone number.
  2. Name of person to contact if there are any questions.
  3. Customer's Merchant Account Number.
  4. Serial number of the terminal (found on the underside of the terminal).
- Please maintain proof of delivery documents for Customer's records, and the serial number from the bottom of the terminal.
- Rental fees may be continued until equipment is returned.

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

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

**8. Software License.** Anything in this Agreement to the contrary notwithstanding, we or certain parties retain all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment (collectively "Software"), and Customer shall have only a nonexclusive, non-transferable, revocable license to use the Software in Customer's operation of the Equipment for purposes set forth in these Terms of Equipment Purchase or Rental. Nothing in these Terms of Equipment Purchase or Rental confers any title or ownership of any such Software to Customer or shall be construed as a sale of any rights in any such Software to Customer. Customer agrees to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Software. Customer shall not reverse engineer, disassemble or decompile the Software. Customer shall not give any third party access to the Software without our prior written consent. Customer's obligations under this Section 8 shall survive the termination of this Equipment Agreement.

**9. Limitation on Liability.** Notwithstanding any provision of these Terms of Equipment Purchase or Rental to the contrary and in addition to the limitations and disclaimers set forth in the Agreement, our liability arising out of or in any way connected with the Equipment or related software shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved.

**10. Reimbursement.** Customer shall reimburse us from any and all losses, liabilities, damages and expenses, resulting from (a) the purchase, delivery, installation, acceptance, rejection, ownership, leasing, possession, use, operation, condition, liens against, or return of the Equipment, or (b) any breach by Customer of any of Customer's obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

In addition to Customer's other obligations hereunder, Customer acknowledges and agrees that the "use" and "operation" of the Equipment for which Customer will reimburse us shall include, but not be limited to,

Customer loading additional software onto Equipment or using such software, or using Equipment or Software to access the Internet.

**11. Default; Remedies.**

a) If any debit of Customer's Settlement Account initiated by us for rent and/or other charges due hereunder is rejected when due, or if Customer otherwise fail to pay us any amounts due hereunder when due, or if Customer defaults in any material respect in the performance or observance of any obligation or provision in these Terms of Equipment Purchase or Rental, or if any other default occurs under this Agreement, any such event shall be a default hereunder.

b) Upon the occurrence of any Event of Default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under these Terms of Equipment Purchase or Rental, repossess the Equipment and proceed in any lawful manner against Customer for collection of all charges that have accrued and are due and payable, in which case these Terms of Equipment Purchase or Rental shall terminate as soon as Customer's obligations to us are satisfied, or (ii) accelerate and declare immediately due and payable all monthly rental charges for the remainder of the applicable rental period and proceed in any lawful manner to obtain satisfaction of the same.



Merchant ID \_\_\_\_\_ Sales Rep. Name \_\_\_\_\_ Sales ID \_\_\_\_\_

MERCHANT INFORMATION					
Corporate Business Name			DBA Name		
Business Address	City	County	State	Zip Code	Business Phone Number
<input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Non-Profit					
Business Type		Tax ID#	Years in Business		
Billing Address (if different than above)		City	State	Zip Code	
Bank Name	Routing Number	Account Number	(Provide copy of Void Check)		

DESCRIPTION OF LEASED EQUIPMENT					
Equipment Type	Quantity	Unit price w/o tax	Equipment Type	Quantity	Unit price w/o tax
		\$			\$
		\$			\$
		\$			\$
		\$			\$
		\$			\$
		\$			\$
		\$			\$
		\$			\$
		\$			\$
		\$			\$

SCHEDULE OF PAYMENTS			
Annual Tax Handling Fee:	Lease Term:	_____	(in months)
<input type="checkbox"/> AL, AR, CA, CT, GA, IN, KY, I.A, MS, MO, NE, NV, NM, NC, OK, OR, RI, SC, TN, TX, VT, VA, WA, WV, WY	Total Cost To Lease:	\$ _____	(without tax)
<input type="checkbox"/> All other states	Monthly Lease Charge:	\$ _____	(total unit price without tax)
\$ <u>30.20</u>	*FDGL Lease Pymt* will appear on your bank statement		
\$ <u>10.20</u>			
<b>Option to Purchase: If you wish to buy out the equipment, please contact 1-877-257-2094</b>			

This Equipment Lease Agreement ("Agreement") is being entered into by and between First Data Merchant Services LLC and the Lessee identified in the signature panel of this Agreement. In this Agreement, the words "we," "our" and "us" refer to First Data Merchant Services LLC and its successors and assigns and the words "you" and "your" refer to Lessee and its permitted successors and assigns. This Equipment Lease Agreement may be a factor in the pricing you are receiving for processing services provided by us. To the extent a Wells Fargo Merchant Services, LLC representative is assisting you to complete this Application, such representative is assisting you on behalf of First Data Merchant Services LLC. Notwithstanding any assistance provided by Wells Fargo Merchant Services, LLC, your lease agreement is solely between you and First Data Merchant Services LLC.

LEASE ACCEPTANCE			
Undersigned agrees to all terms and conditions contained in this Equipment Lease Agreement. Lessee authorizes First Data Merchant Services LLC or its agents, to request and obtain from a consumer reporting agency personal and business consumer reports. Each of the undersigned authorizes us to obtain subsequent consumer reports in connection with the maintenance, updating, renewal or extension of the Agreement. Each of the undersigned furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit financial information to us. <b>THIS LEASE IS A NON-CANCELLABLE COMMITMENT BY YOU FOR THE FULL LEASE TERM INDICATED HEREIN.</b> By executing the below, Lessee confirms that the Lease Term is filled in above. Any attempt by you to terminate this commitment prior to the end of the Lease Term, entitles First Data Merchant Services LLC to all rights and remedies set forth in paragraph 3 including acceleration of the remaining payments due, which shall be calculated as 95% of the product of (1) your monthly payment and (2) the number of months then outstanding on the Lease Term.			
X	_____	_____	_____
Lessee Signature	Title	Print Name	Date

ADDITIONAL TERMS ON PAGES 2 & 3.

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**1. Effective Date, Term and Interim Rent.**

a) This Agreement becomes effective on the date we deliver any piece of Equipment to you (the "Delivery Date"). This 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) **Term:** The term of this Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us represented by our delivery of Equipment to you (the "Commencement Date"), and continues for the number of months indicated above in the Lease Term. **YOU AGREE THIS AGREEMENT IS A NON-CANCELLABLE COMMITMENT BY YOU TO LEASE THE EQUIPMENT IDENTIFIED HEREIN FOR THE ENTIRE LEASE TERM INDICATED ABOVE.** You agree to pay all amounts due during the Lease Term and confirm upon execution the Lease Term is specifically defined as written above.

c) You agree to pay an Interim Lease Payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Delivery Date until the date preceding the Commencement Date.

**2. Authorization.** Lessee hereby authorizes us or our designee, successor or assignee (hereinafter "Lessor") to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Lessee in conjunction with this Agreement by initiating debit entries to Lessee's account at the bank named above (hereinafter "Bank"), or such other bank as the Lessee may from time to time use. In the event of default of Lessee's obligation hereunder, Lessee authorizes debit of its account for the full amount due under this Agreement. Further, Lessee authorizes Bank 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 and Bank have received written notice from Lessee of its termination in such time and in such manner as to afford Lessor and Bank a reasonable opportunity to act.

**3. Default Remedies.**

a) If any debit of your bank 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 Agreement or any agreement with any of our affiliates, alliances or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under a Merchant Processing Agreement ("MPA") with us or with an alliance or joint venture to which we are a party may be treated as a default under this Agreement. Such a default would include a default resulting from early termination of the MPA, if applicable. For fees that may be applicable upon payment default, please see paragraph 10.

b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this Agreement and our future obligations under this 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 the remaining payments due, which shall be calculated as 95% of the product of (1) your monthly payment and (2) the number of months then outstanding on the Lease Term. If Equipment has not been returned this accelerated amount shall include the then fair market value of the Equipment (as determined in good faith by us). This acceleration of payments is not a penalty but 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 addition, you shall also be responsible for our costs of collection, court costs and reasonable attorneys' fees, 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 Agreement by charging your bank account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates, alliances or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, 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 Agreement by obtaining directly from an alliance or joint venture to which we are a party and with which you have entered into a 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.

**4. Return or Purchase of Equipment at End of Lease Period.** Upon the completion of your Lease Term the Agreement shall continue on a month-to-month basis. There is no obligation to continue the lease after the Lease Term ends. At the end of your Lease Term, you will have the option to: (a) return the Equipment to us; (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; or (c) as noted, rent the Equipment on a month-to-month basis at the existing monthly lease payment. In the absence of an affirmative election by you to return or purchase the Equipment, (c) will apply and this Agreement will continue on a month-to-month basis at the existing monthly lease payment. After the end of the Lease Term, if you do not want to continue to rent the Equipment on a month-to-month basis, then you will be obligated to provide Lessor with notice of that choice prior to the end of the Lease Term and advise whether you will return the Equipment to Lessor or purchase the Equipment, which price Lessor shall provide to you upon receipt of the notification. If you fail to provide such notice at least 30 days prior to the end of the Lease Term, you acknowledge that Lessor may not

have time to suspend billing due for the next month's lease charge. If we terminate this Agreement pursuant to paragraph 3 due to a default by you, then you shall immediately return the Equipment to us at the address set forth in paragraph 11 no later than the tenth Business Day after termination, or remit to us the fair market value of the Equipment which amount we shall provide after good faith determination. We may collect any amounts due to us under this paragraph 4 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.

**5. 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 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 Agreement are your sole and exclusive remedies.

**6. Governing Law; Dispute Resolution; Miscellaneous.** This 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). We have substantial facilities in the State of New York and many of the services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement shall be the appropriate state or federal court located in Suffolk County New York. If any part of this Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

**7. Equipment and Software.**

a) We agree to lease to you and you agree to lease from us the equipment identified on the first page of this Agreement or such other comparable equipment we provide you (the "Equipment") according to the terms and conditions of this 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.

b) YOU ACKNOWLEDGE THAT THE EQUIPMENT 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 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 LEASED UNDER THIS LEASE AGREEMENT WITH SAID SERVICE PROVIDER.

**8. 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 use, quiet enjoyment, or 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.

c) Leased Equipment is warranted against material defects for the life of the lease. This warranty does not include damage to the Equipment resulting from accident or misuse or any other breach of the Agreement. If the Equipment should become defective within the warranty period, Wells Fargo Merchant Services, L.L.C. will replace it free of charge (except that appropriate shipping charges may apply).

**9. Lease Guaranty.** No guarantor shall have any right of subrogation to any of our rights in the Equipment or this Lease 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 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.

**10. Payment of Amounts Due; Administrative and Collection Fees.**

a)

SCHEDULE OF FEES			
Default Fees	Amount	Administrative Fees	Amount
NSF Fee	\$10	Upgrade Fee	\$50
Collection Fee	\$25	Assumption Fee	\$150
Late Fee	\$10	Lease Copy Fee	\$7
Collection Invoicing Fee	\$7		

b) The monthly lease charge is due and payable on the same day of each successive month thereafter of the Lease Term for each piece of lease Equipment. You agree to pay all assessed costs for delivery and installation of Equipment.

c) In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes or assessments on or arising out of this Agreement or the Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, exclusive, however, of taxes based on our net income. Reimbursement of property tax calculation is based on an average tax rate.

d) Your lease payments will be due despite dissatisfaction for any reason with the Equipment or related processing services.

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e) Whenever any payment is not made by you in full when due, you shall pay us a late fee of \$10.00 for each month during which it remains unpaid but in no event more than the maximum permitted by law. You shall also pay to us a NSF fee of \$10.00 for any debit we attempt to make against your bank account that is for any reason rejected, but in no event more than the maximum amount permitted by law.

f) In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense fee of \$25 for each aggregate payment requiring a collection effort, but in no event more than the maximum amount permitted by law.

**11. 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 any consensual 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 in your real estate. You shall permit us to affix suitable labels or stickers to the Equipment evidencing our ownership.

g) You agree that all Equipment returns shall be to TASQ Technology, 1169 Canton Road, Marietta, GA., 30066, be done in a manner that can be tracked, and shall have Lease number referenced on the return packaging. You understand and agree that your failure to return the Equipment in the manner noted above will delay our receipt of the return and possibly result in you being charged the then fair market value of the Equipment, or \$100 should the Equipment be received with excessive wear and tear.

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

i) You shall provide proof of insurance as evidenced by a certificate naming First Data Merchant Services LLC as a loss payee under your insurance policy. The loss, destruction, theft or damage of or to the Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly lease charges hereunder.

**12. 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.

**13. Title to Equipment.** We at all times retain title to the Equipment unless we agree otherwise in writing. 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 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 Agreement, and you will execute such documentation as we may request to evidence such security interest.

**14. 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"). Any rights to use the Software other than those owned or licensed by the manufacturer of the Equipment are described in this Lease Agreement. You shall have only a nonexclusive license to use the Software owned or licensed by the manufacturer of the Equipment in your operation of the Equipment.

**15. Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, (including attorneys' fees) resulting from (a) the operation, use, condition, items 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.

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

**17. Notices.** All notices must be in writing, if to you at your address appearing on the cover page of this Agreement and if to us at 4010 Coral Ridge Drive, Coral Springs, Florida, 33065. Attn: Lease Department, and shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received, if to you at the address appearing on the cover page of this Agreement or by any electronic means, including but not limited to the email address you have provided on the cover page of the Agreement. Notices sent to the Merchant's last known address, as indicated in our records, shall constitute effective notice to the Merchant under this Agreement. Customer Service toll free number 1-877-257-2094.

**18. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Agreement may be executed in any number of counterparts and all of 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 Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

**PERSONAL GUARANTY**

Undersigned unconditionally guarantees performance of this Equipment Lease Agreement by Lessee and payment of all sums due hereunder in the event of default, hereby waiving any modification, amendment or extension and notice thereof, and further agrees to the terms of this Equipment Lease Agreement insofar as they apply to the undersigned as guarantor.

<b>X</b>						
Personal Guarantor's Signature (No Title Allowed)						
an Individual						
Print Name		Home Phone Number		Date		
Home Address		City	State	Zip Code	DOB	Social Security #

## Special Provisions Regarding TransArmor® Services

If Customer elects to utilize the TransArmor Service, the following additional terms and conditions of this addendum shall apply.

The TransArmor Service is provided to Customer by Processor and not Bank. Bank is not a party to these Special Provisions Regarding TransArmor® Services insofar as it applies to the TransArmor Service, and Bank is not liable to Customer in any way with respect to such services. For the purposes of these Special Provisions Regarding TransArmor®, the words “we,” “our” and “us” refer only to the Processor and not the Bank.

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

**1. Definitions.** Capitalized terms used herein in these Special Provisions Regarding TransArmor® shall have the meanings given to such terms as set forth in these Special Provisions Regarding TransArmor® or as defined in the Glossary or elsewhere in the Agreement.

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

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

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

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

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

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

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

**3. Services.** The TransArmor Service applies only to Card transactions sent from Customer to us for authorization and interchange settlement pursuant to the Agreement, and specifically excludes electronic check transactions, closed-loop gift card transactions, STAR contactless transactions read in contactless

mode, Wright Express transactions, Voyager transactions, and other Card types that are not capable of being tokenized. Processor and Customer may agree to include additional transaction types in the TransArmor Service when made available by Processor. Processor will provide an encryption key or other encryption capability to Customer to be used to encrypt (make unreadable) Card data during transport of the authorization request from Customer's point of sale to Processor's systems. During the period when the transaction is being transmitted to Processor for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. Processor will then generate or retrieve a unique, randomly generated Token or Multi-Pay Token assigned to the Card number that will be returned to Customer in the authorization response. Customer must select one of the two options for the TransArmor Service as indicated on the Participation Agreement:

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

**4. Responsibilities of Customer.** Customer is responsible to comply with the following regarding Customer's use of the TransArmor Service:

a) Customer is required to comply with the Card Organization Rules, including taking all steps required to comply with the Payment Card Industry Data Security Standards (PCI DSS). Customer must ensure that all third parties and software use by Customer in connection with Customer's payment card processing are compliant with PCI DSS. Use of the TransArmor Service will not, on its own, cause Customer to be compliant with, or eliminate Customer's obligation to comply with PCI DSS or any other Card Organization Rule. Customer must demonstrate and maintain Customer's current PCI DSS compliance certification. Compliance must be validated: (i) either (A) by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or (B) by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), and (ii) if applicable to Customer's business, by passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with Card Organization Rules and PCI DSS.

b) Use of the TransArmor Service is not a guarantee against an unauthorized breach of Customer's point of sale systems or any facility where Customer processes and/or stores transaction data (collectively, "Customer Systems").

c) Customer must deploy the TransArmor Service (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout Customer Systems including replacing existing Card numbers on Customer Systems with Tokens or Multi-Pay Tokens, as applicable. Full Card numbers must never be retained, whether in electronic form or hard copy.

d) Customer must use the Token or Multi-Pay Token, as applicable, in lieu of the Card number for ALL activities subsequent to receipt of the authorization response associated with the transaction, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.

e) Any point of sale device, gateway and/or value added reseller used by Customer in connection with the TransArmor Service must be certified by Processor for use with the TransArmor Service.

f) If Customer sends or receives batch files containing completed Card transaction information to/from Processor, Customer must utilize the service provided by Processor to enable such files to contain only Tokens or Multi-Pay Tokens, as applicable or truncated information.

g) Customer must utilize truncated report viewing and data extract creation within reporting tools provided by Processor.

h) Customer is required to follow rules or procedures we may provide to Customer from time to time related to Customer's use of the TransArmor Service ("TransArmor Rules and Procedures"). We will provide

Customer with advance written notice of any such rules or procedures and any changes to such rules or procedures.

i) Customer has no right, title or interest in or to the TransArmor Service, any related software, materials or documentation, or any derivative works thereof, and nothing in this Agreement assigns or transfers any such right, title or interest to Customer. Customer shall not take any action inconsistent with the stated title and ownership in these Special Provisions Regarding TransArmor®. Customer will not file any action, in any forum that challenges the ownership of the TransArmor Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of these Special Provisions Regarding TransArmor®. We have the right to immediately terminate these Special Provisions Regarding TransArmor® and Customer's access to and use of the TransArmor Service in the event of a challenge by Customer. No additional rights are granted by implication, estoppel or otherwise.

j) Customer will not: (i) distribute, lease, license, sublicense or otherwise disseminate the TransArmor Service or any portion of it to any third party; (ii) modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the TransArmor Service or any portion of it; (iii) sell, license or otherwise distribute the TransArmor Service or any portion of it; (iv) make any copies, or permit any copying, of the TransArmor Service or any portion of it; or (v) use any portion of the TransArmor Service as a standalone program or in any way independently from the TransArmor Service. If any portion of the TransArmor Service contains any copyright notice or any other legend denoting the proprietary interest of Processor or any third party, Customer will not remove, alter, modify, relocate or erase such notice or legend on such item.

k) Customer will only use the TransArmor Service for Customer's internal business purposes in a manner consistent with these Special Provisions Regarding TransArmor®.

l) Customer will use only unaltered version(s) of the TransArmor Service and will not use, operate or combine the TransArmor Service or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in these Special Provisions Regarding TransArmor®.

m) Customer will promptly notify Processor of a breach of any terms of these Special Provisions Regarding TransArmor®.

n) Customer must obtain a Cardholder's written or electronic consent to store a Multi-Pay Token to represent such Cardholder's Card number for future purchases.

o) Customer must store the Multi-Pay Token in its Customer Systems in lieu of the Card number for all Cardholder profile records.

p) Customer must require Cardholders to log into their Cardholder profile in order to initiate a Transaction with the registered Token. This login must require two factors authentication, such as a user ID and password.

q.) If Customer ceases a processing relationship, then Customer must permanently delete all Tokens or Multi-Pay Tokens, as applicable, contemplated under this Section 20 from all Customer Systems no later than ninety (90) days after the termination or expiration of the processing relationship.

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

**6. Fees.** Customer shall pay the fees for TransArmor Service as set forth in the Agreement.

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

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

## Special Provisions Regarding Fraud Detection Services

If Customer elects to receive Fraud Services from us, then the following terms and conditions of these Special Provisions Regarding Fraud Detection Services, referred to as the "Fraud Services Terms", shall apply.

The Fraud Detection Services is provided to Customer by Processor and not Bank. Bank is not a party to these Special Provisions Regarding Fraud Detection Services insofar as it applies to the Fraud Detection Services, and Bank is not liable to Customer in any way with respect to such services. For the purposes of these Special Provisions Regarding Fraud Detection Services, the words "we", "our" and "us" refer only to the Processor and not the Bank.

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

**1. Software Licenses.** We hereby grant Customer a non-exclusive, non-transferable, limited sublicense to use the Fraud Services for the duration of these Special Provisions Regarding Fraud Detection Services, or until otherwise terminated, solely in connection with Customer's use of the payment and processing services otherwise described in the Agreement. Customer acknowledges that the only right Customer obtains to the Fraud Services is the right to use the Fraud Services for the screening and review of Customer's own transactions in accordance with the terms in this Section.

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

**2. Reservation of Rights.** Subject only to the limited sublicense granted herein, we and the Fraud Services provider(s) reserve all ownership rights to our and their respective intellectual property related in any way to the Fraud Services. We reserve the right to alter or suspend the Fraud Services in the event of (i) a violation of Fraud Services Terms or (ii) the termination of the agreement with our Fraud Services provider or other inability to continue to provide the Fraud Services.

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

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

**5. Limitation of Liability.** The Fraud Services provide a tool for Customer to efficiently make better informed decisions whether to accept or reject transactions that may be fraudulent. There is no assurance that the Fraud Services will accurately identify every instance of fraud, nor that every transaction that may appear fraudulent is in fact so. **BY CUSTOMER'S ACCEPTANCE OF THE TERMS OF THESE SPECIAL PROVISIONS REGARDING FRAUD DETECTION SERVICES, AND CUSTOMER'S USE OF THE FRAUD**



SERVICES, CUSTOMER AGREES THAT, UNDER ANY THEORY OF LAW OR EQUITY, WITH RESPECT TO CUSTOMER'S USE OF THE FRAUD SERVICES (i) OUR LIABILITY AND THAT OF ANY FRAUD SERVICES PROVIDER SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED TWELVE (12) MONTHS OF FRAUD SERVICES FEES, AND (ii) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER WE NOR ANY FRAUD SERVICES PROVIDER SHALL HAVE ANY LIABILITY FOR ANY SUBSEQUENT CHARGEBACKS OR LOSS OF REVENUE FROM FALSE POSITIVE FRAUD SCORES OR IN ANY OTHER WAY RELATED TO THE USE OF THE FRAUD SERVICES.

6. **Termination.** Upon termination of the Fraud Services for any reason, Customer agrees to pay any remaining fees or expenses related to Customer's use of the Fraud Services, to cease attempts to access the Fraud Services and to return all user manuals or other materials received in connection with the Fraud Services.

7. **Third Party Beneficiaries.** The Fraud Services provider(s) is (are) an intended third party beneficiary of these Special Provisions Regarding Fraud Detection Services under the Agreement, and may enforce the terms of these Special Provisions Regarding Fraud Detection Services directly against Customer as if it were a party hereto.

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

Any information Customer provides to Merchant may be combined with information from other sources and used by Merchant, or a third party retained by Merchant, to help detect and prevent fraud, misuse of [Merchant]'s website or other illegal activity. Parts or all of this information may be retained by us or the third parties involved in fraud detection and used for future fraud prevention efforts. Information believed to be fraudulent may be shared with other merchants, banks and law enforcement officials to help prevent further misuse. [Merchant] may also use "device identification" technology to recognize specific computers or other internet devices each time they access the website, and associate historical data with that computer or device as part of its efforts to prevent fraud or other misuse.

## Special Provisions Regarding Payeezy Gateway Services

If Customer elects to utilize the Payeezy Gateway Services, the following additional terms and conditions of these Special Provisions Regarding Payeezy Gateway Services shall apply.

The Payeezy Gateway Services are provided to Customer by Processor and not Bank. Bank is not a party to these Special Provisions Regarding Payeezy Gateway Services insofar as it applies to the Payeezy Gateway Services, and Bank is not liable to Customer in any way with respect to such services. For the purposes of these Special Provisions Regarding Payeezy Gateway Services, the words "we," "our" and "us" refer only to the Processor and not the Bank.

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

1. Definitions. Capitalized terms used herein shall have the meanings given to such terms as set forth in these Special Provisions Regarding Payeezy Gateway Services or as defined in the Glossary or elsewhere in these Special Provisions Regarding Payeezy Gateway Services.

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

"Confidential Information" means the Software, Documentation, Operational Procedures, the terms and conditions of these Special Provisions Regarding Payeezy Gateway Services (including any schedule, exhibit or addendum), pricing or other proprietary business information, and any other information provided to Customer by us, whether or not such information is marked as confidential; provided, however, that Confidential Information will not include information that: (a) is or becomes generally known to the public through no fault of Customer's; (b) was lawfully obtained by Customer from a third party free of any obligation of confidentiality; (c) was already in Customer's lawful possession prior to receipt thereof, directly or indirectly, from the disclosing party; (d) is independently developed by Customer without the use of the Confidential Information; (e) is disclosed with our express written permission; or (f) is disclosed pursuant to a lawful court or governmental order, provided Customer provides us with prompt prior written notice of any proceeding that may involve such an order, and an opportunity to contest any disclosure at such proceeding.

"Customer" means Customer's customer who would like to provide payment for Customer's goods or services.

"Documentation" means any and all manuals and other written materials in any form provided for use with the Software, as amended by us from time to time, the terms of which are incorporated in these Special Provisions Regarding Payeezy Gateway Services as if fully set forth herein.

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

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

"Operational Procedures" means our published policies and procedures contained in the various documents provided to Customer, as amended from time to time, concerning the Services provided pursuant to this Section, the terms of which are incorporated in these Special Provisions Regarding Payeezy Gateway Services as if fully set forth herein.

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

"Platform" means our operated, or approved, electronic payment platform(s) and/or gateway(s) (also referred to as the "Payeezy Gateway") through which the payment services contemplated under these Special Provisions Regarding Payeezy Gateway Services are provided.

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

"Software" means all applications, protocols, software components and other interfaces and software provided by us to Customer pursuant to these Special Provisions Regarding Payeezy Gateway Services, and any and all Updates.

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

"Customer's Systems" means any web site(s) or interfaces to the Services operated or maintained by Customer or on Customer's behalf through which transactions are submitted for processing, and all of Customer's other associated systems.

**2. Fees.** Customer shall pay Processor the fees for the Payeezy Gateway Services as set forth on the Application. A separate account with us for Payeezy Gateway Services shall be required for each separate Merchant Account held by Customer.

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

**4. License Grant.**

**4.1. Software License.** Subject to the terms and conditions of these Special Provisions Regarding Payeezy Gateway Services, Processor grants to Customer a royalty free, non-exclusive, nontransferable, revocable limited license to use the Services, during the term of these Special Provisions Regarding Payeezy Gateway Services for the sole and limited purpose of submitting payment transactions to us for processing, and otherwise using our Services as set forth herein.

**4.2. Documentation License.** Subject to the terms and conditions of these, Processor grants to Customer, and Customer hereby accepts, a royalty free, non-exclusive, non-transferable limited license, without right of sublicense, to use the Documentation during the term of these for the sole and limited purpose of supporting Customer's use of the Services. Customer shall strictly follow all Documentation provided to Customer, as it may be amended from time to time by us, in our discretion. To the extent that there is any conflict between the Documentation and the terms of these Special Provisions Regarding Payeezy Gateway Services, the terms of these Special Provisions Regarding Payeezy Gateway Services shall govern and control.

**4.3. Use Restrictions.** Customer shall not, and shall not cause or permit any third party to: (i) use the Services in any way, other than in accordance with these Special Provisions Regarding Payeezy Gateway

Services, the Documentation or as otherwise instructed by us in writing; (ii) use the Software or Documentation, either directly or indirectly, for benchmarking or to develop any product or service that competes with the products and services provided under these Special Provisions Regarding Payeezy Gateway Services; (iii) disassemble, decompile, decrypt, extract, reverse engineer or modify the Services, or otherwise apply any procedure or process to the Services in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Services or any algorithm, process, procedure or other information contained in the Services, except as otherwise specifically authorized in accordance with these Special Provisions Regarding Payeezy Gateway Services; (iv) provide the Services or Documentation to any third party, other than to Customer's 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 these Special Provisions Regarding Payeezy Gateway Services; (v) use, modify, adapt, reformat, copy or reproduce the Services or Documentation, except as is incidental to the purposes of these Special Provisions Regarding Payeezy Gateway Services, or for archival purposes (any copies made hereunder shall contain all appropriate proprietary notices); (vi) rent, lease, assign, sublicense, transfer, distribute, allow access to, or timeshare the Services or Documentation; (vii) circumvent or attempt to circumvent any applicable security measures of the Services; (viii) attempt to access or actually access portions of the Platform or Services not authorized for Customer's use; or (ix) use the Services or Documentation in any unlawful manner or for any unlawful purpose.

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

**4.5. Licensors.** The licenses granted hereunder may be subject to other licenses currently held by us. Should any license held by us or our subcontractors to certain technology or software be terminated or suspended, the corresponding license(s) granted to Customer hereunder may also be terminated or suspended in our sole and absolute discretion. Customer acknowledge and agree to such potential termination or suspension and hereby waives any and all damages, whether actual, incidental or consequential resulting therefrom.

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

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

**4.8. Return / Destruction.** Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate, and within five (5) days thereof, Customer shall either return to us or destroy or

delete from Customer's Systems, as applicable, the Software, Operational procedures, Documentation, and any copies thereof, and shall so certify to us in writing.

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

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

## **5. Platform Matters**

**5.1. Integration with Customer's Systems.** While we provide Software to Customer, Customer acknowledges that the Software itself is insufficient to allow Customer's Systems to function with the Platform. Programming, development and maintenance of Customer's Systems and their functionality are Customer's sole responsibility. Customer has the sole responsibility to select and employ any competent programming agent(s) to accomplish the programming required to make Customer's Systems function correctly with the Platform and the payment services contemplated hereunder ("Integration"). Customer shall be responsible for all technical support for Customer's Systems and Integration related issues. Customer agrees that Customer will use commercially reasonable efforts to complete the Integration as soon as possible. Customer will be responsible for all of Customer's own development and implementation costs associated with such Integration. Notwithstanding any other provision of these Special Provisions Regarding Payeezy Gateway Services, Customer acknowledges that unless and until Customer completes the Integration, no Services need be provided by us to Customer pursuant to Section, except as otherwise specifically provided in Section 5.2 below. In addition, Customer acknowledges and agrees that, even if Customer has completed Integration, if Customer has not entered into a valid merchant processing agreement with an authorized bank card processor, Customer cannot receive the Services through the Platform.

**5.2. Set-Up Assistance Services.** Subject to Section 5.1 above, upon Customer's request to us, and upon payment of any applicable fees, we will provide Customer with set-up services to assist with the Integration.

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

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

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

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

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

**9. Reserved**

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

**11. Limitation of Liability.**

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

**11.2. Special Damages.** In no event shall we be liable to Customer, or to any other person or entity, under these Special Provisions Regarding Payeezy Gateway Services, or otherwise, for any punitive, exemplary, special, incidental or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill.

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

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

**12. DISCLAIMER OF WARRANTIES.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THE USE OF THE SERVICES AND DOCUMENTATION ARE AT CUSTOMER'S SOLE RISK WE MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THESE SPECIAL PROVISIONS REGARDING PAYEEZY GATEWAY SERVICES, THE SERVICES, DOCUMENTATION, OUR PROCEDURES, THE SERVICES PROVIDED HEREUNDER, OR FROM PERFORMANCE BY US, INCLUDING, WITHOUT LIMITATION: (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (B) ANY WARRANTIES OF NONINTERFERENCE OR NON-INFRINGEMENT; OR (C) ANY WARRANTIES THAT ANY PRODUCT OR SERVICE PROVIDED HEREUNDER (INCLUDING BUT NOT LIMITED TO THE SOFTWARE) WILL (1) MEET CUSTOMER'S REQUIREMENTS; (2) OPERATE ACCORDING TO CUSTOMER'S EXPECTATIONS; (3) PROVIDE ACCURATE DATA; OR (4) OPERATE UNINTERRUPTED

OR ERROR FREE. ANY AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED BY US AND WAIVED BY CUSTOMER. WE DO NOT WARRANT THAT ANY ERRORS WILL BE CORRECTED. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, THE SERVICES, (INCLUDING THE SOFTWARE) AND OTHER SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS-IS, WITH ALL FAULTS" BASIS. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THESE SPECIAL PROVISIONS REGARDING PAYEEZY GATEWAY SERVICES. All decisions to reject any processing transaction or payment for Customer's products or services are solely Customer's responsibility.

**13. Notices.** Customer agrees to notify us of any change in Customer's name, type of business, or any other information required in Customer's Participation Agreement at least thirty (30) business days prior to the effective date of change. Any notice or other communication required or permitted to be given hereunder shall be in writing, addressed or transmitted to the party to be notified at such party's address or number at such party's last known address or number, and shall be: (i) if sent by us, hand delivered or delivered by facsimile transmission, overnight courier or certified, registered, regular mail or e-mail; or (ii) if sent by Customer, certified or registered mail, postage prepaid return receipt requested to 6101 Condor Drive, Moorpark, CA 93021. Any notice delivered hereunder shall be deemed effective, as applicable, upon delivery, if hand delivered or sent by overnight courier; upon receipt as evidenced by the date of transmission indicated on the transmitted material, if by facsimile transmission or e-mail; on the date of delivery indicated on the return receipt, if mailed by certified or registered mail; or ten (10) days after mailing, if by regular mail (or as otherwise required by applicable law). The parties' addresses may be changed by written notice to the other party as provided herein.

**14. Subcontractors.** Processor may subcontract all or part of the Services using a variety of providers globally, but, notwithstanding any such subcontract, Processor shall remain fully responsible for performance of the Services, including ensuring the compliance of subcontractors with the terms of this Agreement applicable to such subcontractors. Each of our subcontractors for the Services is a third party beneficiary of Sections 4, 5, 7, 8, 9, 10, 11, 14 and 15 of these Special Provisions Regarding Payeezy Gateway Services with rights to enforce the applicable terms of these Special Provisions Regarding Payeezy Gateway Services against Customer.

## TeleCheck Services Agreement

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

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

**2. Definitions.** As used in this TeleCheck Agreement, the following definitions apply: "ACH Network" means the Automated Clearing House Network, a processing and delivery system that provides for the distribution and settlement of electronic credits and debits. "Authorization Receipt" means the written authorization receipt, in the form approved by TeleCheck, signed by Consumer for each ECA Warranty Transaction, as applicable. "Batch" means a collection of saved transactions transmitted to TeleCheck for settlement processing. "Claim" means any claim, demand, directive, suit or other proceeding, notice, damage, expense (including reasonable attorney's fees), assessment, fine or liability of any kind. "Consumer" means a person or entity that authorizes an Item. "Consumer Authorization Format" means the required format (including, without limitation, all verbiage for payment authorization, return item fees, check approvals and declines, etc.), provided by TeleCheck to Subscriber, as amended from time to time, for processing Consumer payments to Subscriber by an Electronic Item. "ECA Warranty Transaction" means a transaction processed by TeleCheck under the ECA Warranty Service (as applicable), as an electronic funds transfer, a remotely created check or a paper check for the contemporaneous purchase of goods or service by a Consumer at Subscriber's physical location. "Item" means an outstanding financial obligation pursuant to a paper check, electronic funds transfer or remotely created check processed under this Agreement. "NACHA Rules" means the National Automated Clearing House Association Operating Rules and Guidelines, as amended from time to time, that govern the ACH Network. "Paper Warranty Transaction" means a transaction for the contemporaneous purchase of goods or services pursuant to TeleCheck's Paper Warranty Service program. "Return Item Fee" means any fee or exemplary damages allowed by law that may be assessed on a Return Item. "Return Items" mean any Items that are dishonored, returned, reversed, charged back or otherwise unpaid by a Consumer's financial institution upon presentation for payment, regardless of the reason or timing. "Returned Payment" means any financial obligation pursuant to this TeleCheck Agreement not paid by Subscriber's financial institution. "Subscriber's Account" means Subscriber's financial institution account. "TeleCheck Approval Code" means (a) for warranty services, that TeleCheck has authorized an Item for warranty coverage under this TeleCheck Agreement, and (b) for verification services, that TeleCheck has authorized an Item as eligible for processing. "TeleCheck Operational Procedures" means TeleCheck's published policies and procedures contained in various documents provided to Subscriber concerning the services, equipment and maintenance provided pursuant to this TeleCheck Agreement. "TeleCheck Parties" means TeleCheck, its affiliates, officers, directors, employees, shareholders, agents and attorneys. "Warranty Maximum" (a) for an Item processed as an ECA Warranty Transaction means the lower of (i) the face amount of the Item, (ii) the amount set forth in the Participation Agreement; or (iii) \$25,000.00; (b) for an Item processed as a Paper Warranty Transaction means the lower of (i) the face amount of the Item; (ii) the amount set forth on the Participation Agreement; or (iii) \$99,999.99.



## TERMS APPLICABLE ONLY TO TELECHECK ECA WARRANTY SERVICE

### 3. ECA Warranty Service.

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

**3.2. Processing Services.** For each ECA Warranty Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following Subscriber's regular close-out of the point of sale terminal and transmission of the saved ECA Warranty Transactions to TeleCheck for settlement processing, provided that the Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. Subscriber authorizes TeleCheck on its behalf to initiate debits to the Consumer's accounts for each such ECA Warranty Transaction. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for ECA Warranty Transactions, including, without limitation, chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as an ECA Warranty Transaction. As required by the NACHA rules TeleCheck's Originating Depository Financial Institution (as defined by the NACHA Rules) shall have the right to audit Subscriber's compliance with this TeleCheck Agreement and the NACHA Rules.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due ("Funds Hold") should any questionable activity occur as determined by TeleCheck in its sole discretion, including without limitation an excessive amount of Return Items or a breach of the NACHA, or as otherwise required by the Originating Financial Depository Institution or by law. In addition to the right to place a Funds Hold with respect to any payment, TeleCheck is also entitled without notice freeze or terminate all processing activities. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if Subscriber breaches or fails to comply with this TeleCheck Agreement, TeleCheck may, with notice to be provided within 3 business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Subscriber or as a result of a Subscriber error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Subscriber. TeleCheck may also recover from Subscriber the amount of any fees paid by a Consumer to Consumer's financial institution which resulted from a Subscriber error.

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

- (a) The check is a first party check drawn on Consumer's deposit account at a United States financial institution and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer;
- (b) Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in 3.6(f) (below)), including through split sales;
- (c) The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;

- (d) The signature of Consumer on the Authorization Receipt is not substantially different from the name imprinted on the check;
- (e) The date of the check and the ECA Warranty Transaction accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);
- (f) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- (g) The transaction is not subject to any stop payment, dispute or set-off;
- (h) Subscriber has complied with and shall comply with all applicable laws, rules, regulations, and NACHA Rules including, without limitation, posting notice to authorize the ECA Warranty Transaction and the Return Item Fee in a prominent and conspicuous location, and providing a copy of the notice to the Consumer, all in accordance with Regulation E (12 C.F.R. Part 205);
- (i) Consumer authorized the debiting of Consumer's account and the debit entry is in an amount agreed to by Consumer. Subscriber received a separate signed and completed Authorization Receipt from Consumer for each ECA Warranty Transaction;
- (j) The paper check to which the ECA Warranty Transaction relates: (i) has not been used in any other transaction, (ii) is voided on the front by Consumer or Subscriber, and (iii) is returned to Consumer;
- (k) The amount entered into the TeleCheck system and on the Authorization Receipt match exactly and does not exceed the Warranty Maximum; and
- (l) If the ECA Warranty Transaction is approved as a paper check not eligible for processing as an electronic funds transfer, each representation and warranty set forth in Section 4.2 (below) shall be applicable to such ECA Warranty Transaction.

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

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

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

- (a) The goods or services, in whole or in part, for which the ECA Warranty Transaction was submitted, have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- (b) Subscriber has received full or partial payment or security in any form to secure payment of the Item, or the goods or services for which the Item was issued or authorized were initially delivered on credit or under a lease;
- (c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the Item is not permitted by applicable law; or a court of law determines that the Item is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- (d) Any of the representations made by Subscriber as set forth in Section 3.3 (above) are or become false or inaccurate;
- (e) Subscriber failed to comply with this Agreement;
- (f) Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered either the check or the Authorization Receipt; or (ii) processed the transaction with reason to know that the Item was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification

used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction;

(g) The Authorization Receipt was incomplete or unsigned, or a legible copy of the Authorization Receipt was not received by TeleCheck within 7 days of a request by TeleCheck;

(h) A duplicate ECA Warranty Transaction relating to the same transaction was received and processed, or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;

(i) Consumer disputes authorizing the ECA Warranty Transaction or the validity or accuracy of the transaction;

(j) Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice; or

(k) The closeout of the Batch and transmission of the ECA Warranty Transaction to TeleCheck for settlement processing did not occur within 7 days from the date the TeleCheck Approval Code was issued for the transaction.

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

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

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

**3.9. Reserve Account Establishment and Funding.** Subscriber expressly authorizes TeleCheck to establish a reserve account for ECA Warranty Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon 3 days' notice to Subscriber or in instances of fraud or breach of this TeleCheck Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following: (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this TeleCheck Agreement by either TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this TeleCheck Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent

escrow agent, and shall not accrue interest. If Subscriber's funds in the reserve account are not sufficient to cover the delinquent fees, chargebacks or rejected and reassigned warranty Items, or any other fees and charges due from Subscriber to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In the event of a failure by Subscriber to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

**3.10. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Participation Agreement and addenda, if any, or in this TeleCheck Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "**Inquiry Rate**" is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise, whether or not a TeleCheck Approval Code is issued. The "**Transaction Fee**" is the additional per transaction charge for each ECA Warranty Transaction inquiry, whether or not a TeleCheck Approval Code is issued. The "**Monthly Minimum Fee**" is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "**Customer Requested Operator Call Fee**" "CROC" or "**Voice Authorization Fee**" is an additional fee per operator or Interactive Voice Response (IVR)-assisted call not requested by TeleCheck. The "**December Risk Surcharge**" is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in December. The "**Monthly Statement/Processing Fee**" is a monthly fee for handling Subscriber's account.

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

4. **Reserved.**

#### GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES

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

**6. Security Interest.** To secure Subscriber's obligations to TeleCheck and its affiliates under this TeleCheck Agreement and any other agreement (including any check or credit card processing services),

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

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

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

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

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

The following shall appear at least once on every piece of advertising or promotional material created by Subscriber which uses the TeleCheck Marks and has received prior written approval from TeleCheck: "The ("Applicable Mark") trademark is owned by TeleCheck International, Inc. and is licensed for use by ("Subscriber Name")".

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

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

**13. Equipment.**

**13.1. General.** Subscriber may purchase point-of-sale equipment or Subscriber may rent equipment from TeleCheck as indicated in the Participation Agreement. Title to all rental or loaned equipment, if any, is retained by TeleCheck. Monthly rental fees will apply to all months or fractions of a month any equipment remains in use by or in the actual or constructive possession of Subscriber. Upon termination of this TeleCheck Agreement, Subscriber, at Subscriber's expense, shall return all rented or loaned equipment to TeleCheck in good repair, ordinary wear and tear excepted. TeleCheck will replace or repair terminal equipment rented or purchased from TeleCheck provided, however that a swap fee of \$129.00 shall be charged per POS terminal replaced. Subscriber bears the entire risk of loss, theft or damage of or to equipment, whether or not owned by Subscriber. If TeleCheck provides replacement equipment to Subscriber via mail or other delivery service, Subscriber must return replaced equipment to TeleCheck within thirty (30) business days or Subscriber will be deemed to have purchased the equipment and will be billed for it. Subscriber will not permit anyone other than authorized representatives of TeleCheck to adjust, maintain, program or repair equipment. A reprogramming fee of \$25.00 rate will be charged for each occasion that a piece of equipment is reprogrammed for additional features or different information. Subscriber will install all product updates to the equipment, its software or firmware, within thirty (30) days of receiving the updates from TeleCheck. There is a 30-day manufacturer's warranty on purchased equipment. A fee for the shipping and handling of equipment and parts will be charged to the Subscriber.

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

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

**15. Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS TELECHECK AGREEMENT OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER. All decisions to reject

any Item, driver's license or other form of identification or payment for Subscriber's products or services are solely Subscriber's responsibility.

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

**17. Data Security.** Subscriber shall implement commercially reasonable and prudent policies and procedures, including administrative, physical and technical safeguards which are designed to meet the following objectives: (a) ensure the security and confidentiality of Customer Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of such Customer Information, and (c) protect against unauthorized access to or use of Customer Information that could result in substantial harm or inconvenience to Subscriber's customer. "Customer Information" means all Subscriber customer information received by Subscriber in connection with any transaction contemplated by this TeleCheck Agreement. Subscriber agrees to comply with all provisions of applicable federal and state laws and regulations and NACHA Rules, as amended from time to time, related to the protection of Customer Information.

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

**19. Confidentiality.** Subscriber shall maintain the confidentiality of this TeleCheck Agreement and any information provided to Subscriber by either TeleCheck, including, without limitation, TeleCheck Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential. Such information shall not be used except as required in connection with the performance of this Agreement or disclosed to third parties.

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

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

**22. Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing if, to Subscriber, at the Subscriber's address appearing in the Participation Agreement or, if to



TeleCheck, at TeleCheck Merchant Services, Mail Stop A-12, 7301 Pacific Street, Omaha, NE 68114, with a copy to General Counsel's Office, 3975 N.W. 120<sup>th</sup> Avenue, Coral Springs, FL 33065 and shall be deemed to have been properly given (a) upon receipt if by facsimile transmission, as evidenced by the date of transmission indicated on the transmittal material, (b) upon receipt if deposited on a prepaid basis with a nationally recognized overnight courier for next business day delivery or (c) on the date of delivery indicated on the return receipt, if mailed by certified or registered mail. Notices sent to Subscriber's last known address (including email address) as indicated in our records, shall constitute effective notice to the Subscriber under this TeleCheck Agreement. TeleCheck shall also be permitted to provide notice by regular mail and such notice shall be deemed effective 10 days after mailing, unless otherwise provided in this TeleCheck Agreement. The parties' addresses may be changed by written notice to the other party as provided herein.

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

**24. Compliance with Laws, Governing Law, Integration and Waiver of Jury Trial.** The parties agree to comply with all federal and state laws, regulations and rules, including NACHA Rules, each as amended, relating to the services provided hereunder. **Subscriber further acknowledges and agrees that it will not use Subscriber's Account and/or TeleCheck Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., as may be amended from time to time.** Subscriber certifies that it has not been suspended by NACHA or any Card Organization, or cancelled by an ODFI or Third Party Sender (as defined in the NACHA Rules). This TeleCheck Agreement, plus any addenda attached hereto, constitutes the entire Agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter. THIS TELECHECK AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS TELECHECK AGREEMENT.

**25. Severability and Interpretation, Third Party Beneficiaries.** If any provision, in whole or in part, of this TeleCheck Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this TeleCheck 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 TeleCheck Agreement, nor any addenda or TeleCheck Operational Procedures, shall be interpreted in favor or against any party because such party or its counsel drafted such document. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this TeleCheck Agreement. This TeleCheck 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 TeleCheck Agreement.

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

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



provide services or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach.

**28. Financial and Other Information**

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

**28.2.** Subscriber will provide TeleCheck with written notice of any judgment, writ, warrant, or attachment, execution or levy against any substantial part (25% or more in value) of Subscriber's total assets not later than three (3) days after Subscriber becomes aware of the same.

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

**30. IRS Reporting.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return for each calendar year beginning January 1, 2011 reporting all payment card transactions and third party network transactions with payees occurring in that calendar year. Accordingly, for applicable transactions, Customer will receive a Form 1099 reporting Customer's gross transaction amounts for each calendar year beginning with transactions processed in calendar year 2011. In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. Payors are required to perform backup with holding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that Customer provides us with the correct name and TIN that Customer uses when filing Customer's tax return that includes the transactions for Customer's business.

## Special Provisions Regarding Clover Service

These Special Provisions Regarding Clover Service govern the provision of the Clover Service (as defined below) to Customer by Processor along with Processor's third party service providers, including Clover Network, Inc., an affiliate of First Data Merchant Services Corporation ("Clover"). By signing below, Customer is electing to receive the Clover Service and Customer agrees to the terms and conditions set forth in these Special Provisions Regarding Clover Service for the Clover Service.

The Clover Service is provided to Customer by Processor. Bank is not a party to these Special Provisions Regarding Clover Service, and Customer acknowledges that Bank is not liable to Customer in any way with respect to the Clover Service. For the purposes of these Special Provisions Regarding Clover Service, the words "we," "our" and "us" refer only to the Processor and not to the Bank.

The Clover Service, all transactions processed via the Clover Service, and other matters contemplated under this Addendum are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Addendum directly conflict with another provision of the Agreement, in which case the terms of these Special Provisions Regarding Clover Service.

1. Definitions. Capitalized terms have the meanings given to them in this Addendum or elsewhere in the Agreement.

"Application Marketplace" means the electronic marketplace provided to Customer via an agreement between Customer and Clover, through which Third Party Apps and Third Party Services are available to Customer at Customer's election. For the avoidance of doubt, the Application Marketplace is not part of the Clover Service provided by Processor pursuant to these Special Provisions Regarding Clover Service and the Agreement.

"Clover Apps" means the non-modifiable (object code) software applications loaded on a Device at the time we provide the Device to Customer. For the avoidance of doubt, the Clover Apps do not include Third Party Apps.

"Clover Marks" means the trademarks or service marks used by Processor and Clover in connection with the Clover Service.

"Clover Mini" means the Device that is enabled to accept payments (inclusive of credit, NFC, EMV and PIN debit) that Customer submits to us using the Clover Service.

"Clover Mobile Devices" means a hand-held Device that is enabled to accept payments (inclusive of credit, NFC, EMV and PIN debit) that Customer submits to us using the Clover Service.

"Clover Service" means the hardware, software and services delivered through the Device that are designed to assist Customer with the management of Customer's business and enable payment processing at the point of service or sale, including: (a) the website through which the Clover Service is provided to Customer by Processor, (b) the Clover Apps, (c) other non-modifiable (object code) software that enables the Clover Apps to work on the Device, (d) the Device, and (e) any related updates or new versions of such software (including software maintenance or bug fixes), materials, documentation and derivative works released by Processor or Clover from time to time. For the avoidance of doubt, the words "software" and "services" in the preceding sentence do not include the Application Marketplace, any Third Party Apps or any Third Party Services that may be obtained by Customer separately from the Clover Service. The Clover Service is deemed part of the "Services," as defined in and provided under the Agreement.

"Clover Software" means Payment Plus, Register Lite or Register.

"Clover Station" means the stationary Device that is enabled to accept payments (inclusive of credit, NFC, EMV and PIN debit) that Customer submits to us using the Clover Service and has the Register Clover Software that is pre-provisioned.

"Customer" means a Person who makes a purchase of goods or services from Customer, and the transaction is processed utilizing the Clover Service.

"Customer Information" means information about Customer's customers (e.g., name, mailing address, e-mail address, telephone number) and other information obtained by (a) Processor or Clover in connection with Customer's use of the Clover Service, (b) by Clover in connection with Customer's use of the Application Marketplace, or (c) by providers of Third Party Services.

"Device" means a mobile or fixed piece of equipment, including a tablet or smartphone, or other device identified by Processor from time to time to be capable of supporting the Clover Service. For the avoidance of doubt, a Device is deemed to be "Equipment" or "Customer Equipment" as defined in the Agreement.

"Payment Plus" means the non-modifiable (object code) software that is part of the then-current, Clover standard pre-provisioning load to certain Devices that enables:

- the initiation of electronic payments using a Device for payments processing,
- split-tender transactions,
- employee access controls, and
- access to the Application Marketplace.

Payment Plus will allow Customer to separately acquire through the Application Marketplace (subject to payment of applicable fees) the Register Lite or Register Clover Software.

"Register Lite and Register" are the Clover Software plus business management and non-payment processing functionality.

"Third Party Apps" means the non-modifiable (object code) software applications that are NOT loaded on a Device at the time we provide Customer with the Device; Customer must subsequently elect to install Third Party Apps onto the Device. Third Party Apps are available through the Application Marketplace via an agreement between Customer and the developer of the Third Party App. For the avoidance of doubt, the Third Party Apps are not part of the Clover Service provided by Processor pursuant to these Special Provisions Regarding Clover Service and the Agreement.

"Third Party Services" are the services, products, promotions or applications provided through a Third Party App. For the avoidance of doubt, the Third Party Services are not part of the Clover Service provided by Processor pursuant to this Addendum and the Agreement.

2. License Grant. During the term of these Special Provisions Regarding Clover Service, Processor grants Customer a limited, non-exclusive, revocable, non-transferable sublicense, without the right to further sublicense or assign in any way, to electronically access and use the Clover Service solely in the United States to manage Customer's establishment and conduct associated point of sale activities within the United States in accordance with these Special Provisions Regarding Clover Service. For purposes of these Special Provisions Regarding Clover Service, "United States" does not include U.S. Territories or possessions. The Clover Service is for Customer's internal business use only. These Special Provisions Regarding Clover Service do not grant Customer any rights to the Clover Marks. All intellectual property and proprietary rights in or related to the Clover Service and the Clover Marks are and will remain the sole and exclusive property of Clover, us, or our respective vendors or licensors (as applicable), and any and all right, title and interest associated with the Clover Service not expressly granted in these Special Provisions Regarding Clover Service are deemed withheld.

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

judgment impose an unreasonable or disproportionately large load on our infrastructure, network capability or bandwidth; or (l) use the Clover Service (or any part) except as permitted in Section 2 (above).

4. Clover Service Limitations and Requirements.

- 4.1. Customer may access the Clover Service through Customer's Device using a wired (ethernet) or wireless (wifi or cellular) connection to the Internet. Customer is solely responsible for the payment of any fees that may be imposed by Customer's Internet/data provider. Customer's use of the Clover Service may be subject to: (a) the terms of Customer's agreements with Customer's Internet/data provider; and (b) the availability or uptime of the services provided by Customer's Internet/data provider.
- 4.2. Customer may use the Clover Service to conduct point of sale activities offline; transactions initiated offline will be queued and submitted for authorization when Customer restores Customer's Internet connectivity to the Clover System. However, Customer assumes all risk, responsibility and liability associated with any transaction that Customer chooses to conduct while the Clover Service is used offline.
- 4.3. The Clover Service does not function with every mobile device. Processor may alter which Devices are approved as compatible with the Clover Service in our discretion from time to time.
- 4.4. Maintenance on the Clover Service may be performed from time to time, which may result in service interruptions or delays, and the Clover Service may contain errors or "bugs" that may result in failure. Neither we nor Clover will be liable for any such interruptions, delays, errors or bugs. Customer agrees that we or Clover may contact Customer in order to assist Customer with the Clover Service and obtain information needed to identify and fix any errors or bugs.
- 4.5. Customer shall at all times comply with any operating procedures, requirements or guidelines regarding Customer's use of the Clover Service that are posted on the Clover website or otherwise provided or made available to Customer.
- 4.6. Customer is solely responsible for ensuring the accuracy of all information and data regarding Customer's business that Customer provides to us or Clover in connection with the Clover Service (e.g., menus loaded onto the Device). In addition, Customer is solely responsible for verifying that all information and data loaded onto a Device by us or Clover at Customer's request are accurate prior to Customer's business use of such data or such Device. We and Clover disclaim any and all liability arising out of any inaccuracies with respect to such information or data.
- 4.7. Customer shall comply with the following requirements in connection with Customer's use of the Clover Service:
  - a) With respect to each Customer who requests the delivery of transaction receipts via text message or email, such Customer must enter his phone number or email address in the appropriate space displayed on the Device himself; Customer is NOT permitted to add or modify any Customer Information (including but not limited to phone number and email address) on behalf of a Customer.
  - b) With respect to each Customer who desires to receive marketing material or other communications from Customer via text message or email, such Customer must check the appropriate consent check box displayed on the Device himself; Customer is NOT permitted to add or modify a Customer's consent indication on his behalf.
  - c) Customer (or Customer's agents acting on Customer's behalf) may only send marketing materials or other communications to the Customer's provided phone number, street address, and/or email address if the Customer has specifically consented by checking (himself) the applicable box displayed on the Device.
  - d) Customer is responsible to provide and obtain any disclosures and consents related to the E-SIGN Act that may be required in connection with Customer's communications and agreements with Customer's customers.
  - e) NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE CUSTOMER INFORMATION AND TO ALLOW CUSTOMER'S CUSTOMERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM CUSTOMER, SOME STATES' LAWS MAY LIMIT CUSTOMER'S USE OF SUCH INFORMATION, OR CUSTOMER'S DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES, ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED HIS CONSENT. CUSTOMER ACKNOWLEDGE AND AGREE THAT (I) CUSTOMER'S USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) CUSTOMER IS SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, (III) CUSTOMER WILL AT ALL TIME STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS, AND (IV) UPON REQUEST, CUSTOMER WILL FURNISH DOCUMENTATION SUFFICIENT FOR PROCESSOR TO ESTABLISH SAME IN ANY AUDIT OR REGULATORY REVIEW.

5. Special Terms for Clover Flex, Clover Mobile and Clover Mini. If Customer uses Clover Flex, Clover Mobile or Clover Mini to obtain the Clover Services the Clover Software that enables the Clover Apps to work on the Clover Flex, Clover Mobile or Clover Mini Device may be the Register Lite or Register Clover Software unless Customer has previously acquired and are using a Clover Station at the time that Customer acquires the Clover Flex, Clover Mobile or Clover Mini Device, in which case the Clover Software that enables the Clover Apps to work on the Clover Mobile and Clover Mini Device will be the FDPRO Software; All of the other terms in this Addendum apply to Customer's use of the Clover Services using a Clover Mobile or Clover Mini Device.

6. Fees. The fees that Customer agrees to pay to Processor for the Clover Services are described in the fee schedules that accompany the Agreement. Any fees that Customer may agree to pay Clover or any other third party in connection with the Application Marketplace, Third Party Apps or any other Third Party Services will be assessed and collected separately by Clover or the applicable third party.

7. Third Party Apps and Third Party Services. The Application Marketplace enables Customer to obtain Third Party Services through Third Party Apps. If Customer decides to download Third Party Apps or use Third Party Services, Customer will be responsible for reviewing and understanding the terms and conditions that apply to each Third Party App and each Third Party Service (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). Customer understands that Customer's access or use of Third Party Apps or Third Party Services is at Customer's own risk. Customer expressly acknowledges and agrees that Third Party Apps and Third Party Services are not governed by the terms and conditions of these Special Provisions Regarding Clover Service or the Agreement. Customer will have no recourse against Processor, Clover or Bank for such Third Party Services or Third Party Apps; Customer's only recourse, if any, will be against the providers of the Third Party Apps and Third Party Services. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE APPLICATION MARKETPLACE, THIRD PARTY APPS, OR THIRD PARTY SERVICES IS DOWNLOADED AT CUSTOMER'S OWN RISK. NEITHER PROCESSOR, NOR CLOVER, NOR BANK WILL BE RESPONSIBLE FOR ANY ACTIONS, OR ANY FAILURES TO ACT, OF ANY THIRD PARTY WITH RESPECT TO THE THIRD PARTY APPS, THE THIRD PARTY SERVICES, OR OTHERWISE, AND PROCESSOR, CLOVER AND BANK EXPRESSLY DISCLAIM ANY LIABILITY RELATED TO ALL THIRD PARTY APPS AND THIRD PARTY SERVICES. NEITHER PROCESSOR, NOR CLOVER, NOR BANK WARRANTS, ENDORSES, GUARANTEES, OR ASSUMES RESPONSIBILITY FOR ANY PROVIDER OF A THIRD PARTY APP, A THIRD PARTY SERVICE, OR ANY PRODUCT THAT IS ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE CLOVER SERVICE, THE CLOVER WEBSITE, OR THE APPLICATION MARKETPLACE (INCLUDING ANY WEBSITE OR SERVICE THAT IS HYPER-LINKED OR FEATURED IN ANY BANNER OR OTHER ADVERTISING), AND NEITHER PROCESSOR, NOR CLOVER, NOR BANK WILL BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN CUSTOMER AND PROVIDERS OF THIRD PARTY APPS, THIRD PARTY SERVICES, OR ANY PRODUCT ADVERTISED OR OFFERED BY A THIRD PARTY.

8. Privacy and Data Use. All data collected from Customer at [www.clover.com](http://www.clover.com) or in connection with Customer's use of the Clover Service, including Customer Information and information about Customer's business and employees used with or stored in or by the Clover Service (collectively, "Account Data"), is collected by Clover and not by Processor or Bank; therefore, the use and sharing of such Account Data is controlled by the Clover Privacy Policy (available at <https://www.clover.com/privacy.policy>). PLEASE NOTE THAT THE CLOVER PRIVACY POLICY IS NOT THE SAME AS THE PROCESSOR OR BANK PRIVACY POLICIES, AND CUSTOMER MUST REVIEW THE CLOVER PRIVACY POLICY TO ENSURE IT MEETS CUSTOMER'S NEEDS AND IS CONSISTENT WITH THE AGREEMENT CUSTOMER HAS WITH CUSTOMER'S CUSTOMERS, as discussed in greater detail in Section 9 below. Customer acknowledges and agrees that we may access Customer's Account Data upon our request to Clover, and our use of Customer's Account Data is governed by the terms set forth in the Agreement. Certain data collected by Clover or us in connection with the Clover Service may be shared with third parties, and may be used by us, Clover, or third parties for purposes of providing additional products and services to Customer, other merchants, or other third parties. ACCOUNT DATA IS SEPARATE FROM ANY DATA COLLECTED BY THIRD PARTIES THROUGH THIRD PARTY APPS OR THIRD PARTY SERVICES; CUSTOMER WILL BE ABLE TO REVIEW THE PRIVACY POLICIES RELATED TO THIRD PARTY APPS AND THIRD PARTY SERVICES PRIOR TO USING THE THIRD PARTY APPS AND THIRD PARTY SERVICES.

9. Protecting Customer's Information. Customer is solely responsible for ensuring that Customer's account numbers, passwords, security questions and answers, login details and any other security or access information used by Customer to use or access the Clover Service (collectively, "Security Information") are kept safe and confidential, for preventing unauthorized access to and use of Customer's Security Information, and for any liability arising from Customer's failure to fulfill these responsibilities. Customer must also prevent unauthorized access to and use of any Account Data. Customer is responsible for all electronic communications sent to us or to Clover containing Account Data. When we receive communications containing Account Data, we assume Customer sent it to us, and when Clover receives communications containing Account Data, Clover assumes Customer sent it to them. Customer must immediately notify us if Customer become aware of any loss, theft, or unauthorized use of any Account Data (see Clover Service support center contact information below). Customer should not send

Account Data or other confidential information to us through unsecure channels outside of the Clover Service. We reserve the right to deny Customer accesses to the Clover Service, in whole or in part, if we believe that any loss, theft or unauthorized use of any Account Data or access information has occurred.

**10. Clover Service Disclaimer.** USE OF THE CLOVER SERVICE AND CLOVER EQUIPMENT IS AT CUSTOMER'S OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOVER SERVICE IS PROVIDED "AS IS," AND NEITHER PROCESSOR NOR CLOVER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO THE CLOVER SERVICE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER SERVICE WILL FUNCTION UNINTERRUPTED OR ERROR-FREE.

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

- a) Customer's failure to comply with all terms and conditions in these Special Provisions Regarding Clover Service;
- b) Customer's use, sharing or disclosure of any Customer Information obtained in connection with Customer's use of the Clover Service in violation of these Special Provisions Regarding Clover Service;
- c) The content or delivery of any marketing messages that Customer sends or causes to be sent to any Customer phone number or email address collected through the use of the Clover Service; or
- d) Any other party's access and/or use of the Clover Service with Customer's unique username, password, or other appropriate security code.

**12. Notices.** We may provide notices and other information regarding the Clover Service to Customer via the method(s) described in the Agreement or in the E-Sign Consent Agreement set forth below. Customer's notices to us regarding the Clover Service shall be delivered via the method(s) described in the Agreement.

**13. E-SIGN CONSENT AGREEMENT FOR NOTIFICATION OF DISCLOSURES RELATED TO THE CLOVER SERVICE AND THE AGREEMENT**

**A. Consent**

By signing these Special Provisions Regarding Clover Service, Customer consents and agrees that:

- ii. Processor can provide disclosures required by law and other information about Customer's legal rights and duties to Customer electronically.
- iii. Where required or requested, Customer's electronic signature (via "click-through" or other method) on agreements and documents relating to the Clover Service has the same effect as if Customer signed them in ink.
- iv. Processor can send all communications, billing statements, amendments to this Addendum, notices, and other disclosures or information regarding the Clover Service or Customer's use of the Clover Service or in connection with these Special Provisions Regarding Clover Service, including but not limited to any Card Association notices (collectively defined as "Disclosures") to Customer electronically (1) via e-mail, (2) by access to a web site that we designate in an e-mail notice we send to Customer at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.
- v. If Customer wants a paper copy, Customer can print a copy of the Disclosure or download the information for Customer's records.
- vi. This consent applies to all future Disclosures sent to Customer in connection with these Special Provisions Regarding Clover Service, the Agreement, or Customer's use of the Clover Service or the Services as defined in the Agreement.

**B. Legal Effect**

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

**CUSTOMER ALSO SEPARATELY CONSENTS TO THE E-SIGN CONSENT AGREEMENT ABOVE, WHICH CUSTOMER ACKNOWLEDGES IS REQUIRED FOR CUSTOMER'S ACCEPTANCE OF THE CLOVER SERVICE AND PROCESSOR'S ACCEPTANCE OF THESE SPECIAL PROVISIONS REGARDING CLOVER SERVICE.**

## SPECIAL PROVISIONS REGARDING SERVICE FEES

This addendum containing special provisions regarding service fees (the "Service Fee Addendum") to the Agreement is hereby incorporated therein (the "Agreement") and is entered into on the last date signed below (the "Effective Date") between Wells Fargo Merchant Services, L.L.C. and Wells Fargo Bank, N.A. (collectively, "Wells Fargo") and [State of Georgia Participating Entity] ("CUSTOMER").

1. **Definitions.** All capitalized terms not otherwise defined in this Service Fee Addendum shall have the meaning ascribed to such term in the Agreement.

2. **Government Service Fee.** As such term is used herein, "Government Service Fee" shall mean the fee charged by Wells Fargo, on behalf of CUSTOMER, to Customers conducting Eligible Transactions (as described herein, as applicable) with CUSTOMER and operating in certain designated merchant category codes ("MCCs"). For the avoidance of doubt, fees referred to as a "service fee" or "convenience fee" (in the context of the MCCs described herein) as used in the applicable Card Organization Rules, where the fee is processed as a separate Transaction from the underlying purchase or payment Transaction, are included within the definition of, and are referred to herein, as a "Government Service Fee."

3. **Government Service Fee Services.** Wells Fargo agrees to charge a Government Service Fee, as set forth in the Participation Agreement, on behalf of CUSTOMER, to CUSTOMER's customers for Eligible Transactions (the "Government Service Fee Services"), in each case provided that CUSTOMER is in compliance with the Card Organization Rules and any applicable laws, including the Electronic Fund Transfer Act and Regulation E. Wells Fargo Merchant Services reserves the right to increase any Government Service Fee in the event that Interchange, Assessments, Access Fees and other pass-through costs are increased by the Card Processing Networks and Card Issuers. Additionally, Wells Fargo may immediately terminate the Services and the Government Service Fee Services if CUSTOMER's Chargeback rates in any monthly period equal or exceed one percent (1%) of the total dollar value of incoming items to Wells Fargo. Pursuant to this Service Fee Addendum, Wells Fargo will receive and retain the Government Service Fee collected, on behalf of CUSTOMER, in connection with Eligible Transactions and will use the Government Service Fee to pay regular per transaction fees and fees and/or costs for the Processing Services provided by Wells Fargo with respect to such Transactions among other expenses.

4. **Eligible Transactions.** The parties agree that the Government Service Fee shall only apply in connection with the following "Eligible Transactions" as defined by the assigned Merchant Category Code (MCC).

### Visa MCCs

#### Government merchants:

MCC 9311-Tax  
MCC 9222-Fines  
MCC 9211-Court Costs  
MCC 9399-Miscellaneous Government Services

#### Tuition payments for higher education:

MCC 8220-College Tuition



MCC 8244-Business  
MCC 8249-Trade Schools

**MasterCard MCCs**

MCC 8211-Schools (Elementary and Secondary)  
MCC 8220-Colleges and Universities, Professional Schools and Junior Colleges  
MCC 9211-Court Costs including Alimony & Child Support  
MCC 9222-Fines  
MCC 9311-Tax Payments  
MCC 9399-Government Services (not elsewhere classified)

5. **Required Documentation.** CUSTOMER must provide Wells Fargo with the necessary documentation to facilitate Wells Fargo's registration of CUSTOMER in the service fee programs of the applicable Card Organizations. In addition and subject to Wells Fargo's approval (such approval not to be unreasonably withheld), CUSTOMER agrees to provide full and accurate disclosure of the Government Service Fee to Cardholders (the "Fee Disclosure"). Without limiting the foregoing, the Fee Disclosure by CUSTOMER shall at a minimum (i) disclose the Government Service Fee to the Cardholder prior to the completion of the Transaction, (ii) give the Cardholder the option to cancel the Transaction if the Cardholder does not wish to pay the Government Service Fee, (iii) comply with all applicable law, rules and/or regulations, and (iv) the service fee MID will (a) be registered as "WF4\_STATE OF GEORGIA\*SERVICE FEE", (b) comply with Card Organization Rules for character length and naming convention, and (c) be used as the descriptor on the cardholder statement and include the CUSTOMER customer support phone number for inquiries related to the principal and service fee transaction. Any changes to the Fee Disclosure or other processes of CUSTOMER pertaining to Government Service Fees shall be subject to the approval of Wells Fargo, provided that such approval shall not be withheld or delayed. CUSTOMER assumes all responsibility for the Fee Disclosure.

6. **Application.** The Government Service Fee shall apply in the same amount regardless of the Credit Card or signature Debit Card type accepted for payment of a given Eligible Transaction within a particular payment channel. This requirement does not apply to payments made by ACH, cash, or check. The Government Service Fee must not be advertised or otherwise communicated by CUSTOMER as an offset to the merchant discount rate.

7. **Voided Transactions.** If CUSTOMER voids an underlying Eligible Transaction, the associated Government Service Fee must be voided as well. If CUSTOMER processes a refund for an underlying Eligible Transaction, CUSTOMER must disclose to Customers that Government Service Fees are non-refundable. Merchants that desire to charge Government Service Fees will be assigned separate Merchant IDs ("MIDs") for use in connection with Eligible Transactions and related Government Service Fees. MIDs assigned for use with Eligible Transactions and/or Government Service Fees may not be used to process Transactions that are not Eligible Transactions.

8. **Customer Support.** The CUSTOMER will provide customer phone support for all inquiries related to the Eligible Transaction and the Government Service Fee transaction. Chargeback management will be facilitated and managed by the CUSTOMER including for the service fee account.

9. **Termination.** Wells Fargo may terminate this Service Fee Addendum and the Government Service Fee Services immediately upon (i) termination of the Agreement, (ii) a material breach of this Service Fee Addendum, (iii) failure to comply with Sections 3 and 4 of this Service Fee Addendum or (iv) where such termination is required by an applicable Card Organization. In addition, Wells Fargo may terminate this Service Fee Addendum and the Government Service Fee Services for its

convenience with [60] days written notice. Upon termination of this Service Fee Addendum, CUSTOMER agrees to pay any remaining fees or expenses related to Wells Fargo's provision of the Government Service Fee Services.

10. Except as otherwise amended hereby, all other terms and conditions in the Agreement remain unchanged, are hereby ratified and shall apply in all respects to the parties and shall remain in full force and effect.

## EXHIBIT 2

To

### Master Services Agreement

#### FORM OF PARTICIPATION AGREEMENT FOR MERCHANT PROCESSING SERVICES

This **Participation Agreement for Merchant Processing Services** ("**Participation Agreement**") is entered into between ("Customer") \_\_\_\_\_, XXXX, XXXX as of (date) \_\_\_\_\_ (the "Effective Date"). XXXX and XXXX are collectively referred to as "Servicers".

WHEREAS, on (date), Servicers entered into the Master Services Agreement with the Office of State Treasurer ("OST") of the State of Georgia for the provision of merchant processing services (the "MSA"), which such Services are further defined in the MSA; and

WHEREAS, The MSA permits Servicers to provide, and Customers to receive, Services pursuant to the MSA, and this Participation Agreement, and any documents related thereto and hereto, and incorporated therein and herein, **and any subsequent revisions**, and

WHEREAS, the     (enter Agency name)     is a Customer authorized by State of Georgia, and desires, to receive Services pursuant to the MSA;

NOW THEREFORE, the parties to this Participation Agreement hereby agree as follows:

1. Customer is authorized by the State of Georgia as a Customer, and as such has received the approval of the Georgia Office of the State Treasurer to participate under the MSA and this Participation Agreement and any documents related thereto and hereto, including without limitation the Card Processing Terms Addendum and any applicable Product Addenda.
2. Servicers hereby agree to provide Services to Customer pursuant to the terms and conditions of the MSA, which are incorporated herein by reference, and this Participation Agreement, including without limitation the Card Processing Terms Addendum and any applicable Product Addenda.
3. Customer hereby acknowledges receipt of a copy of the Master Services Agreement, and any applicable Product Addenda, and agrees to be bound by all terms and conditions herein and therein.
4. Customer agrees that by executing this Participation Agreement it shall be responsible for all Customer obligations set forth in the MSA, the Card Processing Terms Addendum, and the applicable Product Addenda (as indicated in Attachment 3), including payment of all fees and assumption of all financial obligations related to the Services received by Customer (see Attachment 2 for Pricing).
5. Upon termination of the MSA, Customer must negotiate a separate contract with Servicers in order to continue to receive Services.
6. Customer's contact information for purposes of Section 25.3 ("Notices") of the Card Processing Terms Addendum and VII(B) of the MSA shall be as set forth in Attachment 1 hereto
7. The words or phrases not otherwise defined herein will have the same meanings ascribed to them elsewhere in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement and all documents related hereto as of the date set forth above.

Wells Fargo Bank, N.A. and Wells Fargo Merchant Services, L.L.C.

\_\_\_\_\_  
(Agency Name)

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Legal Disclosures and Important Additional Information about Procedures for Opening a New Account under this Participation Agreement**

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

**Important Notice:** Customer agrees, in order for us to service the Customer or to collect any amounts Customer owes, we may from time to time make calls and/or send text messages to Customer and/or any signer or contact provided to us at any telephone number(s) associated with Customer's account, including wireless telephone numbers that could result in charges to Customer and/or signer or other Customer contact provided to us. The manner in which these calls or text messages are made to Customer, and/or any signer or other contact provided to us may include, but is not limited to, the use of prerecorded/artificial voice messages and/or an automatic telephone dialing system. Customer further agrees that, in order for us to service Customer's account or to collect any amounts Customer owes, we may send e-mails to Customer at any e-mail address Customer provides to us.

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

Customer acknowledges having received and reviewed a copy of the MSA, the provisions of which are incorporated herein by reference. Customer understands and acknowledges that upon the expiration of three (3) calendar days from the date set forth below or after Customer submits to Wells Fargo its first deposit for settlement, whichever comes first (the "Rescission Period"), Customer will be bound by all provisions set forth in the MSA as it may be amended from time to time, unless Customer notifies Wells Fargo in writing otherwise within the Rescission Period. Customer further acknowledges and understands that it has an obligation to promptly contact Wells Fargo regarding any questions pertaining to any provision of the MSA. Customer further agrees that Customer is authorized to accept transactions in accordance with any percentages indicated in this Participation Agreement.

Failure to provide an accurate Federal Tax Identification Number may result in a withholding of merchant funding per IRS regulations.

This signature page for this Participation Agreement also serves as a signature page to the Special Provisions for Equipment Purchase and Rental set forth in the Product Addenda to Card Processing Terms Addendum, if the Customer is requesting a lease of equipment described in such Product Addendum. The undersigned Customer is the "Lessee" for purposes of such Special Provisions for Equipment Purchase and Rental. Wells Fargo intends to assign the lease to First Data Merchant Services Corporation shortly after execution of the Participation Agreement. The Customer furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all business credit and financial information to us.

By signing electronically, Customer and each individual signing this Participation Agreement consent to the use of electronic signatures and records in connection with this Participation Agreement and all related communications and agreements.

**Attachment 1**  
**To Participation Agreement**  
**Customer Information**

State of Georgia Agency Name: \_\_\_\_\_ ("Customer")  
Customer Federal Tax Identification Number: \_\_\_\_\_

Name:  
Title:  
Address:  
Telephone:

Customer Locations:

Customer understands and agrees that requests for additional secondary location(s) after the execution of this Participation Agreement shall be included in, and subject to, this Participation Agreement.

**Attachment 2**  
**To**  
**Participation Agreement**  
**Pricing**

**Attachment 3**

To

**Participation Agreement**

**Applicable Product Addenda**

The following are the additional Product Addenda applicable to Customer under this Participation Agreement, and the terms and conditions of such Product Addenda are hereby incorporated by reference. If Customer wishes to add additional products and/or services, then Customer and Servicers shall amend the Participation Agreement to add the same.

1. [Special Provisions Regarding Non-Bank Cards]
2. [Special Provisions for Debit Card]
3. [Special Provisions Regarding Wireless Service]
4. [Terms of Equipment Purchase or Rental]
5. [Special Provisions Regarding TransArmor® Services]
6. [Special Provisions Regarding Fraud Detection Services]
7. [Special Provisions Regarding Payeezy Gateway Services]
8. [TeleCheck Services Agreement]
9. [Special Provisions Regarding Clover Services]
10. [Service Fee Addendum]



Wells Fargo Merchant Services, L.L.C. ("WFMS") - Pricing Terms

State of Georgia

Proposal Date: 07/13/17

eReceivables Consultant: Richard Toomey

Assumptions	
Credit Card Volume	\$480,826,775
Average Transaction Size	\$56
Number of Locations	3,400
Anticipated Interchange <sup>11</sup> Levels	Public Sector: 032 020/038/307 Public Sector/CNP: 033 020/034/307 Utility: 024 048/053/324 Retail: 001 009/023/310 MOTO w/ AVS (CNP): 003 011/034/314 Internet: 020 089/077/314 Restaurant: 002 009/054/311 Visa Small Ticket/Convenience: 037 028/047/308/948
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	line charges quoted separately Frame Relay / IPN / Dial
Gateway	Other Gateway - Direct Bill to Client / WFMM EMV / Clover Mini/Mobile Only
Pricing Option	<b>Interchange + Assessments + Access Fees + Authorizations</b>

**Credit Card Processing Fees <sup>1</sup>**  
**Interchange Plus the Following Fees:**

**\$0.017** On each Authorization/EDC attempt (as defined below) <sup>3</sup>

Assessed on all Visa transactions, including sales, returns, reversals, chargebacks, and reversed chargebacks

**\$0.0018 VI Base II System File Fee**

This fee is also disclosed on the Payment Networks Pass-Through Fees schedule (see Applicable Fee Schedules below).

**\$0.0018 MC Access Fee** Assessed on each gross sales transaction

**PIN Debit & Electronic Benefits Transfer (EBT) Processing Fees**

\$0.017 Per PIN Debit Transaction (applies to completed and declined transactions)

EBT NOT ENTITLED

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

**Applicable Fee Schedules: <sup>10</sup>**

Payment Networks Qualification Matrix <https://www.wellsfargo.com/biz/creditinterchangeplus>

Payment Networks Pass-Through Fees <https://www.wellsfargo.com/biz/merchantpassthroughfees>

Wells Fargo Fixed Acquirer Network Fee for Visa® Accepting Merchants <https://www.wellsfargo.com/visanetworkfee>

PIN Debit Networks Fee Schedule (if applicable) <https://www.wellsfargo.com/biz/merchantdebitfees>

Fee schedules are updated periodically. To obtain the current applicable fee schedules, please refer to the URLs above for more information. If you do not have internet access, please contact your Merchant Card Representative and request that a copy of the applicable fee schedules be mailed or faxed to you.

As noted in your Merchant Agreement, Payment Networks change their rates/fees from time to time. They are likely to revise rates/fees on 10/14/2017. To learn more about impacts to fee schedules resulting from Payment Network changes, please visit the URLs above or request an updated schedule.

**Other Processing Fees**

Set-Up Fee	\$	-	one time fee per location
Monthly Minimum Processing Fee <sup>9</sup>	\$	-	per month
Chargeback Fee <sup>2</sup>	\$	5.00	per chargeback
Monthly Service Fee (per location)	\$	1.25	per month
Monthly Internet Service Fee (Applies to any location utilizing an Internet Gateway Purchased through WFMS)	\$	10.00	per month
Clover™ Services Fees (per Device ID) <sup>13</sup>	\$	39.00	per month
Wireless Access Fee (per terminal)	\$	10.00	per month
Statement Billing Fee (Paper Statement) <sup>7</sup>	\$	-	per month
Voice Authorization Fee	\$	0.50	per attempt
Annual Fee	\$	-	per location
Authorization/EDC Fee - Visa (Credit and Non-PIN Debit) <sup>3</sup>	\$	0.017	per attempt
Authorization/EDC Fee - MasterCard® (Credit and Non-PIN Debit) <sup>3</sup>	\$	0.017	per attempt
Authorization/EDC Fee - Discover® Network Card (Credit and Non-PIN Debit) <sup>3</sup>	\$	0.017	per attempt
Authorization/EDC Fee - American Express (Credit and Prepaid) <sup>3</sup>		N/A	per attempt
Interchange Clearing Fee <sup>12</sup>			
Applies to Visa, MasterCard, Discover Network Card (Credit and Non-PIN Debit) and American Express (Credit and Prepaid)			N/A on gross sales volume

**Merchant Initials** \_\_\_\_\_

**Wells Fargo Merchant Services, L.L.C. - ("WFMS") - Pricing Terms**

State of Georgia

Proposal Date: 07/13/17

eReceivables Consultant: Richard Toomey

Assumptions	
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MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	line charges quoted separately      Frame Relay / IPN / Dial
Gateway	Other Gateway - Direct Bill to Client / WFMM EMV / Clover Mini/Mobile Only
Pricing Option	<b>Interchange + Assessments + Access Fees + Authorizations</b>

**Other Processing Fees Continued**

TSYS Authorization Fee (Any merchant processing location utilizing TSYS (3rd party vendor) will be charged a TSYS Authorization Fee. This fee will be added to the current Visa, MasterCard, Discover Network Card and Non Bank Card Authorization Fee.)	\$ 0.075 per attempt
Internet Authorization Fee (Any merchant processing location utilizing an Internet Gateway purchased through WFMS will be charged an Internet Authorization fee. This fee will be added to the existing Visa, MasterCard, Discover Network Card and Non Bank Card Authorization Fee.)	\$ 0.03 per attempt
Electronic Address Verification Service Fee	\$ 0.01 per attempt
Voice (Manual) Address Verification Fee	\$ 2.00 per attempt
Annual Compliance Support Fee <sup>5</sup>	\$ - per location
PCI Compliance Service Program Fee <sup>8</sup>	\$ - per month, per location
Non-validation PCI Compliance Fee <sup>8</sup>	\$ 25.00 per month, per location
Equipment Installation Fee	\$ - one time fee
Foreign Handling Fee (on Visa/MasterCard foreign card transactions)	0.10% on foreign card sales
Non Bank Card Authorization <sup>5</sup> Applies only to American Express EDC and Discover EDC	\$ 0.017 per attempt
Non Bank Card Capture Fee Applies only to American Express EDC and Discover EDC	\$ - per attempt
Terminal Reprogramming Fee (Terminal) - Applies to Customer Owned Terminals Only	\$ 50.00 per unit
Terminal Reprogramming Fee - Integrated Terminal - Applies to Customer Owned Integrated Terminals Only	\$ 115.00 per unit
Security Swap Fee for PIN Debit - Applies to Customer Owned PIN Pads Only	\$ 125.00 per unit
Card Imprinter Option	no imprinter
Rush Shipping Option	N/A

**TransArmor Fees**

TransArmor Token & Encrypt <sup>15</sup>	\$ 0.013 per attempt
TransArmor Token Registration Fee <sup>15</sup>	\$ 0.013 per attempt
Legacy Data Conversion Fee <sup>16</sup>	\$ 0.0035 per conversion one-time fee,
PIN Entry Device Fee (only applies if PIN Entry Device is VeriFone)	\$ 18.00 per PIN Entry Device

**Check Processing Fees**

TeleCheck ECA/Warranty Processing	\$0.20 per check tran.	1.40% on sales
TeleCheck ECA/Warranty Monthly Minimum	\$ 25.00	per month
TeleCheck ECA/Warranty ACH Processing Fee	\$ 5.00	per occurrence
TeleCheck ECA/Warranty Customer Requested Operator Call	\$ 2.50	per occurrence
TeleCheck ECA/Warranty Chargeback Fee	\$ 5.00	per occurrence
TeleCheck ECA/Warranty Warranty Research Fee	\$ 7.50	per occurrence

**Report Fees - see Additional Notes for Terms and Conditions**

Data File Manager - Set-up Fee <sup>17</sup>	\$ 2,500.00	one-time fee
Data File Manager - Monthly Fee (fee for daily raw data files) <sup>18</sup>	\$ 165.00	per user per month
Data File Manager - Run Now Files Over 8 Gigabytes (GB) <sup>19</sup>	\$ 750.00	per user per month

**Merchant Initials** \_\_\_\_\_

**Wells Fargo Merchant Services, L.L.C. - ("WFMS") - Pricing Terms**

State of Georgia

Proposal Date: 07/13/17

eReceivables Consultant: Richard Toomey

Assumptions	
Credit Card Volume	\$480,826,775
Average Transaction Size	\$56
Number of Locations	3,400
Anticipated Interchange <sup>11</sup> Levels	Public Sector: 032 020/038/307 Public Sector/CNP: 033 020/034/307 Utility: 024 048/053/324 Retail: 001 009/023/310 MOTO w/ AVS (CNP): 003 011/034/314 Internet: 020 089/077/314 Restaurant: 002 009/054/311 Visa Small Ticket/Convenience: 037 028/047/308/948
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	line charges quoted separately      Frame Relay / IPN / Dial
Gateway	Other Gateway - Direct Bill to Client / WFMM EMV / Clover Mini/Mobile Only
Pricing Option	<b>Interchange + Assessments + Access Fees + Authorizations</b>

- 1) Clients may elect to participate in the Discover Network Card program or the Discover EDC program, but not both. Under the "Discover Network Card program," Clients receive all Discover-related authorization, processing and settlement services from WFMS. Under the "Discover EDC program," Clients enter into a direct agreement with Discover, and WFMS provides only authorization and capture services related to Discover Network Cards. Clients may also elect to participate in the American Express program or the American Express EDC program, but not both. Under the "American Express program," Clients receive all American Express-related authorization, processing and settlement services from WFMS. Under the "American Express EDC program," Clients enter into a direct agreement with American Express, and WFMS provides only authorization and capture services related to American Express Cards. In all cases, any services provided by WFMS for Discover and American Express transactions are subject to the terms of Client's Agreement with WFMS.
- 2) Client acknowledges and understands that an authorization only indicates the availability of the Cardholder's credit at the time the authorization is requested. It does not warrant that the person presenting the card is the rightful Cardholder, nor is it an unconditional promise or guarantee that Client will not be subject to a chargeback or debit.
- 3) Authorization/EDC Fee applies to all Visa, MasterCard, Discover Network Card and American Express approvals (pre-authorizations, authorizations and authorization reversals), denials, batch inquiries, batch entry transactions and includes any transaction fees and capture fees. This fee does not apply to Discover EDC and American Express EDC.
- 5) The Annual Compliance Support Fee will be assessed and deducted from Client's Settlement Account at each anniversary date after the effective date.
- 6) Non Bank Card Authorization Fee applies to all approvals (pre-authorizations, authorizations and authorization reversals), denials, batch inquiries and batch entry transactions.
- 7) The monthly Statement Billing Fee can be waived if Client elects to access the monthly statement online instead of receiving a paper copy by mail. After Business Track access has been activated, please contact Customer Service at 1-800-451-5817 to request that paper statements no longer be mailed. If Business Track access is terminated by Client or as a result of inactivity, paper statements will be reinstated with the applicable monthly Statement Billing Fee. Enroll anytime at [businesstrack.com](http://businesstrack.com).
- 8) The monthly PCI Compliance Service Program Fee and Non-validation PCI Compliance Fee are part of the mandatory PCI Compliance Service Program. These fees apply to Level 4 Clients who utilize a gateway or value added reseller (VAR). The program includes access to TrustKeeper, a Trustwave PCI Compliance solution to help Client comply with the Payment Card Industry Data Security Standards (PCI DSS) requirements. Clients are required to register and complete a PCI DSS certification process by visiting <https://pci.trustwave.com/wellsfargo>. If Client does not comply or fails the PCI DSS certification process, Client will be charged a monthly Non-validation PCI Compliance Fee until the account becomes compliant.
- 9) If the total discount fee for Visa, MasterCard, Discover Network Card and American Express transactions in a given month is less than the Monthly Minimum Processing Fee, then in addition to the total discount fee Client will be charged an amount equal to the Monthly Minimum Processing Fee minus the total discount fee.
- 10) Dues, assessments and pass-through fees are disclosed in the schedules referenced under the "Applicable Fee Schedules" section and the related footnote.
- 11) American Express charges Program Pricing fees and not Interchange, and these fees are subject to change.
- 12) The Interchange Clearing Fee (ICF) will be charged on transactions that may be considered higher risk and/or are processed at a higher expense level. These types of transactions can be identified on Client's Payment Networks Qualification Matrix by looking at the "ICF applies" column. If the interchange program level has been identified by a "YES" in this column, then the ICF will apply to that type of transaction.
- 13) If Client purchases or leases the Clover Mobile and/or the Clover Mini device(s) and does not have a Clover Station on the same merchant account number, then the Clover Services Fee does not apply and will not be charged. If Client purchases or leases the Clover Mobile and/or the Clover Mini device(s) with the Clover Station(s) or already has the Clover Station(s) on the same merchant account number, then the Clover Services Fee will apply only to the Clover Station(s).
- 14) The price for the Clover Mobile and/or the Clover Mini device(s) includes the Clover Software.
- 15) A TransArmor authorization fee that applies to Visa, MasterCard and Discover Network Card (Credit and Non-PIN Debit), Discover EDC, American Express, American Express (EDC), PIN Debit and EBT authorizations. Based on your current processing, the TransArmor authorization fee will be billed under the statement descriptor, "TransArmor Token & Encrypt". However, if your processing method changes, the TransArmor authorization fee may be billed under one or more of the following statement descriptors: (i) TransArmor Token & Encrypt, (ii) TransArmor Token Only or (iii) TransArmor Token Registration.
- 16) A fee that applies to each unique conversion of: (i) a Primary Account Number to a Token or (ii) a Token to a Primary Account Number.
- 17) This is a one-time fee that applies to the initial set-up of a First Data File Gateway Mailbox used for the delivery of Data File Manager reports. This fee will be assessed only if Client does not have a First Data File Gateway Mailbox.
- 18) This fee is not applicable to Run Now Files.
- 19) This is a per user monthly fee that applies when the total size of a user's Run Now Data Files requested in given month is 8 GB or more. This fee only applies when your Run Now On-Demand File (excluding daily raw data files) is 8 GB or more.

**Merchant Initials** \_\_\_\_\_

**Wells Fargo Merchant Services, L.L.C. ("WFMS") - Pricing Terms**

State of Georgia

Proposal Date: 07/13/17

eReceivables Consultant: Richard Toomey

Assumptions	
Credit Card Volume	\$480,826,775
Average Transaction Size	\$56
Number of Locations	3,400
Anticipated Interchange <sup>11</sup> Levels	Public Sector: 032 020/038/307 Public Sector/CNP: 033 020/034/307 Utility: 024 048/053/324 Retail: 001 009/023/310 MOTO w/ AVS (CNP): 003 011/034/314 Internet: 020 089/077/314 Restaurant: 002 009/054/311 Visa Small Ticket/Convenience: 037 028/047/308/948
MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	line charges quoted separately      Frame Relay / IPN / Dial
Gateway	Other Gateway - Direct Bill to Client / WFMM EMV / Clover Mini/Mobile Only
Pricing Option	<b>Interchange + Assessments + Access Fees + Authorizations</b>

If Client has selected to accept TeleCheck Services, see Part III - Section 1 of the Program Guide for the terms and conditions. If applicable, the Additional Services page will contain the fees and rates billed to Client by TeleCheck.

If Client does not follow proper authorization procedures, a \$50 chargeback handling fee will be assessed on MasterCard transactions.

American Express may charge Client an excessive disputes fee in the amount of \$5 for each Disputed Charge if Client is in American Express' Immediate Chargeback Program or \$15 for each Disputed Charge if Client is not in the Immediate Chargeback Program.

Client is responsible for any charges assessed by outside third parties that are not disclosed on the proposal. To the extent that this pricing proposal includes pricing for third party products and services, WFMS disclaims legal liability and responsibility for said products and services. Client's agreement with the third party provider shall govern Client's relationship with the third party provider. In the event that WFMS is billed for the third party's services, Client will reimburse WFMS for such services.

Client acknowledges and understands that WFMS shall have no responsibility or liability for any third party hardware or software procured and used by Client. To the extent Client has any issues, concerns or liability related to such hardware or software, Client must deal directly with the third party provider from whom Client procured the hardware or software. In no event will WFMS be responsible for any indirect, incidental or consequential damages that Client may incur as a result of using any third party hardware or software.

WFMS' proposal and associated pricing is based on the information provided. Without a signed agreement, this proposal expires on December 31, 2017.

See Section 41.3 of the Program Guide for early termination fees.

Rounding. In the event the amount being billed to Client for any line item on this pricing proposal includes a total ending in less than a full cent, WFMS will either round such amount up or down to the nearest cent.

Fees for supplies, shipping, handling, and applicable sales tax may apply and are subject to change without notice. Additional information is available upon request.

Additional Notes:	
<u>MCC Code</u>	<u>MCC Description</u>
9399	GOVERNMENT SERVICES, NOT ELSEWHERE
4900	UTILITIES-ELECTRIC,GAS,WATER
9311	TAX PAYMENTS
9211	COURT COSTS
9222	FINES
8244	BUSINESS & SECRETARIAL SCHOOLS
8249	BUSINESS & SECRETARIAL SCHOOLS
7523	AUTOMOBILE PARKING LOTS
7992	GOLF COURSES-PUBLIC
5812	EATING PLACES, RESTAURANTS
5999	MISC. AND SPECIALTY RETAIL
8220	COLLEGES, UNIVERSITIES
5814	EXPRESS PAY SVC FAST FOOD

Merchant Initials \_\_\_\_\_

**Wells Fargo Merchant Services, L.L.C.- ("WFMS") - Pricing Terms**

State of Georgia

Proposal Date: 07/13/17

eReceivables Consultant: Richard Toomey

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MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	line charges quoted separately      Frame Relay / IPN / Dial
Gateway	Other Gateway - Direct Bill to Client / WFMM EMV / Clover Mini/Mobile Only
Pricing Option	<b>Interchange + Assessments + Access Fees + Authorizations</b>

**Additional Notes Continued:**

**Terms and Conditions of WFMS - Pricing Terms:**

- 1) WFMS pricing as provided in its response to this RFP is based upon the information provided by the State of Georgia (e.g., existing processing technology, number of merchant accounts, etc.) as of the date the pricing provided in WFMS RFP response was created. In responding to this RFP, WFMS only agrees to be bound to the pricing WFMS provided therein to the extent that the assumptions upon which it was based, was reasonably derived in relation to the information provided by the State of Georgia as of the date of the creation of that pricing, are accurate and unchanged. In the event that WFMS is the successful bidder, and the State of Georgia subsequently provides additional information to WFMS that would affect the pricing (including pass through fees paid by the State of Georgia), WFMS shall not be bound by the pricing provided in the RFP response and shall have the right to revise the pricing based upon the corrected information provided by the State of Georgia. Further, should WFMS be the successful bidder for this RFP, the State of Georgia shall be required to execute a Final Pricing Terms document.
- 2) Pricing may require an re-evaluation if the annual net sales volume or average transaction size are not as expected or if you significantly alter your method of doing business.
- 3) Should any terminal require a reprogramming for credit card, non-bankcards or debit cards, the reprogramming charge is \$50 per terminal and \$115 per terminal with an integrated PIN Pad. This price includes download and telephone training. Customer owned PIN Pads require encryption and are charged a security swap fee of \$125 per PIN Pad.
- 4) This pricing proposal assumes that the State of Georgia will utilize First Data Merchant Services' North authorization network and First Data Merchant Services' North settlement/reporting platform.
- 5) Should the State of Georgia require development needs of unique functionalities outside of certification, the the State of Georgia will be billed \$85 per hour of programming needed.
- 6) On-site service, outside of training provided by the Account Manager, will be billed at a rate of \$70 per hour. Travel related costs will be passed through to the State of Georgia.

**Data File Manager Terms and Conditions**

Client has requested access to certain detailed information including without limitation, full or truncated credit card number, expiration date, Address Verification System (AVS) response, CIN response, and information about the order, including items being purchased, dollar amounts, shipping service purchased (Overnight, 2 day, ground).

Client hereby assumes any and all liability and responsibility for ensuring the data retrieved from First Data File Gateway Mailbox is transmitted to and deposited onto Client's computing environment in a manner which is compliant with data security and PCI-DSS requirements.

Client shall notify Servicers and hereby agrees to include any third party services they utilize to review or provide the data to within the scope of Client's PCI-DSS assessments.

**Merchant Initials** \_\_\_\_\_

**Wells Fargo Merchant Services, L.L.C. - ("WFMS") - Pricing Terms**

State of Georgia

Proposal Date: 07/13/17

eReceivables Consultant: Richard Toomey

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MCC Code	Various - Refer to "Additional Notes" Section of Pricing Terms
MCC Description	Various - Refer to "Additional Notes" Section of Pricing Terms
American Express® Industry Type	N/A
Communications Method	Frame Relay / IPN / Dial
Gateway	Other Gateway - Direct Bill to Client / WFMM EMV / Clover Mini/Mobile Only
Pricing Option	<b>Interchange + Assessments + Access Fees + Authorizations</b>

Processing Solutions			
Type	Quantity	Financing Method	Total w/o TAX
FD130 EMV		Purchase	\$247.00 per terminal
FD130 DUO		Purchase	\$192.00 per terminal
FD-410 GPRS EMV (Wireless)		Purchase	\$413.00 per terminal
FD-400GT CDMA EMV (Wireless)		Purchase	\$573.00 per terminal
First Data 200Ti		Purchase	\$412.00 per terminal
FD35 EMV PIN Pad		Purchase	\$148.00 per PIN Pad
Wells ROAM EMV Mobil Rdr		Purchase	\$63.00 per reader
WFMM EMV NFC Mobile Reader		Purchase	\$80.00 per reader
Clover Station (Without Cash Drawer):		Purchase	\$712.00 per station
Clover Cash Drawer		Purchase	\$64.00 per drawer
Clover Mini WIFI <sup>14</sup>		Purchase	\$445.00 per terminal
Clover Mini WIFI & 3G <sup>14</sup>		Purchase	\$500.00 Per terminal
Clover Mobile WIFI & 3G <sup>14</sup>		Purchase	\$570.00 Per Station
Clover Mobile HYG Printer		Purchase	\$150.00 per printer
Clover Mobile Docking Station		Purchase	\$97.00 per station
FD40 PIN Pad		Purchase	\$184.00 per PIN Pad
FD130 EMV		48 month lease	\$15.00 per terminal
FD130 DUO		48 month lease	\$14.00 per terminal
FD-410 GPRS EMV (Wireless)		48 month lease	\$18.00 per terminal
FD-400GT CDMA EMV (Wireless)		48 month lease	\$18.00 per terminal
First Data 200Ti		48 month lease	\$18.00 per terminal
FD35 EMV PIN Pad		48 month lease	\$8.00 per PIN Pad
FD130 EMV		36 month lease	\$18.96 per terminal
FD130 DUO		36 month lease	\$17.96 per terminal
FD-410 GPRS EMV (Wireless)		36 month lease	\$23.96 per terminal
FD-400GT CDMA EMV (Wireless)		36 month lease	\$23.96 per terminal
First Data 200Ti		36 month lease	\$23.96 per terminal
FD35 EMV PIN Pad		36 month lease	\$9.96 per PIN Pad
Clover Station (Without Cash Drawer):		36 month lease	\$33.96 per station
Clover Cash Drawer		36 month lease	\$4.96 per drawer
Clover Mini WIFI <sup>14</sup>		36 month lease	\$20.96 per terminal
Clover Mini WIFI & 3G <sup>14</sup>		36 month lease	\$23.96 Per terminal
Clover Mobile WIFI & 3G <sup>14</sup>		36 month lease	\$24.96 per terminal
Clover Mobile HYG Printer		36 month lease	\$6.96 per printer
FD40 PIN Pad		36 month lease	\$10.96 per PIN Pad
FD130 EMV		Rental	\$59.99 per terminal
FD130 DUO		Rental	\$54.99 per terminal
FD-410 GPRS EMV (Wireless)		Rental	\$69.99 per terminal
FD-400GT CDMA EMV (Wireless)		Rental	\$69.99 per terminal
First Data 200Ti		Rental	\$64.99 per terminal
FD35 EMV PIN Pad		Rental	\$24.99 per PIN Pad

\*Prices and equipment availability are subject to change without notice.

Merchant Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1)**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of (name of public employer) has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

36564 and 41837  
Federal Work Authorization User Identification Number

11/28/06 and 12/9/11  
Date of Authorization

Wells Fargo + Company  
Name of Contractor

Banking Services, Merchant Card + Prepaid Card Services  
Name of Project

State of Georgia and Investment Services  
Name of Public Employer

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

Executed on July, 18, 2017 in Phx (city), Az (state).

Rebecca L Sanchez  
Signature of Authorized Officer or Agent

Rebecca L. Sanchez / HR Delivery + Service Mgr  
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME  
ON THIS THE 18<sup>th</sup> DAY OF July, 2017.

Elva Martinez  
NOTARY PUBLIC

My Commission Expires:  
April 14, 2021

