

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

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

**2.1** You will be authorized to refuse to accept for payment either Non-PIN Debit Cards or Credit Cards that are issued within the United States. You will, however, continue to be obligated to accept all foreign issued Credit or Debit Cards issued by MasterCard, Visa or Discover Network so long as you accept any type of MasterCard, Visa or Discover Network branded Card.

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

**2.3** To the extent that you inadvertently or unintentionally accept a transaction that you are not registered to accept, such transaction will downgrade and you will be charged the Rate 3 or, if you are utilizing the Enhanced Recovery Reduced Discount option, you will be charged the Enhanced Recovery Reduced Rate on the volume of said transaction that Merchant was not registered to accept, in addition to the difference between the MC/Visa Rate 1 agreed to in your Merchant Application and the actual interchange rate assessed to the downgraded transaction.

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

**2.5** Even if you elect not to accept Non-PIN Debit Card transactions as provided above, you may still accept PIN Debit Card transactions if you have signed up for PIN Debit Card Services.

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

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

## **5 Data Security**

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

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

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

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

The PCI Data Security Standard and detailed information including the PCI Self-Assessment Questionnaire which you should complete, can be found at the PCI Data Security Counsel's website: [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)

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

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

The PCI Data Security Standard and information about DISC can be found at Discover Network's DISC website: [http://www.discovernetwork.com/resources/data/data\\_security\\_overview.html](http://www.discovernetwork.com/resources/data/data_security_overview.html).

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

(a) You must install and maintain a secure network firewall to protect data across public networks; (b) You must encrypt stored data and data sent across networks; (c) You must use and regularly update anti-virus software and keep security patches up-to-date; (d) You must restrict access to data by business "need to know", assign a unique ID to each person with computer access to data and track access to data

by unique ID; (e) Don't use vendor-supplied defaults for system passwords and other security parameters; (f) You must regularly test security systems and processes; (g) You must maintain a policy that addresses information security for employees and contractors; (h) You must restrict physical access to Cardholder information; (i) You may not transmit Cardholder account numbers to Cardholders for Internet transactions; (j) You cannot store or retain Card Validation Codes (three-digit values printed in the signature panel of most Cards, and a four-digit code printed on the front of an American Express Card); (k) You cannot store or retain Magnetic Stripe data, PIN data or AVS data. Only Cardholder account number, Cardholder name and Cardholder expiration date can be retained subsequent to transaction authorization; (l) You must destroy or purge all Media containing obsolete transaction data with Cardholder information; (m) You must keep all systems and Media containing Card account, Cardholder, or transaction information (whether physical or electronic) in a secure manner so as to prevent access by, or disclosure to any unauthorized party; and (n) For Internet transactions, copies of the transaction records may be delivered to Cardholders in either electronic or paper format.

**5.3** You may be subject to and we retain the right to conduct an audit performed by us or a third party designated by us to verify your compliance with security procedures and these Operating Procedures.

**5.4** In the event that transaction data is accessed or retrieved by any unauthorized person or entity, contact us immediately, and in no event more than 24 hours after becoming aware of: (i) any suspected or actual data security breach; and (ii) any noncompliance by you with the security requirements.

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

#### **5.6 Required Information for Discover Network Security Breaches**

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

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

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

#### **6 Operating Procedures; Association Rules**

Our Agreement with you includes Operating Procedures which contain procedures, instructions and other directives relating to Card transactions. If you fail to follow any of the provisions of the Operating Procedures, you may incur certain liabilities or we may terminate the Agreement. You will receive the Operating Procedures at the time you sign your Merchant Agreement and you may request additional copies at anytime from your sales representative or by calling customer service. You agree that if you process Card transactions, you will comply with the Operating Procedures for all transactions you process.

#### **7 Settlement Of Card Transactions**

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

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

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

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

**7.5** In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 14) occur, we may, with or without notice, change processing or payment terms and/or suspend Credits or other payments of any and all funds, money and amounts now due or hereafter to become due to you pursuant to the terms of this Agreement, until we have had reasonable opportunity to investigate such event.

#### **8 Exclusivity**

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

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

**9.1** You acknowledge that for Visa, MasterCard and Discover Network transactions, we will process your Card transactions at the Rate 1 Discount Rate only when your transactions meet certain criteria set by the applicable Association and us. When your Card transactions fail to meet those qualification criteria, we will process your transactions at the higher Rate 3 Discount Rate (or, in certain circumstances, at an intermediate Rate 2 Discount Rate) indicated in this Merchant Application and Agreement. The current requirements for the Rate 1 Discount Rate and, if applicable, the Rate 2 and Rate 3 Discount Rates will be provided to you upon signing of the Merchant Application and Agreement. You may also request a copy at any time you're your sales representative or by calling customer service.

**9.2** All authorization fees will be charged for each transaction that you attempt to authorize. All capture fees will be charged for each transaction that you transmit to us for settlement.

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

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

**9.5** Subject to Section 14.3, we may also increase our fees for Services for any other reason by notifying you twenty (20) days prior to the effective date of any such change.

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

**9.7** To the extent the Automated Clearing House (ACH) settlement process is used to effect debits or credits to your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association, as in effect from time to time. You hereby authorize us to initiate credit and debit entries and adjustments to your account through the ACH settlement process

and/or through direct instructions to the financial institution where your Settlement Account is maintained for amounts due under this Agreement and under any agreements with us or our affiliates for any related services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to effect all such debits and credits to your account. This authority will remain in full force and effect until we have given written notice to the financial institution where your Settlement Account is maintained that all monies due under this Agreement and under any other agreements with us or our affiliates for any related services have been paid in full.

**9.8** You agree to pay any fines imposed on us by any Association resulting from Chargebacks and any other fees or fines imposed by an Association with respect to your acts or omissions.

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

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

## **10 Chargebacks**

**10.1** You shall be responsible for reimbursing us for all transactions you submit that are charged back. See the Operating Procedures for additional information regarding Chargebacks and Chargeback procedures.

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

## **11 Representations; Warranties; Limitations On Liability; Exclusion Of Consequential Damages**

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

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

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

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

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

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

**11.1.6** You have no knowledge or notice of any fact, circumstances or defense which would indicate that the Card transaction was

fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectibility of the Cardholder's obligation arising from such Card transaction or relieve the Cardholder from liability with respect thereto;

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

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

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

**11.2** THIS AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE 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.

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

**11.4** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 11.5 or 17), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED: (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THE AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.

**11.5** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 17), OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS, AS ESTABLISHED BY THE FEDERAL RESERVE BOARD FROM TIME TO TIME, LESS ONE PERCENT (1%).

## **12 Confidentiality**

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

**12.2** You acknowledge that you will not obtain ownership rights in any information relating to and derived from Card transactions.

### **13 Assignments**

**13.1** Any transfer or assignment of this Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable by us. Furthermore, you shall indemnify and hold us harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's Submission of Card transactions to us for processing. For purposes of this Section 13, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

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

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

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

**13.4** 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.

### **14 Term; Events Of Default**

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

**14.2** The initial term of this Agreement shall commence and shall continue in force for three years after it becomes effective. Thereafter, it shall continue until either party terminates the Agreement upon written notice to the other.

**14.3** Notwithstanding the above or any other provisions of this Agreement, we may terminate this Agreement at any time and for any reason by providing 30 days' advance notice to you. We may terminate this Agreement immediately or with shorter notice upon an Event of Default as provided under Section 14.4 of this Agreement. In the event we provide notice to you of an increase in the fees for Services, pursuant to Section 9.5, you may terminate this Agreement without further cause or penalty by providing us 30 days advance written notice of termination. You must terminate within 30 days after we provide notice of the Section 9.5 fee increase. The Section 9.5 fee increase shall not take effect in the event you provide timely notice of termination. However, your continued use of our Services after the effective date of any increase shall be deemed acceptance of the increased fees for Services, throughout the term of this Agreement.

**14.4** If any of the following events shall occur (each an "Event of Default"): (a) a material adverse change in your business, financial condition, business procedures, prospects, products or services; or (b) any assignment or transfer of voting control of you or your parent; or (c) a sale of all or a substantial portion of your assets; or (d) irregular

Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, of any Card Association, or any other entity, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or (e) any of your representations or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or (f) you shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 15; or (g) you shall default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our affiliates; or (h) you shall default in the payment when due, of any material indebtedness for borrowed money; or (i) you shall file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or (j) your independent certified accountants shall refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries; or (k) a violation by you of any applicable law or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury or your breach, as determined by Servicers, of Section 24.2 ("Compliance with Laws");

then, upon the occurrence of: (1) an Event of Default specified in items (d), (i), or (k), we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you; and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

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

**14.6** If any Event of Default shall have occurred and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, and this Agreement including, without limitation, exercising our rights under Section 15.

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

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



hold us harmless from and against any and all claims which you may have as a result of such reporting.

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

#### **14.10 Early Cancellation Fee**

If: (a) you elect to cancel this Merchant Application and Agreement prior to the expiration of the initial thirty-six (36) month term; or (b) this Merchant Application and Agreement is terminated by us prior to the expiration of the initial term due to an Event of Default, we will suffer a substantial injury for which it is impracticable or extremely difficult to fix actual damages. In an effort to liquidate in advance the sum that should represent such damages, you agree to pay us as an "Early Cancellation Fee" in the amount indicated on page 2 of your Merchant Application. This sum represents a reasonable pre-estimate of the losses that we will incur as a result of the cancellation of this Merchant Application and Agreement prior to the expiration of the initial thirty-six (36) month term of the Merchant Application and Agreement.

#### **15 Reserve Account; Security Interest**

**15.1** You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 15. The amount of such Reserve Account shall be set by us, in our sole discretion, based upon your processing history and the potential risk of loss to us as we may determine from time to time.

**15.2** The Reserve Account shall be fully funded upon three (3) days' notice to you, or in instances of fraud or suspected fraud or an Event of Default, Reserve Account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to your Settlement Account or any other accounts held by Bank or any of its affiliates, at any financial institution vested in the name of Merchant, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account; (ii) any payments otherwise due to you, including any amount due from TeleCheck; (iii) your delivery to us of a letter of credit; or (iv) if we so agree, your pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination or expiration of this Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination or expiration of this Agreement or for such longer period of time as is consistent with our liability for Card transactions and Chargebacks in accordance with Association Rules. Your funds will be held in an account commingled with reserve funds of our other Merchants, without involvement by an independent escrow agent. Unless specifically agreed in writing by us or specifically required by applicable law, funds held by us in a Reserve Account shall not accrue interest.

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

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

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

**15.3.2** To the extent funds are held in a separate reserve account, the Reserve Account shall be subject to: (i) Servicers' security interest pursuant to this subsection 15.3; and (ii) an account control agreement (as defined by the applicable sections of the Uniform Commercial Code, hereinafter referred to as "Control Agreement") among you, the institution at which the reserve account is held (such institution hereinafter referred to as "Depository") and Servicers (such investment account hereinafter referred to as the "Control Account"). The Control Agreement shall be in form and substance satisfactory to Servicers. The Depository shall be a National Association bank which is mutually acceptable to you and Servicers.

**15.3.3** For sake of clarification and notwithstanding anything in the Agreement to the contrary, in the event Servicers deduct, holdback, suspend, off set or set off (collectively "Set Off Funds") any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement, you acknowledge that such Set Off Funds will be held in a commingled reserve account(s) of Servicers (as described in this subsection 15.3) unless such Set Off Funds are wired or deposited by Servicers into any Control Account, pursuant to a Control Agreement in which case Servicers will transfer Set Off Funds from their commingled reserve account(s) to the Control Account as soon as practicable using commercially reasonable efforts.

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

#### **16 Financial And Other Information**

~~16.1~~ Upon request, you will provide us quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of the financial and credit status of you. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide to us or our representatives reasonable access to your facilities and records for the purpose of performing any inspection and/or copying of your books and/or records deemed appropriate.

**16.2** You will provide us with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three (3) days after you become aware of same.

#### **17 Indemnification**

**17.1** You agree to indemnify and hold us harmless from and against all losses, liabilities, damages and expenses: (a) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by you under this Agreement; (b) arising out of your or your employees' or your agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders; (c) arising out of your

use of our Service; or (d) arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Association or Issuer).

**17.2** We agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement.

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

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

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

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

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

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

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

**18.6** If you accept Voyager Cards:

- In addition to the information stated in Section 1 (MasterCard and Visa Acceptance) of the Operating Procedures, you should check Fleet Cards for any printed restrictions at the point of sale.
- In addition to the information provided under Section 1.5 (Special Terms) of the Operating Procedures, you shall establish a fair policy for the exchange and return of merchandise. You shall promptly submit credits to us for any returns that are to be credited to a Voyager Card holder's account. Unless required by law, you shall not give any cash refunds to any Voyager Card holder in connection with a sale.
- In addition to the information required under Section 3.1 (Information Required) of the Operating Procedures, the following information must be contained on the single page document constituting the Sales Draft for Voyager transactions:
  - Time of transaction
  - Type of fuel sold
  - As permitted by the applicable POS device, odometer reading
  - For all cashier-assisted sales drafts and credit vouchers processed manually using a card imprinter if required, the identification number
- If an increase in the number of Voyager transaction authorization calls from you not due to our or Voyager system outages in excess of 15% for a given month as compared to the previous month occurs, we may, in our discretion, deduct telephone charges, not to exceed \$.25 (25 cents) per call, for the increased calls, from your settlement of your Voyager transactions.

- In addition to the information provided under Section 6 (Settlement) of the Operating Procedures, settlement of Voyager transactions will generally occur by the fourth banking day after we process the applicable card transactions. We shall reimburse you for the dollar amount of sales submitted for a given day by you, reduced by the amount of chargebacks, tax exemptions, discounts, credits, and the fees set forth in the Merchant Application. Neither we nor Voyager shall be required to reimburse you for sales submitted more than sixty (60) days from the date of purchase.

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

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

- In addition to the information provided under Section 11 (Representations; Warranties; Limitations of Liability; Exclusion of Consequential Damages), in no event shall our cumulative liability to you for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions the other exceed the lesser of \$10,000.00 or the Voyager transaction fees paid by you to us for the two months prior to the action giving rise to the claim.

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

## **19 Special Provisions For PIN Debit Card**

The special provisions outlined in this Section 19 apply only to those PIN Debit Card transactions that are processed by a Cardholder entering a PIN. These provisions do not apply to Non-PIN Debit Card transactions which do not involve entry of a PIN.

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

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

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

- All debit transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for PIN Debit Card transactions.

- You may not complete a PIN Debit Card transaction that has not been authorized. If you cannot obtain an Authorization at the time of sale, you should request another form of payment from the customer or process the transaction as a Store and Forward or Resubmission, in which case you assume the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuer to find out why a transaction has been declined.

- You may not complete a PIN Debit Card transaction without entry of the Personal Identification Number (PIN) by the Cardholder. The PIN must be entered into the PIN pad only by the Cardholder. You cannot accept the PIN from the Cardholder verbally or in written form.

- The PIN Debit Network used to process your transaction will depend upon, among other things, the availability of the network at the time of the transaction, whether a particular PIN Debit Card is enabled for a particular network and the routing requirements established by the networks and the card issuers. We may, at our sole discretion, utilize any PIN Debit Network available to us for a given transaction.

- You must issue a receipt to the Cardholder upon successful completion of a transaction. The Cardholder account number will be masked so that only the last four digits will appear. The masked digits will appear as a non-numeric character such as an asterisk. This is referred to as PAN truncation.

- You may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, you must request another form of payment from the customer.

- Any applicable tax must be included in the total transaction amount for which Authorization is requested. Tax may not be collected separately in cash.

- YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING REFUNDS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.

**19.3 Cash Back From Purchase.** You have the option of offering cash back to your customers when they make a PIN Debit Card purchase. You may set a minimum and maximum amount of cash back that you will allow. If you are not now offering this service, your terminal may require additional programming to begin offering cash back.

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

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

There are several reasons for adjustments being initiated:

- The Cardholder was charged an incorrect amount, either too little or too much.

- The Cardholder was charged more than once for the same transaction.

- A processing error may have occurred that caused the Cardholder to be charged even though the transaction did not complete normally at the point of sale.

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

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

If you elect to engage in EBT transactions, the terms and conditions of this Section 20 shall apply.

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

by EBT customers unless you also designate special checkout lanes for debit or Credit Cards and/or other payment methods.

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

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

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

**20.2 Manual EBT Vouchers.** All manual voucher authorizations must be [cleared] on your POS terminal for payment of voucher to be made to you. Vouchers must be [cleared] within 10 business days of voice authorization. Vouchers cannot be [cleared] by any manner except by your POS terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been [cleared] by your POS for payment, no further action can be taken to obtain payment for the voucher. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to sign the voucher. A copy of the voucher should be given to the EBT customer at the time of authorization and you should retain one copy for your records.

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

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

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

**20.6 Term and Termination.** If you are disqualified or withdrawn from the food stamp program, your authority to issue benefits will be terminated contemporaneously therewith. Such disqualification or withdrawal will be deemed a breach of this Agreement with respect to your authority to issue Cash Benefits and, in the event of such disqualification; we shall have the right to immediately terminate the provision of service under this Section 20.6 or the Agreement in its entirety. With respect to the issuance of Cash Benefits only, your authority to issue Cash Benefits may be suspended or terminated immediately at the sole discretion of us, the state or its EBT service provider, effective upon delivery of a notice of suspension or termination

specifying the reasons for such suspension or termination if there shall be: i) any suspension, injunction, cessation, or termination of the EBT service provider's authority to provide EBT services to the state; ii) failure by you, upon not less than thirty (30) days prior written notice, to cure any breach by you of the provisions of these terms and conditions, including without limitation, your failure to support the issuance of benefits during your normal business hours consistent with your normal business practices, your failure to comply with issuance procedures, impermissible acceptance of an EBT Card, or your disqualification or withdrawal from the food stamp program; or iii) based on a state's or its EBT service provider's investigation of the relevant facts, evidence that you or any of your agents or employees are committing, participating in, or have knowledge of fraud or theft in connection with the dispensing of benefits. In the event you fail to cure any breach as set forth above, you may appeal such suspension or termination to the applicable state for determination in its sole discretion.

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

The provision of services under this Section 20.6 shall terminate automatically in the event that our Agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

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

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

The use of information obtained by you in the performance of your duties under this Section 20.7 will be limited to purposes directly connected with such duties.

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

## **20.9 Miscellaneous**

**20.9.1 Amendments.** If any of these terms and conditions are found to conflict with federal or state law, regulation or policy of the rules, these terms and conditions are subject to reasonable amendment by a state or its EBT service provider to address such conflict upon thirty (30) days written notice to you provided that you may, upon written notice, terminate your obligation under this Section 20 upon receipt of notice of such amendment.

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

## **21 Special Provisions Regarding Wireless Service**

If you elect to purchase any Wireless Equipment from us as indicated on the Application, then the following terms and conditions of this Section 21, referred to as the Wireless Services Terms, shall apply. THE WIRELESS SERVICES ARE NOT BEING SOLD TO YOU FOR HOME OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank.

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

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

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

**21.1 Purchase of Wireless Services.** In connection with your purchase of Wireless Equipment, you will purchase the Wireless Networks' service and obtain sublicenses to use any Wireless Software (as defined in Section 21.2) associated therewith (collectively "Wireless Services"). The prices that you will pay for the Wireless Services are set forth on the Schedule of Fees.

- **Licenses.** You agree to obtain any and all licenses, permits or other authorizations required by the Federal Communications Commission ("FCC") or any other regulatory authority, if any, for the lawful operation of Wireless Equipment used by you in connection with your receipt of Wireless Services. You will promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.

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

**21.2 Software Licenses.** We hereby grant to you a non-exclusive, non-transferable limited sublicense to use any Wireless Software solely in connection with your purchase and use of the Wireless Services. As used in this Section 21, "Wireless Software" means all software used in, for or in connection with the Wireless Equipment, the Wireless Services or the access thereto in whatever form, including without limitation source code, object code and microcode, including any computer programs and any documentation relating to or describing the Wireless Software. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this section.

**21.3 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 21.10, or for any third party's unauthorized access to Merchant's data transmitted through either the Wireless Equipment or Wireless Services, or Wireless Networks, regardless of the form of action (whether in contract, tort (including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services Terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor's, Bank's, and Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services. In no event shall Servicers, Wireless Vendor(s) or our respective affiliates be liable for any indirect incidental, special or consequential damages. The remedies available to you under these Wireless Services Terms will be your sole and exclusive remedies.

**21.4 Indemnification.** In addition to any other indemnifications as set forth in this Agreement, you will indemnify and hold Servicers, Vendor(s) and our respective officers, directors, employees, and affiliates harmless from and against any and all losses, claims, liabilities, damages, costs or expenses arising from or related to: (a) the purchase, delivery, acceptance, rejection, ownership, possession, use condition, liens against, or return of the Wireless Services; (b) your negligent acts or omissions; (c) any breach by you of any of your obligations under this Section 21; or (d) any third party's unauthorized access to Merchant's data and/or unauthorized financial activity occurring on your Merchant Account Number hereunder, except to the extent any losses, liabilities,



damages or expenses result from our gross negligence or willful misconduct.

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

**21.6 Termination.** In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 21 may terminate:

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

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

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

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

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

**21.10 Disclaimer.** Wireless Services use radio transmissions, so Wireless Services can't be provided unless your Wireless Equipment is in the range of one of the available Wireless Networks' transmission sites and there is sufficient network capacity available at that moment. There are places, particularly in remote areas, with no service at all. Weather, topography, buildings, your Wireless Equipment, and other conditions we don't control may also cause failed transmissions or other problems. PROCESSOR, BANK, AND VENDOR(S) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATING TO WIRELESS SERVICES. WE CANNOT PROMISE UNINTERRUPTED OR ERROR-FREE WIRELESS SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF.

## **22 Waiver Of Jury Trial**

**22.1 Waiver of Jury Trial.** ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.

## **23 Other Provisions**

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

## **24 Other Terms**

**24.1 Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by: (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other

equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment or funds from a third party shall not excuse the performance of your obligations to us under this Agreement.

**24.2 Compliance with Laws.** In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it. You further agree to cooperate and provide information requested by Servicers, as Servicers determine necessary, to facilitate Servicers compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury.

**24.3 Notices.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier), if to you at your address appearing in the Application and if to us at P.O. Box 5180, Simi Valley, CA 93062, facsimile: 805-552-8899, with a copy to Attention: Counsel's Office, 6101 Condor Drive, Moorpark, CA 93021, and shall be deemed to have been given: (i) if sent by mail or courier, when received; 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.

**24.4 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.

**24.5 Severability.** The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

**24.6 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.

**24.7 Amendment.** We may modify any provision of this Agreement by providing written notice to you of any amendment at least twenty (20) days prior to the effective date of the amendment. You may choose not to accept the requirements of any such change by terminating the Agreement within twenty (20) days of receiving notice. However, for changes in the Association Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any Early Cancellation Fee that might otherwise apply. For purposes of this section, an electronic or "click-wrap" notice intended to modify or amend this Agreement and which you check "I Accept" or "I Agree" or otherwise accept through an electronic process, shall constitute a writing as required herein.

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

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

## **25 Glossary**

As used in the Merchant Agreement and Operating Procedures, the following terms mean as follows:

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

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

**Agreement:** The agreements among Merchant, Processor and Bank contained in the Application, the Operating Procedures and the Schedules thereto and documents incorporated therein, each as amended from time to time, which collectively constitute the Agreement among the parties.

**Application:** See Merchant Application.

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

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

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

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

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

**Bank:** The bank identified on the application signed by you.

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

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

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

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

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

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

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

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

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

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

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

**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.

**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.

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

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

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

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

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

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

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

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

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

**Discount Rate:** An amount charged for processing credit Card transactions or Signature Debit Transactions. Discount Rates are charged on all sales and refunds. The discount rates for Rate 2 and Rate 3 transactions are higher as described in Section 9.1 and the Schedule of Fees) section of the Merchant Application and Agreement.

**Downgrade Fee:** An additional fee applied per settled item for transactions that are charged a Rate 2 Discount Rate or Rate 3 Discount Rate.

**Early Cancellation Fee:** A fee in the amount indicated on page 2 of your Merchant Application, charged in the event that: (a) you elect to cancel this Merchant Application and Agreement prior to the expiration of the initial thirty-six (36) month term of the Merchant Application and Agreement; or (b) this Merchant Application and Agreement is terminated prior to the expiration of the initial thirty-six (36) month term due to an Event of Default, except as provided in Section 14.3.

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

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

**Enhanced Recovery Reduced Rate:** A surcharge applied to any transaction that fails to qualify for the anticipated discounted interchange program in the MC/Visa Qualified Rate referenced in the Service Fee Schedule and is therefore downgraded to a lower discounted interchange program. This is in addition to the difference between the MC/Visa Discount Qualified Rate agreed to in the Service Fee Schedule and the actual discounted interchange rate assessed to the downgraded transaction, which is also your responsibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Servicers:** Bank and Processor collectively. The words "us" and "we" refer to Servicers.

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

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

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

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

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

**Summary Adjustment:** An adjustment to your Submission and/or Settlement Accounts in order to correct errors. (See Sections 9.3 and 9.4 of the Operating Procedures).

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

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

**Us, We:** See Servicers.

**You, Your:** See Merchant.

### Third Party Agreement(s)

The following Agreement(s) are Third Party Agreement(s) entered into between Merchant and the Third Parties identified in the Third Party Agreement(s).

If Merchant desires to receive the products and/or services offered under a Third Party Agreement, Merchant must check the appropriate box or otherwise indicate such desire in the Merchant Application, page three (3) in which case the terms and conditions of the Third Party Agreement shall be binding upon Merchant. The signature page in the Merchant Application and Agreement shall also serve as a signature page to the Third Party Agreement(s). Merchant acknowledges that the Third Parties are relying upon the information contained on the Merchant Application, all of which are incorporated by reference into the Third Party Agreement(s).

#### 26. TeleCheck Services, Inc. Agreement

P.O. **Box** **4514**  
**TeleCheck®**  
**Houston, TX 772104514**

#### TERMS AND CONDITIONS

**26.1. Term, Termination and Amendment.** TeleCheck will provide the services, and any specified equipment and maintenance, to this Agreement for an initial term of twelve (12) months from the Effective Date; provided, however, that Merchant may terminate this Agreement if Merchant gives and TeleCheck receives written notice of termination within the first thirty (30) days of the Agreement. Thereafter, this Agreement shall automatically renew for successive twelve (12) month terms until terminated as provided for herein. Merchant may terminate this Agreement at the end of the initial term or any renewal term upon at least thirty (30) days' prior written notice to TeleCheck. In the event TeleCheck changes the rates, fees or warranty limits hereunder, Merchant may terminate this Agreement upon written notice received by TeleCheck from Merchant within thirty (30) days of Merchant's receipt of notice of such change. TeleCheck may terminate this Agreement at any time upon notice to Merchant. TeleCheck reserves the right to amend, at its discretion, the terms and conditions herein, including, without limitation, any addenda, Operational Procedures, and/or rates and fees, by providing Merchant notice thereof and such amendments shall be effective thirty (30) days from the date notice is mailed to Merchant.

**26.2. Definitions.** As used herein the following definitions apply: "check writer" means the drawer of a check; "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 check writer, person, or entity that authorizes an Item; "Dishonored Item" means an Item having received a valid TeleCheck Approval Code pursuant to a Warranty Business Transaction, but which is dishonored upon presentment for payment; "ECA®" means Electronic Check Acceptance®; "ECA Batch" means a collection of saved ECA Business Transactions; "ECA Business Transaction" means a transaction for the contemporaneous purchase of goods or services (including, without limitation, taxes), the payment for which is processed as an ECA transaction; provided, however, it does not include any ECA transactions for cash or payment on an account, debt or check already due Merchant; "Item" means an outstanding financial obligation pursuant to a check, including a check processed as an ECA Business Transaction; "NACHA Rules" means the National Automated Clearing House Association Operating Rules and Guidelines, as amended from time to time, that govern the Automated Clearing House Network; "Operational Procedures" means TeleCheck's published policies and procedures contained in various documents provided to Merchant concerning the services, equipment and maintenance provided pursuant to this Agreement, the terms of which are incorporated in this Agreement as if fully set forth herein; "Returned Item" means any Item not paid by Merchant's financial institution or that fails to comply with the terms and conditions of this Agreement, including the Warranty Requirements; "TeleCheck Approval Code" means that TeleCheck has authorized an Item for warranty coverage under this Agreement pursuant to a Warranty Business Transaction; "TeleCheck Parties" means TeleCheck and its affiliates and their respective officers, directors, employees, shareholders, agents and attorneys; "Warranty Maximum": (a) for an Item processed as a Warranty Business Transaction means the lower of (i) the face amount of the Item; or (ii) the lesser amount set forth on

the face of this Agreement; and (b) for an Item processed as an ECA Business Transaction means the lower of (i) the face amount of the Item; (ii) the lesser amount set forth on the face of this Agreement; or (iii) \$20,000.00; and "Warranty Business Transaction" means a transaction for the contemporaneous purchase of goods or services pursuant to TeleCheck's warranty service program and shall not include checks written for cash or for payment on an account, debt or check already due Merchant.

**26.3. Fees, Rates and Warranty Changes.** Merchant shall pay TeleCheck the fees and rates set forth on the face of this Agreement, attached Rate Schedule, if any, or in the terms and conditions herein, as changed from time to time by TeleCheck, plus all applicable taxes. The "Set Up Fees" First Location and Additional Locations are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck service. The "ECA Conversion Fee" is the fee charged to convert an existing Merchant to the ECA service. The "Inquiry Rate" is the percentage rate set forth in the Rate Schedule which shall apply to each Item which is entered into the TeleCheck system whether by telephone, electronically or otherwise. "December Risk Surcharge" is an additional charge for each December that is: (i) 10 basis points (0.10%); or (ii) the percentage set forth on the face of this Agreement. The "Monthly Minimum Fee" is the minimum amount of inquiry fees that Merchant shall pay on a monthly basis. If the total fees for Merchant's inquiries for any month are less than the Minimum Monthly Fee, then the Minimum Monthly Fee shall apply. "Additional Inquiry Fees" are those fees for inquiries exceeding the dollar volume of inquiries included in the Monthly Minimum fee. The "Monthly Processing Fee" is a monthly fee for handling Merchant's account. The "Charge Per Transaction" is the per transaction charge for all transactions determined by the method by which the transaction is delivered to TeleCheck. The "ECA Charge Per Transaction" is the additional per transaction charge for all ECA transactions for an ECA Merchant. The "Non Imaging Surcharge" is a per transaction charge for every ECA transaction that its not processed using a TeleCheck approved imaging device. The "POS Support Charge" is a monthly fee for point of sale support services. The "Transaction Surcharge" is an additional charge for transactions going over third party networks. The "ECA Chargeback Fee" is a \$5.00 handling fee for each chargeback of an ECA transaction. The "ECA Funding Report Fee" is an additional fee to receive daily or weekly ECA funding reports. The "ECA Correction Fee" is a \$5.00 fee payable on each Item in an ECA Batch that must be corrected due to Merchant error or at the request of the Merchant. The "Customer Requested Operator Call Charge" is an additional charge of \$2.50 per operator assisted call not requested by TeleCheck. The "Recovery Processing Fee" is a \$5.00 charge for each Item that fails to meet Warranty Requirements for which TeleCheck elects, in its discretion, to reimburse Merchant as a "Goodwill Item" for a specific Returned Item. A "Warranty Research Fee" of \$7.50 will be charged each time Merchant requests substantiation of a warranty payment/nonpayment. These above fees are in addition to any fees charged by TeleCheck to Merchant under any other agreement.

#### 26.4. Payment, Security Interest.

**26.4.1. Payment.** All fees and charges are due upon receipt. Merchant authorizes TeleCheck to debit from Merchant's financial institution account as provided to TeleCheck by Merchant, all payments and other amounts owed (including, without limitation, all chargebacks, ECA Chargeback Fees and Returned Item Fees) to TeleCheck or its affiliates under this Agreement or any other agreement between Merchant and TeleCheck or its affiliates, and to credit all amounts owing to Merchant under this Agreement to Merchant's financial institution account. If there are insufficient funds in Merchant's financial institution account to pay amounts owed to TeleCheck or its affiliates, or if there are any amounts otherwise not paid by Merchant when due, including, without limitation, delinquent fees, chargebacks or rejected and reassigned warranty items, Merchant shall immediately reimburse TeleCheck or its affiliates upon demand, or at TeleCheck's option, TeleCheck may offset such amounts against any amounts due Merchant from TeleCheck or its affiliates under this Agreement or any other agreement between Merchant 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 fifteen (15) days delinquent. TeleCheck shall have the right to suspend all services and obligations to Merchant, including the payment of all warranties due and all transactions previously authorized, during any period in which Merchant's account is delinquent. Merchant agrees to pay to

TeleCheck a \$25.00 fee for any check or ACH debit that is not paid by Merchant's financial institution upon presentment.

**26.4.2. Security Interest.** To secure Merchant's obligations to TeleCheck and its affiliates under this Agreement and any other agreement for the provision of related equipment or services (including any check or credit card processing services), Merchant grants to TeleCheck a lien and security interest in and to any of Merchant's funds pertaining to the transactions contemplated by this Agreement now or hereafter in the possession of TeleCheck or its affiliates, whether now or hereafter due or to become due to Merchant from TeleCheck. Any such funds, money or amounts may be commingled with other funds of TeleCheck, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other Merchants 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 Merchant at any time and from time to time, without notice or demand to Merchant 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 Merchant's obligations to TeleCheck and its affiliates under this Agreement and any other agreement with TeleCheck or any of its affiliates, including, without limitation, fees from any related equipment or related services (including any check or credit card processing services, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured). Merchant agrees to duly execute and deliver to TeleCheck such instruments and documents as TeleCheck may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

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

#### **26.6. Terms Applicable Only to the TeleCheck Verification Service**

**The terms in section 26.6.1. apply only if Merchant uses the TeleCheck verification service.**

**26.6.1. Verification Service.** The sole purpose of the TeleCheck verification service is to provide coded information to assist Merchant in deciding whether or not to accept an Item. TeleCheck does not guarantee the accuracy or completeness of the information and Merchant agrees that there shall be no payment to Merchant by TeleCheck for any loss from transactions processed through the verification service and that Merchant assumes all risks that Items accepted by it may be dishonored. The Warranty Maximum on any Item processed through the TeleCheck verification service shall be zero. Merchant shall only report Items to TeleCheck if the Items were made payable to Merchant.

#### **26.7. Additional Terms Applicable Only to the TeleCheck Electronic Check Acceptance Service**

**The terms in sections 26.7.1. through 19.7.3. apply only if Merchant uses the TeleCheck Electronic Check Acceptance**

**service. The terms in such sections do not apply to Warranty Business Transactions that are not ECA Business Transactions.**

**26.7.1. ECA Processing.** Merchant shall not submit to TeleCheck for processing any ECA transaction exceeding \$20,000.00. For each ECA Business Transaction that TeleCheck issues a TeleCheck Approval Code, TeleCheck shall, via an electronic funds transfer, effect a credit to Merchant's financial institution account for the amount of such transaction as part of an ECA batch credit. Such credit shall typically occur within two banking days following Merchant's regular closeout of the point of sale terminal and transmission to TeleCheck for processing the saved ECA Batch, provided that the ECA Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. Such credit shall occur regardless of whether or not Consumer's ECA transaction is paid by Consumer's financial institution. TeleCheck reserves the right to decline to process any transaction as an ECA Business Transaction. In the event any ECA Business Transaction is not funded or otherwise paid by TeleCheck in accordance with this section 26.7.1., Merchant is required to notify TeleCheck thereof in writing within thirty (30) days from the date of such ECA Business Transaction. If Merchant fails to notify TeleCheck within said thirty (30) day period, TeleCheck shall have no liability and Merchant is precluded from asserting any claims, damages or losses relating to TeleCheck's failure to fund such ECA Business Transaction.

**26.7.2. Retention of ECA Authorization Receipts.** Merchant shall cause the Consumer to sign an ECA authorization receipt in a form approved by TeleCheck prior to submission of each ECA Business Transaction to TeleCheck for processing. Merchant shall maintain the signed ECA authorization receipt for a minimum period of two (2) years from the date of the transaction or for the period specified by the NACHA Rules, whichever is longer. Merchant also agrees to comply with and be bound by all NACHA Rules. Within seven (7) days of TeleCheck's request, Merchant shall physically deliver either the original or a legible copy of the signed ECA authorization receipt to TeleCheck. Merchant shall, upon reasonable notice and during normal business hours, permit TeleCheck to audit Merchant for its compliance with this requirement.

**26.7.3. Reserve Account.** Merchant expressly authorizes TeleCheck to establish a reserve account ("Reserve Account") for ECA Business Transactions. The amount of the Reserve Account shall be set by TeleCheck, in its sole discretion, based upon Merchant's processing history and the anticipated risk of loss to TeleCheck.

**26.7.3.1. Funding of Reserve Account.** The Reserve Account shall be fully funded upon three (3) days' notice to Merchant, or in instances of fraud or breach of this Agreement, the Reserve Account may be funded immediately at TeleCheck's election. The Reserve Account may be funded by all or any combination of the following: (a) one or more debits to Merchant's financial institution (and TeleCheck is hereby authorized to make such debits; (b) one or more deductions or offsets to any payments otherwise due to Merchant from TeleCheck or any of its affiliates; or (c) Merchant's delivery to TeleCheck of a letter of credit. Any such letter of credit shall be issued or established by a financial institution acceptable to TeleCheck and in a form satisfactory to TeleCheck, both in TeleCheck's discretion. In the event of termination of this Agreement by either Merchant or TeleCheck, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by TeleCheck for ten (10) months after termination of this Agreement. Merchant's funds held in a Reserve Account may be held in a commingled Reserve Account for the reserve funds of TeleCheck's Merchants, without involvement by an independent escrow agent, and shall not accrue interest.

**26.7.3.2. Insufficient Funds.** If Merchant'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 Merchant to TeleCheck or its affiliates, or if the funds in the Reserve Account have been released, Merchant shall immediately pay TeleCheck such sums upon request. In the event of a failure by Merchant to fund the Reserve Account, TeleCheck may fund such Reserve Account in the manner set forth in section 26.7.3.1.

#### **26.8. Terms Applicable Only to the Warranty and Electronic Check Acceptance Services**

**The terms in section 26.8.1. through 19.8.7. shall apply only if Merchant uses the warranty or ECA Services and do not apply to the TeleCheck Electronic Check Acceptance Services.**



**26.8.1. Warranty.** The sole purpose of the TeleCheck paper warranty and Electronic Check Acceptance service programs are to provide information and processing services to Merchant. TeleCheck warrants the accuracy of its information provided that all requirements set forth in the Warranty Requirements in section 26.8.2. are strictly met. A Dishonored Item shall be deemed to be a breach of the warranty and as Merchant's sole and exclusive remedy for such breach, Merchant may receive payment of the face amount of the Dishonored Item up to the Warranty Maximum, subject to the terms, conditions, and limitations contained in this Agreement and any addenda hereto. The warranty does not apply where payment has been stopped due to a dispute over goods or services between Merchant and Consumer, or where Merchant has contacted TeleCheck for a TeleCheck Approval Code on more than one check per Warranty Business Transaction.

**26.8.2. Warranty Requirements and ECA Representations.** TeleCheck will reimburse Merchant for one Dishonored Item, up to the Warranty Maximum, per Warranty Business Transaction which meets all of the following applicable requirements, and Merchant represents and warrants with respect to all Warranty Business Transactions and ECA Business Transactions submitted to TeleCheck for processing under this Agreement the following applicable representations:

**a.** The check must be a first party check drawn on a United States, Puerto Rican, Guam or U.S. Virgin Islands financial institution and must be made payable to Merchant. For Warranty Business Transactions only, the check may also be a first party check drawn on a Canadian financial institution and must be made payable to Merchant. The name of the individual or company must be imprinted or typed on the check by the check manufacturer. If P.O. Box is used or address is not imprinted by the check manufacturer, a physical address description must be written on the check according to Operational Procedures;

**b.** Merchant received a completely filled out paper check from the Consumer;

**c.** The Consumer authorized the debiting of Consumer's account and the ECA debit entry is in all respects properly authorized and in an amount agreed to by the Consumer. Merchant received a signed ECA authorization receipt from Consumer and either Consumer or Merchant voided the signed paper check to which the ECA Business Transaction relates;

**d.** Merchant shall have made an inquiry to TeleCheck in strict accordance with Operational Procedures and Merchant must have obtained a single TeleCheck Approval Code for each Item;

**e.** TeleCheck Merchant Number, check writer's telephone number (including area code), a physical address description, identification type and number and TeleCheck Approval Code must all be printed or written on the check for Warranty Business Transactions;

**f.** The Warranty Business Transaction represents an obligation of the Consumer presenting the respective Warranty Business Transaction and the respective transaction is for goods actually sold or rented or services actually rendered for the actual price of such goods or services (including tax and shipping) and does not involve any element of credit for any purpose;

**g.** The signature and physical description of the Consumer on the check and the ECA authorization receipt, if applicable, must reasonably correspond to any signature and description contained in the piece of identification;

**h.** The signature in the signature block on the check must not be substantially different from the name imprinted on the check;

**i.** The date of the check and the ECA Business Transaction, if applicable, must accurately coincide within one (1) calendar day of both: (a) the date of the inquiry call to TeleCheck; and (b) the date the transaction actually occurred. (Checks may not predate or postdate by more than one (1) calendar day the date of the inquiry call and the transaction date.);

**j.** The amount shown in words and figures on the check, and if applicable, the ECA receipt, must match exactly. The amount shown in words and figures on the check must be: (a) less than or equal to the amount entered into the TeleCheck system; or (b) no more than \$1.00 over the amount entered into the TeleCheck system;

**k.** The paper check must have been deposited in Merchant's financial institution account and received by TeleCheck for purchase within thirty (30) days of the date of the check. Such check must be sent directly from Merchant's financial institution after being presented for

payment only once (no representations shall be allowed, whether paper or electronic);

**l.** Merchant has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectibility of the Consumer's obligation or relieve the Consumer from liability; and

**m.** The paper check to which the ECA Business Transaction relates is a personal check and not a business check.

**26.8.2.1. Failure to Satisfy Requirements.** All of the above requirements and representations are material terms of this Agreement. By execution of this Agreement, Merchant acknowledges its full knowledge and understanding of the above requirements and representations as they pertain to the service provided to Merchant under this Agreement. Merchant shall not be entitled to recover any amounts under this Agreement if Merchant fails to timely satisfy any of the terms or conditions of or breaches any representation contained in: (a) section 26.8.2.; or (b) any other terms, conditions or limitations in this Agreement.

**26.8.3. Collection and Returned Item Fees.** TeleCheck shall be entitled to collect from the Consumer and retain any fees or exemplary damages in addition to the amount of the check or ECA Business Transaction, if applicable, which are allowed by law. Merchant shall follow all TeleCheck policies and procedures and post at TeleCheck's direction any notices which in TeleCheck's opinion may be required for TeleCheck to collect any such amounts arising from returned, dishonored or unpaid checks or ECA Business Transactions.

**26.8.4. Assignment of Checks and ECA Business Transactions.** By the execution of this Agreement, Merchant ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Merchant's rights, title and interest in any: (a) check submitted to TeleCheck for coverage under the warranty service program; or (b) ECA Business Transaction submitted by Merchant to TeleCheck under this Agreement. Merchant shall, at TeleCheck's request, in TeleCheck's discretion, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

**26.8.5. Reassignment and Chargeback.** TeleCheck as applicable, may: (i) reassign to Merchant any check purchased by TeleCheck pursuant to the warranty service program provisions of this Agreement; or (ii) chargeback to Merchant and debit Merchant's financial institution account any ECA Business Transaction submitted to TeleCheck for processing pursuant to this Agreement in any of the following circumstances:

**a.** The goods or services, in whole or in part, for which the check was issued or for which the ECA Business Transaction was submitted, have been returned to Merchant, have not been delivered by Merchant or are claimed by the Consumer to have been unsatisfactory or are subject to any dispute, setoff or counterclaim;

**b.** Merchant has received full or partial payment or security in any form whatsoever to secure payment of the: (i) check or the ECA Business Transaction; or (ii) goods or services for which the check or ECA Business Transaction was issued or authorized;

**c.** The transaction for which the check or the ECA Business Transaction was tendered, or transfer to TeleCheck of the check writer's check or the ECA Business Transaction, is for any reason: (i) not permitted by applicable law; or (ii) a court of law determines that the check or ECA Business Transaction is, in whole or in part, not due and payable by the Consumer, unless such determination results from the Consumer's bankruptcy proceeding;

**d.** The check or funds transfer was not issued in connection with a Warranty Business Transaction or an ECA Business Transaction;

**e.** Any of the representations made by Merchant as set forth in section 26.8.2., are or become false or inaccurate;

**f.** Merchant failed to comply with any of the Terms or Conditions of this Agreement;

**g.** Merchant, or any of its owners, agents or employees: (i) materially altered either the check or the ECA authorization receipt; or (ii) accepted the check or processed the ECA Business Transaction with reason to know that the check or the ECA Business Transaction was likely to be dishonored or that the identification used to authorize the check or the ECA Business Transaction was forged, altered or did not belong to the Consumer;

**h.** The ECA authorization receipt was incomplete or unsigned;

i. A duplicate ECA Business Transaction relating to the same ECA Business Transaction was received and processed or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;

j. A legible copy of the ECA authorization receipt is not received by TeleCheck within seven (7) days of a request by TeleCheck;

k. The Consumer disputes authorizing the ECA Business Transaction or the validity or accuracy of the transaction; or

l. Merchant receives notice that Consumer of a Dishonored Item filed bankruptcy and Merchant failed to notify TeleCheck of the bankruptcy within three (3) business days of Merchant's receipt of such notice.

**26.8.5.1.** Merchant shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the check (including a check processed as an ECA Business Transaction) is reassigned as provided herein, TeleCheck may debit Merchant's financial institution account in the amount paid by TeleCheck for the Item, or, upon request, Merchant shall remit the amount of the Item to TeleCheck. TeleCheck may also chargeback to Merchant any amount over the Warranty Maximum on any ECA Business Transaction where TeleCheck has not received payment of such ECA Business Transaction within sixty (60) days of the date of the ECA Business Transaction. Upon reassignment or charging back an Item, TeleCheck shall have no further liability to Merchant on such Items. Following termination of this Agreement, Merchant shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under sections 26.8.5., and 26.8.5.1.

**26.8.6. TeleCheck Approval Code.** Merchant 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.

**26.8.7. "Goodwill" of a Returned Item.** TeleCheck, in its discretion, may voluntarily reimburse a Merchant for a specific Returned Item. TeleCheck's election to reimburse a Returned Item shall not act as a waiver of TeleCheck's right to decline to pay any other Returned Item.

## General Terms

**26.9. Updating Information.** With regard to any items submitted or reported to TeleCheck, Merchant shall promptly notify TeleCheck if: (a) a check writer makes any payment to Merchant on a Dishonored Item; (b) there is a return of goods or services, in whole or in part, which were paid with a Dishonored Item; or (c) there is a dispute of any amount, notice of bankruptcy or any other matter with regard to a Dishonored Item.

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

**26.11. Use of TeleCheck Materials and Marks.** TeleCheck grants to Merchant, and Merchant accepts, a nonexclusive, nonassignable and nontransferable temporary permission, uncoupled with any right or interest, to use TeleCheck's marks: TELECHECK®, TELECHECK ELECTRONIC CHECK ACCEPTANCE®, ECA®, and the TELECHECK® logo (collectively, the "TeleCheck Marks") and to use and display decals, identification data and other materials provided by TeleCheck during the term of this Agreement solely in connection with the offering of the TeleCheck services authorized under this Agreement. In addition, the following shall appear at least once on every piece of advertising or promotional material used by Merchant that references TeleCheck: "(insert applicable TeleCheck Mark) is a trademark owned by TeleCheck International, Inc. and is licensed for

use by (insert Merchant name)"; provided, however, that no such advertising or promotion using any TeleCheck Mark or TeleCheck name shall be done without the prior written consent of TeleCheck. Merchant shall use the designation "®" and "SM" in conjunction with those TeleCheck Marks which are registered trademarks and service marks, respectively, of TeleCheck. Upon termination of this Agreement, Merchant shall either return or destroy all TeleCheck materials (including, without limitation, the prompt removal of decals or other materials that are affixed and displayed to the public). The monthly fees payable by Merchant under this Agreement shall apply for all months or fractions of a month any materials or TeleCheck owned equipment remain in use by Merchant. Merchant shall not permit any persons other than its own officers or employees at Merchant's locations to use the TeleCheck Merchant Number assigned by TeleCheck. MERCHANT SHALL NOT USE ANY TELECHECK MARKS IN CONJUNCTION WITH OR ON THE INTERNET. Merchant shall take all actions reasonably required by TeleCheck to ensure that the TeleCheck Marks and other TeleCheck materials do not become part of the public domain or are otherwise appropriated by any person or entity to the detriment of TeleCheck. Merchant acknowledges TeleCheck's ownership of the TeleCheck Marks and agrees that it will do nothing inconsistent with such ownership. Merchant shall promptly notify TeleCheck of any unauthorized use of the TeleCheck Marks by third parties of which Merchant becomes aware.

**26.12. Use of Information.** Merchant 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 or a First Data Corp. alliance for TeleCheck's credit review; (c) TeleCheck may provide or receive any experiential information regarding Merchant or Merchant's customers to or from any TeleCheck affiliate or First Data Corp. alliance; and (d) TeleCheck is entitled to obtain Merchant's credit card sales data from point of sale equipment or from any TeleCheck affiliate or First Data Corp. alliance for use in TeleCheck's aggregate reporting of retail sales trends.

**26.13. TeleCheck Procedures.** Merchant shall strictly follow all Operational Procedures provided to Merchant, as may be amended from time to time by TeleCheck, in its discretion, including the Operational Procedures relating to the TeleCheck Marks. To the extent that there is any conflict between the Operational Procedures and the terms of this Agreement, the terms of this Agreement shall govern. Merchant is authorized to use TeleCheck owned or supplied equipment and/or ECA services pursuant to this Agreement only for the processing of completely filled out checks (i.e., negotiable instruments). Any other use of TeleCheck owned or supplied equipment or ECA services is unauthorized and Merchant covenants not to make any such use of the equipment or ECA services.

**26.14. Confidentiality.** Merchant shall maintain the confidentiality of this Agreement and any information provided to it by TeleCheck, including, without limitation, Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential.

**26.15. Assignment of Agreement.** This Agreement may be assigned by Merchant only with the prior written consent of TeleCheck. TeleCheck may freely assign this Agreement, its rights, benefits or duties hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of TeleCheck and the heirs, executors, administrators, successors and assigns of Merchant.

**26.16. Indemnification; Limitation of Liability.** In the event Merchant fails to comply with any applicable law, violates any terms or conditions of this Agreement, Merchant shall indemnify, defend and hold harmless the TeleCheck Parties from and against any and all Claims arising therefrom for actions taken by TeleCheck, whether by suit or otherwise, to defend the TeleCheck Parties from any Claim related thereto or to preserve or enforce TeleCheck's rights under this Agreement, and TeleCheck shall have the right to immediately repossess all equipment owned by TeleCheck. In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, Merchant 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 (1) employee or agent who can testify regarding said Claims or defenses. Merchant shall indemnify, defend, and hold harmless the TeleCheck Parties from any Claims arising from any false or inaccurate representation made by Merchant or from Merchant'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 Operational Procedures; or (ii) applicable law. Upon written notice from TeleCheck to Merchant, Merchant 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 Merchant's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws. In no event shall TeleCheck be liable to Merchant, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill. Notwithstanding anything to the contrary contained in this Agreement, in no event shall TeleCheck's liability under this Agreement for all Claims arising under, or related to, this Agreement exceed, in the aggregate (inclusive of any and all Claims made by Merchant against TeleCheck, whether related or unrelated), the lesser of: (i) the total amount of fees paid to TeleCheck by Merchant pursuant to this Agreement during the 12-month period immediately preceding the date the event giving rise to such Claim(s) occurred; or (ii) \$75,000.00.

**26.17. DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 26.8.1., TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT, THE SALE OF ANY EQUIPMENT BY TELECHECK TO MERCHANT, OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY MERCHANT. All decisions to reject any check or ECA transaction, driver's license or other form of identification or payment for Merchant's products or services are solely Merchant's responsibility.

**26.18. Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be hand delivered or delivered by facsimile transmission, overnight courier or certified or registered mail (postage prepaid return receipt requested) addressed or transmitted to the party to be notified as such party's address or number as provided on the face of this Agreement, or at such party's last known address or number. Any notice delivered hereunder shall be deemed effective, as applicable, upon delivery, if hand delivered or sent by overnight courier; upon receipt as evidenced by the date of transmission indicated on the transmitted material, if by facsimile transmission; on the date of delivery indicated on the return receipt, if mailed by certified or registered mail. TeleCheck shall also be permitted to provide notice by regular mail, and such notice shall be deemed effective ten (10) days after mailing. The parties' addresses may be changed by written notice to the other party as provided herein.

**26.19. 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), 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.

**26.20. Governing Law and Integration.** Merchant shall comply with all applicable laws, regulations and rules including NACHA Rules, relating to the services provided hereunder. This Agreement, plus any addenda attached hereto, constitute the entire Agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

**26.21. Resale; Internet.** This Agreement is solely between the Merchant and TeleCheck; the Merchant shall not provide or resell, directly or indirectly, the services provided by TeleCheck to any other third party. Merchant is not authorized to, and shall not in any manner, utilize the TeleCheck services in connection with any transaction

conducted, in whole or in part, over the Internet or in any other non face to face transaction.

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

**26.23. Amendment and Waiver.** No modification or amendment of any of the terms and conditions of this Agreement shall be binding upon TeleCheck, whether written, oral, or in any other medium, unless made in writing and approved and signed by TeleCheck. No waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party; no waiver by either party of a breach or any provision of this Agreement shall constitute a waiver of any prior or subsequent breach of the same or any other provision of this Agreement; no failure to exercise, and no delay in exercising, any right(s) hereunder on the part of either party shall operate as a waiver of any such right; all of TeleCheck's rights are cumulative; and, no single or partial exercise of any right hereunder shall preclude further exercise of such right or any other right.

**26.24. Damages.** Upon Merchant's breach or unauthorized termination of this Agreement, TeleCheck shall be entitled to recover from Merchant liquidated damages in an amount equal to ninety percent (90%) of the total aggregate charges payable for the unexpired portion of the then current term of this Agreement. TeleCheck and Merchant hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of Merchant's breach or unauthorized termination of this Agreement, to the possibility that TeleCheck will not be able to mitigate its damages, and to the expense savings that TeleCheck may obtain by not having to provide services, equipment or maintenance, the liquidated damages specified herein constitute a realistic preestimate of the loss to TeleCheck in the event of such breach or unauthorized termination of this Agreement and will not be construed as a penalty.

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

**26.26. Terms Applicable Only to the TeleCheck® C.O.D. Services.** To obtain an authorization, Merchant may need to estimate the amount of the check to include freight and handling charges. TeleCheck will honor the warranty on the check in accordance with the Warranty Requirements up to the Warranty Maximum if the amount of the check differs from the check approval amount by no more than 10%.

**26.26.1.** The date of the check and the date of the inquiry to TeleCheck must be within ten (10) days of the date of the check.

**26.26.2.** A copy of the invoice must accompany each warranty request.

**26.26.3.** Warranty requests must reach TeleCheck within forty-five (45) days from the date of the inquiry. The date of inquiry and approval code must be written on the check for the warranty to be accepted by TeleCheck.

**26.27. Terms Applicable Only to the Hold Check Services.** A "Hold Check" is defined as any check written towards the purchase of a vehicle which is held prior to deposit in the Merchant's financial institution account. Merchant may accept a maximum of four (4) Hold Checks for each purchase transaction. The first such Hold Check must be deposited within two (2) business days of the purchase.

**26.27.1.** In addition to the representations and warranties made by Merchant with respect to all Warranty Service Business Transactions submitted to TeleCheck for processing under the Agreement, the following additional representations and warranties are applicable to Hold Checks: (a) The aggregate dollar amount of TeleCheck's warranty for the Hold Checks and the aggregate dollar amount of Hold Checks accepted by the Merchant shall be the lesser of (i) the aggregate amount of the Hold Checks accepted by Merchant for the

purchase, (ii) the Warranty Maximum noted on the Agreement, or (iii) 25% of the total purchase price of the vehicle. (b) The Hold Checks must be dated the same date as the purchase agreement and coincide with the date of inquiry to TeleCheck. The inquiry to TeleCheck must be made using Merchant's "Hold Check" Merchant number. (c) The check writer must (i) be purchaser of the vehicle, (ii) the person whose name is to be on the title of the vehicle, and (iii) if the vehicle is being financed, the person listed on the finance papers. (d) A Check Writer Hold Check Agreement, as provided by TeleCheck, outlining the Hold Check amounts and deposit dates must be completed and agreed upon by Merchant and the check writer. For California Merchants only: A Check Writer Hold Check Agreement, as provided by TeleCheck, outlining the Hold Check amounts and deposit dates (i) must be completed and agreed upon by Merchant and the check writer, (ii) shall not be executed by Merchant and the check writer, (iii) shall have the following or substantially similar provision printed or written on the agreement: "Incorporated by Reference into Sales Contract", and (iv) shall be stapled to the sales contract for the vehicle. In addition, the sales contract for the purchase of the vehicle shall (i) include total amount of the Hold Checks, and (ii) have the following or substantially similar provision printed or written on the contract: "See attached Check Writer Hold Check Agreement incorporated by this reference".

**26.27.2.** Warranty requests must reach TeleCheck within forty-five (45) days from the date of the check and must be accompanied by (a) a copy of the purchase agreement, (b) a copy of the Check Writer Hold Check Agreement described above, (c) a copy of the credit application, (d) proof of purchaser insurance and (e) a TeleCheck Warranty Request form.

**26.27.3.** In addition to all other terms and conditions to the TeleCheck warranty service program, the parties agree that the warranty shall not be applicable if any of the following has occurred: (a) the vehicle has not left Merchant's possession, (b) the vehicle has been returned to Merchant's possession, (c) an attempt has been made to return the vehicle to Merchant, but Merchant has not accepted the return of the vehicle, or (d) the purchaser has attempted to rescind the purchase.

**26.27.4.** This Addendum may be terminated by either party at any time by providing thirty (30) days written notice to the other party and is not valid until accepted by TeleCheck's management. If this Addendum is terminated by TeleCheck, Merchant shall have the right to terminate the Agreement by providing thirty (30) days notice, provided that such right shall be waived if not exercised within thirty (30) days from receipt of the TeleCheck notice.

**26.28. Terms Applicable Only to the Mail Order Services.** The Warranty Requirements are modified as follows: (a) The date of the check and the date of the inquiry to TeleCheck must be no later than the date of deposit of the check. (b) The check writer's telephone number including area code, if available from the order form, must be indicated on the check. (c) Checks on orders mailed to a post office box address are not warranted, unless the order is mailed to a post office box located in Alaska. (d) A copy of the invoice must accompany each warranty request.

**26.28.1.** Warranty requests must reach TeleCheck within forty-five (45) days from the date of the inquiry. The date of inquiry and approval code must be written on the check for the warranty to be accepted by TeleCheck.

**26.28.2.** This Addendum may be terminated by either party at any time by providing thirty (30) days written notice to the other party and is not valid until accepted by TeleCheck's management.

## **27. Equipment Lease Agreement**

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

Lessee hereby authorizes us or our designees, successors or assigns (hereinafter "Lessor") to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Lessee in conjunction with this Lease Agreement by initiating debit entries to the bank account designated by Lessee on the Merchant Application and Agreement (the "Settlement Account"). In the event of default of Lessee's obligation hereunder, Lessee authorizes debit of its account for the full amount due under this Lease Agreement. Further, Lessee

authorizes its financial institution to accept and to charge any debit entries initiated by Lessor to Lessee's account. In the event that Lessor withdraws funds erroneously from Lessee's account, Lessee authorizes Lessor to credit Lessee's account for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor has received written notice from Lessee of its termination in such time and in such manner as to afford Lessor a reasonable opportunity to act. Lessee also authorizes Lessor from time to time to obtain investigative credit reports from a credit bureau or a credit agency concerning Lessee.

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

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

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

**27.4. Payment of Amounts Due.** a) The monthly lease charge is due and payable monthly, in advance. You agree to pay all assessed costs for delivery and installation of Equipment. b) In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes, assessments on or arising out of this Lease Agreement or the Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, tax preparation, compliance expenses, but exclusive of taxes based on our net income. Property taxes are calculated and charged based on the average of the estimated annual property taxes over the course of the term of the lease. You will also be charged an annual Tax Handling Fee, as set forth in the Merchant Application and Agreement and/or applicable Fee Schedule. c) Your lease payments will be due despite dissatisfaction with the Equipment for any reason. d) Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent (10%) of the amount due but no less than \$10.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of \$25.00 for any debit we attempt to make against your Settlement Account that is rejected. e) In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense charge of \$50.00 for each aggregate payment requiring a collection effort.

**27.5. Use and Return of Equipment; Insurance.** a) You shall cause the Equipment to be operated by competent and qualified personnel in

accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted. b) You shall not permit any physical alteration or modification of the Equipment, or change the installation site of the Equipment, without our prior written consent. c) You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment without our prior written consent. d) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility. e) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment. f) The Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment evidencing our ownership. g) You shall keep the Equipment adequately insured against loss by fire, theft, and all other hazards. h) You shall provide proof of insurance. The loss, destruction, theft or damage of or to the Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly lease charges hereunder.

**27.6. 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 Lease Agreement does not constitute a financing and is not a lease of the Equipment, then we shall be deemed to have a first lien security interest on the Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto.

**27.7. Return or Purchase of Equipment at End of Lease Period.** Upon the completion of your lease term or any extension thereof, you will have the option to (a) return the Equipment to us, or (b) purchase the Equipment from us for its then fair market value, calculated as a percentage of the aggregate lease payments in accordance with the following: If the term of this Lease is forty-eight(48) months or more, the buyout option as a percentage of the aggregate lease payments shall be ten percent (10%). If the term of this lease is thirty-six (36) to forty-seven (47) months, the buyout option as a percentage of the aggregate lease payments shall be fifteen percent (15%). If the term of this lease is twenty-four (24) to thirty-five (35) months, the buyout option as a percentage of the aggregate lease payments shall be twenty percent (20%). If the term of this lease is twelve (12) to twenty-three (23) months, the buyout option as a percentage of the aggregate lease payments shall be twenty-five percent (25%). In the absence of an affirmative election by you to purchase or return the Equipment, this lease will continue on a month-to-month basis at the existing monthly lease payment. If we terminate the lease pursuant to Section 11(b) due to a default by you, then you shall immediately return the Equipment to us no later than the tenth business day after termination, or remit to us the fair market value of the Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 7 by debiting your bank 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.

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

**27.9. Limitation on Liability.** We are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment, including any damage or injury to persons or property caused by the Equipment. We are not liable for the use or maintenance of the Equipment, its failure to operate, any repairs or

service to it, or by any interruption of service or loss of use of the Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Lease Agreement shall not exceed the aggregate lease amount paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Lease Agreement are your sole and exclusive remedies.

**27.10. Warranties.** a) All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, Merchantability, fitness for a particular purpose, quiet enjoyment, or 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.

**27.11. Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses resulting from: a) the operation, use, condition, liens against, or return of the Equipment; or b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

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

**27.13. Assignment.** You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign this Lease Agreement after its execution to First Data Global Leasing (FDGL), a business unit First Data Merchant Services Corporation. After such assignment, Processor shall have no further obligation under the Lease Agreement.

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



accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full.

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

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

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