



Merchant  
Services

Program  
Terms and  
Conditions  
(Program Guide)

**PROCESSOR  
INFORMATION:**Name: CardConnect, LLC a business unit of First Data Merchant Services, LLCAddress: 1000 Continental Drive, Suite 300, King of Prussia, PA 19046URL: www.cardconnect.com Customer Service #: 1-877-828-0720

Please read this entire Agreement. It describes the terms on which we will provide Merchant Processing Services to you. This summary provides answers to commonly asked questions about your Agreement.

1. **Your Discount Rates and other fees** are calculated based on transactions qualifying for certain program pricing and interchange rates levied by the applicable Card Organization. Transactions that fail to qualify for these rates will be charged an additional fee. Interchange and program pricing levied by the Card Organization is subject to change, (see Section 6 of the General Terms & Conditions).
2. **We may debit your bank account** (also referred to as your Settlement Account) for amounts owed to us.
3. **You are liable for Chargebacks and there are many reasons why a Chargeback may occur.** When they occur we will debit your Settlement Account. See Section 8 of the General Terms & Conditions.
4. **If you wish to dispute any charge or funding,** you must notify us within 60 days of the date of the statement on which the charge or funding appears.

5. **This Agreement limits our liability to you.** See Section 10 of the General Terms & Conditions for further details.
6. **We have assumed certain risks** by agreeing to provide you with the Services. Accordingly, we may take certain actions to mitigate our risk, including termination of this Agreement, and holding monies otherwise payable to you (see Sections 16 and 17 of the General Terms & Conditions).
7. **By executing this Agreement with us** you authorize us and our Affiliates to obtain and share financial and credit information regarding your business and the signers and guarantors of this Agreement until all your obligations to us and our Affiliates are satisfied.
8. **For questions regarding** your Merchant Processing Application and Agreement, please contact Customer Service at 1-877-828-0720.

**Information about Bank:**

Your Bank, who is a Visa and Mastercard Member Bank, is Wells Fargo Bank, N.A. (Bank)  
PO Box 6079, Concord, CA 94524  
Attn: Merchant Services (407) 237-6727

- b) Bank is the entity approved to extend acceptance of Visa and Mastercard products directly to you and will be a party to the sections of this Agreement listed in Section 2.2.
- c) Bank works with Processor to provide the Services to you with respect to Visa Cards and to Mastercard Cards.
- d) Bank shall, either directly or through Processor, advise you of pertinent Card Organization Rules with which you must comply.
- e) Bank is responsible for and must provide settlement funds to you and will be responsible for all funds held in a reserve.

**Your Responsibilities:**

- a) You must comply in full at all times with this Agreement (including the Your Payments Acceptance Guide), all Card Organization Rules and all Cardholder and customer data security and storage requirements.
- b) You may view and download the Your Payments Acceptance Guide at \_\_\_\_\_.
- c) You may view and download the Interchange Qualification Matrix and American Express OptBlue® Guide at \_\_\_\_\_.
- d) You may download the Visa and Mastercard rules at:  
<https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>  
[www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf](http://www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf).
- e) For your account to stay operational, you must keep fraud and Chargeback levels below Card Organization thresholds.
- f) Please retain a signed copy of your Agreement.

Print Merchant's Business Legal Name: City of Redondo Beach, a chartered municipal corporation

By signing below, you:

- (i) **Confirm that you have received and read the Application, General Terms & Conditions [Version CCNGov2210 SMB/CMM], including this Confirmation Page, Interchange Rate Schedule, and any addenda, amendments, replacement or renewal agreement(s); and**
- (ii) **Agree to all terms in this Agreement in your capacity as a person authorized to sign on behalf of the business set out in the Application.**

NO SALES REPRESENTATIVE IS AUTHORIZED TO ACCEPT OR AGREE TO ANY ALTERATIONS TO THIS AGREEMENT.

Business Principal:

X \_\_\_\_\_

Signature:

William C. Brand

Please Print Name of Signer

Mayor

Title

May 5, 2020

Date



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b) You may view and download the Your Payments Acceptance Guide at \_\_\_\_\_.

c) You may view and download the Interchange Qualification Matrix and American Express OptBlue® Guide at \_\_\_\_\_.

d) You may download the Visa and Mastercard rules at:  
<https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>  
[www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf](http://www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf).

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f) Please retain a signed copy of your Agreement.

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**NO SALES REPRESENTATIVE IS AUTHORIZED TO ACCEPT OR AGREE TO ANY ALTERATIONS TO THIS AGREEMENT.**

**Business Principal:**

X \_\_\_\_\_

**Signature:**

William C. Brand

**Please Print Name of Signer**

Mayor

**Title**

May 5, 2020

**Date**

## 1. Your Payment Acceptance Guide and Card Organization Rules

1.1 The General Terms & Conditions (General Terms), together with your Application, the Interchange Rate Schedule and the Your Payments Acceptance Guide constitute the agreement for Card Transaction acceptance and other related Services (this Agreement).

1.2 You agree to comply with the Your Payments Acceptance Guide and, either the Card Organization Rules relevant to you, as they may change over time. The Your Payments Acceptance Guide is available at [www.businesstrack.com](http://www.businesstrack.com).

1.3 If there are any inconsistencies between the General Terms and the Your Payments Acceptance Guide, or the Card Organization Rules, the General Terms will govern.

1.4 You may not alter this Agreement.

## 2. Services and Non-Bank Services

2.1 Your Application will identify the Services you will receive. Certain Services referred to in this Agreement may not be available to you.

2.2 Subject to Card Organization Rules, Services may be performed by us, our Affiliates, our agents, or other third parties we may designate. References to "we" "our" and "us" shall be deemed to be references to Bank and Processor except for the purposes of Sections 2.1, 2.3, 2.4, 6.9, 11.2, 11.5, 11.6, 11.7, 13.1, 20, 24, 32 and 36. Bank shall not be a party to the aforementioned Sections nor shall Bank have any responsibility or liability pursuant to such Sections. Third Party Services, including any apps available in an application marketplace or voice or data services you purchase directly from a third party provider, are not governed by this Agreement and we are not responsible for providing, maintaining, servicing or supporting such services. If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services.

Any third party content downloaded or otherwise obtained through the use of the Services is downloaded at your own risk. WE WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND WE EXPRESSLY DISCLAIM ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY THIRD PARTY SERVICE OR PRODUCT ADVERTISED OR OFFERED

THROUGH THE SERVICES OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND WE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

2.3 If you do not qualify for our full service program but have otherwise been approved for accepting American Express or WEX, your American Express and WEX transactions will be processed through and funded by American Express or WEX (as applicable). American Express and WEX will provide you their own agreements governing those transactions. You agree that (a) we are not responsible and assume no liability for any such transactions; and (b) American Express and WEX may charge additional fees for the services they provide.

2.4 Rather than accepting all categories of card, you have the option to elect to accept only certain categories of card (Limited Acceptance). If you wish to offer Limited Acceptance, you must complete the Limited Acceptance Form and agree to be bound by the additional terms and conditions set out in that document.

## 3. Access and Use of Services

3.1 Except as specified in the Your Payments Acceptance Guide, or otherwise agreed in writing, the Services shall be for your internal business use in the United States only.

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

3.3 You may use the eligible TransArmor services and portals only to scan IP addresses, URLs and domain names owned by and registered to you.

3.4 We have the right to rely on user names, password and other sign on.



#### 4. Settlement

4.1 As part of the Services, we will process transaction data received from you and facilitate the transfer of funds for your Card sales to your Settlement Account.

4.2 We may debit your Settlement Account for any amounts owed to us, including any amounts paid to you in error. We may also offset any amounts owed to us or our Affiliates related to activity in other accounts maintained in your name or which you, any of your principals, guarantors or authorized signors guarantee.

4.3 You are responsible for providing us with accurate information regarding your Settlement Account. If you change the Settlement Account in which you receive the proceeds of your transactions, you must notify us immediately. If you accept payment types other than Visa, Mastercard, American Express, Discover Network and PayPal (such as TeleCheck Services), you are also responsible for contacting the Card Organizations or companies governing those Cards to notify them of this change. We shall not be liable for delays in receipt of funds or errors in debit and credit entries caused by you or any other Person, including any delays or errors resulting from errors in Settlement Account information you provide.

4.4 If a Default occurs you agree we may without notice change processing or payment terms and/or suspend credits or other payments of any amounts due or which become due to you.

4.5 Your right to receive any amounts due or to become due from us is expressly subject and subordinate to Chargeback, setoff, lien, and our rights to withhold settlement funds under this Agreement without regard to whether such Chargeback, setoff, lien, and the withholding of settlement fund rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

4.6 If you undertake Global ePricing (GeP) Transactions, you acknowledge that: (a) Settlement by us of GeP Transactions shall be made in the Local Currency on the basis of the Transaction Price of the GeP Sales Transaction under the process defined by the Card Organizations; (b) you shall be subject to any and all Foreign currency exchange rate exposure in connection with all GeP Transactions; and (c) you are solely responsible for all aspects of the GeP Transaction (other than the performance of GeP Services), including obtaining the Cardholder's agreement to a GeP Transaction, and complying with all Card Organization Rules applicable to you. Dynamic Currency Conversion as defined by Card Organization Rules is not permitted nor provided as part of the GeP Services.

#### 5. Exclusivity

5.1 You will use us as your exclusive provider of all Services during the term of this Agreement.

#### 6. Fees; Adjustments; Collection of Amounts Due

6.1 You will be charged, and agree to pay us, all fees set out on your Fee Schedule or elsewhere in this Agreement.

6.2 The fees specified on your Fee Schedule are based on the assumption that your transactions will qualify at the Anticipated Interchange and Program Pricing Levels associated with your account. If a transaction fails to qualify at the Anticipated Interchange Program Pricing Levels, you will be charged a Non-Qualified Fee, plus a Non-Qualified Surcharge for each such non-qualifying transaction.

6.3 If you accept a Card or transaction other than the type anticipated for your account, we will charge you our then-current transaction fee(s) for the Card and transaction and you will be responsible for the transaction to the same extent as you would be if it was of a Card type elected and approved.

If your fees are not paid through our automatic debiting process, and we are required to pursue collection efforts, you will reimburse us for our costs in an amount of not less than \$100.00.

6.4 The fees specified on your Fee Schedule are based on (a) estimated annual volume and average transaction size for all Services provided under this Agreement; and (b) 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 our fees without prior notice to you. It is your responsibility to notify us of any such changes to your business.

6.5 We may adjust our fees to reflect new or increased fees, taxes or assessments imposed by any Card Organization or other Persons related to the Services. It is your responsibility to pay all such adjusted fees effective from the date specified in our notice to you.

6.6 Any Account Minimum Fee set out in your Application will be charged monthly (beginning in the calendar month after your Application is approved) for each location and will be calculated as the Account Minimum Fee set forth in your Application less the "Discount Fees" and "Other Payment Fees" that you incur for that month and location. The Account Minimum Fee shall never be less than zero.

6.7 An equipment rental fee will be charged each month for each piece of equipment rented from us, plus tax as applicable. You will also be charged for shipping and supplies.



6.8 An Authorization fee will be charged for each Authorization requested, whether the response is approved or declined. If you are being charged a combined fee for both Authorization and Capture we may charge this fee on the communication of all instructions that you transmit to us from your point of sale device or other systems to our computer systems, whether the communications are for Authorization requests or any other capture of information whether or not related to any individual transaction.

6.9 A fee will be charged for each Address Verification Service (AVS) request submitted, whether or not we are able to provide a response to the request.

6.10 Clients opting out of the TransArmor Solution will be charged a Compliance Fee. The Compliance Fee covers our costs for systems maintenance and upgrades, mandatory IRS reporting, as well as costs associated with our required tracking and reporting of your PCI compliance. We will provide a monthly vulnerability "scan," if required, of up to 5 IP addresses. Additional required scans are your responsibility. Payment of the Compliance Fee does not discharge your responsibility to maintain PCI DSS compliance at all times.

6.11 You will be charged a monthly Non-Receipt of PCI Validation fee unless, within 60 days from the date this Agreement is submitted with your signature and on an annual basis after that:

a) you obtain any quarterly or other periodic PCI-approved vulnerability scans that the Card Organization Rules require you to obtain (for example, if you accept Internet transactions);

b) you remediate vulnerabilities identified by your scans in ways that enable you to comply with the Card Organization Rules and applicable standards (including the PCI DSS); and

c) you confirm that you are following certain data security protocols by (i) completing an online self-assessment questionnaire, which we will make available to you, regarding your systems and payments acceptance practices (SAQ), or (ii) using PCI-approved methods, providing us with other written evidence of your PCI DSS compliance.

If you materially change the systems you use to accept payments and you wish to avoid paying the monthly Non-Receipt of PCI Validation fee, you will need to promptly complete a new SAQ or (using PCI-approved methods) promptly provide us with other written evidence of your PCI DSS compliance.

6.12 If you believe any adjustments should be made to your Settlement Account, you must notify us in writing within 60 days after any debit or credit is or should have been effected.

If you notify us after 60 days, you agree we have no obligation to investigate or effect any adjustments. Any voluntary efforts by us to assist you in investigating such matters do not obligate us to continue such investigation or to conduct any future investigation.

6.13 If you fail to pay any amounts due within 30 days of the due date set out in our merchant statement or other communication with you, then we may, in our sole discretion, charge you interest, for such time that the amount and all accrued interest remain outstanding at the lesser of 12% APR or the maximum rate permitted by applicable law

## **7. Electronic Funding Authorization**

7.1 All payments to you shall be made through the automated clearing house system (ACH) and shall normally be electronically transmitted directly to the Settlement Account you have designated or any successor account designated to receive provisional funding of your transactions pursuant to this Agreement. You agree that any Settlement Account designated by you will be an account primarily used for business purposes. We cannot guarantee the timeframe in which payment may be credited by your financial institution.

7.2 You agree to be bound by the operating rules of the ACH and you authorize us to (a) access information from the Settlement Account; (b) initiate credit and/or debit entries by wire or ACH transfer; (c) instruct your financial institution to (i) block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement Account; and (ii) provide such access and to credit and/or debit or to block the Settlement Account.

7.3 If we cannot process an ACH payment, we may (a) charge you the applicable fee set out in the Pricing Schedule; and (b) suspend all subsequent funding until a new electronic funding agreement is signed by you or you notify us that ACH payments can be processed.

7.4 Any funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in our possession may be commingled with other funds of ours, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of ours. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, we are hereby authorized by you at any time and from time to time, without notice or demand to you or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of your obligations to us and our respective Affiliates under this Agreement and any other agreement with us our respective Affiliates for any related equipment or related services



(including any check services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured.

## **8. Chargebacks, Fines and Penalties**

8.1 Cardholders and Issuers are authorized by Card Organization Rules and by law to reverse and Chargeback transactions that you submit to us. Further details are set out in the Your Payments Acceptance Guide and in the Card Organization Rules.

8.2 You are obligated to reimburse us (and authorize us to debit your Settlement Account) for (a) all refunds, credits, Chargebacks and adjustments relating to transactions that you submit for processing; and (b) any fees, fines, assessments, obligations or other charges a Card Organization imposes on us in relation to your acts or omissions or the acts or omissions of your agents or those acting on your behalf.

8.3 Refunds, Credits, returns and Chargebacks for GeP Transactions shall be treated as independent transactions with a Transaction Rate as determined by the Card Organization.

## **9. Your Representations and Warranties**

9.1 By submitting a transaction to us, you represent and warrant that the transaction:

- a) is genuine and arises from a genuine sale or service that you directly sold or provided as described on your Application. (The submission of Authorization requests and/or Card transaction by you for Card sales or cash advances transacted by another business is considered laundering or factoring and is prohibited);
- b) represents the correct amount of the goods or services purchased by the Cardholder from your business as identified on your Application;
- c) is not subject to any dispute, set-off or counterclaim;
- d) to your knowledge is not the result of fraud and has been authorized by the Cardholder
- e) does not violate the law of any applicable jurisdiction, including the jurisdiction where you are located, where the Cardholder is located, or where we are located
- f) except for any delayed delivery or advance deposit Card transactions expressly authorized under this Agreement, included your simultaneous delivery of the goods or services to the Cardholder; and

g) complies with this Agreement and Card Organization Rules.

9.2 You further represent and warrant, as of the date of this Agreement and at the time of submission of each transaction, that:

- a) you are validly existing, in good standing and free to enter into this Agreement;
- b) you have not changed the nature of your business or practices in a way not previously disclosed to us;
- c) each statement made on the Application or other information provided to us in support of this Agreement is true, accurate and complete and you have maintained and updated this information to keep it true, accurate, current and complete;
- d) you have not filed a bankruptcy petition not previously disclosed to us;
- e) you will not process any credit transactions that do not correspond to a previous transaction on the original sales draft;
- f) you will not at any time during the term of this Agreement or until all amounts have been paid in full under this Agreement, grant or pledge any security interest or lien of any type in any Reserve Account, Settlement Account or in any of the transaction proceeds to any Person without our consent; and
- g) where you provide FNS, SNAP or WIC Benefits (as described in the Your Payments Acceptance Guide), you are an FNS authorized merchant and are not disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS.

## **10. Limitations on Liability; Exclusion of Consequential Damages**

10.1 THIS AGREEMENT IS A SERVICE AGREEMENT. USE OF THE SERVICES, SOFTWARE OR ANY EQUIPMENT (INCLUDING ANY SERVICES, SOFTWARE OR EQUIPMENT PROVIDED BY OR THROUGH A THIRD PARTY) IS AT YOUR OWN RISK AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW THE SERVICES, EQUIPMENT AND ANY SOFTWARE IS PROVIDED "AS IS" AND WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT SERVICES, EQUIPMENT OR ANY SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT THE SERVICES, EQUIPMENT OR SOFTWARE ARE SECURE, FREE OF

VIRUSES OR OTHER HARMFUL COMPONENTS, OR DO NOT INFRINGE THE RIGHTS OF ANY PERSON.

10.2 IN NO EVENT SHALL WE OR OUR AFFILIATES OR ANY OF OUR OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.3 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING SECTION 26):

a) OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ANY INDEMNITIES), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US UNDER THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS;

b) ANY LIABILITY THAT WE MAY HAVE TO YOU FOR ANY DELAY IN FUNDING TRANSACTIONS WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK, LESS ONE PERCENT (1%); AND

c) OUR LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY EQUIPMENT OR SOFTWARE SHALL NOT EXCEED THE PURCHASE PRICE OR PRIOR TWELVE MONTH'S RENT OR FEES, AS APPLICABLE, PAID TO US FOR THE PARTICULAR EQUIPMENT OR SOFTWARE INVOLVED.

#### **11. Communications with Customers through the Services**

11.1 You shall provide and obtain any disclosures and consents related to the E-SIGN Act that may be required in connection with your communications and agreements with your customers through the Services.

11.2 If you are able to discern any information about a particular entity or individual from the information available through Insightics or any other Service, either alone or with other information in your possession, you agree that the information may be subject to certain privacy, marketing,

insider trading, or other applicable laws and you shall limit your use and disclosure of that information in accordance with all applicable laws.

11.3 With respect to each customer who desires to receive marketing material, transaction receipts or other communications from you via text message or email, such customer must give the appropriate consent in writing; you are NOT permitted to add or modify a customer's consent indication on behalf of the Customer.

11.4 You (or your agents acting on your behalf) shall only send marketing materials or other communications to a customer's provided phone number, street address, and/or email address if the customer has specifically consented in writing executed by the customer.

11.5 If you offer any loyalty program to customers through the Services or otherwise, you are solely responsible for any and all offerings made available to customers in connection with your loyalty program (each, an Offer). The Offer and all of the related information, including branding (trademarks and logos) and images (collectively, the Content) are provided and determined by you. You are solely responsible for ensuring the accuracy of the Offer and Content.

11.6 By providing Content to us as part of our Services, you grant us the right and license to use, modify (e.g. for formatting and display purposes), publicly perform, publicly display, reproduce and distribute such Content on and through the Services, including any Software we make available to you. This license includes the right for us to make Content available to other users who may access and use your Content.

11.7 You are solely responsible for (a) fulfilling the terms of your Offers and determining the criteria for your customers to earn and redeem perks, rewards, stamps, credits or incentives (Rewards); and (b) honoring Rewards for eligible customers who earn those Rewards and you agree not to withdraw or terminate any Offer after it has been made publicly available to your customers without offering a reasonable alternative method for customers to redeem any Rewards related to the Offer.

11.8 You are solely liable for, and we shall have no liability in relation to, any costs or expenses (including refunds) associated with your Offers or Rewards or your failure to issue, accept, fulfill or redeem any Rewards

#### **12. Confidentiality**

12.1 You shall safeguard all confidential information we supply or otherwise make accessible to you (including the terms of this Agreement) using a reasonable degree of care. You shall only use our confidential information for the



purposes of this Agreement and shall not disclose our confidential information to any person, except as we may agree in advance and in writing. We acknowledge that you may be subject to public records laws for the State in which you are located and any non-exempt public records, which may include our confidential information, are subject to inspection and copying upon request by the public. If a Public Records request is made for our confidential information, you will provide us 10 days' prior notice of your intent to disclose the records so that we may seek a protective order or take other court action. If no such action is filed, you may disclose the records. At our request you shall return to us or destroy all of our confidential information in your possession or control.

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

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

### **13. Use of Data**

13.1 You agree we may use Transaction Data for the purpose of providing additional products and services to you, other merchants, or third parties. This includes using Cardholder information, dates, transaction details, and other Transaction Data to provide you with analytics products and services as well as collecting using Transaction Data aggregated with other merchants' transaction data to provide you, other merchants, third parties with analytic products and services.

13.2 In the course of providing Services, we may collect information relating to activities on your network, including network configuration, TCP/ IP packet headers and contents, log files, malicious codes, and Trojan horses. We retain the right to use this information or aggregations of this information, in addition to the Transaction Data described above, for any reasonable purpose.

13.3 You agree that we may obtain relevant information from any applicable telecommunications provider you utilize, as necessary to investigate any allegation of fraud, suspected

fraud or other actual or alleged wrongful act by you in connection with the Services.

### **14. Intellectual Property Rights**

14.1 All right, title, and interest in and to all confidential information and intellectual property related to the Services (including the Marks, all Software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods and any updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by us prior to, during the term of, or after this Agreement, or employed by us in connection with the Services, shall be and remain, as among the Parties, our or our affiliates', our vendors' or our licensors' (as applicable) sole and exclusive property and all right, title and interest associated with the Services, Equipment and Software not expressly granted by us in this Agreement are deemed withheld.

You may not use our Marks in any manner, including in any advertisements, displays, or press releases, without our prior written consent.

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

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



14.4 You shall not take any action inconsistent with the stated title and ownership in this Section 14. You will not file any action, in any forum that challenges the ownership of any part of the Service or any Software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the Service in the event of a challenge by you.

14.5 If you are acquiring any Services on behalf of any part of the United States Government (Government): (a) any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause of FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement; and (b) we are the contractor/manufacturer, with the address set forth in this Agreement.

## **15. Assignment**

15.1 Any transfer or assignment of this Agreement by you, without our prior written consent (such consent not to be unreasonably withheld by us), by operation of law or otherwise, is voidable by us and, in such event we may: (a) suspend Services at any time and without notice, (b) hold you and your guarantors liable for all obligations incurred by such purchaser or transferee, and (c) offset funding and obligations incurred on your accounts without regard to whether such funding or obligations relate to activities of you or of such purchaser or transferee.

15.2 If 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.

15.3 Processor may not assign or transfer this Agreement to any other Person without your prior written consent (such consent not to be unreasonably withheld by you). Subject to Card Organization Rules, Bank may assign or transfer this Agreement and its rights, duties and obligations hereunder, in whole or in part, to any Person, whether in connection with a change in sponsorship, as set forth in the preceding paragraph, or otherwise, without notice to you or your consent. In addition, 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 such substitution, such other Visa and Mastercard member shall be responsible for all

obligations required of Bank, including full responsibility for its Card program and such other obligations as may be expressly required by applicable Card Organization Rules.

15.4 If this Agreement is assigned with our permission or by operation of law, the restriction against assignment shall continue to apply to the assignee, who will not be authorized to further assign this Agreement except as described in this Section.

## **16. Terms; Events of Default**

16.1 This Agreement becomes effective only when approved by our Credit Department. We reserve the right to immediately suspend or terminate your account and this Agreement if you fail to meet our credit policies even if your account has been activated to submit transactions prior to your approval by our Credit Department.

16.2 The initial term of this Agreement is three years from the date of your approval by our Credit Department (the Initial Term). After the Initial Term, subject to Section 16.3, this Agreement shall automatically extend for additional period of one year each (each an Extended Term).

16.3 A party may give written notice to the other party, not later than 30 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be. Should you fail to notify us in writing that you wish to terminate this Agreement under this Section

16.3 you agree that you will continue to be charged certain fees pursuant to this Agreement even if you are not using your account. If you have an equipment lease, termination of this Agreement does not terminate that equipment lease.

16.4 We may terminate this Agreement or suspend any or all of the Services immediately and without notice in the following circumstances (each, a Default):

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

b) any assignment or transfer of voting control of you or your parent or sale of all or a substantial portion of your assets;

c) irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, or any Card Organization, or any other Person, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us;



d) you breach any of your representations, warranties or covenants in this Agreement or you default in any material respect in the performance or observance of this Agreement or in any agreement with any of our respective Affiliates, including the establishment or maintenance of funds in a Reserve Account or any failure to notify us of any change to the information in your merchant profile;

e) your actions come under investigation by any Card Organization resulting in the Card Organization directing us to terminate or suspend our Services or Agreement with you; or

f) you violate any applicable law or Card Organization Rule or we reasonably believe that termination of this Agreement or suspension of Services is necessary to comply with any law, including the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

16.5 We may suspend or terminate this Agreement or our provision of one or more Services to you without penalty if: (a) the Service is generally discontinued; (b) our arrangement with the Card Organization or third party vendor in relation to the Service expires or terminates; (c) we are directed to end the service to you by any Card Organization; (d) we are prevented from providing the Service by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority; or (e) we are for any other reason no longer able to provide the Service.

16.6 We may also suspend Services to: (a) prevent damages to, or degradation of, our or a third party vendor or network's network integrity that may be caused by a third party; (b) comply with any law, regulation, court order or other governmental request which requires immediate action; or (c) otherwise protect us or a third party vendor from potential legal liability. To the extent commercially reasonable, we shall give notice to you before suspending any Services in these circumstances. If not commercially reasonable to give prior notice, we shall give notice to you as soon as commercially practicable thereafter. Availability of Services may vary due to events beyond the control of us or our third party vendors. In the event of a suspension of a Service under this Section, we or the applicable third party vendor shall promptly restore the Services after the event giving rise to the suspension has been resolved.

16.7 Subject to Section 16.8, you can terminate this Agreement if we notify you of an increase to your fees or add new fees and you notify us that you are terminating this Agreement within 30 days of our notice. If you do not notify us in the required period, you are deemed to have accepted the fee changes.

16.8 Your right to terminate under Section 16.7 does not apply to increases in rates or any other charges or new fees imposed on us by third parties (including the Card Organizations) which we pass on to you in accordance with Section 6.5 or where we adjust your fees in accordance with Section 6.4. Any termination in these circumstances shall be considered a breach of this Agreement

16.9 The expiration or termination of this Agreement shall not affect the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive, including Sections 8, 10, 12, 14, 17, 19, 26 and 27. After expiration or termination of this Agreement or your subscription to a particular Service for any reason: (a) your right and license to access and use the Software and documentation associated with the Service shall immediately cease and, within five (5) days after such event, you shall either return to us or destroy all Software and documentation provided to you by us and shall so certify to us in writing; and (b) you shall continue to bear total responsibility for all transactions you have submitted to us and all Chargebacks, fees, Card Organization fines imposed on us as a result of your acts or omissions, credits and adjustments resulting from Card transactions processed pursuant to this Agreement, and all other amounts then due or which may become due under this Agreement. On termination due to a Default, all amounts owing to us shall be immediately due and payable.

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

16.11 The Card Organizations maintain merchant lists such as the Member Alert To Control High-risk (Merchants) (MATCH) who have had their merchant agreements or card acceptance rights terminated for cause. If this Agreement is terminated for cause, you

(a) agree that we may report your business name and the names and other information regarding your principals to the Card Organizations for inclusion on such list(s); and (b) waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.



## **17. Reserve**

17.1 You agree that in addition to any other rights we have under this Agreement, we may establish a Reserve consisting of cash or other assets that we will hold to satisfy your obligations or potential obligations under this Agreement or any other agreement with us or our Affiliates.

17.2 The amount of the Reserve 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.

17.3 The Reserve shall be fully funded upon three days' notice to you or immediately in instances of suspected fraud or a Default.

17.4 The Reserve may be funded by all or any combination of: (a) one or more debits to your Settlement Account or any other accounts held by Bank or any of its Affiliates, at any financial institution maintained in your name or in the name of any of your principals, or any of your guarantors, or if any of same are authorized signers on such account; (b) any payments otherwise due to you from us or our Affiliates; or (c) any other collateral that you agree to provide and we agree to accept in our mutual discretion.

17.5 If this Agreement is terminated by any party, an immediate Reserve may be established without notice in the manner provided above. In these circumstances, the Reserve will be held by us for 10 months after termination of this Agreement or for such longer period of time as is consistent with resolution of all liability from your Card acceptance including Chargebacks, fines, fees or obligations of any other kind.

17.6 Any funds we hold in Reserve represent general payment obligations to you which do not become due until all potential contingent liabilities arising from your Card transactions have expired or lapsed. We may set-off any obligations that you owe to us before returning the balance of the Reserve. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in the Reserve, and we shall be entitled to accrued interest in such funds.

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

## **18. Account Information**

18.1 You are solely responsible for: (a) ensuring the accuracy of all information and data regarding your business that you provide to us or our service providers in connection with the

Services, including any menus loaded onto a Device; (b) verifying that all information and data loaded onto a Device by us or our service providers at your request are accurate prior to your business use of such Device; and (c) immediately notifying us should any information you have provided to us become inaccurate or misleading. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.

18.2 Upon request, you will provide us and our Affiliates quarterly financial statements within 45 days of the end of each fiscal quarter and annual audited financial statements within 90 days of the end of each fiscal year. Any financial statements provided must be prepared in accordance with generally accepted accounting principles. You will also provide other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request.

18.3 You authorize us and our Affiliates to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to us for any other reason.

18.4 Upon request, you shall provide to us and our Affiliates or our representatives or regulators (as well as those of the Card Organizations) reasonable access to your facilities and records for the purpose of performing any inspection (including of Equipment) and copying of books and records deemed appropriate. You shall pay the costs incurred by us or our Affiliates for such inspection, including costs incurred for airfare and hotel accommodation.

18.5 You authorize us to share information provided by you in your Application or otherwise with other relevant organizations, including those involved in the provision of the Services.

## **19. Audit Rights**

19.1 Upon notice to you, we may audit your usage, records and security, your customer's payment processing information, and the Services to ensure that (a) you are using the Services in full compliance with this Agreement; (b) all applicable fees have been paid; and; (c) you are in full compliance with all applicable laws, regulations and rules (including Card Organization Rules). Any such audit shall be conducted during regular business hours at your offices and shall not interfere unreasonably with your business.

19.2 You shall cooperate fully with any investigation or audit we or any Card Organization may undertake in relation to data security and you authorize us to share the details of any



questionnaire or compliance report with the Card Organizations

## **20. Software Updates and Maintenance**

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

20.2 We may, at our discretion, release enhancements, improvements or other updates to any Software. If we notify you of any such update, you shall integrate and install such update into your systems within thirty (30) days of your receipt of such notice. You acknowledge that failure to install any updates in a timely fashion may impair the functionality of the Software or Services. We shall have no liability for your failure to properly install the most current version of any Software or any update, and we shall have no obligation to provide support or services for any outdated versions.

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

20.4 We and our Wireless Vendor(s) reserve the right to make changes in the configuration of 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.

20.5 The default version and functionality of Clover software applications that are accessible at the time you acquire a Clover Device may vary.

## **21. Accessing Services via wireless services, the Internet or third parties**

21.1 You may access certain of our Services through a Device using a wired (ethernet) or wireless (WiFi or cellular) connection to the internet. You are solely responsible for the payment of any fees that may be imposed by your internet/data provider. Your use of any Services accessed wirelessly or through the internet is subject to: (a) the terms of any agreements you have with your internet/data

provider; and (b) availability, transmission range and uptime of the services and any wireless equipment.

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

21.3 We may alter which Devices and browsers are approved as compatible with particular Services in our discretion.

21.4 If a Service relies on online connectivity to provide up-to-date data, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Service is offline.

## **22. Service Integration**

22.1 Unless otherwise agreed in writing, you have the sole responsibility to select and employ any competent programming agent(s) to accomplish any programming required to make your systems function correctly with our platforms (Integration). You shall be responsible for all technical support for your systems and Integration related issues. You agree that you will use commercially reasonable efforts to complete any Integration as soon as possible. You will be responsible for all of your own development and implementation costs associated with such Integration.

22.2 You acknowledge that unless and until you complete any Integration, no Services which require such Integration shall need be provided by us to you pursuant to this Agreement.

22.3 Upon your request to us, and upon payment of any applicable fees, we may provide you with set-up services to assist with any Integration.

## **23. Security**

23.1 You are solely responsible for establishing and maintaining Card Organization Rule compliant security policies and procedures to prevent unauthorized access to and use of Cardholder Information or any other data, including by implementing: (a) all steps required to comply



with the PCI DSS, including ensuring all third parties and software use by you in connection with your payment processing are compliant with PCI DSS; (b) appropriate controls to limit access to, and render unreadable prior to discarding, all Cardholder Information and other data; (c) firewalls, passwords and other appropriate security features to protect against unauthorized access to your terminals, systems, the Services and any Software by your employees, contractors, customers, or by any other person (including instituting appropriate controls to prevent employees or others from submitting credits that do not reflect bona fide returns or reimbursements of earlier transactions); and (d) any other reasonable protective techniques suggested by us. You are required to provide information to us regarding your PCI-DSS compliance when requested, including but not limited to an annual questionnaire that we will make available to you.

23.2 If you become aware of any loss, theft or unauthorized use of any data and/or any suspected breach of your systems or any suspicious transactions or fraudulent activity or if any other Data Security Event occurs, you shall (a) immediately notify us (and, as required under the Card Organization Rules, each Card Organization); (b) cooperate fully with any investigation into such matter by us or any Card Organization; (c) investigate the matter and perform all remedial actions reasonably specified by us; (d) not, without our prior written consent, take any action, or fail to take any action, which prejudices our rights under this Agreement; (e) not admit any liability, assume any financial obligation, pay any money, or incur any expense in connection with any Data Security Event without our prior written consent. If you do so, it will be at your own expense; and (f) grant us and our vendors the right to access and perform a scan of the IP addresses identified within your profile (and you agree and authorize payment for the additional scan). We reserve the right to deny you access to the Services, in whole or in part, if we believe that any loss, theft or unauthorized use of any data or access information has occurred.

23.3 You are responsible for all electronic communications sent to us or to any third party. When we receive communications from you we will assume you sent it to us.

23.4 You will not obtain ownership rights in any Cardholder Information. You must not use, disclose, store, sell or disseminate any Cardholder Information except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, retrieval requests or similar issues involving Card transaction.

## **24. Supply of Equipment**

24.1 We will sell to you, and you will buy from us Equipment identified in Equipment Documents as being sold to you (individually and collectively, the Purchased Equipment). We

will rent to you and you agree to accept and rent from us Equipment identified in Equipment Documents as being rented to you (individually and collectively, the Rental Equipment).

24.2 Any Equipment sold or rented to you is being sold or rented to you solely for business use and not for household or personal use.

24.3 Warranties, if any, for the Equipment or any related Software will be contained within the packaging and originate from the applicable third party provider or manufacturer (Vendor) not us.

24.4 YOU ACKNOWLEDGE THAT ANY EQUIPMENT AND/OR SOFTWARE YOU PURCHASE OR RENT FROM US MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IF YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER ON TERMINATION OF THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE RENTED OR PURCHASED UNDER THIS AGREEMENT.

24.5 We will provide you supplies as requested by you. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to this Agreement.

24.6 We will deliver the Equipment to the site you designate. You are deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation; (b) delivery to you if your site is not prepared and ready for installation; or (c) for Equipment that we have not agreed to install for you, seven (7) days after shipment of each such piece of Equipment. The rental period for each piece of Rental Equipment starts on the date the Equipment is deemed accepted and terminates at the scheduled termination date in the Equipment Documents.

24.7 You will prepare the installation site(s) for the Equipment, including 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. Any alterations required for installation of Equipment will be done at your expense.

24.8 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 not use the Equipment, or permit the Equipment to



be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.

24.9 You may not relocate, remove, disconnect, modify or in any way alter any Equipment without our prior consent.

24.10 You are responsible for safeguarding Equipment from (and shall immediately notify us of any) loss, damage, unauthorized use, misuse or theft.

24.11 You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the Rental Equipment does not relieve you of your obligation to pay the full purchase price or rent payable under this Agreement.

24.12 If Equipment is defective, you must immediately call the POS Help Desk. If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.

24.13 Rented Equipment may not be subleased at any time and you must keep all Equipment free of any claims, liens and legal processes initiated by creditors.

24.14 Promptly upon termination of all applicable rental periods or promptly following any action by us following a Default, you shall deliver possession of all Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, except for reasonable wear and tear. For each item of Rental Equipment not so returned 14 calendar days after (a) termination of the applicable rental period, or (b) any action by us following a Default, you agree to pay us the greater of \$250 or the fair market value of such item of Equipment if it were in the condition described above, as determined by us.

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

24.16 You shall return Equipment in accordance with the procedure set out in the Your Payments Acceptance Guide. Rental fees may be continued until Equipment is returned.

24.17 You hereby grant to us a security interest in (a) all Purchased Equipment and the related Software to secure payment of the purchase price; and (b) all Rental Equipment

and the related Software to secure payment of the monthly payments and authorize us to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.

24.18 You agree that in order to access any Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by us in our sole discretion (Wireless Equipment).

24.19 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 any Wireless Equipment used by you. You shall 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.

## **25. Compliance with Laws**

25.1 You shall comply fully with the requirements of all applicable federal, state and local laws and regulations related to your use of Software, Equipment and each Service and provision and use of any Cardholder Information, customer information and other point of sale data in connection with the Services. You shall not use the Services for illegal purposes.

25.2 You are solely responsible for obtaining all required permits and monitoring legal developments applicable to the Services and the operation of your business, interpreting applicable laws and regulations, determining the requirements for compliance with all applicable laws and regulations, and maintaining an on-going compliance program.

25.3 NOTWITHSTANDING THE CAPABILITY OF CERTAIN SERVICES TO COLLECT AND STORE CUSTOMER INFORMATION AND TO ALLOW YOUR CUSTOMERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM YOU, SOME STATES MAY LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED HIS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (a) YOUR USE OF ANY CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE SERVICES MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (b) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND

(c) YOU WILL AT ALL TIMES STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

## 26. Responsibilities

26.1 You agree to be fully responsible for and hold us, our Affiliates and third party service providers harmless from and against all losses, liabilities, damages and expenses arising from:

(a) any breach or misrepresentation by you under this Agreement; (b) 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) your use of the Services, including any Software or Equipment provided under this Agreement; (d) any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Card Organization or Issuer); (e) your use of any Cardholder Information or other customer information obtained in connection with your use of the Services; (f) the content or delivery of any marketing messages that you send or cause to be sent to any customer; or (g) any other persons authorized or unauthorized access and/or use of any Service, Software or Equipment, whether or not using your unique username, password, or other security features.

26.2 Subject to the limitations set forth in Section 10.3, we agree to agree to be fully responsible for and hold you harmless from and against all losses, liabilities, damages and expenses directly resulting from any breach or misrepresentation by us under this Agreement or directly arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this obligation shall only apply to Bank in relation to the services provided by it hereunder.

## 27. Dispute Resolution

The parties agree to resolve disputes in accordance with this section.

27.1 Informal Resolution. In the event of any dispute or disagreement between the parties arising out of or relating to this Agreement (the "Dispute"), either party ("Notice Party") may provide written notice to the other party ("Receiving Party") in an attempt to informally resolve the Dispute, including a description of the issues ("Initial Notice"). If the parties' authorized representatives do not resolve the Dispute within ten (10) business days of delivery of the Initial Notice, then each party shall immediately refer the Dispute to an executive at the Vice President level. No proceedings for the resolution of such Dispute may begin until it has been elevated to the Vice President level, and the Vice President concludes, after a good faith effort to resolve the Dispute, that resolution through continued discussion is unlikely.

27.2 Litigation. Any Dispute not resolved within sixty (60) calendar days after a good faith effort to resolve the Dispute informally pursuant to Section 27.1 may be submitted to litigation. The parties agree that any litigation involving any Claim, regardless of whether the Claim is in contract, tort (including negligence), or otherwise or is legal or equitable in nature, that arises out of this Agreement that relates to the Services or the subject matter of this Agreement be brought exclusively in any appropriate state or federal court located in the State in which you are located.

27.4 Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State in which you are located (without regards to its choice of law provisions). The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in the State in which you are located.

27.5 Nothing in this Agreement will abrogate the defense of sovereign or governmental immunity if otherwise available to you.

## 28. Notices

28.1 All notices and other communications required or permitted under this Agreement (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing and sent:

- a) if to you, to your email address or postal address appearing on the Application;
- b) if to Processor, to its address appearing on the confirmation page, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065; and
- c) if to Bank, to the address appearing on the confirmation page.

28.2 Notices shall be effective when actually received or, if sent by courier, when delivered. Notices sent to your last known e-mail address or postal address, as indicated in our records, shall constitute effective notice to you under this Agreement.

28.3 You must give us 30 days prior notice of any change to your address. Failure to provide us with a valid address may result in the termination of this Agreement.

28.4 Notwithstanding the above, all bankruptcy, credit reporting or collection related notices must be sent to the following address: Merchant Services Department, P.O. Box 675799 Marietta, GA 30006 Attn: Bankruptcy and Collection Notifications.



28.5 All notices must include your name(s) and merchant number(s).

## **29. Communications**

29.1 You agree that we, our affiliates and our third party subcontractors and/or agents, may use, in addition to any live agent calls, an automatic telephone dialing system, an artificial or pre-recorded voice, or both, to contact you at the telephone number(s) you have provided, and/or may leave a detailed voice message if you are unable to be reached, even if the number provided is a cellular or wireless number or if you have previously registered on a Do Not Call list or requested not to be contacted for solicitation purposes.

29.2 You consent to receiving commercial electronic messages, including email messages, SMS and text messages, and telephone calls, from us, our Affiliates, and our third party subcontractors and/or agents.

## **30. Whole Agreement; Waiver; Severability**

30.1 This Agreement constitutes the entire Agreement between the parties with respect to its subject matter, and supersedes any previous agreements and understandings.

30.2 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.

30.3 Except with respect to Section 27, the parties intend every provision of this Agreement to be severable, and, if any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

## **31. Amendment**

31.1 We may modify this Agreement (including changing the fees or adding new fees) by 20 days written notice to you. Subject to Section 31.2, you may choose not to accept the change by terminating this Agreement by written notice within 30 days of our notice.

31.2 Notwithstanding Section 31.1, we may at any time modify this Agreement in accordance with Section 6.5 or to reflect changes in applicable law, the Card Organization Rules or security procedures and your right of termination shall not arise in such circumstances.

## **32. Third Party Beneficiaries**

32.1 Our Affiliates and any Persons we use in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as if they are a party to it. The rights of the parties to rescind or agree to any variations, waiver or settlement under this Agreement are not subject to the consent of any Person.

32.2 Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights or remedies under this Agreement.

## **33. 6050W of the Internal Revenue Code**

33.1 Under Section 6050W of the Internal Revenue Code, you will receive a Form 1099- K reporting the gross dollar amount of card transactions processed through your merchant account with us in each year.

33.2 Amounts reportable under Section 6050W are subject to backup withholding requirements. We will be required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) you fail to provide your taxpayer identification number (TIN) to us, or (b) if the IRS notifies us that the TIN (when matched with the name) provided by you is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.

## **34. Export Compliance**

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

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

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

## **35. No Investment Advice**

35.1 We do not provide any business, investment or financial advice and are not advocating any business decision or the sale or purchase of any real property, stocks, bonds, or securities.

35.2 We expressly state, and you hereby acknowledge, that any information services are provided solely for informational purposes and are not to be used as a

substitute for independent financial investment advice nor are they intended to be relied upon by any person or entity, including you or your customers for the purposes of investment or other financial decisions.

### **36. Interpretation; Definitions**

36.1 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. References in this Agreement to include, including, or in particular shall not be given a restrictive meaning and shall be interpreted without limitation. Reference to any legislation is to such legislation as amended or supplemented in the future.

36.2 Certain terms used in this Agreement are defined below:

**Affiliate:** a Person that, directly or indirectly, (i) owns or controls a party to this Agreement or (ii) is under common ownership or control with a party to this Agreement.

**Anticipated Interchange and Program Pricing Level:** your initial anticipated Card Organization interchange and program pricing rates.

**Application:** the application for Services executed by you.

**Authorization:** approval by, or on behalf of, the Issuer to validate a transaction. An Authorization indicates only that the Issuer has confirmed there is sufficient availability of funds on the Cardholder's account at the time the Authorization is requested.

**Authorization and Capture:** the communication of instructions from your POS or other systems to our computer systems, whether the communications are for authorization requests or any other capture of information.

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

**Cardholder:** the Person whose name is embossed on a Card and any authorized user of such Card, also referred to as a Card Member by American Express.

**Cardholder Information:** the data contained on a Card, or otherwise provided to you, that is required by the Card Organization or us in order to process, approve and/or settle a Card transaction, including the names, addresses and Card account numbers of Cardholders.

**Card Organization:** any entity formed to administer and promote Cards, including Mastercard Worldwide (Mastercard), Visa U.S.A., Inc. (Visa), DFS Services LLC (Discover Network), PayPal, Inc. (PayPal), American Express Travel Related Services Company, Inc. (American Express) and any applicable debit networks.

**Card Organization Rules:** the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBTs, the Quest Operating Rules).

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

**Clover:** Clover Network, Inc.

**Clover Service:** the website associated with the Clover Service, the object code version of Clover software applications (whether owned or licensed by Clover) resident on a Device at the time we provide you with the Device and the object code version of the software that enables the applications resident on a Device at the time of provisioning, and any related updates (including software maintenance or bug fixes) that are designed to assist with the management of your business and enable payment processing at the point of sale, and any materials, documentation and derivative works released by us.

**Credit Card:** a card bearing a valid Mark of Visa, Mastercard, Discover Network, PayPal or American Express (or any other Card Organization specified by us in writing) and authorizing the Cardholder to buy goods or services on credit.

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

**Data Security Event:** any actual or suspected unauthorized or fraudulent access to (or use, disclosure, or alteration of) Transaction Data (including but not limited to Cardholder Information) whether consisting of a single event, a continuous course of events, or a series of related events.

**Debit Card:** a card bearing a valid Mark of Visa, Mastercard, Discover Network or American Express or any debit network that is used to access funds in a Cardholder's bank account or a prepaid account.

**Device:** a tablet, smartphone, or other mobile or fixed form factor identified by us as compatible with and capable of accessing and/or supporting a particular Service.

**Discount Rate:** a percentage rate or amount charged to a merchant for processing its qualifying daily Credit Card and Non-PIN Debit transactions, as set forth in the Application.

**Dispute:** any dispute, claim, or controversy related to or arising under any aspect of your relationship with us, whether directly with Processor and/or Bank, or indirectly with any other person or entity related to the relationship,



and arising at any time during, before, or after that relationship.

**EMV Upgrade Costs:** the costs you agree to incur to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled Cards in a manner compliant with the PCI DSS.

**Equipment:** equipment rented to or purchased by you under this Agreement and any Equipment Documents.

**Equipment Documents:** documents setting out additional terms on which Equipment is rented to or purchased by you under this Agreement.

**General Terms:** these general terms and conditions on which the Services are provided, including any amendments or modifications.

**Foreign Currency:** a currency other than the Local Currency and supported by us for a particular service.

**GeP Transaction:** a card not present transaction between you and a Cardholder using a card type approved by us, in which you present the price for the product or service in a Foreign Currency in a card not present environment and the Cardholder authorizes (a) the price in a Foreign Currency to be submitted to a Card Organization for settlement, and (b) that the Cardholder's account will be charged for the price in the Foreign Currency.

**GeP Service:** the merchant pricing of goods and services in a Foreign Currency and the activity undertaken by us and/or a GeP Service Provider to authorize, process, and settle GeP Transactions.

**Issuer:** the financial institution or Card Organization that has issued a Card to a Person.

**Local Currency:** the currency associated with your place of domicile and approved by us.

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

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

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

**MID:** merchant identification number.

**Mitigation Service:** a service provided to a Cardholder whose information is the subject of a Data Security Event, where the primary purpose of the service is to mitigate the effects of the Data Security Event, including identity theft education and assistance and credit monitoring.

**Non-PIN Debit:** a transaction using a Debit Card that is processed without the use of a PIN.

**Non-Qualified Fee:** the difference between the interchange or program pricing associated with the Anticipated Interchange and Program Pricing Level and the interchange or program pricing associated with the more costly interchange or program pricing level at which the transaction actually processed.

**Non-Qualified Surcharge:** a surcharge applied to any transaction that fails to qualify for the Anticipated Interchange and Program Pricing Level and is therefore downgraded to a more costly interchange or program pricing level. The Non-Qualified Surcharge (the amount of which is set out on the Fee Schedule) is in addition to the Non-Qualified Fee, which is also your responsibility.

**PCI:** Payment Card Industry.

**PCI DSS:** Payment Card Industry Data Security Standard, as amended from time to time.

**Person:** an individual, corporation, partnership, sole proprietorship, trust, association or any other legally recognized entity or organization, other than you or us.

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

**PIN Debit:** a transaction using a Debit Card where a Cardholder-enters a PIN via a PIN Pad.

**Reserve:** funds that are otherwise payable to you which we hold to secure your obligations under this Agreement, pursuant to Section 17 of this Agreement. The Reserve may also refer to other collateral that you may provide to us to secure such obligations. References to "Reserve Account" shall refer to our records and accounting of such funds or other collateral.

**Security Event Expenses:** means: (a) any obligation that you have to us arising from a Data Security Event, including EMV Upgrade Costs; (b) the cost of a security assessment conducted by a qualified security assessor approved by a Card Organization or PCI to determine the cause and extent of a Data Security Event; and (c) any reasonable fees or expenses incurred by us, or by you with our prior written consent, for any Mitigation Service specifically approved by

us in writing but only if the Mitigation Service is provided within one (1) year after discovery of the relevant Data Security Event.

Service(s): Bank and Processor collectively. The words “we,” “us” and “our” refer to Service(s), unless otherwise indicated.

Services: the activities undertaken by us to authorize, process and settle Card transactions undertaken by Cardholders at your location(s), and all other services provided by us under this Agreement.

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

Software: all software, computer programs, related documentation, technology, know-how and processes embodied in the Equipment i.e. firmware or otherwise provided to you under this Agreement. For the avoidance of doubt, the term Software shall not include any third party software available as part of a Third Party Service or which may be obtained by you separately from the Services (e.g. any applications downloaded by you through an application marketplace).

Third Party Services: services, products, promotions or applications provided by someone other than us.

Transaction Data: data collected as part of performing Services for you.

Transaction Rate: the then-current Foreign Currency exchange rate used by the Card Organizations or their designee to convert the net funding amount into the Local Currency.

Wireless Networks: certain cellular telephone and data networks to which we have access through Wireless Vendors

Wireless Services: wireless data communication services that use radio base stations and switching offered by Wireless Networks in order to allow you to capture and transmit to us certain wireless Card Authorization transactions or to transmit other communications to our system.

Wireless Software: wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from our systems onto the Wireless Equipment.

Wireless Vendors: one or more third party vendors selected by us in our sole discretion through whom we have acquired the right to resell Wireless Services.

You, Your: the merchant signing this Agreement.

Your Payments Acceptance Guide: the information prepared by us, containing operational procedures, instructions and other rules and requirements relating to Card transactions.