

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X		
CHOI'S BEER SHOP, LLC, on behalf of itself	:	
and all others similarly situated,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	
v.	:	_____
	:	
PNC MERCHANT SERVICES COMPANY, L.P.,	:	
	:	
Defendant.	:	
-----X		

**CLASS ACTION COMPLAINT**

COMES NOW Plaintiff Choi's Beer Shop, LLC, individually and on behalf of the Class preliminarily defined below, and files this Class Action Complaint based on personal knowledge, investigation of counsel, and information and belief.

**INTRODUCTION**

1. For years, PNC Merchant Services Company, L.P. ("Defendant" or "Merchant Services") has engaged in a scheme through which it assesses annual fees on its merchant customers that are in breach of its standard form contract.

2. Plaintiff brings this action against Defendant for engaging in this scheme and the resulting breaches of contract.

**PARTIES**

3. Plaintiff Choi's Beer Shop, LLC ("Choi's LLC") is a small, family-owned-and-operated market in Philadelphia that sells beer and sandwiches made to order. Choi's LLC originally signed up for service with Defendant in July 2017 and remains a customer as of the filing of this Complaint.

4. Defendant Merchant Services is a Delaware limited partnership that is co-owned by PNC Bank and First Data Corporation (currently known as Fiserv). PNC Bank is the sixth largest retail bank in the United States, with over \$380 billion in assets. First Data/Fiserv is the country's largest payment processor. Defendant was formed in 1996 and has been incredibly successful for its two partners.

5. Merchant Services did not grow rapidly until 2005. After nine years of operation, the company had only 25,000 customers. In 2005, the decision was made to make Merchant Services a bigger sales focus at PNC Bank. The Bank bought an additional 20 percent of the company from First Data, taking the ownership percentages from 60 percent for First Data and 40 percent for PNC to 60 percent for PNC Bank and 40 percent for First Data. The Bank was reorganized to make Merchant Services "a core product offering."

6. The number of accounts grew rapidly thereafter. Merchant Services went from having a shrinking number of clients in 2005 to growing at over 20 percent per year in 2008-2012. The customer count went from 25,000 to over 100,000 by 2013. Growth has continued under the aggressive sales practices described herein, pushing more recent customer accounts to over 124,000 merchants.

#### **JURISDICTION AND VENUE**

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2) because there are more than 100 potential class members and the aggregate amount in controversy exceeds \$5 million exclusive of interest, fees, and costs, and at least one class member is a citizen of a state other than New York.

8. Oddly, Defendant is not registered to do business in New York even though it contractually mandates that all disputes against it be pursued in New York courts. This Court

still has personal jurisdiction over Defendant, however, because it has engaged in a continuous and systematic course of doing business in New York by offering and providing payment processing services to thousands of New York citizens and companies.

9. Venue lies within this judicial district because Merchant Services mandates that suits against it be filed in Suffolk County, which falls entirely within this district.

### **FACTUAL ALLEGATIONS**

10. Defendant's sales agents pitch the benefits of Defendant's services with prospective merchants and discuss the pricing associated with such services. If merchants express any interest, the agents ask the customer to sign a "Merchant Processing Application and Agreement" ("Application"). The Application comprises several fine print contract documents, including a Program Guide. By way of example, a true and correct copy of Plaintiff's Application, including the Program Guide, is attached hereto as Exhibit A.

11. The Application sets forth the pricing Defendant will charge the merchant. The Application's Service Fee Schedule provides:

#### **Annual Fee**

We reserve the right to assess, on an annual basis and with at least 30 days' advance written notice, a reasonable fee to defray the cost of necessary systems technology upgrades, communication requirements and reporting.

*Id.* at 4.

12. The plain language of the Application thus states to prospective merchants that Defendant may or may not assess an annual fee each year but, if it does: (1) at least 30 days' advance written notice will be provided, (2) the fee will be reasonable, and (3) the fee will only be charged as needed to defray certain specified costs.

13. The reality is, however, that Defendant assesses the fee every year on less than 30 days' advance written notice, the fee is unreasonable, and the fee is not used to defray the specified costs but rather is additional profit that goes straight to Defendant's bottom line.

14. Rather than explain these truths to merchants on the Application, Defendant worded the Application in a false manner to induce more customers to do business. Indeed, Defendant knew merchants would rarely agree to do business if they knew they would *definitely* be charged a large fee (typically \$109.95 per year, as in the case of Plaintiff). Thus, Defendant crafted the disclosure to lead merchants to believe such fee may not be charged and, if it was charged, it would be reasonable and would be used to defray new specified costs (and not generate more profit).

15. Defendant's sales agents echoed this fact by telling customers "I can't remember the last time we did that" despite knowing full well that the fee was consistently charged every year. The non-definitive language in the Application's description of annual fees gives agents wiggle room to make these false representations.

16. After customers sign the Application, which automatically locks them into a long-term agreement with Defendant that is often cancellable only upon the payment of hefty early termination penalties, they are hit with an annual fee each year they remain customers as a matter of course.

17. Each year, Defendant notifies customers via a standard message on their monthly billing statement that the annual fee will be assessed "on or after" the first day of the *same month* that the statement is first made available to customers.

18. By way of example, attached hereto as Exhibit B is a true and correct copy of Plaintiff's August 2019 statement, which provides:

2019 Annual Fee

PNC Merchant Services will be assessing the Annual Fee of \$109.95 on or after September 1, 2019. This fee offsets the cost of implementing upgrades. Our commitment is to continue to maintain the highest industry standards and security for your payment transactions. If we can answer any questions regarding the fee or your merchant account, please contact our Customer Help Desk at 1-800-742-5030.

*Id.* at 1.

19. As a matter of consistent practice, and contrary to the clear contractual requirement, Defendant assesses the fee after less than 30 days' notice.

20. By way of example, Plaintiff's August 2019 statement was first made available to Plaintiff on September 3, 2019. However, the annual fee was assessed on Plaintiff on September 21, 2019, i.e., 18 days later. *See* September 2019 Statement, p. 3 (noting "MISC ADJUSTMENT ANNUAL FEE" of \$109.95 made on "9/21/19") (Exh. C hereto).

21. PNC automatically withdrew the \$109.95 annual fee from Plaintiff's bank account on October 2, 2019, which is also less than 30 days after the date its August 2019 statement was first made available (i.e., September 3, 2019).

22. These facts are not unique to Plaintiff but rather Defendant has programmed its computer systems to always assess annual fees on less than 30 days' notice on its customer base.

23. Moreover, the annual fees that Defendant charges are neither "reasonable" nor are they used to offset "the cost of necessary systems technology upgrades, communication requirements and reporting." Rather, they are imposed as a planned yearly "release" strictly to pad Defendant's bottom line at the expense of its customers.

24. That the amount charged (\$109.95) has been the same for years shows the fees are not dependent on changing necessary costs or requirements, as such factors are not uniform on a year-to-year basis.

25. Upon information and belief, this fee results in annual proceeds of over \$15,000,000 for Defendant. Since First Data, not Defendant, handles all back-office processing for Merchant Services, and the same systems are shared by hundreds of other companies – such as Bank of America Merchant Services and Wells Fargo Merchant Services – there are no actual “necessary costs” that would allow Defendant to charge this fee. In fact, no costs are being defrayed – as is required by the contract – but rather the proceeds from the annual fee travel straight to Defendant’s bottom line.

26. Buried deep in the fine print of the Program Guide is the following provision:

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

27. Defendant claims this provision requires its customers to contemporaneously “catch it in the act” and provide written notice of any disputed fees within 60 days of the fees being assessed.

28. Despite purporting to require written complaints to preserve the right to challenge fees such as annual fees, Defendant’s corporate practice was to instruct merchants to make *telephonic* complaints to its customer service department. Indeed, Merchant Services included language on the statements that directed merchants to “contact our Customer Help Desk at 1-800-742-5030” if “we can answer any questions regarding the [annual] fee or your merchant account.”

29. Former employees confirm that the corporate policy was to instruct customers to call the 1-800 for complaints and refunds. Thus, despite knowing full well that language buried deep in its own boilerplate contract purports to require complaints to be lodged in writing, month after month Defendant nonetheless consistently directed customers to lodge complaints telephonically, which Plaintiff did repeatedly. Defendant took such actions to frustrate customers' performance under Section 11.10 and like provisions. Merchant Services also had the right to waive any specific contractual requirements, which it did verbally and in writing on a routine basis.

30. Despite the actions taken by Defendant to frustrate performance of the written notice requirement, Plaintiff provided timely written notice of its dispute with the 2019 annual fee assessed by Defendant on two separate occasions.

31. First, on October 9, 2019, Plaintiff mailed letters to each of the notice addresses for Defendant reflected in the Program Guide disputing its 2019 annual fee. A true and correct copy of this letter is attached hereto as Exhibit D.

32. These letters were mailed seven days after the annual fee was automatically debited from Plaintiff's bank account by Defendant and 16 days after the annual fee was charged to Plaintiff. According to the Program Guide, notice is effective upon mailing.

33. Second, this Class Action Complaint also serves as timely written notice. On October 11, 2019, copies of it have been mailed to each of the notice addresses for Defendant reflected in the Program Guide. This date is nine days after the annual fee was debited from Plaintiff's bank account by Defendant and 18 days after the annual fee was assessed on Plaintiff's account. Plaintiff has thus timely complied with Section 11.10 on two separate

occasions and has preserved its right to dispute the 2019 annual fee (both on its own behalf and behalf of those similarly situated).

34. As a consequence of Defendant's conduct described herein, Plaintiff and the members of the proposed Class have been wrongfully forced to pay unauthorized annual fees. Defendant has improperly deprived Plaintiff and those similarly situated of significant funds, causing ascertainable monetary losses and damages.

### **PROCEDURAL HISTORY**

35. This is not the first billing dispute between Plaintiff and Defendant. On October 22, 2018, Plaintiff filed a Class Action Complaint against Defendant alleging multiple instances of overbilling by Defendant, including with respect to the 2018 annual fee. The case was assigned Docket Number 18-cv-5906.

36. The case was consolidated with another overbilling action brought by other customers of Defendant that had previously been assigned Docket Number 17-cv-6255. A Consolidated Class Action Complaint ("CCAC") was collectively filed by all Plaintiffs in the earlier case.

37. Defendant moved to dismiss the CCAC and the motion was granted by the Court with respect to all of Plaintiff's claims. Specifically, the Court found that Plaintiff failed to allege it provided a written notice of dispute to Defendant within 60 days of the charges for which it sought recovery (including the 2018 annual fee). *See* Dkt. 38 in Case No. 17-cv-6255, p. 27.

38. Plaintiff contended the Court overlooked key allegations in the CCAC that it *did* provide timely written notice of its dispute with the 2018 annual fee and filed a motion for reconsideration. Such motion is currently pending before the Court.



39. Plaintiff's dispute with the 2019 annual fee was not at issue in the CCAC, nor could it have been. Indeed, the 2019 annual fee was not assessed on Plaintiff until September 21, 2019, and not removed from Plaintiff's account until October 2, 2019. The order on Defendant's motion to dismiss was entered on September 30, 2019.

40. Plaintiff has a legal right to pursue a breach of contract claim against Defendant concerning the 2019 annual fee regardless of whether its motion seeking reconsideration of the Court's dismissal of its claim concerning the 2018 annual fee is granted.

### **CLASS ALLEGATIONS**

41. Plaintiff brings this action on behalf of itself and all others similarly situated.

42. The Class is preliminarily defined as "[a]ll United States customers of PNC Merchant Services that were assessed an annual fee."

43. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate and as the Court may otherwise allow.

44. Excluded from the Class is Defendant, its parents, subsidiaries, affiliates, officers, and directors, any entity in which Defendant has a controlling interest, all customers who make a timely election to be excluded, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

45. Given the Program Guide's indication that New York law governs, the time period for the Class is six years immediately preceding the date on which the Complaint is filed, going forward into the future until such time as Defendant remedies the conduct complained of herein.

46. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can meet all the applicable requirements of Federal Rule of Civil Procedure 23 and can prove the elements of its claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

47. **Numerosity.** The members of the Class are so numerous that individual joinder of all the members is impracticable. There are hundreds of thousands of customers that have been assessed annual fees and damaged by Defendant's wrongful conduct as alleged herein. The precise number of Class members and their addresses is presently unknown to Plaintiff but can readily be ascertained from Defendant's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, and/or published notice.

48. **Commonality and Predominance.** Numerous common questions of law and fact exist as to the claims of Plaintiff and the other Class members. Such questions include, but are not limited to:

- (a). Whether Defendant assesses annual fees after less than 30 days' notice;
- (b). Whether the annual fees assessed by Defendant are reasonable fees;
- (c). Whether the annual fees assessed by Defendant defray the cost of necessary systems technology upgrades, communication requirements, and reporting;
- (d). Whether the annual fees assessed by Defendant are assessed to generate additional profit at customer expense;
- (e). Whether the annual fees assessed by Defendant violate its contract with customers;
- (f). The proper method or methods by which to measure damages; and

(g). Whether Defendant should be enjoined from assessing annual fees in violation of its contract.

49. Defendant has engaged in a common course of conduct toward Plaintiff and the other Class members. The common issues arising from this conduct that affect Plaintiff and the other Class members predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

50. **Typicality.** Plaintiff's claims are typical of the other Class members' claims because, among other things, all of the claims arise out of a common course of conduct and assert the same legal theory. Further, Plaintiff and the members of the Class were comparably injured through the uniform misconduct described above.

51. **Adequacy of Representation.** Plaintiff is an adequate Class representative because its interests do not conflict with the interests of the other Class members; Plaintiff has retained counsel competent and experienced in complex class action litigation; and Plaintiff intends to prosecute this action vigorously. Class members' interests will be fairly and adequately protected by Plaintiff and its counsel.

52. **Declaratory and Injunctive Relief.** Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive and declaratory relief, as described below. Specifically, Defendant continues to knowingly assess annual fees in violation of its form contract and overbill the Class. Class-wide declaratory and/or injunctive relief is appropriate to put an end to this illicit practice.

53. **Superiority.** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment

suffered by Plaintiff and each of the other Class members are small compared to the burden and expense that would be required to individually litigate their claims against Defendant, thus rendering it impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

**COUNT ONE**  
**Breach of Contract**

54. Plaintiff repeats paragraphs 1 through 53 above.

55. Plaintiff and the Class members each signed form Applications prepared by Defendant. This form Application is a contract which binds those who apply.

56. The actions taken by Defendant have materially violated the specific terms of these form contracts. Specifically, Defendant has breached the contract by charging annual fees without providing 30 days' advance notice. Also, by charging an unreasonable fee Defendant has breached the contract. Finally, by assessing the fee in an amount greater than necessary to "defray the cost of necessary systems technology upgrades, communication requirements and reporting" Defendant breached the contract.

57. Plaintiff and the Class members have performed all conditions precedent to suit and all, or substantially all, of the other obligations imposed on them under the contracts, including but not limited to any obligations pursuant to Section 11.10 of the Program Guide.

58. Defendant's breaches of contract have resulted in damages sustained by Plaintiff and the Class.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and the proposed Class demand judgment as follows:

1. Certifying this case as a class action pursuant to Federal Rule 23;
2. Declaring Defendant's annual fees to be improper and in violation of the contract;
3. Temporarily and permanently enjoining Defendant from continuing the assessment of improper annual fees;
4. Awarding damages allowed by law in an amount to be determined by the Court;
5. Awarding pre-judgment interest at the maximum rate permitted; and
6. Awarding such other relief as this Court deems just and proper.

DATED this 11th day of October, 2019.

Respectfully submitted,

BY: WEBB, KLASSE & LEMOND, LLC

/s/ E. Adam Webb

E. Adam Webb

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# **EXHIBIT**

**A**

**MERCHANT PROCESSING APPLICATION AND AGREEMENT (Page 1 of 3)**

Merchant # \_\_\_\_\_ Loc. 1 of 1  
 PNC(SNAP)2005 **(1) TELL US ABOUT YOUR BUSINESS** PNC(SNAP)2005

Client (Your Business LEGAL Name): CHOIS BEER SHOP LLC Store #:  
☐ Same as Legal Name **or** Provide DBA/Outlet Name: CHOIS BEER SHOP First/Last Contact Name: KYUNG HWA CHOI  
 (No P.O. Box) Address: 1642 SOUTH ST Suite #: City: PHILADELPHIA State: PA Zip Code: 191461542  
 Your Business Phone: 2676796600 ☒ Same as Business Phone **or** Merchant's Customer Service Phone: 2676796600 Your Fax #:  
 Your Cust. Svc. E-mail Address: johnlee1226@gmail.com Select One for Retrieval Requests: ☐ (02) Dedicated 24 Hour Fax ☒ (03) No fax; mail ☐ (05) eIDS

**(2) MASTERCARD® / VISA® / DISCOVER® / AMERICAN EXPRESS®**

Your Total Cash and Credit Sales: (For All Outlets) \$ 120,000.00 Estimated MC/Visa/Discover Average Ticket/Sales Amount: \$ 20.00  
 Total Annual MC/Visa Volume: (For All Outlets) \$ 80,000.00 Estimated American Express Average Ticket for this Outlet: \$ 20.00  
 Total Annual Discover Volume: (For All Outlets) \$ 20,000.00 Annual MC/Visa Volume for this Outlet: (For Multiple Outlets Only) \$ \_\_\_\_\_  
 Total Annual American Express Volume: (For All Outlets) \$ 20,000.00 Annual Discover Volume for this Outlet: (For Multiple Outlets Only) \$ \_\_\_\_\_  
 Highest Ticket Amount: \$ 100.00 Annual American Express Sales Volume for this Outlet: (For Mult. Outlets Only) \$ \_\_\_\_\_

**(3) PROVIDE MORE BUSINESS DATA**

State Incorp. PA Month/Year Started: 04/2017 ☐ Sole Ownership ☐ Partnership ☐ Non Profit/Tax Exempt ☐ Public Corp. ☐ Private Corp. ☒ L.L.C. ☐ Gov't.  
 Check one: TIN Type: ☒ EIN (Fed Tax ID #) ☐ SSN No. of Employees: 2

**NOTE:** Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations. (See Part IV, Section A.4 of your Program Guide for further information.)  
 Name (as it appears on your income tax return) CHOIS BEER SHOP LLC ☒ Federal Tax ID# (TIN) (as it appears on your income tax return) XXXXXXXXXX ☐ I certify that I am a foreign entity/nonresident alien. (If checked, please attach IRS Form W-8.)

Mag Swipe 100.0 + Keyed Manually 0 % = **100%** Product/Services You Sell: BEER STORE  
 POS Card Present (MAG Swipe and/or Manual Imprint) 100 % + Mail Order/Direct Marketing 0.0 % + Phone Order 0.0 % + Internet 0.0 % = **100%**  
 Do you use any third party to store, process or transmit cardholder data? ☐ Yes ☒ No (Examples include, but not limited to web hosting companies, Electronic Data Capture, Loyalty programs)  
 If yes, give name/address: \_\_\_\_\_

Please identify any Software used for storing, transmitting, or processing Card Transactions or Authorization Requests: \_\_\_\_\_

**(4) OTHER ENTITLEMENTS**

Traditional TeleCheck: ☐ In-Person Paper Warranty (20P) ☐ In-Person Warranty (ECA) (20E)  
 Signed Annual Check Sales Volume: \$ \_\_\_\_\_ Avg. Check Ticket: \$ \_\_\_\_\_  
☐ Voyager Fleet\* **or** Existing Voyager Acct #: \_\_\_\_\_ Annual Voyager Vol.: \$ \_\_\_\_\_ Voyager Avg. Ticket: \$ \_\_\_\_\_  
☐ MC Fleet ☐ WEX Full Acquiring ☐ WEX Pass Thru ☐ Wright Express **or** Existing WEX Acct #: \_\_\_\_\_ Annual WEX Vol. \$ \_\_\_\_\_ WEX Avg. Ticket \$ \_\_\_\_\_  
 \*Tax exempt Voyager Cards accepted: ☐ Yes ☐ No  
☒ American Express ☐ American Express Direct \_\_\_\_\_  
☒ Discover Full Processing ☒ Debit Pkg 4 4 4 8 3 0 4 2 ☐ EBT (SNAP) FNS # (XREF): \_\_\_\_\_  
☐ PayPal  
☐ FDMS Gift Card (A separate Gift Card Setup Form is required) ☐ (206) CARDnet® ☒ (2003) Nashville ☐ (2002) Buypass ☐ Other: \_\_\_\_\_ Specify Security Code: ( )

**(5) DESCRIBE EQUIPMENT DETAILS**

Lease - Purchase Cust Owned - Rental	QTY	IP	Equip Type Terminal/Software Code and Name	Unit Price w/o tax	Lease - Purchase Cust Owned - Rental	QTY	IP	Equip Type Terminal/Software Code and Name	Unit Price w/o tax
Purchase	1		CLOVER MINIWIFI RTL #1	875.00					
Purchase	1		CLOVER CASH DRAWER	150.00					
Purchase	1		CLOVER 1D SCANNER	150.00					

☒ Retail ☐ Restaurant ☐ MOTO/Internet ☐ Lodging ☐ Supermarket ☐ Car Rental ☐ QSR ☐ Petro  
☒ MAG to Train (or receive training via phone, dial 1-800-558-7101 Opt. #1, M-F 8:00 am - 10:00 pm EST & Sat. 10:00 am - 2:00 pm EST)  
☐ Sales Rep. to Train ☐ Installer to Train ☐ No Merchant Training Best Time To Call: 9:00 AM  
 Imprinter Purchase: ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ x Qty: \_\_\_\_\_ = \$ \_\_\_\_\_ (w/o Tax) Wireless Provider: ☐ GPRS Cingular/AT&T ☐ CDMA Sprint  
☐ Payeezy Gateway E-mail address \_\_\_\_\_  
 VAR/Internet/Software: Name: \_\_\_\_\_ (Nashville Only: Product ID # \_\_\_\_\_ Vendor ID # \_\_\_\_\_)  
☐ Frame (A price quote is required for Frame) ☐ Host/Lease Line Solutions ☐ Dial Solutions

**NOTE: Any Special Instructions must be included on About Merchant's Business Page.**

**See Section 32 of the Program Guide for Equipment Purchase or Rental details.**

**Complete Credit Addendum for Software Compliance.**  
☐ PABP Compliant ☐ PCI/DSS Compliant

**(6) PROVIDE YOUR OWNER INFORMATION**

Owner/Partner/Officer Name: KYUNG CHOI D.O.B.: XXXXXXXXXX Social Security #: XXXXXXXXXX Home Phone: \_\_\_\_\_ % of Ownership: 100  
 Home Address: 432 MONTGOMERY AVE City: HAVERFORD State: PA Zip: 19041 Country: USA  
 Business Owner's E-Mail Address\*: johnlee1226@gmail.com

Owner/Partner/Officer Name: \_\_\_\_\_ D.O.B.: \_\_\_\_\_ Social Security #: \_\_\_\_\_ Home Phone: \_\_\_\_\_ % of Ownership: \_\_\_\_\_  
 Home Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Country: \_\_\_\_\_

Business Owner's E-Mail Address\*:

\*Business Owner's E-mail address for receipt of monthly newsletters, product updates, contract notifications, and other communications from PNC.

Client's Initials: OK Boe Le

DBA Name: CHOIS BEER SHOP

Pricing Type: 101

Interchange Schedule Version:

PNC.MVDA.F16.2.001\_Retail

Loc. 1 of 1

PNC(SNAP)2005

## (7) SERVICE FEE SCHEDULE

PNC Fee(SNAP)2005

**Start-Up Fees (One-Time Charge)****Non-Taxable Fees:**

Application Fee (Non-Refundable)	(247)	\$ 0.00
Site Visitation Fee	(31G)	\$
Programming Fee	(31A)	\$ 0.00
Deployment Fee	(32K)	\$
Mobile Payments Setup Fee	(62S)	\$
Payeezy Gateway Setup Fee	(40B)	\$
Wireless Activation Fee	(31E)	\$
Internet Set-up Fee	(30R)	\$
FEE PER TID	# OF TIDS	TOTAL
\$	x	= \$
Equipment Shipping Costs		\$

**Taxable Items:**

State:	Sales Tax	%
	City/Locality Tax	%
Equipment Purchase (ACH)	\$ 1175.00	
Total Sales Tax	\$	
Total Amount	\$ 1,175.00	

**Billed Monthly Fees**

Monthly Svc Fee:	(224)	\$ 0.00
Monthly Maintenance Fee	(354)	\$
Minimum Processing Fee	(954)	\$ 0.00
Monthly Access Fee (per TID)	(60J)	\$
Mobile Payments Monthly Svc Fee	(32Y)	\$
Payeezy Gateway Monthly Fee	(40A)	\$
Payeezy Webstore Solution	(2D9)	\$
Clover Services Fee*	(2ST)	\$ 0.00
Clover Security Plus Monthly	(3CM)	\$
Clover Insights	(49I, 49M)	\$

**Statement Fee:**

<input type="checkbox"/> Paper Statement	(240)	\$
<input checked="" type="checkbox"/> E-Mail Statement	(268)	\$ 0.0
<input type="checkbox"/> Suppress Statement		

Internet Service Fee	(394)	\$
FEE PER TID	# OF TIDS	TOTAL
\$	x	= \$

Other: \$

Non Receipt of PCI Validation (60L) \$

Equipment Rental Fee (ACH) \$

(\*For Clover Mobile and Clover Mini (only) devices, this fee shall commence and be applied to your account only upon the upgrade to "Clover Register" software that is available through the Clover App Market.)

**Credit & Non-PIN Debit Authorization & Credit/Refund**

MasterCard	(10A, 002, 131)	\$ 0.1
Visa	(10D, 006, 135)	\$ 0.1
Discover	(10J, 016, 788)	\$ 0.1
American Express	(10P, 014)	\$ 0.1

☐ **Interchange Pass-Through\*, plus the following fees:**

MC/Visa/Discover/PayPal/Amex TXN Fee

(001, 002, 005, 006, 015, 016, 13A, 013, 014) \$

MC/Visa/Discover Interchange Fee

(Key 0 to 550, 560, 529) \$ 0

AMEX Program Pricing Fee (57B)\* \$

MC/Visa/Discover/Amex Basis Point Fee

(495, 496, 494, 164) %

\*American Express has Program Pricing and not Interchange and is subject to change.

**Bundled Debit**

Debit Sales Discount Rate	(120)	%
Debit Auth Fee V/MC/Disc	(0CN)	\$
Debit Auth Fee V/MC	(0CO)	\$

**Discount Fees (Based On Gross Transaction Volume)****Accept all MasterCard, Visa and Discover® transactions (presumed, unless any selections below are checked)****MasterCard Acceptance**

- ☐ Accept MC Credit transactions only  
☐ Accept MC Non-PIN Debit transactions only

**Discover® Acceptance**

- ☐ Accept Discover Credit transactions only  
☐ Accept Discover Non-PIN Debit transactions only

See Section 1.2 of the Program Guide for details regarding limited acceptance. You are responsible for distinguishing Credit from Non-PIN Debit Cards. Even if you have agreed to limit your acceptance of certain cards as outlined above, you must continue to accept all foreign issued cards, whether Credit or Non-PIN Debit. If you agree to limit your acceptance to a particular type of card and, whether intentionally or in error, accept another type of transaction, the resulting transaction will downgrade to the highest cost interchange plus the applicable Non-Qualified Surcharge (See Section 11.1 of the Program Guide).

- ☐ Accept Visa Credit transactions only  
☐ Accept Visa Non-PIN Debit transactions only

**American Express Acceptance**

- ☐ Accept American Express Credit transactions only

**QUALIFIED DISCOUNT RATES**

MasterCard, Visa, Discover, PayPal Credit Discount Rates	(800, 804, 170, 175)	1.7	%
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American Express Discount Rate	(164)	1.7	%
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MasterCard, Visa, Discover Non-PIN Debit Discount Rates	(850, 854, 964)	1.7	%
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**MID-QUALIFIED DISCOUNT RATES**

MasterCard, Visa, Discover Discount Rates	(810, 814, 990)	2.35	%
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American Express Discount Rate	(81C)	2.35	%
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MasterCard, Visa, Discover Non-PIN Debit Discount Rates	(870, 874, 968)	2.35	%
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**NON-QUALIFIED DISCOUNT RATES**

MasterCard, Visa, Discover Credit Discount Rates	(820, 824, 994)	2.9	%
--	-----------------	-----	---

American Express Discount Rate	(82A)	2.9	%
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MasterCard, Visa, Discover Non-PIN Debit Discount Rate	(880, 864, 978)	2.9	%
--	-----------------	-----	---

Non-Qualified Surcharge Fee: (excluding interchange pass-through fees, see §18.1)

Applies to Non-Qualified MasterCard, Visa, Discover® and American Express (30-D)

Credit and/or Non-PIN Debit Transactions ☐ %

or (Requires Special Pricing)

**Transaction / Other Fees**

American Express Network Fee	(286)	<u>0.15</u>	%
American Express Capture	(068)	\$	
Discover Usage	(22E)	<u>\$ 0.0195</u>	
Discover Network Authorization Fee	(0BC)	<u>\$ 0.0025</u>	
MasterCard Assessment Fee	(273)	<u>0.12</u>	%
MC Assessment Trans Amt > = \$1k	(237)	<u>0.02</u>	%
Visa Debit Assessment Fee	(274)	<u>0.13</u>	%
Visa Credit Assessment	(27L)	<u>0.13</u>	%
Discover® Assessment Fee	(6AC)	<u>0.13</u>	%
PayPal Assessment	(451)	<u>0.13</u>	%
MC/Visa, Amex, Discover VRU	(036, 046, 066, 076)	<u>\$ 0.49</u>	
MC/Visa, Amex, Discover VRU/Voice	(037, 047, 067, 077)	<u>\$ 0.69</u>	
MC CVC2	(11M)	<u>\$ 0.0025</u>	
EBT	(18E, 18I, 02X, 18H)	\$	
AVS Fee (POS-Mag Swipe)	(405, 406, 408, 07B, 79)	<u>\$ 0.035</u>	
PNC Debit Pre Auth Fee (Key 0 to 587)		<u>\$ 0.00</u>	
PNC Debit Fee (Key 0 to 590)		<u>\$ 0.00</u>	
(In addition to Network fee)			
PNC Debit Transaction Fee	(018)	<u>\$ 0.35</u>	
PIN Debit Basis Point	(190)	<u>0.1</u>	%
Star Annual License Fee	( )	<u>\$ 12.00</u>	
PULSE Annual Debit Ntwk Fee	( )	<u>\$ 12.00</u>	
Jeanie Debit Ntwk Annual Fee	( )	<u>\$ 9.00</u>	
ACCEL Annual Fee	( )	\$	
NYCE Debit Network Participation Fee	( )	<u>\$ 12.00</u>	
Batch Settlement Fee	(227)	<u>\$ 0.00</u>	

**PNCMS Processing Fees**

MC Foreign Handling Fee	(260)	<u>0.8</u>	%	Visa Misuse of Auth Fee	(04G)	<u>\$ 0.09</u>
Visa Foreign Handling Fee	(261)	<u>1</u>	%	MC Processing Integrity Fee	(04F)	<u>\$ 0.045</u>
MC Network Access Fee	(60M, 0B4)	<u>\$ 0.0195</u>		MC Processing Integrity		
Visa Acq Processing Fee - Credit	(04H)	<u>\$ 0.0195</u>		Pre-Authorization Fee	(03H)	<u>\$ 0.045</u>
Visa Base II Acquirer				MC Processing Integrity		
Voucher Fee - Credit	(47P)	<u>\$ 0.0195</u>		Undefined Authorization Fee	(03I)	<u>\$ 0.045</u>
Visa Acq Processing Fee - Debit	(04J)	<u>\$ 0.0155</u>		MC Processing Integrity		
Visa Base II Acquirer				Final Auth Fee	(03J)	<u>\$ 0.0025</u>
Voucher Fee - Debit	(47O)	<u>\$ 0.0155</u>		MC Processing Integrity		
Visa Fixed Acquirer Network				Final Auth Minimum Fee	(03K)	<u>\$ 0.04</u>
Fee CP*	(NF1)	<u>Pass-Thru</u>	of Cost	MC Processing Integrity		
Visa Fixed Acquirer Network				Fee Detail Report Fee	(03L)	<u>\$ 0.012</u>
Fee CNP*	(NF2)	<u>Pass-Thru</u>	of Cost	MC U.S. Acct Status		
Visa Transaction Integrity Fee	(238)	<u>\$ 0.10</u>		Inquiry Service Interregional	(11G)	<u>\$</u>
Visa Partial Auth NP Trans Fee	(12D)	<u>\$ 0.01</u>		MC U.S. Acct Status		
Visa Zero Amount Fee	(10Y)	<u>\$ 0.025</u>		Inquiry Service Intraregional	(11H)	<u>\$</u>
MasterCard Digital				MC License Fee	(818)	<u>0.008</u>
Enablement Fee	(24E)	<u>0.01</u>	%	MC Card Present AVS Fee	(0FB)	<u>\$ 0.01</u>
MC Kilobyte Fee	(278)	<u>\$ 0.0035</u>		MC Card Not Present AVS Fee	(10Z)	<u>\$ 0.01</u>
Visa Base II System File Fee	(47N)	<u>\$ 0.0018</u>		MasterCard Annual Membership Fee		
Visa Zero Floor Limit Fee	(04I)	<u>\$ 0.20</u>		(Fee billed on monthly basis)	(24I)	<u>\$</u>

\*See Interchange Qualification Matrix ("IQM") for billing tables.

Client's Initials:

ok Boal



DBA Name: CHOIS BEER SHOP

Loc. 1 of 1

PNC(SNAP)2005

## (7) SERVICE FEE SCHEDULE (cont'd)

PNC Fee(SNAP)2005

Other Payment Fees		Internet Service/Transaction Fees		Bypass Fees	
ACH Reject Fee	(401) \$ 20.00	MC/Visa/Amex/Discover	Per Auth	Voyager Sales/Credit Discount Rate	(844, 845) %
Chargeback Fee	(205, 725, 01A) \$ 25.00	Internet GW (03R, 04R, 06I, 07I)	\$	Voyager Auth Fee	(0D0, 0D1, 0DV) \$
Discover Int'l Service Fee	(22H) 0.8 %	Payeezy Gateway		WEX Sales/Refund Discount Rate	(840, 841) %
Discover Int'l Process Fee	(22G) 0.5 %	Per Trans Fee	(0FC) \$	WEX Auth Fee	(0B0, 0B1, 0BV, 0D4) \$
Trustkeeper Fee	(W01) \$	PayPal Auth Fee	(45U, 47U) \$	WEX Chargeback Discount Fee	(842, 843) %
TransArmor Data Protection Token & Encrypt/VF	(12E, 12I) \$ 0.08	PayPal Sales/Return		WEX Chargeback Fee	(29H) \$
TransArmor Data Protection Token Only	(12G) \$	Trans Fee	(45V, 47V, 47Y) \$	WEX Retrieval Fee	(29I) \$
TransArmor Data Protection Token Registration	(12H) \$	Internet AVS	(435) \$		
TransArmor Data Protection Monthly Fee	(30L) \$				
PCI Compliance Service PGM Fee (PCI Rapid Comply)	(33Q) \$				
Other:	\$				
Annual Fee	(FSC-TBD) \$ 109.95				

TeleCheck Fees:		Traditional TeleCheck** (20)	
		<input type="checkbox"/> In-Person Paper Warranty (20P)	<input type="checkbox"/> In-Person Warranty (ECA) (20E)
Inquiry Rate		%	%
Transaction Fee		\$	\$
Monthly Minimum Fee		\$	\$
Customer Request Operator Call/Voice Auth Fee		\$	\$
Monthly Processing/Statement Fee		\$	\$
December Risk Surcharge		%	%
Other:		\$	\$
Funding Report Fee			No Charge
Format/Frequency			Mail / Monthly

\*\*Billed Separately by TeleCheck

## Annual Fee

We reserve the right to assess, on an annual basis and with at least 30 days' advance written notice, a reasonable fee to defray the cost of necessary systems technology upgrades, communication requirements and reporting.

See Agreement for definitions and any additional fees. Note: See Part IV, Section A3 of the Program Guide for early termination fees.

## (8) AGREEMENT APPROVAL

The statements made in this Merchant Processing Application and Agreement are true. Client acknowledges having received and read a copy of the Interchange Schedule (for card processing services), Program Guide (which includes terms and conditions for each of the services, Operating Procedures, Third Party Agreements and a Confirmation Page), and Merchant Processing Application (consisting of Sections 1-9), as modified from time to time in accordance with the provisions of this Agreement, and agrees to be bound by all provisions as printed therein. Client hereby consents to receiving commercial electronic mail messages from us from time to time. Client further agrees that Client will not accept more than 20% of its card transactions via mail, telephone or Internet order. However, if your Application is approved based upon contrary information stated in the Provide More Business Data section above, you are authorized to accept transactions in accordance with the percentages indicated in that Section. This signature page also serves as the signature page to the TeleCheck Services Agreement appearing in the Third Party Section of the Program Guide, if selected, the undersigned Client being "Subscriber" for the purposes of the TeleCheck Services Agreement.

**Information about Phone Calls:** By providing telephone number(s) to us, now or at any later time, you authorize PNC and its affiliates and designees to contact you regarding your account(s) with PNC and its affiliates at such numbers using any means, including but not limited to placing calls using an automated dialing system to cell, VoIP or other wireless phone number, or by sending prerecorded messages or text messages, even if charges may be incurred for the calls or text messages. You consent that any phone call with us may be monitored or recorded by us.

**ACH Debit and Credit Authorization:** Subscriber authorizes its financial institution to pay and charge to its account the amount(s) due TeleCheck under this Agreement and to accept all credits and debits made to its account by TeleCheck via electronic funds transfer in connection with TeleCheck's service(s) under this Agreement. This authorization will remain in effect until 30 days after revoked in writing.

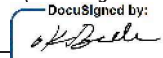
By signing below, each of the undersigned authorizes us and our Affiliates to request and obtain from a consumer reporting agency, personal and business consumer reports. If the Application is approved, each of the undersigned also authorizes us and our Affiliates to obtain subsequent consumer reports in connection with the maintenance, updating, renewal or extension of the Agreement. Each of the undersigned furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit financial information to us and our Affiliates. Each of the undersigned authorizes us and our Affiliates to provide amongst each other the information contained in this Merchant Processing Application and Agreement and any information received from all references, including banks and consumer reporting agencies. It is our policy to obtain certain information in order to verify your identity while processing your account application.

You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control (OFAC).

**USA Patriot Act.** Important Information About How We Open New Accounts: To help the U.S. government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. As a result, when you open an account at PNC we will ask for your name, address, date of birth and other information that will enable us to identify you. We may also ask to see your driver's license or other official documents to identify you. We value your business and appreciate your cooperation with us in meeting the Federal requirements. Thank you for allowing us to assist you with your financial needs.

**Client certifies under penalties of perjury, that the federal taxpayer identification number and corresponding and filing name provided herein are correct.** THIS MERCHANT PROCESSING APPLICATION AND AGREEMENT HAS BEEN EXECUTED ON BEHALF OF AND BY THE AUTHORIZED MANAGEMENT OF CLIENT AS OF THE EFFECTIVE DATE. **The Term of this Agreement is for three (3) years. Early termination penalties will apply if cancelled prior to the end of the contract term. By signing below, you authorize you accept all terms explicitly stated in this processing agreement.**

Client's Business Principal: (Please sign below)

DocuSigned by:  
  
 X Signature \_\_\_\_\_ Date 7/24/2017  
 Title: ☐ President ☐ Vice President ☒ L.L.C. ☐ Owner ☐ Partner  
 KYUNG CHOI  
 Print Name

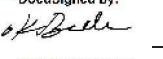
X Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Title: ☐ President ☐ Vice President ☐ Member L.L.C. ☐ Owner ☐ Partner  
 Other: \_\_\_\_\_  
 Print Name

For PNC Bank, N.A. and PNC Merchant Services Company: X Signature \_\_\_\_\_ Date \_\_\_\_\_

## (9) PERSONAL GUARANTY

In exchange for PNC Merchant Services Company, PNC Bank N.A.'s, and TeleCheck Services, Inc. (the Guaranteed Parties) acceptance of, as applicable, the Agreement and/or the applicable Third Party Agreement(s), the undersigned unconditionally and irrevocably guarantees the full payment and performance of the Client's obligations under the foregoing Agreements, and payment of all sums due thereunder, and in the event of default, hereby waives notice of default and agrees to indemnify the other parties for any and all amounts due from Client under any of the foregoing Agreements. I understand that this is a Guaranty of payment and not of collection and that PNC Bank N.A.'s, PNC Merchant Services Company the Guaranteed Parties are relying upon this Personal Guaranty in entering into, as applicable, the foregoing agreements.

Signature (Please sign below)

DocuSigned by:  
  
 X \_\_\_\_\_, an individual

Signature (Please sign below):

X \_\_\_\_\_, an individual



PNC Bank, National Association

# Merchant Processing Agreement Program Guide



## PREFACE

Thank you for selecting us for your payment processing needs. Accepting numerous payment options provides a convenience to your customers, increases your customers' ability to make purchases at your establishment, and helps speed payment to your account.

This Program Guide presents terms governing the acceptance of Visa®, MasterCard®, PayPal in-store Card payments and Discover® Credit and Debit Card payments. The Program Guide also includes provisions applicable to American Express® and Non-Bank Services. Your Merchant Processing Application will indicate the types of payments and Services you have elected to accept.

**This Program Terms and Conditions ( the "Program Guide"), the Operating Procedures Guide, your Merchant Processing Application and the schedules thereto (collectively, the "Agreement"), including, without limitation, the Interchange Qualification Matrix and American Express Program Pricing, one of the Interchange Schedules, as applicable to your pricing method as set forth in the Merchant Processing Application, contains the terms and conditions under which Processor and/or Bank and/or other third parties, will provide services to you. We will not accept any alterations or strike-outs to the Agreement and, if made, any such alterations or strike-outs shall not apply. Please read this booklet completely.**

**You acknowledge that all Services referenced in the Agreement may not be available to you.**

### **IMPORTANT INFORMATION ABOUT BANK'S RESPONSIBILITIES:**

**Discover Card Transactions, American Express Card Transactions, PayPal in-store Card payment transactions and Non-Bank Services are not provided to you by PNC Bank, National Association, but are provided by Processor and/or third parties.**

**The provisions of this Agreement regarding Discover Card Transactions, PayPal in-store Card payment transactions, American Express Card Transactions and Non-Bank Services constitute an agreement solely between you and Processor and/or third parties. Bank is not a party to this Agreement insofar as it relates to Discover Card Transactions, American Express Card Transactions and Non-Bank Services.**

### **OTHER IMPORTANT INFORMATION:**

Cards present risks of loss and non-payment that are different than those with other payment systems. In deciding to accept Cards, you should be aware that you are also accepting these risks.

Visa U.S.A., Inc. ("**Visa**"), MasterCard Worldwide ("**MasterCard**") and DFS Services LLC ("**Discover**"), PayPal, Inc. ("**PayPal**") and American Express Company, Inc. ("**American Express**") are payment card networks that electronically exchange Sales Drafts and Chargebacks for Card sales and Credits. Sales Drafts are electronically transferred from banks (in the case of MasterCard and Visa transactions) or network acquirers (in the case of Discover and PayPal in-store Card transactions) that acquire them from merchants such as yourself (these banks and network acquirers are referred to as "Acquirers") through the appropriate Card Organization to the Issuers. These Issuers then bill their Cardholders for the transactions. The Card Organizations charge the Acquirers interchange fees, pricing and/ or assessments for submitting transactions into their systems. A substantial portion of the fees that you pay will go toward these interchange fees, pricing and assessments.

In order to speed up the payment process, the Issuer transfers the funds back through the Card Organization to the Acquirer at approximately the same time that the Issuer receives the electronic Sales Drafts. Even though the payments under this system are made simultaneously, all payments made through the Card Organizations are conditional and subject to reversals and adjustments.

Each Card Organization has developed Card Organization Rules that govern their Acquirers and Issuers and the procedures, responsibilities and allocation of risk for this process. Merchants are also bound by Card Organization Rules and applicable laws and regulations. The Card Organization Rules and applicable laws and regulations give Cardholders and Issuers certain rights to dispute transactions long after payment has been made to the merchant including Chargebacks.

We do not decide what transactions are charged back and we do not control the ultimate resolution of the Chargeback. While we can attempt to reverse a Chargeback to the Issuer, we can only do so if the Issuer agrees to accept it or the Card Organization requires the Issuer to do so after a formal appeal process. Sometimes, your customer may be able to successfully charge back a Card transaction even though you have provided your goods or services and are otherwise legally entitled to payment from your customer. While you may still be able to pursue claims directly against that customer, neither we nor the Issuer will be responsible for such transactions.

You will be responsible for all Chargebacks and adjustments associated with the transactions that you submit for processing.

Please refer to the Glossary for certain capitalized terms used in the Agreement, including this Preface (if not defined above).

Capitalized terms not otherwise defined in the Agreement, may not be found in the Card Organization Rules.

**PART I: CONFIRMATION PAGE**

Please read the Merchant Processing Program Guide and Merchant Processing Application in their entirety. They describe the terms under which we will provide merchant processing Services to you.

From time to time you may have questions regarding the contents of your Agreement with Bank and/or Processor or the contents of your Agreement with a third party. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

- Your Discount Rates are assessed** on transactions that qualify for certain reduced interchange rates imposed by MasterCard, Visa, Discover and PayPal. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 11 of the Card Processing Program Guide).
- We may debit your bank account (also referred to as your Settlement Account)** from time to time for amounts owed to us under the Agreement.
- There are many reasons** why a Chargeback may occur. When Chargebacks occur we will debit your settlement funds or Settlement Account. For a more detailed discussion regarding Chargebacks, see Section 11 of the Operating Procedures Guide, which will be sent to you when your account is approved, or see the applicable provisions of the TeleCheck Services Agreement.
- If you dispute any charge or funding**, you must notify us within 45 days of the date of the statement where the charge or funding appears for Card Processing or within thirty (30) days of the date of a TeleCheck transaction.
- The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 13 of the Merchant Processing Program Guide or Section 1.14 of the TeleCheck Services Agreement.
- We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card Processing General Terms in Section 16, Term; Events of Default and Section 17, Reserve Account; Security Interest), (see TeleCheck Services Agreement in Sections 1.1, 1.3.2, 1.3.9, 1.5 and 1.6), under certain circumstances.
- By executing this Agreement with us** you are authorizing us to obtain financial and credit information regarding your business and the personal credit and financial information of the signer (even if the signer is executing this Agreement in his/her business capacity) and guarantors of the Agreement until all your obligations to us are satisfied.
- The Agreement contains a provision** for early termination fees under certain circumstances. For example, in the event you terminate the Agreement prior to the expiration of your initial three (3) year term, you may be responsible for the payment of early termination fees as set forth in Part IV, A3 under "Additional Fee Information" and Section 1.27 of the TeleCheck Services Agreement.

In addition, your Lease Agreement is non-cancellable, and Purchased Equipment is non-returnable.

#### 9. Visa and MasterCard Disclosure

##### Visa and MasterCard Member Bank Information: PNC Bank, N.A.

The Bank's mailing address is One PNC Plaza, 249 Fifth Avenue, Pittsburgh, PA, 15222, and its phone number is 1-877-287-2654.

##### Important Visa and MasterCard Member Bank Responsibilities:

- The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a merchant.
- The Bank must be a principal (signer) to the merchant Agreement.
- The Bank is responsible for educating Merchants on pertinent Visa, MasterCard and Discover Rules with which merchants must comply; but this information may be provided to you by Processor.
- The Bank is responsible for and must provide settlement funds to the merchant.
- The Bank is responsible for all funds held in reserve that are derived from settlement.
- The Bank is the ultimate authority should a merchant have any problems with Visa or MasterCard products (however, Processor will also assist you with any such problems).

##### Important Merchant Responsibilities:

- Ensure compliance with Cardholder data security and storage requirements.
- Maintain fraud and Chargebacks below Association thresholds.
- Review and understand the terms of the Merchant Agreement.
- Comply with Card Organization Rules and applicable law and regulations.
- Retain a signed copy of this Disclosure Page.
- You may download "Visa Regulations" from Visa's website at: <https://usa.visa.com/support/merchant.html>
- You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>
- You may download "American Express merchant Operating Guide" from American Express' website at: [www.americanexpress.com/merchantsguide](http://www.americanexpress.com/merchantsguide)

The Term of this Agreement is for three (3) years. Early termination penalties will apply if cancelled prior to the end of the Contract term.

By signing below, you authorize you accept all terms explicitly stated in this processing agreement.

Print Client's Business Legal Name: CHOIS BEER SHOP LLC

By its signature below, Client acknowledges that it received the Interchange Qualification Matrix, and American Express Program Pricing, (version PNC.IQM.MVD.S17.1 or \_\_\_\_\_) and complete Program Terms and Conditions (Version PNC2005) consisting of 40 pages (including this confirmation).

Client further acknowledges reading and agreeing to all terms in the Program Terms and Conditions, MPA, and Agreement, which shall be incorporated into Client's Agreement. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

**NO ALTERATIONS OR STRIKE-OUTS TO THE AGREEMENT WILL BE ACCEPTED.**

#### Client's Business Principal or Authorized Officer:

**Signature** (Please sign below):

X

DocuSigned by:  
  
 4D9F6542E8644E7...

KYUNG CHOI

Please Print Name of Signer

Member LLC

Title

7/24/2017

Date



**PART I: DUPLICATE CONFIRMATION PAGE**

Please read the Merchant Processing Program Guide and Merchant Processing Application in their entirety. They describe the terms under which we will provide merchant processing Services to you.

From time to time you may have questions regarding the contents of your Agreement with Bank and/or Processor or the contents of your Agreement with a third party. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

- Your Discount Rates are assessed** on transactions that qualify for certain reduced interchange rates imposed by MasterCard, Visa, Discover and PayPal. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 11 of the Card Processing Program Guide).
- We may debit your bank account (also referred to as your Settlement Account)** from time to time for amounts owed to us under the Agreement.
- There are many reasons** why a Chargeback may occur. When Chargebacks occur we will debit your settlement funds or Settlement Account. For a more detailed discussion regarding Chargebacks, see Section 11 of the Operating Procedures Guide, which will be sent to you when your account is approved, or see the applicable provisions of the TeleCheck Services Agreement.
- If you dispute any charge or funding**, you must notify us within 45 days of the date of the statement where the charge or funding appears for Card Processing or within thirty (30) days of the date of a TeleCheck transaction.
- The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 13 of the Merchant Processing Program Guide or Section 1.14 of the TeleCheck Services Agreement.
- We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card Processing General Terms in Section 16, Term; Events of Default and Section 17, Reserve Account; Security Interest), (see TeleCheck Services Agreement in Sections 1.1, 1.3.2, 1.3.9, 1.5 and 1.6), under certain circumstances.
- By executing this Agreement with us** you are authorizing us to obtain financial and credit information regarding your business and the personal credit and financial information of the signer (even if the signer is executing this Agreement in his/her business capacity) and guarantors of the Agreement until all your obligations to us are satisfied.
- The Agreement contains a provision** for early termination fees under certain circumstances. For example, in the event you terminate the Agreement prior to the expiration of your initial three (3) year term, you may be responsible for the payment of early termination fees as set forth in Part IV, A3 under "Additional Fee Information" and Section 1.27 of the TeleCheck Services Agreement.

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- The Bank must be a principal (signer) to the merchant Agreement.
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- The Bank is responsible for and must provide settlement funds to the merchant.
- The Bank is responsible for all funds held in reserve that are derived from settlement.
- The Bank is the ultimate authority should a merchant have any problems with Visa or MasterCard products (however, Processor will also assist you with any such problems).

##### Important Merchant Responsibilities:

- Ensure compliance with Cardholder data security and storage requirements.
- Maintain fraud and Chargebacks below Association thresholds.
- Review and understand the terms of the Merchant Agreement.
- Comply with Card Organization Rules and applicable law and regulations.
- Retain a signed copy of this Disclosure Page.
- You may download "Visa Regulations" from Visa's website at: <https://usa.visa.com/support/merchant.html>
- You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>
- You may download "American Express merchant Operating Guide" from American Express' website at: [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide)

The Term of this Agreement is for three (3) years. Early termination penalties will apply if cancelled prior to the end of the Contract term.

By signing below, you authorize you accept all terms explicitly stated in this processing agreement.

Print Client's Business Legal Name: \_\_\_\_\_

By its signature below, Client acknowledges that it received the Interchange Qualification Matrix, and American Express Program Pricing, (version PNC.IQM.MVD.S17.1 or \_\_\_\_\_) and complete Program Terms and Conditions (Version PNC(SNAP)2005) consisting of 40 pages (including this confirmation).

Client further acknowledges reading and agreeing to all terms in the Program Terms and Conditions, MPA, and Agreement, which shall be incorporated into Client's Agreement. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

**NO ALTERATIONS OR STRIKE-OUTS TO THE AGREEMENT WILL BE ACCEPTED.**

**Client's Business Principal or Authorized Officer:**

**Signature** (Please sign below):

**X** \_\_\_\_\_

Title

Date

Please Print Name of Signer

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**PART II: CARD SERVICES****A. OPERATING PROCEDURES**

This part of the Program Guide (through Section 6) describes the procedures and methods for submitting Credit Card transactions for payment, obtaining authorizations, responding to Chargebacks and Media Retrieval Requests, and other aspects of the operations of our services.

PNC Merchant Services is a full-service financial transaction processor dedicated, among other processing services, to facilitating the passage of your Sales Drafts back to the thousands of institutions who issue the MasterCard®, Visa®, Discover, PayPal, and American Express Cards carried by your customers, as well as to the independent Card Issuers of American Express® and Optima. The Operating Procedures contained in this part seek to provide you with the principles for a sound Card program; however, you should consult the Card Organization Rules for complete information to ensure full compliance. The Operating Procedures contained in this part are designed to help you decrease your Chargeback liability and train your employees. (In the event we provide authorization, processing or settlement of transactions involving Cards other than MasterCard, Visa, Discover, PayPal and American Express, you should also consult those independent Issuers' proprietary rules and regulations.)

The requirements set forth in these Operating Procedures will apply unless prohibited by law. You are responsible for following any additional or conflicting requirements imposed by your state or local jurisdiction.

**I. MasterCard, Visa, Discover, PayPal and American Express Acceptance**

**I.1. Certain Rules and Requirements.** The following rules are requirements strictly enforced by Visa, MasterCard, Discover and PayPal:

- Your minimum Credit Card acceptance amount cannot exceed \$10.00. Such minimum amount must be established to all Credit Cards regardless of Card Issuer or Card brands. Unless you are a federal government entity or institution of higher learning, you may not establish a maximum amount as a condition for accepting a Card, except that for Discover transactions, you may limit the maximum amount a Discover Cardholder may spend if, and only if, you have not received a positive authorization response from the Issuer. Setting a minimum transaction amount limit for debit cards (PIN Debit or Non-PIN Debit) is still prohibited.
- You cannot impose a surcharge or fee for accepting a Debit Card or PayPal Card.
- You cannot establish any special conditions for accepting a Card.
- You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address including zip code; or driver's license number) unless instructed by the Authorization Center. The exception to this is for mail/ telephone/Internet order or delivery-required transactions, or as otherwise permitted by applicable law. Any information that is supplied by the Cardholder must not be in plain view when mailed.
- Any tax required to be collected must be included in the total transaction amount and not collected in cash.
- You cannot submit any transaction representing the refinance or transfer of an existing Cardholder obligation deemed uncollectible, for example, a transaction that has been previously charged back, or to cover a dishonored check.
- You cannot accept a Visa Consumer Credit Card or Commercial Visa Product, issued by a U.S. Issuer, to collect or refinance an existing debt. NOTE: Visa Consumer debit and Visa Business debit Card products including prepaid card type can be accepted to collect or refinance an existing debt.
- You must create a Sales Draft or Credit Draft for each Card transaction and deliver at least one copy of the Sales Draft or Credit Draft to the Cardholder.
- 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.
- Failure to comply with any of the Card Organization Rules may result in fines or penalties.

**U.S. Merchants may engage in any of the following steering activities:**

- You may direct customers to a particular brand or type of general purpose card or a particular form of payment. U.S. Merchants may also encourage customers who initially present a Visa Card to use a payment card with a different network brand, a different type of payment card or a different form of payment.
- You may provide a discount/incentive for a consumer to pay with cash, check, Credit Card, Debit Card, etc., however, you must clearly and conspicuously disclose the discount to consumers. Also, you must offer the discount to all consumers and you cannot discriminate based upon Card brand or Card Issuer. 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 1.9.
- You may offer a discount or rebate, including an immediate discount or rebate at the point of sale;

- You may offer a free or discounted product, service or enhanced service;
- You may offer an incentive, encouragement, or benefit;
- You may express a preference for the use of a particular brand or type of general purpose card or a particular form of payment;
- You may assess a surcharge not to exceed the maximum fee amount in effect applicable to credit card products only (debit card products are excluded) when you register with your acquirer thirty (30) days in advance and you disclose your surcharge practices to your customers. For additional details including the maximum surcharge fee amount in effect and sample customer disclosure, please visit [www.visa.com/merchantsurcharging](http://www.visa.com/merchantsurcharging) and [www.mastercardmerchant.com](http://www.mastercardmerchant.com).
- You may communicate to a customer the reasonably estimated or actual costs incurred by the merchant when a customer uses a particular brand or type of general purpose card or a particular form of payment or the relative costs of using different brands or types of general purpose cards or different forms of payment. Visa Consumer and Visa Business Debit Card products including prepaid Card type can be accepted to collect or refinance and existing debit; or
- You may engage in any other practices substantially equivalent to the above.
- You will inform the Cardholder that you are responsible for the Card transaction including your goods and services and for related customer service, dispute resolution and performance of the terms and conditions of the transaction.

**I.2. Card Acceptance.** If you have indicated either in the Merchant Processing 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 1.2 will apply:

**I.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 Card or Debit Cards issued by MasterCard, Visa or Discover so long as you accept any type of MasterCard Visa or Discover branded Card.

**I.2.2.** While many Debit Cards include markings indicating debit (such as "Visa Checkcard, Visa Buxx, Gift Card, DEBIT, or Mastermoney"), many Debit Cards may not include any such markings. 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 Card Organizations. You will be responsible for updating your systems to utilize such tables and to obtain updated tables. You must safeguard BIN information provided by us. If you share our provided BIN information with a third party to use on your behalf, you must require they safeguard it also and use it only for card type identification at the POS.

**I.2.3.** To the extent that you inadvertently or intentionally accept a transaction other than the type anticipated for your account, such transaction will downgrade to a higher cost interchange and you will be billed the difference in interchange (a Non-Qualified Interchange Fee), plus a Non-Qualified Surcharge (see Section 11.1 and Glossary).

**I.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 Cards and use approved specific signage reflecting your policy of accepting only Non-PIN Debit or Credit Cards.

**I.2.5.** Even if you elect not to accept Non-PIN Debit Card transactions as provided above, you may still accept PIN Debit Card transactions if you have signed up for PIN Debit Card Services. The terms in Section 21 shall apply to such services.

**I.2.6.** If a MasterCard Card is presented, you must use your best efforts, by reasonable and peaceful means to retain the Card while making an authorization request. In a face-to-face environment you must give a MasterCard Cardholder the option of a signature based transaction. Unless the Cardholder uses a PIN, the Cardholder must sign the transaction receipt.

**I.2.7.** MasterCard revised standards related to the use of Mobile POS ("MPOS") terminals. Merchants with less than \$100,000 in annual MasterCard transaction volume may use chip only MPOS terminals;

- That do not support magnetic stripe capture and cannot print a paper Transaction receipt.
- Have a contact chip reader and magnetic stripe-reading capability but does not support PIN as a Cardholder Verification Method (CVM) for Contact Chip Transactions.
- Chip-only MPOS Terminal.

Merchants with less than \$100,000 in annual MasterCard transaction volume may use MPOS terminals or Chip-only MPOS solutions that do not support electronic signature capture to complete a transaction without obtaining a CVM.

Please Note: Merchants with more than \$100,000 in annual transactions may use MPOS terminals if the MPOS terminal complies with MasterCard's requirements for POS terminals or hybrid POS terminals (if chip cards are accepted).

**I.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 1.3 is deemed a cash advance, and cash advances are prohibited.

**1.4. 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 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.

**1.5. Telecommunication Transactions.** Telecommunication Card Sales occur when a telephone service provider is paid directly using a Card for individual local or long-distance telephone calls. (NOTE: pre-paid telephone service cards are not and do not give rise to Telecommunication Card Sales). Prior to conducting Telecommunication transactions you must contact us for approval and further instructions, rules and requirements. Failure to do so could result in additional charges or termination of this Agreement.

## 2. 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.**

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

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

For the purposes of this Section 2, "**Merchant Equipment**" means any and all equipment you use in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, including, without limitation, all telecommunication lines and wireless connections and software, systems, point-of-sale terminals, card readers, merchandise and card scanners, printers, PIN pad devices and other hardware, whether owned by you, Merchant Providers or other Persons used by you.

The Card Organizations 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 Services under this Agreement for any actual or suspected data security compromise. You agree that you will not request any Authorizations, submit any Sales Drafts or credit Drafts until you have read and understood the PCI DSS, CISP, SDP and DISC for which you acknowledge we have provided you sufficient information to obtain, and you will be deemed to have done so upon our receipt of your request or submission of any Authorizations, Sales Drafts or Credit Drafts.

You must comply with the data security requirements described in this Section 2.1, including, without limitation, PCI DSS, SDP, CISP, DISC and DSOP, and any additional Card Organization requirements applicable to payment applications and PIN transactions.

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

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

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

Detailed information about DISC can be found at Discover's DISC website:

<http://www.discovernetwork.com/datasecurity/disc.html>

Detailed information can be found at American Express' DSOP website:

[www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide)

**2.2. Data Security Requirements.** You must comply with the data security requirements shown below:

- You must install and maintain a secure firewall configuration to protect data.
- You must protect stored data and do encrypt transmissions of data sent across open/public networks using methods indicated in the Payment Card Industry Data Security Standard ("PCI DSS") which is available at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).
- You must use and regularly update anti-virus software and keep security patches up-to-date.

- 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.
- You must not use vendor-supplied defaults for system passwords and other security parameters.
- You must regularly test security systems and processes.
- You must maintain a policy that addresses information security for employees and contractors.
- You must restrict physical access to Cardholder information.
- You may not transmit Cardholder account numbers to Cardholders for Internet transactions.
- You cannot store or retain Card Verification Codes (three-digit codes printed in the signature panel of most Cards, and a four-digit code printed on the front of an American Express Card) after transaction authorization.
- You cannot store or retain Magnetic Stripe data, PIN data, chip data or AVS data. Only Cardholder account number, Cardholder Name and Cardholder expiration date can be retained subsequent to transaction authorization.
- You must destroy or purge all Media containing obsolete transaction data with Cardholder information.
- 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.
- For Internet transactions, copies of the transaction records may be delivered to Cardholders in either electronic or paper format.
- You must use only those services and devices that have been certified as PCI DSS compliant by the Card Organizations and by vendors approved by your sponsor bank.

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

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

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

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

**2.7. Merchant Providers.** The data security standards set forth in this Section 2 also applies to Merchant Providers. Before you engage any Merchant Provider, you must provide to us in writing (a) the Merchant Provider's legal name, (b) contact information and (c) intended function. You acknowledge and agree that you will not use, or provide Cardholder data access to, any Merchant Provider until you receive our approval and, if required, confirmation of our registration of that Merchant Provider with applicable Card Organizations. You must ensure that you and Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with all applicable Card Organization Rules, including without limitation, those requiring security of Cardholder data. You may allow Merchant Providers access to Cardholder data only for purposes authorized under and in conformance with the Card Organization Rules. You are responsible for all our costs and expenses associated with our review, approval, certification (and recertification as may be required by us or the Card Organization Rules) and registration of any Merchant Providers.



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

**2.8. Noncompliance Fees.** If we have not received compliance validation of your conformance to PCI DSS standards within the first 90 days of the date of the Agreement, you will be charged a monthly non-receipt of PCI Validation fee as set forth in the Application or as otherwise communicated to you, for the period beginning upon expiration of the 90 day period, until such time as you are compliant or this Agreement is terminated, whichever comes first. This fee is in addition to any and all other fees for which you are responsible related to your failure to be compliant as required hereunder.

**2.9. Costs.** If you or a Merchant Provider (or other Person used by you) are determined by any Card Organization, regardless of any forensic analysis or report, to be the likely source of any loss, disclosure, theft or compromise of Cardholder data or Card transaction information, or caused Cardholder data to be put at risk (together, “**Compromised Data Events**”) and regardless of your belief that you have complied with the Card Organization Rules or any other security precautions and are not responsible for the Compromised Data Event, you must promptly pay us for all related expenses, claims, assessments, fines, losses, costs, and penalties and Issuer reimbursements imposed by the Card Organizations against us (together, “Data Compromise Losses”). In addition to the foregoing, you must also pay us promptly for all expenses and claims made by Issuers against us alleging your responsibility for the Compromised Data Event, apart from any claim procedures administered by the Card Organizations.

### 3. Settlement

Except as otherwise set forth in this Program Guide, your funds for MasterCard, Visa, Discover, PayPal and American Express transactions will ordinarily be processed and transferred to your financial institution within two (2) Business Days from the time a Batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard/Visa/Discover/PayPal transactions will ordinarily be processed via the Federal Reserve within two (2) Business Days from the time a Batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

If you have been classified by Discover as having a Discover Direct Strategic Relationship with Discover we will not acquire your Discover transactions and they will be subject to your agreement with Discover. In addition, if you participate in the American Express Direct acceptance program, we will not acquire your American Express transactions, and they will be subject to your agreement with American Express.

If you have a direct relationship with PayPal, we will not acquire your PayPal in-store transactions (we will simply pass transaction data to PayPal) and they will be subject to your agreement with PayPal.

You acknowledge and agree that if we have not agreed to or do not acquire transactions for any Card type (i) we have no liability or responsibility whatsoever for the settlement of or disputes regarding those transactions and (ii) you will pursue directly with the related Card Organization all claims and disputes regarding those transactions. You agree to pay us for per item processing, authorization and other fees in the Application for any non-acquired transaction services you receive from us. For the avoidance of doubt, with respect to the payments you have elected to accept on your Merchant Processing Application, you authorize us to submit Card transactions to, and receive settlement for such transactions from, the applicable Card Organizations on your behalf.

### 4. Account Maintenance

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

**4.2. Change in Your Legal Name or Structure.** You must call Customer Service or your Relationship Manager for instructions and to request required status change request documentation.

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

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

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

### 5. Card Organization Monitoring

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

### 6. Supplies

#### Placing Orders

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

**B. CARD GENERAL TERMS**

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

**7. Services**

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

**8. Operating Procedures; Card Organization Rules and Compliance**

You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Card Organization Rules, including without limitation, the data security requirements described in Section 2. From time to time, we may amend the Operating Procedures, by providing you with at least 30 days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the Card Organization Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there are any inconsistencies between the General Terms and the Operating Procedures, the General Terms will govern. You are responsible for staying apprised of all applicable changes to the Card Organization Rules and maintaining compliance with the Card Organization Rules. Card Organization Rules may be available on web sites such as <https://usa.visa.com>, [www.mastercard.us/en-us/merchants.html](http://www.mastercard.us/en-us/merchants.html) and [www.discovernetwork.com/en-us](http://www.discovernetwork.com/en-us). These links may change from time to time.

**9. Settlement of Card Transactions**

**9.1.** 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.

**9.2.** All settlements for Visa, MasterCard, Discover, PayPal and American Express 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 any of our respective Affiliates whether or not arising out of or related to this Agreement.

**9.3.** All Credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our right to deduct our fees, our final audit, Chargebacks (including our related losses), fees, fines and any other charges imposed on us by the Card Organizations as a result of your acts or omissions. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees and pending Chargebacks and any other amounts owed to us, or our respective Affiliates, in connection with this Agreement, or we may deduct such amounts from settlement funds due to you from us, or our respective Affiliates. 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.

**9.4.** 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.

**9.5.** In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 16.4) occur, we may, with or without notice, change processing or payment terms and/or suspend Credits or other payments of any and all funds, money and amounts now due or hereafter to become due to you pursuant to the terms of this Agreement, until we have had reasonable opportunity to investigate such event.

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

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

**10. Exclusivity**

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

**11. Fees; Adjustments; Collection of Amounts Due**

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

If a transaction fails to qualify for your anticipated interchange levels or you inadvertently or intentionally accept a transaction other than the type anticipated for your account

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

For more information on Visa's and MasterCard's interchange rates, please go to [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com).

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

**11.3.** 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.

**11.4.** The fees for Services set forth in this Agreement may be adjusted to pass through fees imposed by the Card Organizations or other third parties related to the Services. Such pass-through fees include, but are not limited to: (i) new fees imposed by Card Organizations or other third parties, (ii) increases to any third party fees paid for by Cardholder; or (iii) Card Organization fees previously paid for by Servicers. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change or addition is implemented by the applicable Card Organization or other third party as specified in our notice to you.

**11.5.** Subject to Section 16.3, we may also increase our fees or add new fees for Services for any other reason at any time, by notifying you thirty (30) days prior to the effective date of any such change or addition.

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

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

**11.8.** You agree to pay i) any fines imposed upon us by any Card Organization resulting from Chargebacks, ii) any other fees, fines and other charges imposed by a Card Organization with respect to your acts or omissions, iii) any fees or fines imposed upon us by a legal tribunal with respect to your acts or omissions. You are also responsible for all fees, fines and other charges imposed on us as a result of acts or omissions by your agents or third parties.

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

**11.10.** You agree to promptly and carefully review your merchant statements or other documents provided or made available to you (physically, electronically or otherwise provided by Us or others) reflecting Card transaction activity, including, activity in your Settlement Account. If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within sixty (60) days after any debit or credit is or should have been effected or such shorter period as provided in the terms and conditions that govern such account. If you notify us after sixty (60) days, we shall have no obligation to investigate or effect any such adjustments. Any voluntary efforts by us to assist

you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

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

**11.12. Other Debits.** We may also debit your Settlement Account or your settlement funds in the event we are required to pay Card Organization fees, charges, fines, penalties or other assessments as a consequence of your sales activities. Such debits shall not be subject to any limitations of time specified elsewhere in the Agreement, including, without limitation the following, which we may add to or delete from this list as changes occur in the Card Organization Rules or our Operating Procedures pursuant to Section 8:

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

## 12. Chargebacks

**12.1.** 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.

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

**12.3.** You shall reimburse us for any Chargebacks, return items or other claims, demands, losses or expenses resulting from your failure to comply with Association rules, operating procedures, applicable laws or regulations or court orders.

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

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

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

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

**13.1.3.** the amount charged for each Card transaction is not subject to any dispute, set off or counterclaim;

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

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

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

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

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

**13.1.9.** the Card transaction is not a transaction to facilitate illegal internet gambling, or any other activity which is prohibited by federal, state or local law.

**13.1.10.** you are in good standing and free to enter into this Agreement;

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

**13.1.12.** you are not doing business under a name or nature of business not previously disclosed to us;

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

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

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

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

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

**13.2.** THIS AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.

**13.3.** IN NO EVENT SHALL WE, OR OUR AFFILIATES OR ANY OF OUR OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY EARLY TERMINATION FEE OR LIQUIDATED DAMAGES AS PROVIDED ELSEWHERE IN THIS AGREEMENT SHALL NOT BE PROHIBITED BY THIS PARAGRAPH. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT BE APPLICABLE TO YOU WITH RESPECT TO ANY CLAIMS, AWARDS, OR DAMAGES IMPOSED UPON US BY A LEGAL TRIBUNAL ARISING OUT OF YOUR ACTS OR OMISSIONS. YOU HEREBY WAIVE ANY DEFENSES YOU MAY HAVE TO ANY SUCH CLAIM BY US FOR REIMBURSEMENT AND INDEMNIFICATION IN SUCH INSTANCES.

**13.4.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 19 or 13.5), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.

**13.5.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 19), 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 SET BY THE FEDERAL RESERVE BANK OF NEW YORK FROM TIME TO TIME, LESS ONE PERCENT (1%).

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



#### 14. Confidentiality

**14.1.** Unless you obtain written consents from us and each applicable Card Organization, 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.

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

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

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

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

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

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

**14.4.** We may use data collected as part of performing payment processing or other transaction-related services for you ("Transaction Data") for the purpose of providing additional products and services to you, other merchants, or third parties. We have the right to collect and use cardholder information, dates, amounts, and other information we or our vendors obtain in connection with payment processing and related transactions. We will de-identify all cardholder data when we provide you, and others with analytic products and services. We may also collect, aggregate and use your anonymized Transaction Data in combination with other merchants' transaction data in order to develop and to provide you, other merchants, and third parties with analytic products and services.

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

**14.6.** All rights, title, and interest in and to all intellectual property related to the Services (including without limitation, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods), owned, developed or licensed by us prior to, during the term of, or after the Agreement, or employed by us in

connection with the Services and any updates, changes, alterations, or modifications to or derivative works from such intellectual property, shall be and remain, as among the Parties, our exclusive property.

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

#### 15. Assignments

**15.1.** 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 15, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Agreement.

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

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

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

**15.4.** 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.

#### 16. Term; Events of Default

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

**16.2.** 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 this Agreement upon written notice to the other, or as otherwise authorized by this Agreement. Should you fail to notify us in writing of your request to terminate you acknowledge and agree you will continue to be charged fees pursuant to this Agreement, unless your Agreement is terminated for default under Section 16.4.2, notwithstanding non-use of your account. If you have an equipment lease, termination of the Agreement will not terminate your lease or change any of our obligations under that lease (including your obligation to make monthly lease payments).

**16.3.** 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 16.4 of this Agreement. In the event we provide notice to you of any new fees or increases in existing fees for Services, pursuant to Section 11.5, you may terminate this Agreement without further cause or penalty by notifying us that you are terminating this Agreement prior to the effective date of such new fees or increases. However, your continued use of the Services after the effective date of any such fee changes shall be deemed your acceptance of such fee changes for the Services, throughout the term of this Agreement.

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

**16.4.1.** a material adverse or other change in your business, financial condition, business procedures, prospects, products or services; or

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

**16.4.3.** a sale of all or a substantial portion of your assets; or

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

circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or

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

**16.4.6.** you 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 17; or

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

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

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

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

**16.4.11.** a violation by you of any applicable law or Card Organization Rule or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury or your breach, as determined by Servicers, of Section 34.2 ("Compliance with Laws"); or

**16.4.12.** you do not use our services for thirty (30) calendar days;

then, upon the occurrence of (1) an Event of Default specified in subsections 16.4.4, 16.4.9 or 16.4.11, or 16.4.12, 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.

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

**16.6.** If any Event of Default occurs regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, and this Agreement including, without limitation, exercising our rights under Section 17.

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

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

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

## 17. Reserve Account; Security Interest

**17.1.** You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 17. 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.

**17.2.** The Reserve Account shall be fully funded upon three (3) days' notice to you, or in instances of fraud or suspected fraud or an Event of Default, Reserve Account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to your Settlement Account or any other accounts held by Bank or any of its Affiliates, at any financial institution maintained in the name of Client, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account; (ii) any payments otherwise due to you, including any amount due from TeleCheck or other third parties for services provided in connection with your Card transactions; (iii) your delivery to us of a letter of credit; or (iv) if we so agree, your pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination of this Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination of this Agreement or for such longer period of time as is consistent with our liability for your Card transactions and Chargebacks in accordance with Card Organization Rules. We will hold funds pursuant to this Section 17 in master account(s) with your funds allocated to separate sub accounts. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in a Reserve Account.

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

**17.4.1.** To secure your obligations to Servicers and our respective Affiliates under this Agreement and any other agreement for the provision of equipment products or services (including any obligations for which payments on account of such obligations are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause), you grant to 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 our respective Affiliates under this Agreement and any other agreement with Servicers or any of Servicers' and our respective Affiliates for any related equipment or related services (including any check services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to 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.

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

**17.4.3.** 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.

## 18. Financial and Other Information

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

**18.2.** 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.



## 19. Indemnification

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

**19.2.** Subject to the limitations set forth in Section 13.4, we agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall not apply to Bank with respect to Non-Bank Services.

## 20. Special Provisions Regarding Non-Bank Cards

**20.1.** Non-Bank Card transactions are provided to you by Processor and not by Bank and include transactions made using Discover, PayPal, American Express, JCB, Voyager and WEX Card types. The Services provided, transactions processed and other matters contemplated under this Section 20 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 20 directly conflict with another provision of this Agreement, in which case the terms of this Section 20 will control; provided, however, that (i) Bank is not a party to this Agreement insofar as it relates to Non-Bank Card services, and Bank is not liable to you in any way with respect to such Services and (ii) you agree to pay Processor any per item processing, authorization and other fees described in the Application for non-acquired transaction services you receive from Processor. For the purposes of this section, the words "we," "our," and "us" refer only to the Processor and not to the Bank. You authorize us to share information from your Application with American Express, Discover, PayPal and any other Non-Bank Card Organization.

**20.2.** If you accept American Express, you understand that if, based upon your anticipated Card transaction volume you do not qualify for our full service program but have otherwise been approved for accepting American Express transactions, your authorizations will be obtained from and funded by American Express. American Express will provide you with its own agreement that governs those transactions. You understand and agree that we are not responsible and assume absolutely no liability with regard to any such transactions, including but not limited to the funding and settlement of American Express transactions, and that American Express will charge additional fees for the services they provide.

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

**20.4.** 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.

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

**20.6.** If you elect to participate in the WEX Full Service Program; the following terms and conditions shall apply:

- a) You shall provide, at your own expense, all equipment necessary to permit the electronic acceptance of the WEX Cards, including the operation and maintenance of the equipment, telecommunication link, and provision of all networking services;
- b) All authorization request data for WEX Card sales must include WEX Cardholder account number, vehicle number, Card expiration date, driver identification number; and the amount of the transaction, date and time of the transaction, quantity of goods sold, unit price, and product code (the "Authorization Request Data"). All manual WEX Card sales (i.e., sales facilitated by a card imprinter) must include an Authorization number or other approval code from WEX along with the aforementioned Authorization Request Data. The type of goods sold, quantity of goods sold, unit price/price per gallon (if applicable), taxes, and any coupons presented within the product detail of a transaction must be accurate. Product detail presented must also equal the total amount of the sale when calculated (e.g. Product quantity x unit price must equal product amount. Sum of all product amounts including taxes minus any coupons must equal total transaction amount.);
- c) You shall not to submit a WEX Card sale for processing when a WEX Card is not presented at the time of the WEX Card sale;

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

### 20.7. If you accept Voyager Cards:

- In addition to the information stated in Section 1 (MasterCard, Visa, Discover, PayPal and American Express Acceptance) of the Operating Procedures, you should check Fleet Cards for any printed restrictions at the point of sale.
- In addition to the information provided under Section 1.5 (Special Terms) of the Operating Procedures Guide, 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 Cardholder in connection with a sale.
- In addition to the information required under Section 3.1 (Information Required) of the Operating Procedures Guide, the following information must be contained on the single page document constituting the Sales Draft for Voyager transactions:
- All authorization request data for Voyager Card sales must include Voyager Cardholder account number, Card expiration date, driver identification number and the amount of the transaction date and time of the transaction, of goods sold, unit price, and product code (the "Authorization Request Data"). All manual Voyager Card sales (i.e., sales facilitated by a card imprinter) must include an Authorization number or other approval code from Voyager along with the aforementioned Authorization Request Data. The type of goods sold, quantity of goods sold, unit price/price per gallon (if applicable), taxes, and any coupons presented within the product detail of a transaction must be accurate. Product detail presented must also equal the total amount of the sale when calculated (i.e. Product qty x unit price must equal product amount. Sum of all product amounts including taxes minus any coupons must equal total transaction amount.)
- Client acknowledges that fuel tax removal at the point of sale is not permitted. For all payment system product codes that are taxable, transaction dollar amount and price per gallon (PPG) must contain the sum of the fuel cost and PPG inclusive of all applicable Federal, State, County, Local and other fuel taxes.
- If an increase in the number of Voyager transaction authorization calls from you not due to our or Voyager system outages in excess of 15% for a given month as compared to the previous month occurs, we may, in our discretion, deduct telephone charges, not to exceed \$.25 (25 cents) per call, for the increased calls, from your settlement of your Voyager transactions.
- In addition to the information provided under Section 3 (Settlement) of the Operating Procedures, settlement of Voyager transactions will generally occur by the fourth banking day after we process the applicable card transactions. We shall reimburse you for the dollar amount of sales submitted for a given day by you, reduced by the amount of Chargebacks, tax exemptions, discounts, credits, and the fees set forth in the Application. Notify Processor of any errors contained with the Settlement Reports within thirty (30) calendar days of receipt of such report. Neither we nor

Voyager shall be required to reimburse you for sales submitted more than sixty (60) calendar days from the date of purchase.

- For daily transmission of sales data, you shall securely maintain true and complete records in connection with the information required to be provided under this paragraph for a period of not less than thirty-six (36) months from the date of the generation of the data. You may store records on electronic media, if secure. You are responsible for the expense of retaining sales data records and Sales Drafts.
- In addition to the scenarios identified in Section 11.1.4 of the Operating Procedures Guide that could cause an authorization related Chargeback to occur, with respect to Voyager transactions, Chargebacks shall be made in accordance with any other Voyager rules. Notwithstanding termination or expiration of this paragraph or the Agreement, you shall remain liable for all outstanding Chargebacks on Voyager transactions.
- In addition to the information provided under Section 13 (Representations; Warranties; Covenants; Limitations of Liability; Exclusion of Consequential Damages) of the General Terms, in no event shall our cumulative liability to you for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions exceed the lesser of \$10,000.00 or the Voyager transaction fees paid by you to us for the two months prior to the action giving rise to the claim.
- Notwithstanding anything in this Agreement to the contrary, our obligation to provide services to you relating to any Fleet Card will terminate automatically without penalty to us or the related Card Organization upon the earlier of (i) the termination or expiration of our agreement with such Card Organization, (ii) at least twenty (20) days prior written notice by us to you; (iii) your failure to comply with material terms relating to such Fleet Card transactions, or (iv) written notice, if a Card Organization discontinues its Card.

**20.8.** If you accept PayPal Cards you understand that the following requirements apply to PayPal Card transactions in addition to the information required in this Agreement:

- Only PayPal's in-store, Card present transactions are eligible for processing under this Agreement. Online, cash over, cash advance, quasi cash transactions, international transactions or manually entered transactions may not be processed (you must contact us or PayPal for information related to services that are not covered in this Agreement).
- You will provide us with information about the Card transactions you conduct; including, data related to your Authorization requests, Card transactions, and transaction dispute responses.
- You will provide us with aggregate and individual information about the Card transactions you accept; including, the number, type and kind of transactions you conduct, your disputes, your business operations, your merchant category code information, and any other information you are required to provide under this Agreement.
- You will not use, store, retain or otherwise disclose any of PayPal's confidential information, Cardholder data, magnetic stripe track data, or PayPal Card transaction data (other than as necessary to complete a transaction).
- You will not use PayPal Cardholder's personal information for marketing and/or other purposes without explicit consent from the Cardholder.

## 21. Special Provisions For Debit Card

The special provisions outlined in this Section 21 apply only to those Debit Card transactions that are processed by a Cardholder entering a PIN unless the transaction is a network supported PINless transaction. A PINless transaction is a Debit Card transaction that a merchant submits to us for settlement/ funding transactions with neither a PIN nor Signature. The Services provided, transactions processed and other matters contemplated under this Section 21 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 21 directly conflict with another provision of this Agreement, in which case the terms of this Section 21 will control.

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

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

- You may not process a Credit Card transaction in order to provide a refund on a Debit Card transaction.

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

- All Debit Card transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for Debit Card transactions.
- You may not complete a Debit Card transaction that has not been authorized. If you cannot obtain an Authorization at the time of sale, you should request another form of payment from the Cardholder or process the transaction as a Store and Forward or Resubmission, in which case you assume the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuer to find out why a transaction has been declined.
- Unless the transaction is a network supported PINless transaction, you may not complete a Debit Card transaction without entry of the PIN by the Cardholder (and no one else) or signature by the Cardholder (and no one else). 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 debit transaction will depend upon, among other things, our own business considerations, the availability of the Debit network at the time of the transaction and whether a particular Debit Card is enabled for a particular network. The Debit network used to route your transaction may or may not be the lowest cost network available. To the extent permitted by law, we may, in our sole discretion (i) use any Debit network available to us for a given transaction (including any of our affiliated PIN Debit networks) and (ii) add and/or remove Debit networks available to you based on a variety of factors including availability, features, functionality and our own business considerations.
- You must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN truncation on it.
- You may not manually enter the account number for PIN Debit transactions. Signature Debit transaction may be key entered if you are unable to swipe the Card. The account number must be read electronically from the Magnetic Stripe/chip for transactions authenticated with a PIN. If the Magnetic Stripe/chip is unreadable, you must request another form of payment from the Cardholder. Do obtain a signature if PIN authentication is not supported or available
- 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 FOR SECURING YOUR POS DEVICES AND FOR IMPLEMENTING APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

**21.3. Cash Back From Purchase.** You may offer 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 currently offering this service, your POS device may require additional programming to begin offering cash back as long as it is supported by the Debit Network.

**21.4. Settlement.** You must reconcile your accounts for each location daily and notify us within 24 hours of any issues.

**21.5. Adjustments.** An adjustment is a transaction that is initiated to correct a Debit Card transaction that has been processed in error. For signature debit transactions (including "no signature" signature debit transactions), both the Cardholder and the card issuing bank have the right to question or dispute a transaction. If these questions or disputes are not resolved, a chargeback may occur. You are responsible for all adjustment and Chargeback fees that may be charged by a Debit network. Some PIN Debit networks may have established minimum amounts for adjustments.

**There are several reasons for adjustments being initiated:**

- The Cardholder was charged an incorrect amount, whether 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.
- A Cardholder is disputing the goods or services provided.

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

## 22. Special Provisions Regarding EBT Transactions

If you elect to accept EBT Cards and engage in EBT transactions, the terms and conditions of this Section 22 shall apply.

EBT transactions are provided to you by Processor and not by Bank. The Services provided, transactions processed and other matters contemplated under this Section 22 are subject to the rest of the Agreement, as applicable, except to the extent the terms of this Section 22 directly conflict with another section of this Agreement, in which case the terms of this Section 22 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to EBT transactions, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank.



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

**22.1. Acceptance of EBT Benefits.** You agree to accept EBT Cards and provide EBT benefits to EBT customers through the use of POS Terminals, PIN pad and printer or other equipment that meet required standards set forth in the EBT Rules (including those set out in the Quest Rules) ("Authorized Terminal") during your normal business hours, in a manner consistent with your normal business practices.

The "EBT Rules" means (i) all procedures that we establish and provide to you from time to time regarding your acceptance of EBT Cards and provision of EBT benefits to EBT customers; (ii) the Quest Rules, as amended from time-to-time, issued by the National Automated Clearing House Association as approved by the Financial Management Service of the U.S. Treasury Department, as necessary (and any rules that succeed or replace the Quest Rules); and, (iii) other such laws, rules, regulations and procedures that are applicable to the acceptance of EBT Cards and the provision of EBT benefits by you under this Section 22, including without limitation, laws pertaining to delivery of services to EBT customers and EBT customer confidentiality, the federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, regulations issued by the Department of Agriculture pertaining to Food Stamp Program, and, any additional procedures specified by the state regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by providing EBT customers with information such as telephone numbers and addresses of the state or other appropriate agencies. The "Food Stamp Program" is the government benefits program operated under the authority of the Food Stamp Act of 1964.

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

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

**22.2. Manual EBT Vouchers.** In accordance with the procedures set forth in this Section 22 and the EBT Rules, you will manually accept EBT Cards during periods of time when your Authorized Terminal is not working or the EBT system is not available; you will manually provide EBT benefits in the amount authorized through the applicable EBT service provider to the EBT customers at no cost to the EBT customers upon presentation by an EBT customer of his/her EBT Card. All manual voucher authorizations must be cleared on your POS terminal for payment of voucher to be made to you. In addition to any procedures set forth in the EBT Rules, the following limitations will apply to manual issuance of FS Benefits by merchant:

- i. An authorization number for the amount of the purchase must be received by you from the applicable EBT service provider while the respective EBT customer is present and before you provide such EBT customer with any FNS, SNAP and WIC Benefits or Cash Benefits, as applicable. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to sign the voucher. The EBT customer must sign the voucher. A copy of the voucher should be given to the EBT customer at the time of authorization and you should retain one copy for your records.
- ii. Specified EBT customer, clerk and sales information, including the telephone authorization number, must be entered properly and legibly on the manual sales draft.
- iii. All manual voucher authorizations must be cleared on your Authorized Terminal within 14 days after the date of applicable voice authorization. Vouchers cannot be cleared by any manner except by your Authorized Terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your Authorized Terminal for payment, no further action can be taken to obtain payment for the voucher.
- iv. In the event that, due to EBT host failure, EBT benefit availability for an EBT customer cannot be determined at the time you request authorization, the maximum authorized manual transaction and benefit encumbrance will be \$40.00 or such other state specific floor limit as set forth in the most current version of the applicable EBT Rules.
- v. Except as specifically provided in the applicable EBT Rules, you will not be reimbursed and will be solely responsible for a manual transaction if you fail to obtain an authorization number from the applicable EBT service provider as set forth in this

Section 22 or otherwise fail to process the manual transaction in accordance with the EBT Rules.

- vi. If you have not received an authorization number in accordance with paragraph 22.1 above, you may not "re-submit" a manual sales draft for payment for the same transaction.

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

**22.4. Interoperability.** If you accept EBT Cards and provide EBT benefits (Food Stamps Benefits and/or Cash Benefits), you must do so for EBT customers from all states.

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

**22.6. 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 have the right to immediately terminate the provision of service under this Section 22 or the Agreement in its entirety. With respect to the issuance of Cash Benefits only, your authority to issue Cash Benefits may be suspended or terminated immediately at the sole discretion of us, the state or its EBT service provider, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination if there will be (i) any suspension, injunction, cessation, or termination of the EBT service provider's authority to provide EBT services to the state; (ii) failure by you, upon not less than thirty (30) days prior written notice, to cure any breach by you of these terms and conditions, including without limitation, your failure to support the issuance of EBT benefits during your normal business hours consistent with your normal business practices, your failure to comply with EBT benefit issuance procedures, your impermissible acceptance of an EBT Card, or your disqualification or withdrawal from the Food Stamp Program; or (iii) based on a state's or its EBT service provider's investigation of the relevant facts, evidence that you or any of your agents or employees are committing, participating in, or have knowledge of fraud or theft in connection with the dispensing of EBT benefits. If you fail to cure any breach as set forth above, you may appeal such suspension of termination to the applicable state for determination in its sole discretion.

In the event that your authority to accept benefits is suspended or terminated by a state or its EBT service provider, and you successfully appeal such suspension or termination to the state or its EBT service provider, we shall be under no obligation to reinstate the services previously provided under this Section 22 or the Agreement, as applicable.

The provision of services under this Section 22 shall terminate automatically if our agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

You will give prompt notice to us if you plan to stop accepting EBT Cards and providing EBT benefits or if you are unable to comply with the terms of this Section 22.

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

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

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

The use of information obtained by you in the performance of your duties under this Section 22 will be limited to purposes directly connected with such duties.

**22.8. 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 EBT benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider or we endorses your goods or services. Your right to use such Protected Marks pursuant to this Agreement will continue only so long as this Section 22 remains in effect or until you



are notified by us, any state or its EBT service provider to cease their use or display. You will not use the Marks of any EBT service provider without prior written approval from such EBT service provider.

## **22.9. Miscellaneous.**

**22.9.1. Errors.** You will fully cooperate with us and any other participants in the EBT system in the resolution of errors and disputes regarding EBT transactions processed pursuant to this Section 22. You will promptly notify us of any such errors or disputes.

### **22.9.2. Issuance Records.**

- i. You agree to make available such informational materials as may be required by the state, its EBT service provider or any applicable regulations pertaining to the issuance of Benefits.
- ii. You will retain all EBT-related records (including but not limited to manual sales drafts or vouchers) in the manner required by the EBT Rules or otherwise reasonably requested by us for three (3) years following the date of the applicable EBT transaction, or for such additional period as may be required by the EBT Rules. Records involving matters in litigation will be kept by you for a period of not less than three (3) years following the termination of the applicable litigation. Copies of any documents in media other than paper (e.g., microfilm, etc.) related to this Section 22 may be substituted for the originals to the extent permitted under applicable EBT Rules and provided that legible paper copies can be reproduced within a reasonable time after such records are requested.
- iii. You will make all EBT-related records available for audit upon request to representatives of the state or its EBT service provider, or other authorized state or federal government agency during normal business hours.
- iv. To assure compliance with this Agreement, including without limitation this Section 22, the state, its EBT service provider, or other authorized state or federal government agency, will at all times, upon advance notice except in the case of suspected fraud or other similar activity, have the right to enter, during normal business hours, your premises to inspect or evaluate any work performed under this Agreement, or to obtain any other information required to be provided by you or otherwise related to this Agreement.

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

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

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

**22.9.6. Reference to State.** Any references to state herein will mean the state in which you accept EBT benefits pursuant to this Section 22. If you accept EBT benefit in more than one state pursuant this Section 22, then the reference will mean each such state severally, not jointly.

**22.9.7. Third Party Beneficiaries.** These terms and conditions, do not create, and will not be construed as creating, any rights enforceable by any person not having any rights directly under this Agreement, except that the state and its Issuer, as defined in the Quest Rules, will be deemed third party beneficiaries of the representations, warranties, covenants and agreements made by you under the Agreement, including without limitation this Section 22.

## **23. Special Provisions Regarding Wireless Service**

If you elect to purchase the Wireless Services from us as indicated on the Application, then the following terms and conditions of this Section 23, referred to as the Wireless Services Terms, shall apply. THE WIRELESS SERVICES BEING SOLD TO YOU FOR USE IN YOUR BUSINESS ARE NOT BEING SOLD TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank. Bank is not a party to this Agreement insofar as it relates to Wireless Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words “we,” “our” and “us” refer only to the Processor and not to the Bank.

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

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

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

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

• **Wireless Equipment.** You agree that in order to access the Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by Processor from time to time in its sole discretion (the “Wireless Equipment”). If Wireless Equipment is purchased by you from us as indicated on the Application, then the terms of this Agreement, including without limitation Section 25 of this Agreement, apply to your use of such Wireless Equipment.

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

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

**23.2. Software Licenses.** Processor hereby grants to you a non-exclusive, non-transferable limited sublicense to use any wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from Processor's systems onto the Wireless Equipment in connection with your purchase and use of the Wireless Services in accordance with the terms of this Agreement, including this Section 23 and Section 25 (“Wireless Software”). Anything in this Agreement to the contrary notwithstanding, we or certain third parties retain all ownership and copyright interest in and to all Wireless Software, related documentation, technology, know-how and processes embodied in or provided in connection with the Wireless Software, and you shall have only a nonexclusive, non-transferable license to use the Software in your operation of the Equipment for the purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Wireless Software to you or shall be construed as a sale of any rights in any such Software to you. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Wireless Software. You shall not reverse engineer, disassemble or decompile the Wireless Software. You shall not give any Person access to the Wireless Software without our prior written consent. Your obligations under this Section 23.2 shall survive the termination of this Agreement. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this Section.

**23.3. 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 23.10, or for any third party's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services (including the Wireless Software), or Wireless Networks, regardless of the form of action (whether in contract, tort (including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor's, Bank's, and Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the lesser of the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services or \$50,000.00. In no event shall Servicers, Wireless Vendor(s) or our respective affiliates be liable for any indirect incidental, special or consequential damages. The remedies available to you under these Wireless Services Terms will be your sole and exclusive remedies with respect to the Wireless Services.

**23.4. 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 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 23; or (d) any third party's unauthorized access to Client's data and/or unauthorized financial activity occurring on your Merchant Identification Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

**23.5. 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.

**23.6. Termination.** In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 23 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).

**23.7. 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.

**23.8. 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.

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

**23.10. 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

## 24. Special Provisions Regarding Gift Card Services

Gift Card Services are provided to you by Processor. The Services provided, transactions processed and other matters contemplated under this Section 24 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 24 directly conflict with another provision of this Agreement, in which case the terms of this Section 24 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Gift Card Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our," and "us" refer only to the Processor and not to the Bank. The terms and conditions set forth in this Section govern the provision of Gift Card Services.

**24.1. Definitions.** Capitalized terms used in this Section 24 or as defined in the Glossary or elsewhere in this Section.

- a) "ACH" means the Automated Clearing House system.
- b) "Affiliated Issuer(s)" means each Client Affiliate and/or franchisee that enters into an Affiliated Issuer Agreement, in the form required and provided by Processor.
- c) "Database" means the database on which Gift Card Data for each Gift Card issued under the Program is processed and maintained.
- d) "Designated Location" means any store, retail location or other place of business (including a direct marketing program or Internet site), located in the U.S.A., and at or through which you issue Gift Cards and/or process transactions using Gift Cards issued under the Program. Designated Location may also include any help desk or IVR through which transactions are processed under the Program.
- e) "Enhanced Features" means the additional program functionality offered to you pursuant to the Enhanced Features set-up form.
- f) "Gift Card" means an encoded device that accesses Gift Card Data maintained in the Database.
- g) "Gift Card Data" means the current value and record of transactions corresponding to each Gift Card issued under the Program.
- h) "Gift Card Equipment" means any POS Terminal, software or other similar telecommunications equipment that has been programmed and certified to Processor's specifications in order to transmit Gift Card Data and process online transactions under the Program.
- i) "Gift Card Holder" means any person in possession of or that uses a Gift Card.
- j) "Gift Card Number" means the identifying number of a Gift Card.
- k) "Gift Card Production Company" means a company selected and retained by Processor or you to produce Gift Cards and provide related products or services for the Program.

- l) "IVR" means an automated Interactive Voice Response system accessed via a toll-free telephone number.
- m) "POS Terminal" means an electronic Point-Of-Sale terminal placed in a Designated Location which is connected to Processor's system via telephone lines and is designed to swipe Gift Cards.
- n) "Program" means your program pursuant to which you issue Gift Cards to Gift Card Holders and Processor provides the Services to enable such Gift Card Holders to use such Gift Cards to purchase goods and services at Designated Locations.
- o) "Services" means the services provided by Processor in connection with the Program as further described in this Section.

**24.2. Services.** Processor agrees to provide the Services set forth below in connection with the Program.

- a) Processor will arrange for the production of all Gift Cards and all other services related thereto by the Gift Card Production Company for the Program in accordance with the specifications and fees set forth on the Gift Card Set-Up Form (the "Gift Card Set-Up Form"), which is incorporated by reference herein.
- b) Processor shall establish, process and maintain Gift Card Data on the Database.
- c) Processor shall provide you and your Affiliated Issuers with the capability to process selected transactions under the Program through Gift Card Equipment at Designated Locations.
- d) Upon receipt of transaction information from a Designated Location by the Database, Processor will compare the proposed transaction amount with the account balance maintained on the Database corresponding to the Gift Card or Gift Card Number that was presented at the Designated Location. If the account balance is greater than or equal to the amount of the proposed transaction, Processor will authorize the transaction. If the account balance is less than the amount of the proposed transaction, Processor will decline the transaction. If your Gift Card Equipment supports "split tender" and the account balance is less than the amount of the proposed transaction, Processor will authorize the transaction for the amount of the account balance, and return a message and/or receipt to the Gift Card Equipment showing the remaining amount of the transaction to be collected by you. You understand and agree that an Authorization by Processor only indicates the availability of sufficient value on a Gift Card account at the time of Authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number.
- e) Processor shall provide an IVR, twenty-four (24) hours per day, seven (7) days per week through which you and Gift Card Holders may obtain Gift Card balances.
- f) Processor shall provide a Gift Card product support help desk through which you may process selected transactions under the Program. Support is currently available Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern Time (excluding holidays). The hours and days of support are subject to change at any time; provided that (i) Processor will provide advance notice of any change in the hours and days; and (ii) the total number of hours shall not be less than 40 in any regular work week (excluding holidays).
- g) Processor will provide you with Gift Card transaction reports, accessible by you through a designated Internet site. Processor will maintain reports on the Internet site for Client's use for a period of six (6) months. Processor may, in its discretion, provide additional or custom reports or report formats, as may be requested by you from time to time, at a fee to be determined by Processor.
- h) You will at all times own all right, title and interest in and to all Gift Card Data generated under the Program. During the term, Processor will retain the Gift Card Data for each Gift Card on the Database for a period of twenty-four (24) months following the date that the account balance reaches zero. Thereafter, during the term, Processor may remove the Gift Card Data from the Database and archive such Gift Card Data in any manner determined by Processor in its reasonable business judgment. Notwithstanding the foregoing, within ninety (90) days of your written request, during the first twelve (12) months following the expiration or termination of the Gift Card Services, Processor will compile a data report of the Gift Card Data stored in the Database, in Processor's standard format, at a fee to be determined by Processor. Processor shall deliver your Gift Card Data to you in a mutually agreeable format. Processor shall have no obligations with respect to your Gift Card Data following delivery to you.
- i) Enhanced Features are made available to you, you may choose additional Enhanced Features pursuant to the Enhanced Features set-up form and you expressly authorize Processor, and Processor agrees to provide Services with respect to Gift Cards sold and activated by third party distributors. As between Processor and you, you shall be responsible for any acts or omissions of each third party distributor in connection with the sale or activation of any Cards. You and Processor agree that Processor shall not be deemed to have failed to provide Services outlined herein with respect to any Card sold and activated by any third party distributor, including through any Designated Location, to the extent any such failure by Processor is caused in whole or in part by any failure of any third party distributor or you to provide to Processor information regarding the sale and activation of such Card that is accurate, complete, timely and formatted in accordance with Processor's instructions and specifications in all respects. Additional fees and charges may apply, including separate third party fees, for any Enhanced Features chosen by you. You may only work with Processor approved third party distributors.

**24.3. Your Responsibilities.** Your responsibilities are set forth below and elsewhere in this Section.



- a) You will accept for processing any transaction initiated by one of your customers using a Gift Card pursuant to the Services without discrimination with regard to the customer who initiated the transaction.
- b) You will securely maintain all transaction records and other records required by law or regulation to be maintained in connection with the operation of the Gift Card Equipment or the Program. You will download and securely store any and all Gift Card transaction reports for future reference. In the event that you need a report for a period past such six (6) months, Processor may provide such requested report to you at a fee to be determined by Processor.
- c) You will make your personnel and records available to Processor, its agents and contractors, all within such time and in such forms or manner as may be reasonably necessary to enable Processor to perform the Services promptly and in an efficient manner.
- d) You shall be responsible, at your sole cost and expense, for the sale and other distribution of Gift Cards to Gift Card Holders and for any marketing or advertising of the Program.
- e) You shall obtain, operate and maintain, at your sole cost and expense, all Gift Card Equipment required to enable you and Affiliated Issuers to electronically transmit Gift Card Data in accordance with Processor's specifications from all Designated Locations to the Database.
- f) You are solely responsible for obtaining Authorization in advance of each transaction. You are solely responsible for any losses incurred in conducting transactions when an Authorization is not obtained, including, without limitation, transactions conducted when the Database or the Gift Card Equipment is not in service. You assume all risk of erroneous or fraudulently obtained Authorizations, unless such erroneous or fraudulently obtained Authorization is caused directly by Processor. You understand and agree that an Authorization by Processor only indicates the availability of sufficient value on a Gift Card account at the time of Authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number. You are responsible for the accuracy of all data transmitted by it for processing by Processor.
- g) You shall be responsible for accessing and comparing the reports supplied by Processor to its own records and promptly notifying Processor of any necessary adjustments to Gift Card accounts. You acknowledge that Processor will make adjustments to Gift Card accounts pursuant to your instructions, and Processor shall have no liability for any errors to Gift Card accounts that are made in accordance with your instructions.
- h) You shall comply and shall ensure that all Affiliated Issuers comply with all laws and regulations applicable to the Program. You acknowledge and agree that you are solely responsible for interpreting all laws and regulations applicable to the Program, for monitoring changes in laws and regulations applicable to the Program, and for determining the requirements for compliance with laws and regulations applicable to the Program. Processor shall be entitled to rely upon and use any and all information and instructions provided by you for use in performing the Services, and Processor shall have no liability whatsoever for any noncompliance of such information or instructions with laws or regulations.
- i) As between you and Processor, you shall bear all risk related to the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number or PIN: (i) in the case of Gift Cards ordered through Processor, upon delivery of such Gift Cards to you or your Designated Location, as applicable, and (ii) in the case of Gift Cards obtained by you from a Person or Gift Cards which you request to be delivered in a pre-activated state, whether such loss occurs before or after delivery of such Gift Cards to you or your Designated Location.
- j) Processor and you agree that during the term: (i) Processor will be the sole and exclusive provider of the Services to you and your Affiliated Issuers; and (ii) you will not directly or indirectly, offer or promote any other proprietary, closed network, online Gift Card or similar access device.
- k) You may allow Affiliated Issuers to participate in the Program; provided, however that (i) you shall be responsible for ensuring that all Affiliated Issuers comply with the terms and conditions of this Section and the separate Affiliated Issuer Agreement, and (ii) you shall be jointly and severally liable for all fees and other amounts payable to Processor in connection with any activities of Affiliated Issuers related to this Section, including but not limited to Gift Card transactions.
- l) You are responsible for any settlement of funds among Affiliated Issuers and Designated Locations.
- m) You may only use, distribute or accept the Gift Cards and the Gift Card Services in connection with the bona-fide sale of goods and services at your place of business and for no other purpose. You will not use, distribute or accept the Gift Cards or the Gift Card Services for any illegal purpose, including but not limited to transactions prohibited by the Unlawful Internet Gambling Enforcement Act or the rules and regulations promulgated by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury.

**24.4. Fees and Payment.** In addition to all other rights we have under the Agreement you shall pay Processor the fees set forth on the Gift Card Set-Up Form. You shall also be responsible for the payment of any taxes imposed by any applicable governmental authority in connection with any products or services covered by this Section (other than those taxes based solely on the net income of Processor). All fees for the Services shall be paid via an ACH transfer of funds from a bank account designated by you. To authorize the ACH transfers, you agree to execute the ACH Authorization on the Gift Card Set-Up Form. In the

event that fees cannot be collected from you as set forth above, Processor reserves and may exercise all other rights to collect any fees due.

#### **24.5. Termination.**

- a) The provision of Gift Card Services may be terminated at any time: (i) by either party in the event that the other materially breaches any term or condition of this Section and fails to cure such breach within thirty (30) days of written notice of such breach from the non-breaching party; (ii) by Processor if you fail to pay any amount due within ten (10) Business Days after written notice to you of your failure to pay such amount; (iii) by Processor upon written notice to you in the event that your operation of the Program results in a violation of law or regulation (by you, an Affiliated Issuer or Processor); (iv) by you if Processor increases its rates under Section 24.4(c) above and you provide thirty (30) days written notice of termination within thirty (30) days of receiving notice of said increase; or (v) by either party upon written notice to the other after the filing by the other of any petition in bankruptcy or for reorganization or debt consolidation under the federal bankruptcy laws or under any comparable law, or upon the other party's making of an assignment of its assets for the benefit of creditors, or upon the application of the other party for the appointment of a receiver or trustee of its assets.
- b) If (i) the Gift Card Services are terminated for any reason other than Processor's material breach prior to the expiration of the initial term, or (ii) you suspend or terminate the Program prior to the expiration of the initial term except as provided for in Section 24.5 (a) (iv), nothing in this subsection shall prohibit or limit Processor's right to recover damages or any other amounts owing Processor in the event that the Gift Card Services are terminated by Processor due to a breach by you or shall be deemed to waive or otherwise limit your obligations pursuant to Section 24.6 (a).
- c) If requested by you, Processor may, in its sole and absolute discretion, continue to provide the Services for all previously issued and unexpired (if applicable) Gift Cards for up to twelve (12) months following the termination of the Gift Card Services; provided, however, that Processor shall not activate any new Gift Cards after the effective date of termination. Processor's obligation to provide continuing Services after termination is contingent upon your agreement to pay for such Services and to conduct your operations in accordance with the terms of this Section, and Processor may require advance payment for some portion or all of the estimated cost of such Services to be provided after termination.
- d) Termination of the Gift Card Services shall not affect your obligation (including any obligation incurred by an Affiliated Issuer) to pay for services rendered or obligations due or owing under this Section prior to termination.
- e) The provisions of Sections 24.3 (f), (g), (h), (i), (k) and (l), and Sections 24.4, 24.5(b), 24.5(c), 24.5(d), 24.6 and 24.7 hereof shall survive any termination of this Agreement.

#### **24.6. Indemnification.**

- a) You shall indemnify and hold harmless Servicers, their directors, officers, employees, agents and their respective Affiliates from and against any and all third party claims, losses, liabilities, damages and expenses, including reasonable attorneys' fees, (collectively "Claims") to the extent that any such Claim is caused by or arises out of: (i) any failure of you or an Affiliated Issuer to comply with any law or regulation applicable to the Program; (ii) any dispute between you and any Affiliated Issuer, or you and any Gift Card Holder, or an Affiliated Issuer and any Gift Card Holder, including, without limitation, any dispute regarding the goods or services purchased using a Gift Card or the payment of any amounts owed or alleged to be owed by one or more such persons to any other such persons; (iii) any instructions or procedures that you may provide to Processor in connection with the Program and Processor's compliance therewith; (iv) any actual or alleged loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number or PIN; (v) use or operation of Gift Card Equipment by you or an Affiliated Issuer; and (vi) any Claim or action against Servicers for actual or alleged infringement of any patent, copyright, trademark, trade secret or other proprietary right of any person arising in connection with the production of Gift Cards or related products for you using artwork, designs, specifications or concepts provided by you.
- b) Processor shall indemnify and hold harmless you and your directors, officers, employees, agents and Affiliate Issuers from and against any and all third party Claims to the extent that any such Claim is caused by or arises out of: (i) any failure of Processor to comply with any law or regulation applicable to the Program; or (ii) any error in the Database, unless the error is caused by incorrect information submitted by you or is otherwise made in accordance with your instructions.

**24.7. Patents, Copyrights, Intellectual Property, etc.** You shall have no interest whatsoever, including copyright interests, franchise interests, license interests, patent rights, property rights or other interest in the Services provided hereunder. These provisions are not to be construed as granting to you any patent rights or patent license in any patent, which may be obtained in respect of the Services. Artwork created by Processor on behalf of you remains the property of Processor. You retain ownership of any artwork supplied to Processor.

#### **24.8. Limitation of Liability; Disclaimer of Warranties.**

NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, SERVICERS' CUMULATIVE AGGREGATE LIABILITY FOR ANY LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES ARISING OUT OF RELATED TO THIS SECTION FOR ANY CAUSE WHATSOEVER REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED BY YOU AND, IN ANY EVENT, SHALL NOT EXCEED THE LESSER OF (1)

THE AMOUNT OF FEES PAID TO PROCESSOR BY YOU UNDER THIS SECTION DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THAT THE LIABILITY ARISES, OR (II) TWENTY THOUSAND DOLLARS (\$20,000).

## 25. Terms of Equipment Purchase or Rental

This Section 25 governs any equipment that is rented to you on a month to month basis or that is sold to you by Processor under the Merchant Processing Application, subsequent purchase or rental agreements and/or other documentation provided in connection with the purchase or rental of Equipment ("Equipment Documents"). If your Application or other documents reflect that your equipment is leased, then the provisions of your lease agreement are governed by your Equipment Lease Agreement. Equipment rented to or purchased by you under this Section 25 is referred to in this section as the "Equipment." THE EQUIPMENT IS BEING SOLD OR RENTED TO YOU FOR USE IN YOUR BUSINESS AND IS NOT BEING SOLD OR RENTED TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sales and rentals of equipment are made by Processor. Bank is not a party to this Agreement insofar as it relates to sales and rental of equipment and Bank is not liable to you in any way with respect to such services. For purposes of this section the words "we," "our" and "us" refer only to Processor and not to Bank. The Agreement between Processor and you as set forth in this section is referred to as the "Equipment Agreement," and the full Agreement of which the Equipment Agreement is a part is referred to as the "Merchant Agreement."

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

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

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASED OR RENT FROM US OR SUBSEQUENTLY 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. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE 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.

**25.1. Purchased Equipment; Supplies.** We will sell to you, and you will buy from us the Equipment identified in the Merchant Agreement as being purchased by you (the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 25.7), except that any "Software" (as defined in Section 25.8) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 25.8 of this Agreement. You shall pay the purchase price specified for the Purchased Equipment and the related software license(s), including all applicable tax and shipping and handling charges prior to the effective date of the Equipment Agreement or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 25.5. We will provide you supplies as requested by you from time to time. 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 Section 25.5. (Maintenance and repair of merchant-owned equipment is your responsibility). Should your terminal become inoperable, we can provide you with equipment at a monthly rental fee. There will also be a nominal shipping and handling fee. For such rental equipment contact the POS Help Desk.)

**25.2. Rental Equipment.** We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Merchant Agreement as being rented to you (the "Rental Equipment"), according to the terms and conditions of this Section 25. In addition, any rental equipment ordered by you during the term of the Merchant Agreement shall also be governed by the terms of this Equipment Agreement.

**25.3. Effective Date and Term of Equipment Agreement.** This Equipment Agreement shall become effective on the first date you receive any piece of Equipment covered by this Equipment Agreement. This Equipment Agreement will remain in effect until all of your obligations and all of our obligations under this Equipment Agreement have been satisfied. We will deliver the Equipment to the site designated by you. You shall be 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 with respect to each piece of Rental Equipment shall commence on the date such Equipment is deemed accepted and shall terminate at the scheduled termination date (but not upon any early termination) of your Merchant Agreement and/or any other agreement then in effect with us for Card services. The provisions of this Equipment Agreement shall survive the termination or expiration of the Merchant Agreement and continue until all equipment rented from us is returned or paid for. In addition, your Lease Agreement is non-cancellable, and Purchased Equipment is non-returnable.

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

- Upon request, you must allow us (or our agents) reasonable access to the premises where Authorization terminals or other communications Equipment (e.g., printers) are or will be located.
- Any alterations required for installation of Authorization terminal(s) or other communications Equipment will be done at your expense.
- Only we or our agents can alter or modify Authorization terminal(s) or other communications equipment owned by us.
- If a terminal or printer appears to be defective, you must immediately call the POS Help Desk.
- You are responsible for safeguarding Authorization terminals or other Equipment from loss, damage, unauthorized use, misuse or theft. We should be notified immediately regarding any damage to or loss of communications equipment.
- If necessary, we will assist 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.
- You are responsible for keeping all communication Equipment free of any claims, liens and legal processes initiated by creditors.
- Equipment may not be subleased at any time. The cost of comparable new Equipment, as well as any associated legal and/or collection costs incurred by us or the owner of the Equipment, will be assessed to you for each piece of Equipment not returned upon termination of the Agreement by either party, or upon request for the return of the Equipment for any reason.
- You may not relocate, remove, disconnect, modify or in any way alter any equipment used in connection with the services we are providing to you without first obtaining our permission.
- You must provide us with thirty (30) days' prior written notice to request the relocation of any Equipment.
- Should you require additional equipment, you must contact Relationship Management or Customer Service (there may be additional costs or fees charged to you in connection with any new equipment ordered, including download fees).

### 25.5. Payment of Amounts Due.

- a) The monthly rental charge specified in the Merchant Agreement shall be due and payable on the first day of each month of the rental period for each piece of Rental Equipment, except that the first payment of the monthly rental charge for each piece of Rental Equipment shall be due and payable upon acceptance of such Equipment by you at the location designated in the Merchant Agreement or, upon delivery if the site is not prepared for installation (as provided in Section 25.3). The monthly rental charge for fractions of a calendar month shall be prorated based on a thirty (30) day month.
- b) You hereby authorize us to collect all amounts due from you under this Equipment Agreement by initiating debit entries for such amounts to your account designated pursuant to the Merchant Agreement to be debited and credited for amounts due from and to you under the Merchant Agreement (the "Settlement Account") or by deducting such amounts from amounts due to you from TeleCheck or Servicers. All Authorizations and other provisions in your Merchant Agreement regarding the debiting and crediting of your Settlement Account apply with equal force with respect to amounts due to or from you under this Equipment Agreement. This authority will remain in full force and effect until we have given written notice to your bank where your Settlement Account is maintained that all monies due from you under this Equipment Agreement have been paid in full.
- c) In addition to the purchase price or monthly rental charge due hereunder, you shall pay, or reimburse us for, amounts equal to any taxes, levies, shipping fees, duties or assessments, however designated, levied or based on such charges, or on this Equipment Agreement or the Equipment and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income.
- d) As indicated in the Merchant Agreement, separate charges will apply for supplies; they are not included in monthly rental charges.

### 25.6. 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 and in connection with the services provided under your Merchant Agreement. 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.
- b) You shall not permit any physical alteration or modification of the Equipment without our prior written consent.
- c) You shall not change the installation site of the Equipment without our prior written consent, which consent we will not unreasonably withhold.
- d) You shall not assign your rights or obligations under this Equipment Agreement, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment to any other person, firm or organization without our prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of such consent shall be void.



- e) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all legally required permits for the Equipment.
- f) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.
- g) Promptly upon termination of all applicable rental periods or promptly following any action by us pursuant to Section 25.11(b), you shall deliver possession of the 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, reasonable wear and tear excepted.
- h) For each item of Rental Equipment that you fail to return to us at your cost in the same operating order, repair, condition and appearance that it had at the time of delivery to you, reasonable wear and tear excepted, by the 10th Business Day after (i) termination of the applicable rental period, or (ii) any action by us pursuant to Section 25.11(b), 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. We may collect such amounts in the manner provided in Section 25.5 and to the extent we are unable to do so, you agree to pay us the amounts owed promptly.
- i) Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.
- j) You shall keep the Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the Equipment shall not relieve you from your obligation to pay the full purchase price or rent payable hereunder.
- k) Except for Purchased Equipment that has been paid in full, the Equipment shall be kept at the address indicated in the Merchant Agreement and shall not be removed from there without our prior written consent (except where normal use of the Equipment requires temporary removal).
- l) In order to return equipment, you should:
- Call Customer Service for the address of the location to send the equipment.
  - The following information must be included within the shipping box:
    1. Client name, complete address and phone number.
    2. Name of person to contact if there are any questions.
    3. Your Merchant Account Number.
    4. Serial number of the terminal (found on the underside of the terminal).
  - Please maintain proof of delivery documents for your records, and the serial number from the bottom of the terminal.
  - Rental fees may be continued until equipment is returned.

**25.7. Security Interest; Financing Statements.** 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 therefor 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.

**25.8. Software License.** Anything in this Equipment Agreement to the contrary notwithstanding, we or certain third parties retain all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment (collectively "Software"), and you shall have only a nonexclusive, non-transferable license to use the Software in your operation of the Equipment for the purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Software to you or shall be construed as a sale of any rights in any such Software to you. You agree to accept, agree to be bound by all applicable terms and conditions of use and other license terms applicable to such Software. You shall not reverse engineer, disassemble or decompile the Software. You shall not give any third party access to the Software without our prior written consent. Your obligations under this Section 25.8 shall survive the termination of this Agreement.

**25.9. Limitation on Liability.** Notwithstanding any provision of this Agreement to the contrary, and in addition to the limitations and disclaimers set forth in Section 13 of this Agreement (including without limitation the disclaimers in Section 13.2 of this Agreement, our liability arising out of or in any way connected with the Equipment or related Software shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Equipment Agreement will be your sole and exclusive remedies.

**25.10. Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, resulting from (a) the purchase, delivery, installation, acceptance, rejection, ownership, leasing, possession, use, operation, condition, liens against, or return of the Equipment, or (b) any breach by 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.

In addition to your other obligations hereunder, You acknowledge and agree that the "use" and "operation" of the Equipment for which you will indemnify and hold us harmless shall

include, but not be limited to, You loading additional software onto Equipment or using such software, or using Equipment or Software to access the Internet.

#### **25.11. Default; Remedies.**

- a) If any debit of your Settlement Account initiated by us for rent and/or other charges due hereunder 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 in this Equipment Agreement, or if any other default occurs under the Merchant Agreement, any such event shall be a default hereunder.
- b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Equipment 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, in which case this Equipment Agreement shall terminate as soon as your obligations to us are satisfied, or (ii) accelerate and declare immediately due and payable all monthly rental charges for the remainder of the applicable rental period and proceed in any lawful manner to obtain satisfaction of the same.

**25.12. Assignment.** Subject to the following provisions, this Equipment Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. You may not assign or transfer this Equipment Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Equipment Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer hereof. We may assign or transfer this Equipment Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Equipment Agreement.

### **26. Special Provisions Regarding Clover<sup>SM</sup> Security Plus**

Clover Security Plus consists of a POS security monitor, the TransArmor Data Protection service, and tools that you can use to help you meet your PCI DSS compliance obligations. Each of these services is described in more detail below. Clover Security Plus is provided to you by Processor and not by Bank. Clover Security Plus is available only for Level 3 and Level 4 merchants, as defined by the Payments Organizations. Clover Security Plus is not available for Level 1 or Level 2 merchants.

**26.1.** The POS security monitor offers you monitoring, scanning, and anti-virus software services for your point of sale computer systems.

The TransArmor Data Protection service is described in Sections 32.14 and 26.15.

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

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

**26.4. Data Protection; Responsibilities of Client (If Selected by Client).** Data Protection applies only to card transactions sent from you to us for authorization and settlement pursuant to the Agreement, and specifically excludes electronic check transactions. You are responsible for compliance with the following regarding your use of Data Protection:

- a) Data Protection can only be used with a point of sale device, gateway and/or VAR that is certified by us with the Data Protection solution. If you are uncertain whether your equipment is compliant, please contact us. It is your responsibility to ensure that you have eligible equipment in order to use Data Protection.
- b) You must demonstrate and maintain your current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), as applicable, and if applicable to your business, passing quarterly network scans performed by an Approved Scan Vendor, all in

accordance with card organization rules and PCI DSS. Use of the Data Protection will not, on its own, cause you to be compliant or eliminate your obligations to comply with PCI DSS or any other Card Organization Rule. You must also ensure that all third parties and software that you use for payment processing comply with the PCI DSS.

- c) You must deploy Data Protection solution (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your systems including replacing existing Card numbers on your systems with Tokens. Full Card numbers must never be retained, whether in electronic form or hard copy.
- d) You must use the Token in lieu of the Card number for ALL activities subsequent to receipt of the authorization response including, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.
- e) If you send or receive batch files containing completed Card transaction information to/from us, do use the service provided by us to enable such files to contain only Tokens or truncated information.
- f) You must use truncated report viewing and data extract creation within reporting tools provided by us.
- g) You are required to follow rules or procedures we may provide to you from time to time regarding your use of the Data Protection solution. We will provide you with advance written notice of any such rules or procedures or changes to such rules or procedures.
- h) You will use only unaltered version(s) of Data Protection solution and will not use, operate or combine Data Protection or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this section.
- i) You will promptly notify us of a breach of any these terms.

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

The Limited Warranty is void if (a) you use Data Protection in a manner not contemplated by, or you are otherwise in violation of, this Agreement or any other agreement relating to Cards eligible for Data Protection; (b) you are grossly negligent or engage in intentional misconduct; or (c) you no longer have a processing relationship with us. This Limited Warranty is available only if you have elected to receive Data Protection. Merchants that receive only Clover Security Plus other than Data Protection are not eligible to benefit from this Limited Warranty.

**26.6. Disclaimer; Clover Security Plus Does Not Guarantee Compliance or Security.**

**26.6.1.** USE OF THE CLOVER SECURITY PLUS, 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 CLOVER SECURITY PLUS, EQUIPMENT AND ANY SOFTWARE IS PROVIDED “AS IS” AND WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT THE CLOVER SECURITY PLUS, EQUIPMENT OR ANY SOFTWARE WILL OPERATE IN AN UNINTERRUPTED OR ERROR FREE FASHION OR THAT THE CLOVER SECURITY PLUS, EQUIPMENT OR SOFTWARE ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR DO NOT INFRINGE THE RIGHTS OF ANY PERSON.

**26.6.2.** YOU MUST COMPLY WITH ALL RULES OR PROCEDURES RELATING TO CLOVER SECURITY PLUS (OR ANY COMPONENT OF CLOVER SECURITY PLUS) THAT WE GIVE YOU FROM TIME TO TIME. YOU MUST ALSO IMPLEMENT ALL UPDATES TO CLOVER SECURITY PLUS WITHIN A REASONABLE PERIOD OF TIME AFTER YOU RECEIVE THEM. YOU ARE SOLELY RESPONSIBLE FOR BACKING UP AND/OR OTHERWISE PROTECTING YOUR DATA, SYSTEMS, AND SERVICE.

**26.6.3.** Use of Clover Security Plus does not (a) guarantee compliance with any laws, Rules, or applicable standards (including the PCI DSS), (b) affect your obligation to comply with laws, Rules, and applicable standards (including the PCI DSS), or (c) guarantee protection against a Data Incident. Your use of Clover Security Plus involves inherent risks, including system performance, availability, and data corruption. We make no promise, and disclaim all warranties of any kind, that the use of Clover Security Plus will detect all vulnerabilities on your system, or that our vulnerability assessments, suggested solutions, information, or advice is error-free or complete.

**26.7. Intellectual Property Rights.**

**26.7.1.** All right, title, and interest in and to all confidential information and intellectual property related to the TransArmor Service (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 Clover Security Plus, shall be and remain, as among the Parties or our Affiliates’, our vendors’ or our licensors’ (as applicable) sole and exclusive property, and all right, title and interest associated with the Clover Security Plus, 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.

**26.7.2.** 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 Clover Security Plus, 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 Clover Security Plus, Software or Equipment (or any part) or the Marks; (c) create derivative works of or based on the Clover Security Plus (or any part), Software or the Marks; (d) except for backup and archival purposes, directly or indirectly copy the Clover Security Plus or any Software (or any part); (e) republish, upload, post, transmit, disclose, or distribute (in any format) the Clover Security Plus or Software (or any part) except as permitted in this Agreement; or (f) remove, relocate, or otherwise alter any proprietary rights notices from the Clover Security Plus, Software or Documentation (or any part) or the Marks.

**26.7.3.** 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 Clover Security Plus and solely for you to access and use the Software and Documentation to receive the relevant Clover Security Plus 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.

**26.7.4.** You shall not take any action inconsistent with the stated title and ownership in this Section 26. You will not file any action, in any forum that challenges the ownership of any part of the Clover Security Plus 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 Clover Security Plus in the event of a challenge by you.

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

**26.8. Software Updates, Maintenance and Changes.**

**26.8.1.** We may perform maintenance on Software or Clover Security Plus 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 Clover Security Plus and obtain information needed to identify and fix any errors. We may, at our discretion, release enhancements, improvements or other updates to any Software, or otherwise make any changes to the Clover Security Plus (or any part).

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

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

**26.10. Access and Use of Clover Security Plus.**

**26.10.1.** Unless we otherwise agree in writing, the Clover Security Plus shall be for your internal business use in the United States and US territories or possessions only.



**26.10.2.** You shall not and shall not permit any third party to: (a) access or attempt to access any of the Clover Security Plus that is not intended to be available to you; (b) access or use (in any format) the Clover Security Plus (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 the Clover Security Plus (or any part thereof) outside or from outside of the United States; (d) perform or attempt to perform any actions that would interfere with the proper working of any part of the Clover Security Plus, prevent access to or use of any of the Clover Security Plus by other users, or in our reasonable judgment, impose a large load on our infrastructure, network capability or bandwidth; or (e) use the Clover Security Plus (or any part thereof) except as permitted in this Agreement.

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

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

**26.12. Liability Waiver.**

**26.12.1.** Subject to the terms of this Agreement, we agree to waive liability that you have to us under this Agreement for Security Incident Expenses resulting from a Data Security Incident first discovered by you or us while you are receiving and utilizing the Clover Security Plus (the "Liability Waiver"). The Liability Waiver is available to you only if you receive the full Clover Security Plus, including Data Protection and the Additional Security Services. The Liability Waiver is provided in addition to the Limited Warranty described above.

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

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

**26.12.3.** In addition to **Section 26.12.2**, the maximum amount of Liability Waiver during any TransArmor Program Year for EMV Upgrade Costs is further limited as follows:

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

These limitations apply during each twelve-month period from June 1 through May 31 regardless of the number of Data Incidents you may experience.

**26.12.4.** All Data Incident Expenses resulting from the same, continuous, related or repeated event or facts will be deemed to arise out of one Data Incident for purposes of these limits. The Liability Waiver is available only while you are using and paying for Clover Security Plus.

**26.12.5.** The Liability Waiver shall not apply in relation to:

The Liability Waiver will not apply to any of the following: (a) any Data Incident that began before you started using Clover Security Plus or that is reported to us after you stopped using Clover Security Plus; (b) any fines or assessments against you that are not the direct result of a Data Incident; (c) any repeated Data Incidents, unless between the repeated events a qualified security assessor certified you as PCI-compliant; (d) any routine or recurring expenses for security assessments, regulatory examinations, or compliance activities; (e) any Data Incident that occurs during any period of time that (1) a Payments Organization has categorized you as a Level 1 or Level 2 merchant, or (2) you have processed more than 6 million transactions during the 12-month period before the Data Incident; (f) any expenses (other than Data Incident Expenses) incurred to bring you into compliance with the PCI DSS or a similar security standard; or (g) any Data Incident Expenses that arise out of an uncontrollable event or any intentional, reckless, or grossly negligent misconduct on your part.

**26.13. Export Compliance**

**26.13.1.** 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.

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

**26.13.3.** 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.

**26.14. Definitions:**

(a) **Card Organization Assessment** means a monetary assessment, fee, fine or penalty levied against you or us by a Card Organization as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event; provided, that the Card Organization Assessment shall not exceed the maximum monetary assessment, fee, fine or penalty permitted upon the occurrence of a Data Security Event by the applicable rules or agreement in effect as of the inception date of this Agreement for such Card Organization; (b) **Cardholder Information** means the data contained on a Card, or otherwise provided to Client, that is required by the Card Organization or us in order to process, approve and/or settle a Card transaction; (c) **Card Replacement Expenses** means the costs that we or you are required to pay by the Card Organization to replace compromised Cards as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event; (d) **Data Protection** is a Clover Security Plus that provides encryption of cardholder data at your payment environment and replaces the data with a token or randomly generated number; (e) **Data Security Event** means the actual or suspected unauthorized access to or use of Cardholder Information, arising out of your possession of or access to such Cardholder Information, which has been reported (i) to a Card Organization by you or us or (ii) to you or us by a Card Organization. All Security Event Expenses and Post Event Services Expenses resulting from the same, continuous, related or repeated event or which arise from the same, related or common nexus of facts, will be deemed to arise out of one Data Security Event; (f) **Documentation** means any documents, instructions, web screen, layouts or any other materials provided by us relating to the Software or the Clover Security Plus; (g) **Equipment** means equipment rented to or purchased by you under this Agreement and any documents setting out additional terms on which Equipment is rented to or purchased by you; (h) **EMV Upgrade Costs** means cost to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled Card in a manner compliant with PCI Data Security Standards; (i) **Forensic Audit Expenses** means the costs of a security assessment conducted by a qualified security assessor approved by a Card Organization or PCI Security Standards Council to determine the cause and extent of a Data Security Event; (j) **Liability Waiver** has the meaning as set forth in **Section 26.12.1** above; (k) **Marks** means the names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations; (l) **Post Event Services Expenses** means reasonable fees and expenses incurred by us or you with our prior written consent, for any service specifically approved by us in writing, including, without limitation, identity theft education and assistance and credit file monitoring. Such services must be provided by or on behalf of us or you within one (1) year following discovery of a Data Security Event to a Cardholder whose Cardholder Information is the subject of that Data Security Event for the primary purpose of mitigating the effects of such Data Security Event; (m) **Program Year** means the period from June 1st through May 31st of each year; (n) **Security Event Expenses** means Card Organization Assessments, Forensic Audit Expenses and Card Replacement Expenses. Security Event Expenses also includes EMV Upgrade Costs you agree to incur in lieu of a Card Organization Assessment; (o) **Software** means all software, computer programs, related documentation, technology, know-how and processes embodied in the Equipment (i.e. firmware) or otherwise provided to you under this Agreement. For the avoidance of doubt, the term Software shall not include any third party software available as part of a service provided from someone other than us or our vendors or which may be obtained by you separately from the TransArmor Solution (e.g. any applications downloaded by you through an application marketplace); (p) **Clover Security Plus PCI** is a Clover Security Plus that provides access to online PCI DSS Self-Assessment Questionnaires (SAQ) to validate PCI data standards; and (q) **Clover Security Plus** is the suite of security services provided by us and known as TransArmor.

**TransArmor Data Protection Service.**

**26.15.** The TransArmor Data Protection service encrypts cardholder data at the point of transaction and replaces it with a unique identifier (a token) that is returned with the authorization response. You must use the token you receive with the authorization response instead of the card number for all other activities associated with the transaction, including settlement, retrieval, chargeback, or adjustment processing as well as transaction reviews. If you fully deploy and use the TransArmor Data Protection service, the token returned to you with the authorization response cannot be used to initiate a financial sale transaction by an unauthorized person outside your point of sale systems or the systems where you store your transaction data. The TransArmor Data Protection service can only be used with a point of sale device, gateway, or service that we have certified as being eligible for the TransArmor Data Protection service. The TransArmor Data Protection Service is provided to you by Processor and not by Bank.

**26.16.** Use of the TransArmor Data Protection Service does not (a) guarantee compliance with any laws, Rules, or applicable standards (including the PCI DSS), (b) affect your obligation to comply with laws, Rules, and applicable standards (including the PCI DSS), or (c) guarantee protection against a Data Incident.

**27. Special Provisions Regarding Fraud Detection Services**

If you elect to receive Fraud Services from us, then the following terms and conditions of this Section, referred to as the Fraud Services Terms, shall apply.

The Fraud Detection Service is provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the Fraud Detection Service, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words “we,” “our” and “us” refer only to the Processor and not the Bank.

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

**27.1. Software Licenses.** We hereby grant you a non-exclusive, non-transferable, limited sublicense to use the Fraud Services for the duration of this Agreement, or until otherwise terminated, solely in connection with your use of the payment and processing services otherwise described in this Program Guide. You acknowledge that the only right you obtain to the Fraud Services is the right to use the Fraud Services for the screening and review of your own transactions in accordance with the terms in this Section.

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

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

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

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

**27.5. Limitation of Liability.** The Fraud Services provide a tool for you to efficiently make better informed decisions whether to accept or reject transactions that may be fraudulent. There is no assurance that the Fraud Services will accurately identify every instance of fraud, not that every transaction that may appear fraudulent is in fact so. **BY YOUR ACCEPTANCE OF THE TERMS OF THIS PROGRAM GUIDE, AND YOUR USE OF THE FRAUD SERVICES, YOU AGREE THAT, UNDER ANY THEORY OF LAW OR EQUITY, WITH RESPECT TO YOUR USE OF THE FRAUD SERVICES (i) OUR LIABILITY AND THAT OF ANY FRAUD SERVICES PROVIDER SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED TWELVE (12) MONTHS OF FRAUD SERVICES FEES, AND (ii) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER WE NOR ANY FRAUD SERVICES PROVIDER SHALL HAVE ANY LIABILITY FOR ANY SUBSEQUENT CHARGEBACKS OR LOSS OF REVENUE FROM FALSE POSITIVE FRAUD SCORES OR IN ANY OTHER WAY RELATED TO THE USE OF THE FRAUD SERVICES.**

**27.6. Termination.** Upon termination of the Fraud Services for any reason, you agree to pay any remaining fees or expenses related to your use of the Fraud Services, to cease attempts to access the Fraud Services and to return all user manuals or other materials received in connection with the Fraud Services.

**27.7. Third Party Beneficiaries.** The Fraud Services provider(s) is(are) an intended third party beneficiary of this Section of the Program Guide, and may enforce the terms of this Section directly against you as if it were a party hereto.

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

**Any information you provide to [Merchant] may be combined with information from other sources and used by [Merchant], or a third party retained by [Merchant], to help detect and prevent fraud.**

## 28. Special Provisions Regarding Buyer Initiated Payments

**The terms and conditions set forth in this Section 28 govern the provision of Buyer Initiated Payment services and apply only to Card payments that originate from a business certified into a Card Association approved gateway for Buyer Initiated Payments. These provisions do not apply to any transactions originating from a terminal or software at your business.**

**28.1. Description of Buyer Initiated Payments.** Buyer Initiated Payments allow invoices that have been electronically entered at the cardholding buyer’s location to be processed by us for settlement to you (the seller of goods and services in B2B transactions) without you manually re-entering the same pieces of card and invoice information. Use of this service only changes the method of payment between you and your Buyer. All other processes between you and the Buyer as it pertains to invoicing, approvals and exceptions will remain as is for each Buyer paying you through this service.

### 28.2. Acceptance of Buyer Initiated Payments.

- There is no hardware, software, or supplies required to accept Buyer Initiated Payments.
- All transactions submitted through a BIP account must be Buyer initiated. You cannot request a terminal or initiate transactions in any way through the Merchant ID established by these terms. Merchant processing must be done through a separate Merchant ID.
- No credits are permitted on BIP accounts. In the event of a dispute regarding a Buyer Initiated Payment, all refunds, discounts, or other remedies must be handled between you and your customer, the Buyer, without the involvement of Servicers.
- It is your responsibility to ensure that only customers that you authorize to submit payments on this account do so. We will not disclose the fact that you are enrolled to receive Buyer Initiated Payments (BIP) to other businesses unless you authorize us to do so.
- If a business does process a payment on the account without your consent, you must handle the matter directly with your customer, the Buyer, without the involvement of Servicer.
- Servicers are responsible for processing the BIP. Any concessions given by your customers such as accelerating payment terms or changing early payment discounts are not administered or enforced by Servicer. Such agreements are strictly part of the relationships between your business and those of your buyers and the resolution to issues arising from those arrangements are to be handled outside of this Agreement.

**28.3. Chargebacks related to Buyer Initiated Payments.** In Buyer Initiated Payment processing, the Buyer (your customer) has control over the payment, and is therefore prohibited from initiating most chargeback types. In the event your buyer initiates a chargeback on this Merchant ID, please contact Servicers.

**28.4. Limitation on Liability/Indemnification.** NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, SERVICER’S CUMULATIVE AGGREGATE LIABILITY FOR ANY LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES ARISING OUT OF RELATED TO THIS SECTION FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED BY CLIENT AND, IN ANY EVENT, SHALL NOT EXCEED THE LESSER OF (I) THE AMOUNT OF FEES PAID TO SERVICERS BY CLIENT UNDER THIS SECTION DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THAT THE LIABILITY ARISES, OR (II) TWENTY THOUSAND DOLLARS (\$20,000).

**28.5. Indemnification.** Client shall indemnify and hold harmless Servicers, its directors, officers, employees, agents and Affiliates from and against any and all third party claims, losses, liabilities, damages and expenses, including reasonable attorneys’ fees, (collectively “Claims”) to the extent that any such Claim is caused by or arises out of: (i) any failure of Client to comply with this Agreement or any law or regulation applicable to BIP; (ii) any dispute between Client and Buyer; or (iii) any instructions or procedures that Client may provide to Servicers in connection with the Buyer Initiated Payments and Servicers compliance therewith.

**28.6. Processing Specifications.** The following details apply to how Servicers transfers monies between parties.

- Unless otherwise specified by you on the Application, amounts deposited into your account will be in the whole amount of the payment from your customer. After a payment is made by the Buyer (your customer), it typically takes one to three business days for the funds to be deposited into your checking account.
- Unless otherwise specified by you on the Application, the fees applied to your transactions will be debited from your DDA account on or about the first business day of the month following when the transactions occurred. It is your responsibility to ensure that there are no settings on your account prohibiting a debit entry. You must ensure there are adequate funds available in your account.

**28.7. Authorization.** Authorization will occur at the Servicer or relevant Card Organization.

**28.8. Termination.** As stated on your Application, there is no early termination fee associated with BIP accounts. At any time, you are able to terminate service by calling the customer service number listed on your statement. It is your responsibility to contact your Buyers to inform them that a different payment option will be needed on future invoices. We can terminate BIP services upon 30 days’ notice to you or immediately in the event of your breach of the Agreement.



## 29. Special Provisions Regarding Payeezy<sup>SM</sup> Gateway Services

If you elect to utilize the Payeezy Gateway Services, the following additional terms and conditions of this Section 29 shall apply.

The Payeezy Gateway Services are provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the Payeezy Gateway Services, and Bank is not liable to you in any way with respect to the Payeezy Gateway Services. For the purposes of this Section 29, the words “we,” “our” and “us” refer only to the Processor and not the Bank.

The Payeezy Gateway Services provided and other matters contemplated under this Section 29 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 29 directly conflict with another provision of this Agreement, in which case the terms of this Section 29 will control.

**29.1. Definitions.** Capitalized terms used in this Section 29 shall have the meanings given to such terms as set forth in this Section 29.1 or as defined in the Glossary or elsewhere in this Section 29.

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

**Confidential Information** means the Payeezy Gateway Services, Documentation, operational procedures, the terms and conditions of this Section 29 (including any schedule, exhibit or addendum), pricing or other proprietary business information, and any other information provided to you by us, whether or not such information is marked as confidential; provided, however, that Confidential Information will not include information that: (a) is or becomes generally known to the public through no fault of yours; (b) was lawfully obtained by you from a third party free of any obligation of confidentiality; (c) was already in your lawful possession prior to receipt thereof, directly or indirectly, from the disclosing party; (d) is independently developed by you without the use of the Confidential Information; (e) is disclosed with our express written permission; or (f) is disclosed pursuant to a lawful court or governmental order, provided you provide us with prompt prior written notice of any proceeding that may involve such an order, and an opportunity to contest any disclosure at such proceeding.

**Customer** means your customer who would like to provide payment for your goods or services.

**Documentation** means any and all manuals and other written materials in any form provided for use with the Software, as amended by us from time to time, the terms of which are incorporated in this Section 29 as if fully set forth herein.

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

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

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

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

**Platform** means our operated, or approved, electronic payment platform(s) and/or gateway(s) through which the payment services contemplated under this Section 29 are provided.

**Software** means all protocols, software components and other interfaces and software provided by us to you pursuant to this Section 29, and any and all Updates.

**Updates** mean an embodiment of the Software that provides enhancements and/or improvements.

**Your Systems** means any web site(s) or interface(s) to the Payeezy Gateway Services that are operated or maintained by you or on your behalf through which transactions are submitted for processing, and all of your other associated systems.

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

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

### 29.4. License Grant

**29.4.1. License.** Subject to the terms and conditions of this Agreement, we grant to you, and you hereby accept, a nonsub licensable, royalty free, non-exclusive, nontransferable, revocable limited license to use the Payeezy Gateway Services, during the term of this Agreement for the sole and limited purpose of submitting payment transactions to us for processing, and otherwise using Payeezy Gateway Services as set forth herein.

**29.4.2. Documentation License.** Subject to the terms and conditions of this Agreement, we grant to you, and you hereby accept, a nonsub licensable, royalty free, non-exclusive, non-transferable, revocable limited license, to use the Documentation during the term of this Agreement for the sole and limited purpose of supporting your use of Payeezy Gateway Services. You shall strictly follow all Documentation provided to you, as it may be amended from time to time by us, in our discretion. To the extent that there is any conflict between the Documentation and the terms of this Agreement, the terms of this Section 29 shall govern and control.

**29.4.3. Use Restrictions.** You shall not, and shall not cause or permit any third party to: (i) use the Payeezy Gateway Services in any way, other than in accordance with this Agreement, the Documentation or as otherwise instructed by us in writing; (ii) use the Payeezy Gateway Services or Documentation, either directly or indirectly, to develop any product or service that competes with the products and services provided under this Section 29; (iii) disassemble, decompile, decrypt, extract, reverse engineer or modify the Payeezy Gateway Services, or otherwise apply any procedure or process to the Payeezy Gateway Services in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Payeezy Gateway Services or any algorithm, process, procedure or other information contained in the Payeezy Gateway Services, except as otherwise specifically authorized in accordance with this Section 29; (iv) provide the Payeezy Gateway Services or Documentation to any third party, other than to your authorized employees and contractors who are subject to a written confidentiality agreement, the terms of which are no less restrictive than the confidentiality provisions of this Section 29; (v) make any copies of the Payeezy Gateway Services or Documentation, except as is incidental to the purposes of this Section 29, or for archival purposes (any copies made hereunder shall contain all appropriate proprietary notices); (vi) rent, lease, assign, sublicense, transfer, distribute, allow access to, or timeshare the Payeezy Gateway Services or Documentation; (vii) circumvent or attempt to circumvent any applicable security measures of the Payeezy Gateway Services; (viii) attempt to access or actually access portions of Payeezy Gateway Services not authorized for your use; or (ix) use the Payeezy Gateway Services or Documentation for any unlawful purpose.

**29.4.4. Updates.** From time to time we may, at our discretion, release Updates. In the event 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 Updates in a timely fashion may impair the functionality of the Platform or any of Payeezy Gateway Services provided hereunder. We will have no liability for your failure to properly install the most current version of the Payeezy Gateway Services or any Update, and we will have no obligation to provide support or services for any outdated versions.

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

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

**29.4.7. Federal Acquisition Regulations.** If you are acquiring the Payeezy Gateway Services on behalf of any part of the United States Government (the "Government"), the following provisions apply: Any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. First Data Merchant Services LLC is the contractor/manufacturer, with the address of 3975 N.W. 120th Avenue, Coral Springs, FL 33065. Any use, modification, reproduction, release, performance, display or disclosure of the Payeezy Gateway Services and/or the accompanying documentation by the Government or any of its agencies shall be governed solely by the terms of this Section and shall be prohibited except to the extent expressly permitted by the terms of this Section 29.

**29.4.8. Return/Destruction.** Upon termination or expiration of the Payeezy Gateway Services, all licenses granted hereunder shall immediately terminate, and within five (5) days thereof, you shall either return to us, destroy or delete from your Systems, as applicable, the Payeezy Gateway Services, Operational Procedures, Documentation, and any copies thereof, and shall so certify to us in writing.

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

**29.4.10. Use of Transaction Data.** As permitted by applicable law and regulations, we reserve the right to copy and distribute to third parties any information associated with your use of the Payeezy Gateway Services or your activities on the Payeezy Gateway to the extent necessary to provide the Payeezy Gateway Services to you.

## **29.5. Platform Matters.**

**29.5.1. Integration with Your Systems.** While we provide Payeezy Gateway Services to you, you acknowledge that the Payeezy Gateway Services itself is insufficient to allow your Systems to function with the Platform. Programming, development and maintenance of your Systems and their functionality are your sole responsibility. You have the sole responsibility to select and employ any competent programming agent(s) to accomplish the programming required to make your Systems function correctly with the Platform and the payment services contemplated hereunder ("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 the Integration as soon as possible. You will be responsible for all of your own development and implementation costs associated with such Integration. Notwithstanding any other provision of this Section 29, you acknowledge that unless and until you complete the Integration, no services need be provided by us to you pursuant to Section, except as otherwise specifically provided in Section 29.5.2 below. In addition, you acknowledge and agree that, even if you have completed Integration, if you have not entered into a valid merchant processing agreement with an authorized bank card processor, you cannot receive Payeezy Gateway Services.

**29.5.2. Set-Up Assistance Services.** Subject to Section 29.5.1 above, upon your request to us, and upon payment of any applicable fees, we will provide you with set-up services to assist with the Integration.

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

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

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

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

**29.8. Audit Rights.** Upon notice to you, we may audit your usage, records and security of the Payeezy Gateway Services, your Customer's payment processing information, and the services provided hereunder to ensure (i) that you are using the Payeezy Gateway Services and the services in full compliance with the provisions of this Section 29; (ii) that all applicable fees have been paid; (iii) that you are adhering to your Privacy Policy; and;

(iv) that you are in full compliance with all applicable laws, regulations and rules (including but not limited to Card Organization Rules). Any such audit shall be conducted during regular business hours at your offices and shall not interfere unreasonably with your business.

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

## **29.10. Limitation of Liability.**

**29.10.1.** We are not liable for the merit and legitimacy of the orders forwarded by you. All liability for validity of orders remains with you. We are not responsible for any data entry errors, Customer misrepresentations, or reporting errors resulting from your actions. We shall not be liable to you or your Customer for the accuracy of the information provided by Payeezy Gateway Services.

**29.10.2.** In no event shall we be liable to you, or to any other person or entity, under this Section 29, or otherwise, for any punitive, exemplary, special, incidental or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill.

**29.10.3.** Notwithstanding any provision in this Agreement to the contrary, in no event shall our liability under this Section 29 for all Claims arising under, or related to, this Section 29 exceed, in the aggregate (inclusive of any and all Claims made by you against us, whether related or unrelated), the lesser of: (i) the total amount of fees paid by you for the Payeezy Gateway Services during the 12-month period immediately preceding the date the event giving rise to such Claim(s) occurred; or (ii) \$10,000.00.

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

Except as expressly agreed to by us in writing with respect to any Separate Product, we are not liable for any Excluded Products.

**29.11. DISCLAIMER OF WARRANTIES.** YOU ACKNOWLEDGE AND AGREE THAT THE USE OF THE Payeezy Gateway<sup>SM</sup> SERVICES AND DOCUMENTATION ARE AT YOUR SOLE RISK WE MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS SECTION, THE PAYEEZY GATEWAY SERVICES, DOCUMENTATION, OUR PROCEDURES, OTHER SERVICES PROVIDED BY OR PERFORMED BY US HEREUNDER, INCLUDING, WITHOUT LIMITATION: (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (B) ANY WARRANTIES OF NONINTERFERENCE OR NON-INFRINGEMENT; OR (C) ANY WARRANTIES THAT ANY PRODUCT OR SERVICE PROVIDED HEREUNDER (INCLUDING BUT NOT LIMITED TO THE SOFTWARE) WILL (1) MEET YOUR REQUIREMENTS; (2) OPERATE ACCORDING TO YOUR EXPECTATIONS; (3) PROVIDE ACCURATE DATA; OR (4) OPERATE UNINTERRUPTED OR ERROR FREE. ANY AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED BY US AND WAIVED BY YOU. WE DO NOT WARRANT THAT ANY ERRORS WILL BE CORRECTED. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, THE PAYEEZY GATEWAY SERVICES, (INCLUDING THE SOFTWARE) AND OTHER SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS-IS, WITH ALL FAULTS" BASIS. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. All decisions to reject any processing transaction or payment for your products or services are solely your responsibility.

**29.12. Notices.** You agree to notify us of any change in your name, type of business, or any other information required on your Merchant Processing Application at least thirty (30) business days prior to the effective date of change. Any notice or other communication required or permitted to be given hereunder shall be in writing, addressed or transmitted to the party to be notified at such party's address or number at such party's last known address or number, and shall be: (i) if sent by us, hand delivered or delivered by facsimile transmission, overnight courier or certified, registered, regular mail or e-mail; or (ii) if sent by you, certified or registered mail, postage prepaid return receipt requested to 3975 N.W. 120th Avenue, Coral Springs, FL, 33065. Any notice delivered hereunder shall be deemed effective, as applicable, upon delivery, if hand delivered or sent by overnight courier; upon receipt as evidenced by the date of transmission indicated on the transmitted material, if by facsimile transmission or e-mail; on the date of delivery indicated on the return receipt, if mailed by certified or registered mail; or ten (10) days after mailing, if by regular mail (or as otherwise required by applicable law). The parties' addresses may be changed by written notice to the other party as provided herein.



**29.13. Subcontractors.** We may subcontract all or part of the Payeezy Gateway Services using a variety of providers globally, but, notwithstanding any such subcontract, we shall remain fully responsible for performance of Payeezy Gateway Services, including ensuring the compliance of subcontractors with the terms of this Agreement applicable to such subcontractors. Each of our subcontractors for the Payeezy Gateway Services is a third party beneficiary of Sections 29.4, 29.5, 29.7, 29.8, 29.9, 29.10, 29.11, 29.13 and 29.14 of this Section with rights to enforce the applicable terms of this Section against you.

**29.14. Survival.** Upon termination or expiration of this Section 29 or the Agreement, a party's obligations shall cease except for those remaining or required to be performed following such termination. For the avoidance of doubt, the parties agree that those provisions of this Section that logically should survive its termination or expiration in order to accomplish its fundamental purposes will do so. All representations, warranties, indemnities and covenants made herein shall survive the termination of this Section and shall remain enforceable after such termination.

### 30. Special Provisions Regarding Clover Service

If you elect to use the Clover Service, the following additional terms and conditions of this Section 30 shall apply.

The Clover Service is provided to you by Processor and not Bank. The Clover Service, transactions processed, and other matters contemplated under this Section 30 are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Section 30 directly conflict with another provision of the Agreement, in which case the terms of this Section 30 will control; provided however, Bank is not a party to this Agreement insofar as it applies to the Clover Service, and you acknowledge that Bank is not liable to you in any way with respect to the Clover Service. For the purposes of this Section 30, the words "we," "our" and "us" refer only to the Processor and not the Bank.

**30.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 30 or as defined in the Glossary or elsewhere in this Agreement.

**"Clover Base App"** means the object code version of any software, content or digital material (including any bug fixes, updates, upgrades, modifications, enhancements, revisions, new releases or new versions of such software, content or digital materials) owned or licensed by Clover, and individually or collectively, are part of the Clover Software. For the avoidance of doubt, as of October 1, 2013, the following are Clover Base Apps: Clover, Setup, Manual Transaction, Customers, Reporting, Printers, Launcher, Register, Orders, Cash Log, Help and Card Transactions. Additional Clover Base Apps may be made available by Clover from time to time.

**"Clover"** means Clover Network, Inc.

**"Clover Marks"** means the trademarks or service marks of Clover Network, Inc.

**"Clover Service"** means the services provided by Processor under this Agreement that enable the capture, management, and transmission of information for payments processing through your use of the Clover System. The Clover Service is deemed part of the "Services," as defined in and provided under the Agreement.

**"Clover Software"** means the object code version of any software, content or digital material (including any bug fixes, updates, upgrades, modifications, enhancements, revisions, new releases or new versions of such software, content or digital materials) owned or licensed by us or our service providers (including Clover), which may be accessible via the Clover Base Apps preloaded on a Device at the time we provide you with the Device or via a website designed or designated by Clover, including, without limitation, associated APIs, software, firmware, object code, source code and any related upgrades, modifications, materials, documentation, and derivative works with respect to such software that are provided by Clover from time to time under this Agreement and designed to assist with the management of your business and enable payment processing at the point of sale. For the avoidance of doubt, Clover Software and the term software in the preceding sentence do not include any non-Clover Base Apps (e.g., any non-Clover software applications that are preloaded on the Device at the time we provide you with the Device or that may be obtained by you separately from the Clover Service through an application marketplace) or any Clover software applications separately obtained by you through an application marketplace after the Device is deployed to you.

**"Clover System"** means the combination of the Clover Software and Device and any manuals, documentation, or other materials provided by us or our service providers (including Clover) and related to the Clover Software, Devices or the Clover Service.

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

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

**"Device"** means a tablet, smartphone, or other mobile or fixed form factor identified by Processor from time to time through which the Clover Software can be accessed.

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

**30.2. License Grant.** During the term of the Agreement, Processor grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense or assign in any way, to electronically access and use the Clover Service solely in the United States to manage your establishment and conduct associated point of sale activities within the United States in accordance with the terms of this Section 30. For purposes of this Section 30, "United States" does not include U.S. Territories or possessions. The Clover

Service is for your internal business use only. This Section 30 does not grant you any rights to the Clover Marks. All intellectual property and proprietary rights in or related to the Clover Service and the Clover Marks are and will remain our, our affiliates', our vendors', or our licensors' (as applicable) sole and exclusive property, and any and all right, title and interest associated with the Clover Service not expressly granted by Processor in this Section 30 are deemed withheld.

**30.3. Restrictions.** You may not, nor may you permit any third party to do any of the following: (a) disclose or distribute in any format any Intellectual Property of any third party incorporated into the Clover System, the Clover Services, or the Clover Marks; (b) access or use any Intellectual Property related to the Clover System, the Clover Service, or the Clover Marks (in any format) through any time-sharing service, service bureau, network, consortium, or other means; (c) lease, license or otherwise transfer any rights under the license granted in subsection 30.2 above to any third party; (d) decompile, disassemble or reverse engineer any Intellectual Property incorporated into any part of the Clover System or the Clover Service; (e) modify, translate or alter or otherwise create any derivative works based on any Intellectual Property incorporated into any part of the Clover System or the Clover Service; (f) except for backup and archival purposes, copy any Intellectual Property incorporated into any part of the Clover System or the Clover Service; provided that you may copy manuals or other materials related to the Clover System or the Clover Service as reasonably necessary to facilitate your support and use such service; (g) use any part of the Clover System or the Clover Service, or access or ship any part of the Clover System or the Clover Service from, outside of the United States; or (h) perform or attempt to perform any actions designed to interfere with the proper working of the Clover System or the Clover Service or prevent access to or use of the Clover System or the Clover Service by other users; (i) remove, modify, erase, relocate, or otherwise alter any proprietary rights notices or other legend from the Clover System or Clover Service (or any part thereof) or the Clover Marks; or (j) use the Clover System or Clover Service (or any part thereof) except as permitted under this Agreement.

You shall not take any action inconsistent with the stated title and ownership in subsection 30.2 above. You will not file any action, in any forum that challenges the ownership of any part of the Clover System or Clover Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate this Agreement and your access to and use of the Clover System and Clover Service in the event of a challenge by you.

### 30.4. Clover Service Limitations and Requirements.

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

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

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

**30.4.4.** You acknowledge that certain updates, modifications and changes to the underlying features and functionality of the Clover Software or Clover Services may be necessary from time-to-time. We or our service providers may perform maintenance and updates on the Clover Service from time to time which may result in service interruptions, delays, or errors. We will not be liable for any such interruptions, delays, errors, or bugs. You agree that we or our service provides may contact you in order to assist you with the Clover Service and obtain information needed to identify and fix any errors.

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

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

- a) With respect to each Customer who requests the delivery of transaction receipts via text message or email, such Customer must enter his phone number or email address in the appropriate space displayed on the Device himself; you are NOT permitted to add or modify any Customer Information (including but not limited to phone number and email address) on behalf of a Customer.
- b) With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent check box displayed on the Device himself; you are NOT permitted to add or modify a Customer's consent indication on his behalf.
- c) You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer's provided phone number, street address, and/or email address if the Customer has specifically consented by checking (himself) the applicable box displayed on the Device.
- d) NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE CUSTOMER INFORMATION AND TO ALLOW YOUR CUSTOMERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM YOU, SOME STATES MAY

LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED HIS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (I) YOUR USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) YOU WILL AT ALL TIME STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

**30.5. Clover Service Fees.** You shall pay Processor the fees for Clover Service as set forth on the Merchant Processing Application and Agreement.

**30.6. Purchased Equipment.**

**30.6.1. Definitions.** Except as otherwise stated in this subsection 30.6.1, the terms in Section 25 of the Agreement entitled "Terms of Equipment Purchase or Rental" of the Agreement will apply to any Device, or other equipment or peripherals related to the Clover Service that you purchase or rent from us (collectively, the "Clover Equipment").

Accordingly, the term "Equipment" in the Terms of Equipment Purchase or Rental section of the Agreement means the "Clover Equipment" and the term "terminal" means "Device". However, the term "Software" as such term is used in the Terms of Equipment Purchase or Rental section of the Agreement means only the software, computer programs, related documentation, technology, know-how and processes embodied in the Clover Equipment by a Vendor (e.g., firmware) or provided in connection with the Clover Equipment by a Vendor. For the avoidance of doubt, the term "Software" as that term is used in Section 25 of the Agreement does not include any software that is a part of the Clover System. Your usage rights, restrictions and responsibilities with respect to any software that is a part of the Clover System are governed by the terms of this Section 30.

**30.6.2. One Year Limited Warranty.** We warrant that the Clover tablet and Clover printer will be free from manufacturer induced defects in materials or workmanship for a one year period beginning on the date of shipment to you (Limited Warranty").

This Limited Warranty does not include damage to, or accident or misuse of, the Clover tablet or Clover printer (which may include, but is not limited to: damage resulting from smashed or cracked units or screens; extraneous materials (e.g., cat hair, soil, dust) in the interior of the unit; contact with liquids; missing unit covers; fire damage; melted or burnt units; cosmetic damage, including but not limited to scratches, dents and broken plastic on ports; improper or inadequate maintenance; or, other visible damage) or your breach of any agreement applicable to the Clover tablet or Clover printer. The Limited Warranty also does not apply to defects or damage resulting from your or any third party supplied software, interfacing or supplies; negligence; accident; acts of nature such as flood or lightning damage; loss or damage in transit; improper site preparation; failure to follow written instructions on proper use; or, unauthorized modification or repair. If the Clover tablet or Clover printer should otherwise become defective within the Limited Warranty period, we (or our third party providers) will repair or replace it free of charge (except that applicable call tag and shipping charges will apply). Replacement tablets or printers will be warranted for the remainder of the Limited Warranty period. This Limited Warranty is non-transferable by you.

Notwithstanding this Limited Warranty, it may be necessary or desirable for you to upgrade your Clover printer or Clover tablet or purchase a new Clover printer or Clover tablet from time to time, and you will be charged for any such upgraded or new equipment.

For the avoidance of doubt, this Limited Warranty does not apply to any software (including Clover Software), the cash drawer or any peripherals used in connection with the tablet or printer. We do not warrant that the operation of the Clover printer or the Clover tablet will be uninterrupted or error free.

If damage or defects are not covered under the Limited Warranty, applicable fees (e.g., no trouble found, no trouble found plus cosmetic refurbishment, repair, replacement, beyond economic repair/scrap) will apply.

**30.7. Term and Termination.** This Section 30.7 shall become effective on the day we begin providing the Clover System or Clover Service to you and shall end when terminated as set forth herein. For the avoidance of doubt, except as set forth below, termination of this Section 30.7 will not terminate the Agreement. This Section 30.7 may be terminated at any time by either party upon thirty (30) days' written notice to the other party. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, we may suspend the Clover Service or terminate this Section 30.7 if (i) we determine that you are using Clover System or Clover Service for any fraudulent, illegal, or unauthorized purpose, (ii) you violate the terms of this Agreement or an Event of Default occurs under the Agreement, (iii) we terminate our agreement with any third parties that are involved in providing the Clover System or Clover Service, or (iv) Processor otherwise decides to discontinue providing the Clover Service. You acknowledge and agree that an occurrence of (i) or (ii) above may be deemed an Event of Default under the Agreement, thereby affording Processor and Bank all rights and remedies as set forth in the Agreement triggered by such an Event of Default, which may include immediate termination of the Agreement without notice. Further, this Section 30.7 will terminate automatically upon the termination of the Agreement. Upon termination of this Section 30.7 for any reason, you will remain responsible for the full amount of [the Clover Service Fees] through the end of the calendar month in which such termination is effective. We will have no further obligations to you upon the expiration or termination of this Section 30.7.

**30.8. Third Party Services.** The Clover Service may contain links to Third Party Services (e.g., an application marketplace). If you decide to use Third Party Services, you will be responsible for all charges and fees for such Third Party Services, reviewing and

understanding the terms and conditions associated with Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). Your access of any Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Agreement. You acknowledge and agree that you will be required to enter into separate agreements with third parties in order to obtain Third Party Services. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., APPLICATION MARKETPLACE AND ANY NON-BASE APPS AVAILABLE AT SUCH APPLICATION MARKETPLACE) IS DOWNLOADED AT YOUR OWN RISK. ALL THIRD PARTY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE WITHOUT WARRANTIES OF ANY KIND. PROCESSOR WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND PROCESSOR EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. PROCESSOR DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY THIRD PARTY SERVICE OR PRODUCT ADVERTISED OR OFFERED THROUGH THE CLOVER SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND PROCESSOR WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS. WE MAY CEASE TO PROVIDE THIRD PARTY SERVICES AT ANY TIME WITHOUT NOTICE TO YOU. YOU SHALL NOT USE THE THIRD PARTY SERVICES TO ACCESS, USE OR DOWNLOAD ANY NON-PROCESSOR OR NON-BANK APPLICATIONS THAT FACILITATE OR PROVIDE ANY FINANCIAL OR MONEY SERVICES BUSINESSES, SUCH AS, CURRENCY DEALER OR EXCHANGER, CHECK CASHER, ISSUER/SELLER OR REDEEMER OF TRAVELER'S CHECKS OR MONEY ORDERS, MONEY TRANSMITTER, PROVIDER OF LENDING PRODUCTS OR THE LIKE INCLUDING THE CREATION OR SALE OF A CONVERTIBLE VIRTUAL CURRENCY.

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

**30.10. Privacy and Data Use.** All data collected from you at [www.clover.com](http://www.clover.com) or in connection with your use of the Clover Service, including Customer Information and information about your business and employees used with or stored in or by the Clover Service (collectively, "Account Data"), is collected by Clover and not Processor or Bank; therefore, the use and sharing of such Account Data is controlled by the Clover Network, Inc. Privacy Policy (available at [https://www.clover.com/privacy\\_policy](https://www.clover.com/privacy_policy)). You acknowledge and agree that we may access your Account Data upon our request to our service providers (including Clover), and our use of your Account Data is governed by the terms set forth in the Agreement. You further acknowledge and agree that transaction data and certain other data, such as personal information, business information, log data, data collected through cookies and other technologies, that is obtained by us or our service providers (including Clover) in connection with the Clover Services (collectively, the "Clover Services Data") may be collected and used by us or our service providers (including Clover) to create new products, services and enhance products and services that may be subsequently made available to merchants, subject to the terms of this Section 30.10. For the avoidance of doubt, we may disclose aggregated anonymized Clover Services Data to third parties.

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

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

**30.13. Clover Service Disclaimer.** USE OF THE CLOVER SYSTEM, CLOVER SERVICE OR CLOVER EQUIPMENT IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOVER SYSTEM, CLOVER EQUIPMENT (EXCEPT AS PROVIDED IN SECTION 30.6.2 ABOVE) AND CLOVER SERVICE IS PROVIDED "AS IS" AND PROCESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO THE CLOVER SYSTEM OR CLOVER SERVICE, OR ANY PART OF THE CLOVER SYSTEM OR CLOVER SERVICE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER SYSTEM OR CLOVER SERVICE WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT THE CLOVER SYSTEM OR CLOVER SERVICE IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COM-



PONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED. FOR THE AVOIDANCE OF DOUBT, THE CLOVER SERVICE AND CLOVER SYSTEM DOES NOT INCLUDE, AND PROCESSOR MAKES NO REPRESENTATIONS OR WARRANTIES RELATED TO THE LIMITATIONS, DELAYS OR OTHER PROBLEMS INHERENT IN, THE USE OF INTERNET, WIRELESS DATA NETWORK, CELLULAR DATA NETWORK OR OTHER COMMUNICATIONS SERVICES; AND, PROCESSOR IS NO WAY RESPONSIBLE FOR ANY ERRORS, DELAYS, FAILURES, OR OTHER PROBLEMS ARISING FROM USE OF THE INTERNET OR COMMUNICATIONS SERVICES

**30.14. Indemnity.** Without limiting your indemnification obligations in the Agreement, you agree to indemnify and hold us (and our employees, directors, agents, affiliates and representatives) harmless from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to:

- a) Your failure to comply with all terms and conditions in this Agreement, including but not limited to the Clover Ops Guide;
- b) Your use of any Customer Information obtained in connection with your use of the Clover Service;
- c) The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of the Clover Service;
- d) Any other party's access and/or use of the Clover System or Clover Service with your unique username, password, or other appropriate security code; or
- e) Your wrongful or improper use of the Clover Service or Clover System or their respective components;
- f) Any transaction submitted by you through the Clover Service;
- g) Your violation of any third party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; or
- h) Your violation of any law, rule or regulation of the United States or any other country;

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

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

**30.17. Ideas.** You may choose, or we or Clover may, invite you to submit comments or ideas about the Clover System or Clover Service, including, without limitation, about how to improve the Clover Service ("Ideas"). By submitting any Idea, you agree that: (a) we and Clover 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 or Clover are free to use and disclose any Idea on an unrestricted basis without notifying or compensating you. You release us and Clover (and our respective affiliates) from all liability and obligations that may arise from receipt, review, use or disclosure of any portion of any Idea by us Clover.

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

**30.19. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PROCESSOR (OR ITS AFFILIATES, AGENTS, DIRECTORS AND EMPLOYEES) BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, IN CONNECTION WITH, RESULTING FROM, CAUSED BY OR ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE CLOVER SYSTEM (IN WHOLE OR ITS INDIVIDUAL COMPONENTS) OR CLOVER SERVICE.

## **30.20. E-Sign Consent Agreement**

### **30.20.1. Consent.**

By signing this Agreement, you consent and agree that:

- a) Processor can provide disclosures required by law and other information about your legal rights and duties to you electronically.
- b) Where required or requested, your electronic signature (via "click-through" or other method) on agreements and documents relating to the Clover System or Clover Service has the same effect as if you signed them in ink.
- c) Processor can send all communications, billing statements, amendments to this Agreement, notices, and other disclosures or information regarding the Clover System or Clover Service or your use of the Clover System, Clover Service or the Services as defined in the Agreement (collectively defined as "Disclosures") to you electronically (1) via e-mail to the most recent e-mail address on our records, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is

available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.

- d) If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.
- e) This consent applies to all future Disclosures sent to you in connection with this Agreement, the Agreement, or your use of the Clover System, Clover Service or the Services as defined in the Agreement.

### **30.20.2. Legal Effect.**

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

**30.21. Ratification.** The terms of this Agreement shall serve to supplement the terms of your Agreement. Nothing contained herein alters any existing contractual obligations. Except as expressly set forth herein, the Agreement is hereby ratified in all respects and shall remain in full force and effect.

## **31. Special Provisions Regarding Clover Go Service (Mobile Payments)**

If you elect to use the Clover Go Service, the following additional terms and conditions of this Section 31 shall apply.

The Clover Go service is provided to you by Processor and not Bank. The Clover Go service, transactions processed, and other matters contemplated under this Section 31 are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Section 31 directly conflict with another provision of the Agreement, in which case the terms of this Section 31 will control; provided however, Bank is not a party to this Agreement insofar as it applies to the mobile payments service, and you acknowledge that Bank is not liable to you in any way with respect to the mobile payments service. For the purposes of this Section, 31, the words "we," "our" and "us" refer only to the Processor and not the Bank.

**31.1.** Your mobile payments service ("Clover Go Service") enables you to accept card-based payments using (a) a smart phone or other supported mobile device that you provide, (b) an approved card reader you obtain from us ("Clover Go Reader"), and (c) an application ("Clover Go App") that you download from the Apple App Store or Google Play. The Clover Go Service does not support offline point of sale activities and requires Internet connectivity for proper functioning. We may update the Clover Go Service from time to time.

**31.2.** Only Apple iOS and Google Android operating systems are compatible with the Clover Go Service, and only certain types of mobile devices using Apple iOS and Google Android are supported for the Clover Go App and Clover Go Service. Please contact us for information on whether a particular mobile device is supported for the Clover Go App and Clover Go Service.

**31.3.** Additional terms of use ("Clover Go Terms") apply to the Clover Go Service. From time to time, Clover Go Terms will be presented to you electronically on an "in-application" basis, and you will be required to "click to agree" before being permitted to use the Clover Go App. If we update the Clover Go Terms you will be required to "click to agree" to the updated Clover Go Terms in order to use the Clover Go App again.

**31.4.** TO USE THE CLOVER GO SERVICE, YOU MUST ALSO BE USING, AT A MINIMUM, THE TRANSARMOR<sup>SM</sup> SERVICE, which is sometimes referred to as "TransArmor Tokenization and Encryption" or the "TransArmor Data Protection Service."

**31.5.** If you are already using the single-token version of either the TransArmor Service or Clover Security Plus Services, then no additional TransArmor products are needed for the Clover Go Service.

**31.6.** If you are using the Payeezy Gateway or if you accept card-not-present payments (for example, Internet payments), you may need a different TransArmor product. Please contact us for information.

**31.7.** If you are not already using a TransArmor product, then you must first sign an agreement for an eligible TransArmor product.

**31.8.** USE OF CLOVER GO READERS IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLOVER GO READERS ARE PROVIDED "AS IS," AND WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH RESPECT TO CLOVER GO READERS, INCLUDING BUT NOT LIMITED TO: (a) WARRANTIES OF QUALITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, (b) ANY WARRANTY THAT THE CLOVER GO READERS WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, (c) ANY WARRANTY THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED, OR (d) ANY WARRANTY THAT THE CLOVER GO READERS ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

## **32. Special Provisions Regarding Clover Insights Services Terms and Conditions.**

If you elect to utilize the First Data Clover Insights<sup>SM</sup> Solution ("Clover Insights") the terms and condition in this Section 32 shall apply ("Clover Insights Terms and Conditions"); and if you were granted a First Data Clover Insights Temporary Demonstration License, an



election for Services under this Section 32 shall serve to supersede it. Clover Insights is provided to you by Processor and not Bank. Bank is not liable to you in any way with respect to Clover Insights. Clover Insights, transactions processed, and other matters contemplated under Section 32 are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms directly conflict with the Clover Insights Terms and Conditions, in which case the Clover Insights Terms and Conditions will control.

**32.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in Section 32.1 or as defined elsewhere in this Section 32, or the Agreement.

“**Customer**” means a Person who makes a purchase of goods or services from you, the transaction detail of which is utilized in Clover Insights.

“**Customer Information**” means information about your Customers (e.g., name, mailing address, card account number, e-mail address, telephone number) obtained in connection with your use of the Services and may be utilized in Clover Insights.

“**Data**” means transaction data that may include processing data from First Data Merchant Services LLC’s credit and debit information warehouse and other available sources that First Data Merchant Services LLC owns or has a contractual or other right to use in Clover Insights.

“**Device**” means a tablet, computer, smartphone or other mobile device, or other device that you use to access the Clover Insights website to receive or to which you receive communications from Clover Insights.

“**First Data**” means First Data LLC, which is the parent company of First Data Merchant Services LLC.

“**First Data Clover Insights Marks**” means the trademarks or service marks related to Clover Insights<sup>SM</sup> and sub-licensed to you by Processor.

“**First Data Clover Insights Solution**” or “**Clover Insights Solution**” means the website or the application associated with Clover Insights<sup>SM</sup>, the object code version of the Clover Insights software applications and communications you receive from the applications. Among other things, Clover Insights allows merchants to track and visualize information regarding their own revenue, ticket size, and Customers contained in the Data and other third party data sources. Clover Insights may also permit a merchant to compare its performance to groups of similar businesses within their industry and/or certain geographic areas using the Data and other third party data sources, subject to certain limitations. The features and functionality of Clover Insights may be modified from time to time by First Data or its third party provider(s). For the avoidance of doubt, the term “software” in this definition does not include any software that may be obtained by you separately from Clover Insights (e.g., any applications downloaded by you). The First Data Clover Insights Solution is deemed part of the “Services,” as defined in and provided under the Agreement.

“**Clover Insights Solution Fees**” means the fees charged for your use of the First Data Clover Insights Solution, which includes additional fees for multiple locations. Clover Insights Solution Fees shall be incurred commencing on the first day of the month following sixty (60) days after Clover Insights is turned on for your use.

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

“**User Documentation**” means that documentation regarding the operation, guidelines and features and functionality of Clover Insights that is made available to you from time to time at the website, by internet link or otherwise. User Documentation may be modified from time to time by First Data or its third party provider(s).

**32.2. License Grant.** Subject to the Clover Insights Terms and Conditions in this Section 32, Processor grants you a personal, limited, non-exclusive, revocable, non-transferable sub-license, without the right to further sub-license or assign in any way, to electronically access and use, solely in the United States, Clover Insights to manage your establishment(s) and analyze associated point of sale activities within the United States. For purposes of this Section 32, “United States” does not include U.S. Territories or possessions. Clover Insights is for your internal business use only. This Section 32 does not grant you any rights to First Data Clover Insights Marks. Except for the license expressly granted herein, all intellectual property and proprietary rights in or related to Clover Insights and First Data Clover Insights Marks are and will remain the sole and exclusive property of First Data or its affiliates, vendors, or third party provider(s) (as applicable), and any and all right, title and interest associated with Clover Insights not expressly granted in this Section 32 is deemed withheld.

### **32.3. Restrictions.**

**32.3.1.** You may not, nor may you permit any third party, other than employees and agents with a business need, to do any of the following: (a) access or attempt to access Clover Insights (or any part) that is not expressly made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code or any underlying data, ideas or algorithms of Clover Insights (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, Clover Insights (or any part), or First Data Clover Insights Marks; (d) create derivative works of or based on Clover Insights (or any part) or Clover Insights Marks; (e) except for backup and archival purposes, directly or indirectly copy Clover Insights (or any part), except screen shots may be copied and retained solely for internal business purposes; (f) republish, upload, post, transmit, disclose, or distribute (in any format) Clover Insights (or any part) except as expressly permitted herein; (g) access or use (in any format) Clover Insights (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer your license rights to any third party, whether by operation of

law or otherwise; (i) use or ship Clover Insights (or any part) outside of the United States, or access Clover Insights (or any part) from outside the United States, without in any case obtaining our advance written consent; (j) remove, relocate, or otherwise alter any proprietary rights notices from Clover Insights (or any part), or First Data Clover Insights Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of Clover Insights, prevent access to or use of Clover Insights by other users, or in our reasonable judgment impose an unreasonable or disproportionately large load on Clover Insights’ infrastructure, network capability or bandwidth; or (l) use Clover Insights (or any part) except as permitted in Section 32.2.

**32.3.2.** You shall not take any action inconsistent with the stated title and ownership in Section 32.2. You will not file any action, in any forum that challenges the ownership of any part of Clover Insights, any related software, materials or User Documentation. Failure to comply with this provision will constitute a material breach of this Agreement and may restrict Processor’s ability to sublicense Clover Insights to you. Processor has the right to immediately terminate Services under this Section 32, and First Data has the right to immediately terminate your access to and use of Clover Insights in the event of a challenge by you.

### **32.4. Clover Insights Limitations and Requirements.**

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

**32.4.2.** You may use Clover Insights to conduct analysis of the Data and third party data made available through Clover Insights application and/or other tools made available at the website or in the application.

**32.4.3.** First Data may alter which Devices and browsers are approved as compatible with Clover Insights in its discretion from time-to-time.

**32.4.4.** First Data may perform maintenance on Clover Insights from time to time which may result in service interruptions, delays, or errors. Neither First Data nor its affiliates, vendors, or third party provider(s), will be liable for any such interruptions, delays, errors, or bugs. You agree that First Data or its affiliates, vendors, or third party provider(s) may contact you in order to assist you with Clover Insights and obtain information needed to identify and fix any errors.

**32.4.5.** You shall at all times comply with the User Documentation.

**32.4.6.** You shall comply with the following requirements in connection with your use of Clover Insights:

**32.4.6.1.** In the event you are able to discern any information about a particular entity or individual from the information available from Clover Insights, either alone or with other information in your possession, you understand and acknowledge that the information may be subject to certain privacy, marketing, insider trading, or other applicable laws and you will limit your use thereof in accordance with all applicable laws.

**32.4.6.2.** With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent or the consent must be provided in writing; you are NOT permitted to add or modify a Customer’s consent indication on his behalf.

**32.4.6.3.** You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer’s provided phone number, street address, and/or email address if the Customer has specifically consented in writing executed by the Customer.

**32.4.6.4.** NOTWITHSTANDING THE CAPABILITY OF CLOVER INSIGHTS TO COLLECT AND STORE CUSTOMER INFORMATION, SOME STATES MAY LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED ITS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (I) YOUR USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH CLOVER INSIGHTS MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) YOU WILL AT ALL TIME STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

**32.4.7.** You shall comply fully with the requirements of all applicable federal, state and local laws and regulations related to your use of Clover Insights and provision and use of Customer Information and point of sale data in connection with Clover Insights. Furthermore, you are solely responsible for monitoring legal developments applicable to Clover Insights 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.

**32.4.8.** In connection with Clover Insights, you shall receive a username and password to access Clover Insights. You are responsible for securely storing and keeping the username and password in accordance with this Section 32.10 below. You will not permit anyone unauthorized by you to use the username and password and you may only authorize your employees and agents with a business need to use the username and password. At such time as multiple usernames and passwords are available, you shall restrict the use of usernames and passwords to single individuals and you shall monitor use of Clover Insights to ensure compliance with this Section 32 by those to whom you have provided usernames

and passwords and you shall keep records regarding who has access to which usernames and passwords at all times.

**32.5. Equipment.** You must obtain all equipment necessary for you to access and use the Clover Insights website. No communication channel or device to access the website is included within the provision of the First Data Clover Insights Solution, and you shall be responsible for all such equipment and communication channels, including but not limited to all device or channel compatibility.

**32.6. Term and Termination.** Clover Insights Terms and Conditions in this Section 32 shall become effective upon execution hereof and shall end when terminated as set forth herein. For the avoidance of doubt, except as set forth below, termination of Services under Section 32 will not terminate the underlying Agreement. You may terminate your First Data Clover Insights Solution services at any time upon thirty (30) days' notice by calling the Customer Service number on your statement. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, First Data may terminate your access to, and use of Clover Insights if (i) it is determined that you are using Clover Insights for any fraudulent, illegal, or unauthorized purpose, (ii) you violate the Clover Insights Terms and Conditions or an Event of Default occurs under the Agreement, (iii) First Data terminates its agreement with any third parties that are involved in providing Clover Insights, or (iv) First Data otherwise decides to discontinue providing Clover Insights. You acknowledge and agree that an occurrence of (i) or (ii) above may be deemed an Event of Default under the Agreement, thereby affording Processor and Bank all rights and remedies as set forth in the Agreement triggered by such an Event of Default, which may include immediate termination of the Services under Section 32 without notice.

**32.7. Third Party Services.** Clover Insights may be used in connection with Third Party Services that you obtain separately for your purposes (e.g., an accounting application on your Device). If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with Clover Insights). Your access of any Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Section 32 or the Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., ACCOUNTING APPLICATION) IS DOWNLOADED AT YOUR OWN RISK. NEITHER FIRST DATA NOR ITS AFFILIATES, VENDORS, OR THIRD PARTY PROVIDER(S), WILL BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND SUCH LIABILITY RELATED TO ALL THIRD PARTY SERVICES IS EXPRESSLY DISCLAIMED.

**32.8. Account Registration.** First Data may require you to register at Clover Insights website or through the application. If and when prompted by the registration process, you agree to (a) provide true, accurate, current and complete information about yourself and/or your business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by you is untrue, inaccurate, not current or incomplete, First Data has the right to terminate your First Data Clover Insights account ("Account") and refuse any and all current or future use of Clover Insights.

**32.9. Privacy and Data Use.** All data collected from you in connection with the Services or in connection with your use of Clover Insights, including Customer Information and information about your business and employees used with or stored in or by Clover Insights (collectively, "Account Data"), is collected by First Data, its affiliates, vendors, and/or third party provider(s); therefore, the use and sharing of such Account Data is controlled by the applicable Privacy Policy displayed and available at or through a link on the Clover Insights website. You acknowledge and agree that First Data, its affiliates, vendors, and/or third party provider(s) may access your Account Data, and our use of your Account Data is governed by the Clover Insights Terms and Conditions and the Agreement. You also agree that First Data, its affiliates, vendors, and/or third party provider(s) may access and use Account Data to provide or enhance Clover Insights or the Services.

**32.10. Protecting Your Information.** You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access Clover Insights are kept safe and confidential. You must prevent unauthorized access to and use of any Account Data. You are responsible for all electronic communications sent to First Data, its affiliates, vendors, or third party provider(s) containing Account Data. When First Data receives communications containing Account Data, it will assume you sent it to First Data. You must immediately notify First Data if you become aware of any loss, theft or unauthorized use of any Account Data (see Clover Insights support center contact information below). First Data reserves the right to deny you access to Clover Insights, in whole or in part, if First Data believes that any loss, theft or unauthorized use of any Account Data or access information has occurred.

**32.11. Accuracy of Information.** You are solely responsible for ensuring the accuracy of all information and data regarding your business that you provide to First Data, its affiliates, vendors, and/or third party provider(s) in connection with Clover Insights (e.g., Customer Information). First Data, its affiliates, vendors, and/or third party provider(s) disclaim any and all liability arising out of any inaccuracies as a result of use of such information or data.

### **32.12. First Data Clover Insights Solution Disclaimer.**

**32.12.1. AS IS.** USE OF CLOVER INSIGHTS IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLOVER INSIGHTS IS PROVIDED "AS IS" AND NEITHER FIRST DATA NOR ITS AFFILIATES, VENDORS, OR THIRD PARTY PROVIDER(S) MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO CLOVER INSIGHTS,

INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT CLOVER INSIGHTS WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT CLOVER INSIGHTS IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

**32.12.2. Financial Advice.** First Data Clover Insights Solution does not provide any business, investment or financial advice and is not advocating any business decision or the sale or purchase of any real property, stocks, bonds, or securities. First Data expressly states, and you hereby acknowledge, that Clover Insights is 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. Clover Insights is not to be construed as providing business or investment advice and should not be used or construed, in whole or in part, as a basis or recommendation for an investment or business decision.

**32.12.3. Accuracy.** While First Data takes commercially reasonable measures to ensure the accuracy of the information and content contained in Clover Insights, it makes no representation or warranty of any kind with respect to Clover Insights. You acknowledge and agree that all use of Clover Insights by you and all other persons shall be: (i) based upon your own determination and evaluation and (ii) at your sole risk. At times the Data may include third party data that is appended to the Data and First Data has not investigated and does not make any representation or warranty with respect to the accuracy of the third party data.

**32.13. Indemnity.** Without limiting your indemnification obligations in the Agreement, you agree to indemnify and hold First Data, its affiliates, vendors, and third party provider(s) harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys' fees) arising out of or relating to:

**32.13.1.** Your failure to comply with all terms and conditions in this Section 32, including but not limited to User Documentation;

**32.13.2.** Your use (alone or in combination with any other information) of any Customer Information, reports, information or analytics obtained in connection with your use of Clover Insights;

**32.13.3.** The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of Clover Insights; or

**32.13.4.** Any other party's access and/or use of Clover Insights with your unique username, password, or other appropriate security code.

**32.14. Notices.** First Data, its affiliates, vendors, and/or third party provider(s) may provide notices and other information regarding Clover Insights to you via the method(s) described in the Agreement.

**32.15. Amendment.** First Data has the right to: (i) require changes or addition to the Clover Insights Terms and Conditions in Section 32 at any time, and (ii) change, delete, discontinue, or impose conditions on any feature or aspect of Clover Insights with notice provided to you as set forth in the Notices section of the Section 32. Any use of Clover Insights after the publication of any such changes shall constitute your acceptance of the Clover Insights Terms and Conditions as modified.

**32.16. Ideas.** You may choose to, or First Data, its affiliates, vendors, or third party provider(s) may invite you to, submit comments or ideas about Clover Insights, including, without limitation, about how to improve Clover Insights ("Ideas"). By submitting any Idea, you agree that: (a) First Data expressly disclaims any confidentiality obligations or use restrictions, express or implied, with respect to any Idea, (b) your submission will be non-confidential, and (c) First Data is free to use and disclose any Idea on an unrestricted basis without notifying or compensating you and without you claiming any rights therein. You release First Data, its affiliates, vendors, or third party provider(s) from all liability and obligations that may arise from the receipt, review, use or disclosure of any portion of any Idea.

**32.17. Third Party Beneficiaries.** First Data, its affiliates, vendors, or third party provider(s) used in providing Clover Insights are intended third party beneficiaries of this Section 32 as applicable, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this Section 32, nothing in this Section 32 is intended to confer upon any Persons any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Section 32.

**32.18. Limitation of Liability.** The cumulative liability to you from First Data, its affiliates, vendors, and third party provider(s) for any and all claims arising out of or resulting from this Section 32 shall not exceed the total for the Clover Insights Solution Fees you paid to the Processor in the twelve months immediately preceding any claim.

## **33. Choice of Law; Venue; Waiver of Jury Trial**

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

**33.2. Venue.** We have substantial facilities in the State of New York and many of the services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in Suffolk County, New York.

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

### 34. Other Terms

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

**34.2. Compliance with Laws.** In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it. You further agree to cooperate and provide information requested by Servicers, as Servicers determine necessary, to facilitate Servicers compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury. You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or those involving any Person listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated National and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)) or the U.S. Department of State's Terrorist List (available at [www.state.gov](http://www.state.gov)), for the processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control ("OFAC") or in connection with illegal activity of any kind.

**34.3. Notices.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, if to you at your address appearing in the Application. If to us at our address appearing in Section A.4 of Part IV of this Agreement, with a copy to Attention: Chief counsel, Retail Bank, One PNC Plaza, 249 Fifth Avenue, Pittsburgh, PA 15222, with copy to: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065. Notices shall be deemed to have been given (i) if sent by mail or courier, when mailed or delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to your last known address as indicated in our records shall constitute effective notice to the Merchant under this Agreement. Notwithstanding the above, all bankruptcy or collection related inquiries, notices must be sent to the following address, Merchant Services Department, 4141 Southwest Freeway, STE 300, Sugar Land, TX 77478, Attention: Bankruptcy and Collection Notifications. All such notices must include the related merchant name and merchant number. Failure to provide Notice to this address or include this pertinent merchant information will be deemed ineffective. All notices must include your merchant names(s) and merchant number(s). Failure to provide notice in the manner described in this Section will be deemed ineffective.

**34.4. 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.

**34.5. 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.

**34.6. 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.

**34.7. Amendment.** We may modify any provision of this Agreement by providing written notice to you. You may choose not to accept the requirements of any such change by terminating the Agreement within thirty (30) days of receiving notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any early termination fee that might otherwise apply. For purposes of this section, an electronic or "click wrap" notice intended to modify or amend this Agreement and which you check "I Accept" or "I Agree" or otherwise accept through an electronic process, shall constitute in writing as required herein. This Section 34.7 does not apply to fee changes, which are governed by Sections 11.4 and 11.5.

**34.8. No Third Party Beneficiaries.** Our respective Affiliates and any Persons we use in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as it was a party hereto. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any Person or entity other than the parties any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Agreement.

**34.9. Card Organization Rules.** The parties acknowledge that the Visa, MasterCard, Discover and PayPal Card Organization Rules give Visa, MasterCard, Discover and PayPal certain rights to require termination or modification of this Agreement with respect to

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

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

#### 34.11. E-Sign Consent Agreement.

**34.11.1. Consent.** By signing this Agreement, you consent and agree that:

- a) Processor can provide disclosures required by law and other information about your legal rights and duties to you electronically.
- b) Where required or requested, your electronic signature (via "click-through" or other method) on agreements and documents relating to the Clover System or Clover Service has the same effect as if you signed them in ink.
- c) Processor can send all communications, billing statements, amendments to this Agreement, notices, and other disclosures or information regarding the Clover System or Clover Service or your use of the Clover System, Clover Service or the Services as defined in the Agreement (collectively defined as "Disclosures") to you electronically (1) via e-mail to the most recent e-mail address on our records, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.
- d) If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.
- e) This consent applies to all future Disclosures sent to you in connection with this Agreement, the Agreement, or your use of the Clover System, Clover Service or the Services as defined in the Agreement.

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

**34.12. Ratification.** The terms of this Agreement shall serve to supplement the terms of your Agreement. Nothing contained herein alters any existing contractual obligations. Except as expressly set forth herein, the Agreement is hereby ratified in all respects and shall remain in full force and effect.



## 35. Glossary

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

**Acquirer:** Banks in the case of MasterCard Visa and certain debit transaction or Processor in the case of Discover and PayPal (in-store only) 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 may provide you with additional information that you can use to decide if you want to process a transaction. An AVS match does not guarantee that a transaction is valid. An AVS request should generally be submitted with an authorization request. The AVS response, if available, however will not impact whether any associated authorization request is approved or denied. You are responsible for each AVS request that you submit and you may be charged an AVS fee even if we are not able to provide a response to the request.

**Affiliate:** Is 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.

**Agreement:** The Agreements among Client, Processor and Bank contained in the Application, the Program Guide and the Schedules thereto and documents incorporated therein, each as amended from time to time, which collectively constitute the Agreement among the parties. Bank is a party to this Agreement for Visa, MasterCard and Non-PIN debit purposes only.

**Application:** See Merchant Processing 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"), Discover Financial Services, LLC ("Discover") and any applicable debit networks.

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

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

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

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

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

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

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

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

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

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

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

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

**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 Verification 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 Verification Code is known as CVV2; MasterCard's Card Verification Code is known as CVC2; the Card Verification Code for Discover, PayPal and American Express are known as Card Identification Numbers (CID). Card Verification Codes are used to deter fraudulent use of an account number in a non-face-to-face environment, (e.g., mail orders, telephone orders and Internet orders).

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

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

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

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

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

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

**CheckVerification:** 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.

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

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

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

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

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

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

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

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

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

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

**Data Incident:** Any actual or potential unauthorized or fraudulent access to (or use, disclosure, or alteration of) transaction data, whether consisting of a single event, a continuous course of events, or a series of related events.

**Data Incident Expenses:** Means: (a) any obligations that you have to us arising from a Data Incident including EMV Upgrade Costs; (b) the costs of a security assessment conducted by a qualified security assessor approved by a Payments Organization or PCI to determine the cause and extent of a Data Incident; and (c) any reasonable fees and expenses incurred by us, or by you with our prior written consent, for any Mitigation Services specifically approved by us in writing but only if the Mitigation Services are provided within one (1) year following discovery of the relevant Data Incident.

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

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

**Discount Rate:** A percentage rate and/or amount charged a merchant for processing its qualifying daily Credit Card and Non-PIN Debit Card transactions, as set forth in the Application. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 11.1.



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

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

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

**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.

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

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

**Federal Funds:** "Federal Funds Effective Rate" for any day shall mean the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the date of this Agreement; provided, if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the Federal Funds Effective Rate for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

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

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

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

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

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

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

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

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

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

**Merchant 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 Identification Number, name and sometimes merchant ID code and terminal number.

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

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

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

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

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

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

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

**Non-Qualified Surcharge:** A surcharge applied to any transaction that fails to qualify for the Anticipated Interchange Level and is therefore downgraded to a more costly interchange level. The Non-Qualified Surcharge (the amount of which is set forth on the Service Fee Schedule) is in addition to the Non-Qualified Interchange Fee, which is also your responsibility (see above and Section 11.1).

**Operating Procedures:** The information prepared by Processor, containing operational procedures, instructions and other directives relating to Card transactions. The current Operating Procedures are set forth in your Operating Procedures Guide.

**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.

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

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

**PIN Debit Card:** A 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).

**PINless Transaction:** A PIN Debit transaction using a Debit Card that does not require the Cardholder to enter a PIN.

**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:** PNC Merchant Services Company.

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

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

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

**Reserve:** Money we owe to you (net of any obligations you owe to us) that we hold back in order to secure or fund your obligations with us.

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

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

**Rules:** The rules, regulations, standards, 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).

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

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

**Servicers:** Bank and Processor Collectively. The words “we,” “us” and “our” refer to Servicers, unless otherwise indicated in this Program Guide.

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

**Signature Debit:** A transaction using a Debit Card that requires the Cardholder to provide a signature rather than a PIN.

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

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

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

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

**Summary Adjustment:** An adjustment to your Submission and/or Settlement Accounts in order to correct errors. (See Sections 11.2 and 11.3 of the Operating Procedures Guide).

**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 and Our:** See Servicers.

**You,Your:** See Client

### PART III: THIRD PARTY AGREEMENTS

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

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

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

#### I.0. TeleCheck Solutions Agreement

##### I. Services

TeleCheck will provide the Company with coded information that it may use when deciding to whether to accept a check or electronic funds transfer item (each an Item, and together, Items) when presented by its consumers as payment, warranty services for Items, settlement processing, and additional services that the parties agree to in writing (together, Services); all as described in this Agreement. Specifically, but without limitation, this Agreement applies to "In-Person Warranty" (Clover or Non-Clover device), "Mobile App Warranty," and/or "Online Warranty" Services. TeleCheck will be the Company's exclusive provider of the Services during the Term (defined below) of this Agreement. The Company agrees to the terms of this Agreement by signing the TeleCheck Services Application and Agreement; clicking "Accept" or "Install" when presented via an App (as applicable and described below); or using any of the Services.

**I.1. Delivery by Application.** The Company agrees that this Agreement will govern Company's access to and use of TeleCheck's Services when provided through its check acceptance application (App) that resides on a Clover® point of sale device (a Device). The Company's use of its Device is subject to its agreement with the supplier of the Device (and not TeleCheck), and this Agreement does not alter the Company's agreement with its Device supplier. The Company will comply with the terms of its agreement with the Device supplier; and warrants that it is authorized to install and use TeleCheck's App on the Device.

**I.2. Submitting Items.** The Company will designate the types of Items it accepts and that it will submit to TeleCheck for processing under this Agreement as indicated on the TeleCheck Application and Agreement. The Company will submit all of its designated Items to TeleCheck for processing under this Agreement. TeleCheck will analyze each Item that the Company submits for processing and, in its discretion, provide the Company with an approval or decline code with respect to each Item. TeleCheck will give the Company operating guidelines and specifications, as applicable, to assist the Company with properly accepting and submitting its Items for processing (operating guidelines and specifications may be provided to the Company electronically or made available via the Internet).

**I.3. Information Warranty.** TeleCheck warrants the accuracy of the information given in its approval code (the Information Warranty) when an Item meets the warranty requirements described below. Items that satisfy TeleCheck's Information Warranty and meet the corresponding warranty requirements are Eligible Items. TeleCheck will purchase Eligible Items that are subsequently dishonored, returned, reversed, or otherwise not paid by a consumer's financial institution (these Items are Return Items). The Company's sole remedy for a breach of TeleCheck's Information Warranty is the right to require TeleCheck to purchase an Eligible Item that became a Return Item. TeleCheck's liability to the Company for breach of its Information Warranty will not exceed the lesser of: (a) the amount of the Eligible Item, or (b) the Warranty Maximum set forth in the TeleCheck Service Application and Agreement. The Company may accept Items that do not receive an approval code or that do not meet the warranty requirements (these Items, Ineligible Items); however, Ineligible Items are not covered under TeleCheck's Information Warranty and TeleCheck will not purchase them.

TeleCheck reserves the right to decline processing any Item as an Eligible Item.

**I.4. Warranty Requirements.** The Company represents and that each Item it submits to TeleCheck for processing and coverage under the Information Warranty meets the following requirements:

- (1) the Item was submitted for processing according to TeleCheck's operating guidelines and specifications, and the Company obtained a single approval code for it;
- (2) the Item is drawn on the consumer's deposit account at a United States financial institution (for example, and without limitation, money orders, cashier's checks, travelers checks, insurance checks, credit card checks, or non-first party Items are Ineligible Items);
- (3) the Item, or a clear image of the Item (if submitted using a mobile or other optical imaging device), shows the consumer's name, address, check number, and routing and account numbers in the MICR line;
- (4) the Item is properly completed first party Item that is dated, payable to the Company, made out for the amount due to the Company for its goods or services, and signed by the consumer (when submitted online, information submitted for the Item (a) includes the consumer's name, address, routing and account numbers, date of the transaction, amount due to the Company, and (b) is submitted through a site that authenticates the consumer's identity and uses

appropriate site security and internet session security standards in accordance with the NACHA Rules);

- (5) the consumer authorized debiting its account by electronic funds transfer or remotely created check for the amount of the Item (an Authorization) in accordance with TeleCheck's operating guidelines and specifications, and the NACHA Rules (if authorized in-person at the point of sale, the consumer's signature must reasonably match the name imprinted on the Item);
- (6) the Item represents the consumer's payment obligation to the Company for its goods or services, and has not been used in another transaction;
- (7) the amount of the Item (a) is for the price of the Company's goods or services, (b) matches the amount submitted to TeleCheck for processing, and (c) does not exceed the Warranty Maximum;
- (8) if the consumer presents a paper check in-person at the Company's point of purchase location, the Item must be voided and returned to the consumer according to TeleCheck's operating guidelines after submission to TeleCheck for processing;
- (9) the Item was not submitted as a split sale or in other ways to avoid these warranty requirements or the Warranty Maximum;
- (10) the Item is not for credit, cash, or payment on an account, debt, or Item already due to the Company;
- (11) the Item does not pre-date or post-date the date of the transaction and corresponding inquiry to TeleCheck by more than 1 calendar day;
- (12) the transaction and corresponding Item are not subject to any stop payment, dispute or setoff right;
- (13) the Company is not aware of anything that invalidates the Item, prevents its collection, or relieves the consumer from liability for it;
- (14) the Company clearly and conspicuously posted the notices required by applicable Law (defined below), authorizing TeleCheck to process the Item as an electronic funds transfer or remotely created check and imposing (and authorizing such processing of) a fee for Return Items; and
- (15) if TeleCheck approves an Item as a paper check that could not be settled as an electronic funds transfer or the check is submitted to TeleCheck as an image through a mobile device (either, a **Paper Settlement Item**), the check must include: (a) the consumer's name (imprinted by the manufacturer), physical address (imprinted by the manufacturer or written on the check according to TeleCheck's instructions – P.O. Boxes will not be accepted), phone number (with area code), and identification type and number; (b) the Company's TeleCheck Subscriber Number (written on the check); (c) TeleCheck's approval code for the (written on the check); and (d) the consumer's signature must reasonably match the name imprinted on the check. The Company must send Paper Settlement Items that were not initially submitted using a mobile device and that become Return Items directly from its financial institution to TeleCheck within 30 days of the date on the check for coverage under TeleCheck's Information Warranty. If the Paper Settlement Item was initially submitted through a mobile device but TeleCheck subsequently instructs the Company to deposit the check because of image quality issues (a **Redeposit Check Item**), Company must deposit the Redeposit Check Item within 2 days of TeleCheck's instruction to do so and TeleCheck must receive it for purchase within 45 days of the date on the check. Paper Settlement Items and Redeposit Check Items may only be presented once for payment (TeleCheck will not accept Paper Settlement Items or Redeposit Check Items that the Company or its financial institution previously presented for payment).

**I.5. Electronic Images.** If the Item is submitted to TeleCheck by the Company via an image using a mobile device or other image reader, the ability to settle imaged Eligible Items to the banking system depends on (a) the quality of the image and (b) the banking system's ability to accept the image for settlement processing. The Company will use a third party provider to capture images of Items using a mobile device (this third party, an **Image Vendor**) and submit those images to TeleCheck. The Company acknowledges that its Image Vendor will require some of Company's account information (including, without limitation, merchant account number, contact name, email address and device identifier) to submit Item images to TeleCheck; and authorizes TeleCheck to provide the Image Vendor with the information necessary to allow it to submit Item images to TeleCheck on behalf of the Company. TeleCheck is not responsible for the image quality of Items submitted through



the Company's Image Vendor, or submission of the images by the Company's Image Vendor to TeleCheck. The Company will securely store the physical copies of Eligible Items that are processed using a mobile device for 60 days following the corresponding payment transaction. The Company will destroy physical copies of Eligible Items that were submitted as electronic images after storing them for 60 days.

**1.6. Authorization.** The Company will maintain a copy of each consumer's Authorization for the longer of: (a) 2 years, or (b) the period of time required by the NACHA Rules. The Company will provide TeleCheck with legible copies of Authorizations within 7 days of TeleCheck's request for them.

**1.7. Assignment of Items.** The Company assigns all if its right, title, and interest in each Eligible Item that it submits to TeleCheck for warranty coverage when the Item becomes a Return Item. The Company will reasonably aid TeleCheck in its enforcement of the rights associated with an assigned Eligible Item.

**1.8. Processing Notices; Return Item Fees.** The Company will post, and provide consumers with, notices at the point of sale that are required to process Items using the Services and to collect fees on Return Items. The Company will assess the highest fee amount allowed by applicable Laws on all Return Items, which TeleCheck may collect and retain from consumers.

**1.9. "Goodwill" of an eligible Item.** TeleCheck may elect to provide warranty coverage for an Ineligible Item that the Company submits for processing. Providing warranty coverage for an Ineligible Item will not constitute a course of dealing, waiver of rights, or prevent TeleCheck from rejecting warranty coverage for any other Ineligible Items.

**1.10. Updating Information.** The Company will promptly notify TeleCheck if (a) a consumer makes any payment to the Company or returns any goods in connection with a Return Item that is subject to warranty coverage, or (b) the Company cancels any services paid for by an Item that is subject to warranty coverage; both representing a full or partial satisfaction of the Return Item. The Company's notice of payment or cancellation of services will identify the consumer.

**1.11. Chargeback.** TeleCheck may chargeback any Eligible Item that it purchased from the Company for coverage under the Information Warranty if:

- (1) the consumer returned the goods or services (in whole or in part) that were paid for with the Item;
- (2) the Company has not delivered the goods or services that were paid for using the Item;
- (3) the Item is subject to any stop payment, dispute, or setoff;
- (4) the consumer makes full or partial payment to the Company for the Item, or provides any form of security to ensure its payment;
- (5) the goods or services were initially delivered on credit or under a lease;
- (6) the purchase transaction, the payment represented by the Item, or transferring the Item to TeleCheck (by assignment or otherwise) is void or invalid for any reason other than the consumer's bankruptcy;
- (7) the Company breaches the applicable warranty requirements for Eligible Items;
- (8) the Company submits multiple Items or duplicate Items related to the same transaction for processing (e.g., deposits a paper Item previously submitted for processing as an electronic Item without TeleCheck's direction to do so);
- (9) the Company does not submit its Items to TeleCheck for processing within 1 calendar day of the transaction date (for batch processing, Items must be submitted to TeleCheck for processing within 7 calendar days of the transaction date);
- (10) the consumer disputes authorizing the Item, its validity, or the amount debited for it (except in the case of third party fraud committed with a consumer's check);
- (11) the consumer's Authorization is incomplete or invalid;
- (12) the Company fails to provide TeleCheck with a legible copy of an Authorization within 7 days of a request for it; or
- (13) the Company breaches this Agreement, alters an Item or approval code, or submits an Item with Knowledge it is likely to become a Return Item. **Knowledge** means facts or circumstances which, if known, would cause a merchant, using commercially reasonable judgment, to independently refuse to accept an Item (including, without limitation, splitting single transactions into smaller components or resubmitting Items that were previously denied).

The Company will immediately notify TeleCheck if it has Knowledge that any of the above circumstances occur. The Company will continue to be responsible for its chargebacks after termination of this Agreement. TeleCheck may chargeback any amounts that exceed the Warranty Maximum for an Eligible Item.

## 2. Settlement

**2.1.** The Company will identify one or more bank accounts held in its name (each, a **Settlement Account**) that TeleCheck will use in connection with the Services. The Company authorizes TeleCheck to (a) initiate credits to the Settlement Account for proceeds that correspond to the Company's transactions; (b) initiate debits to the Settlement Account for any amounts that may be owed or are required to be paid under this Agreement; (c) initiate the transaction to a consumer's deposit account on the

Company's behalf for Items that are owed to it; and (d) initiate adjustments related to the foregoing (including, without limitation, adjustments for chargebacks or partial adjustments). TeleCheck may initiate any transfer by Automated Clearing House (ACH) entry.

**2.2.** TeleCheck will initiate a funds transfer for the Company's transactions that were processed under this Agreement; less any amounts due from Company for fees, refunds, adjustments or its other obligations. TeleCheck will typically credit the Company's settlement funds to its Settlement Account within 2 banking days once the transactions are finally submitted to TeleCheck for settlement processing.

**2.3.** TeleCheck may recover amounts associated with any adjustments for an Item that are made to the Settlement Account at the Company's request or due to its error. TeleCheck may also recover amounts associated with any fees that a consumer paid to its financial institution because of these adjustments.

**2.4.** The Company must promptly notify TeleCheck if it fails to receive any settlement funds or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if the Company provides inaccurate information about, or fails to notify TeleCheck of changes to, the Settlement Account. TeleCheck is not responsible for settlement errors that arise if the Company provides inaccurate information about, or fails to notify TeleCheck of changes to, the Settlement Account.

## 3. Financial Information

The Company will promptly provide any financial or other information reasonably requested by TeleCheck to perform credit risk, security, qualification, and other reviews related to providing the Services, transactions submitted, fulfillment of obligations to TeleCheck, or the financial condition of the Company. The Company authorizes TeleCheck to obtain information from third parties when performing credit risk, security, qualification, and other reviews.

## 4. Notice of Material Changes

The Company will provide TeleCheck with reasonable advance notice of any material change in the nature of the Company's business (including, without limitation, any change to the Company's operations that would materially affect its products sold, services provided, or the procedures it follows for payments acceptance). The failure to provide TeleCheck with this notice constitutes a material breach of this Agreement.

## 5. The Company's Payment Obligations

**Fees.** The Company will pay TeleCheck for: (a) all fees and charges for the Services that are set forth in the TeleCheck Service Application and Agreement; (b) all Items that are chargedback; (c) all adjustments required in connection with the Company's transactions; and (d) all costs, liabilities, or other obligations imposed on TeleCheck by third parties as a result of transactions submitted by the Company, its actions, or inactions.

**5.1. Other Fees.** The Company will also pay TeleCheck for the following fees and charges for the Services (as applicable): (a) **Customer Requested Operator Call Fee** (also called **CROC** or **Voice Authorization Fee**), which is an additional \$2.50 fee per operator or Interactive Voice Response (IVR)-assisted call that the Company initiates, but TeleCheck does not request; (b) **December Risk Surcharge**, which is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in the month of December; (c) **Funding Report Fee**, which is a \$10.00 monthly fee to receive daily funding or weekly funding reports (the Funding Report Fee does not apply if TeleCheck provides the funding report monthly); (d) **Inquiry Rate**, which is the percentage rate that applies to the face amount of each Item (up to the Warranty Maximum) that the Company submits to TeleCheck for authorization (whether or not TeleCheck issues an approval code for the Item); (e) **Monthly Minimum Fee**, which is the minimum aggregate amount of the Inquiry Rate fees that the Company must pay on a monthly basis (if the total Inquiry Rate fees for the Company's Items submitted during any month is less than the Monthly Minimum Fee, then the Monthly Minimum Fee will apply); (f) **Monthly Processing Fee** is a monthly fee for handling the Company's account; (g) **Special Handling Fee**, which is a \$5.00 fee applied when the following occur: (1) a chargeback of an Eligible Item, (2) an Item processed for payment must be corrected due to Subscriber's error or at Subscriber's request, or (3) TeleCheck elects (in its discretion) to process an Item that fails to meet the applicable warranty requirements, or that is a Return Item, as a "Goodwill" Item; and (h) **Transaction Fee**, which is the additional per transaction charge for each Item that the Company submits to TeleCheck for authorization (whether or not TeleCheck issues an approval code for the Item).

**5.2. Early Termination Fee.** TeleCheck will suffer substantial injury, for which it would be difficult to determine damages, if the Company breaches this Agreement or terminates it early in violation of the Agreement's terms. TeleCheck may recover damages equal to 90% of the aggregate Monthly Minimum Fees and Monthly Processing Fees that are payable for the unexpired portion of the then-current Term as an accurate reflection of these damages and realistic pre-estimate of TeleCheck's losses caused by an early termination of this Agreement.

## 6. Reserve

**6.1.** TeleCheck may require the Company to fund a cash reserve (**Reserve**) in an amount that reflects TeleCheck's assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of TeleCheck, established by holding back



transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that the Company may have to TeleCheck. The Reserve is not a segregated fund that the Company may claim to own. TeleCheck is obligated to pay to the Company any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to the Company's payment transactions have expired.

**6.2.** The Obligations due to the Company from the Reserve will not accrue interest unless required by applicable Laws.

**6.3.** TeleCheck will notify the Company if a Reserve is established (including its amount) or if the amount of the Reserve is modified.

**6.4.** TeleCheck may set off any obligations that the Company owes to TeleCheck from the Reserve.

**6.5.** Although the Company acknowledges that the Reserve is a general obligation of TeleCheck, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of the Company that is held by TeleCheck, the Company grants and acknowledges that TeleCheck have a security interest in the Reserve and, at TeleCheck request, will provide documentation to reflect this security interest.

## 7. Setoff and Priority

All Funds that TeleCheck owes to the Company under this Agreement are subject to the Company's payment obligations under this Agreement. TeleCheck may setoff or recoup amounts the Company owes to TeleCheck against any funds that TeleCheck owes to the Company.

## 8. Statements, Reporting

TeleCheck will provide the Company with statements or electronic reporting (together, **Statements**) reflecting the fees, settlement amounts, and other information related to the Services. The Company must review the Statements and inform TeleCheck of any errors within 60 days following the date that the error was, or should have been, reported; provided, the Company must report settlement or funding errors to TeleCheck within 30 days (reporting errors will enable TeleCheck to recover amounts or prevent them from continuing). TeleCheck will have no obligation to provide refunds for errors that the Company reports more than 60 days or 30 days (as applicable) after the errors were, or should have been, reported. The Company and TeleCheck will work together to resolve issues or disputes that arise in connection with the Statements, or the funds credited or debited to the Settlement Account.

## 9. Term

This Agreement begins on the earlier of the dates when the Company signs its TeleCheck Services Application and Agreement, submits its first Item for processing under this Agreement, or when the Company downloads the App (this date, the **Effective Date**). The length of this Agreement's initial term is designated in the TeleCheck Services Application and Agreement (**Initial Term**). This Agreement will automatically renew for successive one-year periods (each, a **Renewal Term**), unless TeleCheck or the Company provides the other with at least 30 days' written notice of non-renewal at the end of the Initial Term. The Initial Term together with any Renewal Term(s) is the **Term** of this Agreement.

## 10. Termination; Modification; Suspension

**10.1. General Termination.** Either the Company or TeleCheck may terminate this Agreement by giving 30 days' advance notice if the other materially breaches this Agreement and fails to remedy the breach within 30 days of receiving notice of it. TeleCheck may terminate this Agreement upon written notice to the Company for any reason (with or without cause) during its Term. If the Services are delivered through TeleCheck's App, the Company may terminate this Agreement for any reason (with or without cause) during its Term by uninstalling the App.

**10.2. Modification.** TeleCheck may modify this Agreement's terms (including, without limitation, its fees) upon 30 days' notice to the Company, during which notice period the Company may terminate this Agreement by providing written notice of termination to TeleCheck. The Company's continued use of the Services after the 30 day period contained in a notice of modification from TeleCheck will constitute the Company's acceptance of the new terms.

**10.3. Suspension.** TeleCheck may suspend its Services or settlement of any funds under this Agreement if it determines that questionable activity occurs with respect to the Company's payment transactions (including, without limitation, if there are excessive Return Items associated with the Company's Items, the Company breaches the NACHA Rules, or if required by applicable laws. TeleCheck may also suspend or terminate its Services if requested by its Originating Financial Depository Institution.

## 11. Confidential Information

**11.1. Confidentiality.** Neither party will disclose non-public information about the other party's business (including, without limitation, the terms of this Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party

will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

**11.2. Disclosure.** The recipient may disclose the other party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors or vendors) that need to know it in connection with the recipient's performance under this Agreement, and are bound by confidentiality obligations materially similar to those required under this Agreement; and (2) in response to a subpoena, court order, or as required under applicable Laws or NACHA Rules.

## 12. Data Use; Security

**12.1. Data Use.** TeleCheck owns all right, title and interest in the data it obtains from providing the Services to the Company.

**12.2. Data Security.** The Company will implement commercially reasonable practices, including administrative, physical and technical safeguards, that are designed to: (a) maintain the security and confidentiality of Consumer Information, (b) protect against reasonably anticipated threats to the security or integrity of Consumer Information, and (c) protect against unauthorized access to or use of Consumer Information that could result in substantial harm or inconvenience to the consumer. **Consumer Information** is customer information the Company receives in connection with any transaction contemplated by this Agreement.

**13. License to Marks.** TeleCheck grants the Company a limited, non-exclusive, non-transferrable, non-sublicensable, royalty-free license to use the trademarks, service marks and logos (together, **Marks**) that TeleCheck provides to the Company during the Term of this Agreement. The Company (a) may use the Marks only in the United States; (b) may use the Marks only in connection with its use of the Services; (c) will follow the branding guidelines that TeleCheck provides or makes available from time-to-time; and (d) will not use materials containing the Marks without TeleCheck's prior written permission. The Company will not otherwise distribute, lease, sublicense, sell, modify, copy or create derivative works from the Marks. TeleCheck reserves to itself all right, title, interest or license (express or implied) to the Marks that are not specifically granted to the Company under this Agreement; and may suspend or terminate this license upon written notice to the Company.

## 14. Indemnification

The Company will indemnify, defend, and hold TeleCheck harmless for all losses, damages, costs, or expenses (including reasonable attorney's fees) claimed against it by third parties, which arise from the Company's gross negligence, willful misconduct, or breach under this Agreement.

## 15. Exclusion of Damages

Neither party will be liable to the other for lost profits, revenues or business opportunities, nor any exemplary, punitive, special, indirect, incidental, or consequential damages (whether any are direct or indirect); regardless of whether these damages were foreseeable or either party was advised they were possible.

## 16. Limitation of Liability

TeleCheck' and the Company's aggregate liability to the other for losses arising from any cause (regardless of the form of action or legal theory) in connection with this Agreement will be limited to \$75,000.00 (Liability Cap). The Liability Cap will not apply to: (1) TeleCheck' obligation to remit the proceeds of transactions it processed, after accounting for all offsetting obligations; or (2) the Company's payment obligations to TeleCheck.

## 17. Notices

Written Notices (other than normal operations) required under this Agreement will be sent by certified mail or national courier (with tracking and delivery confirmation). TeleCheck may also provide written notices required under this Agreement by regular mail. Notices will be effective upon receipt. Notices to the Company will be sent to the address it provides on the TeleCheck Service Application and Agreement. Notices to TeleCheck will be sent to: TeleCheck Services, Inc., Attn: TeleCheck Merchant Services, Mail Stop A-12, 7301 Pacific Street, Omaha, NE 68114; with copies to TeleCheck Services, Inc., Attn: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065 and legalpapers@firstdata.com

## 18. Third Party Beneficiaries

There are no third party beneficiaries to this Agreement other than TeleCheck' subsidiaries and affiliates involved in providing the Services to the Company. Each party is responsible for the performance of any third parties it uses in connection with the Services, and their compliance with the terms of this Agreement. TeleCheck is not responsible or liable to the Company for any errors or breaches of this Agreement that occur because of the Company's third party providers (e.g., without limitation, issues that arise from ACH network participants, or if the Company uses third party providers or applications to capture electronic images of Items to submit to TeleCheck). TeleCheck may audit the Company's compliance with this Agreement upon reasonable notice, during normal business hours, and at TeleCheck's expense; and as required by the NACHA Rules. TeleCheck's Originating Depository Financial Institution may also audit the Company's compliance with this Agreement and the NACHA Rules.

## 19. Waivers

Any party's delay or failure to exercise any of its rights under this Agreement will not be a waiver of those rights.

## 20. Compliance with Law, Choice of Law, Waiver of Jury Trial

**20.1. Compliance with Law.** The parties will comply with all laws, regulations, and rules (including ACH's network rules, requirements, and standards; the **NACHA Rules**) (together **Laws**) that are applicable to their respective performance obligations under this Agreement. The Company acknowledges that it is the Originator under the NACHA Rules with respect to its transactions and agrees to comply with its obligations as an Originator. The Company certifies that it has a legitimate business need for the information that TeleCheck provides through its Services, will use the information in connection with submitting payment transactions to TeleCheck for processing and for no other purpose, and will use the information only for permissible purposes under the Fair Credit Reporting Act (the Company will not use TeleCheck's information for employment related purposes).

**20.2. Choice of Law; Waiver of Jury Trial.** This Agreement will be governed by New York law (without regard to its choice of law provisions). The courts of New York, New York will be the proper venue for legal proceedings brought in connection with this Agreement. **TeleCheck and the Company each waive their right to a jury trial for claims arising in connection with this Agreement.**

## 21. Entire Agreement, Amendment, Counterparts

The defined term Agreement includes its schedules, addenda, and any amendments (capitalized terms used in the schedules, addenda, or amendments without definition will have the meanings given to them in this Agreement). This Agreement is the entire agreement between the parties and replaces any prior agreements or understandings (written or oral) with respect to its subject matter. Except as set forth in Section 10.2, modifications to this Agreement must be in writing, executed by the parties. This Agreement and any amendments may be executed electronically and in counterparts, each of which constitutes one agreement when taken together. Electronic and other copies of the executed Agreement are valid.

## 22. Assignment

The Company may not assign this Agreement without TeleCheck's written consent. TeleCheck may assign this Agreement upon notice to the Company. This Agreement will be enforceable against a party's permitted successors or assigns. This Agreement may not be continued, assumed, or assigned in the event of a bankruptcy or other insolvency event without consent from the non-bankrupt or insolvent parties.

**PART IV: ADDITIONAL IMPORTANT INFORMATION FOR CARDS****A.1. Electronic Funding Authorization**

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

Client hereby authorizes **PNC Bank, N.A.** and its authorized representative, including PNC Merchant Services Company, to access information from the Settlement Account and to initiate credit and/or debit entries by bankwire or ACH transfer and to authorize your financial institution to block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement and to authorize your financial institution to provide such access and to credit and/or debit or to block the same to such account. This authorization is without respect to the source of any funds in the Settlement Account, is irrevocable and coupled with an interest. This authority extends to any equipment rental or purchase agreements which may exist with Client as well as to any fees, fines and assessments and Chargeback amounts of whatever kind or nature due to PNC Merchant Services Company or **PNC Bank, N.A.** under terms of this Agreement whether arising during or after termination of the Agreement. This authority is to remain in full force and effect at all times unless and until PNC Merchant Services Company and **PNC Bank, N.A.** have consented to its termination at such time and in such a manner as to afford them a reasonable opportunity to act on it. In addition, Client shall be charged twenty dollars (\$20.00) for each ACH which cannot be processed, and all subsequent funding may be suspended until Client either (i) notifies PNC Merchant Services Company that ACH's can be processed or (ii) a new electronic funding agreement is signed by Client. Client's Settlement Account must be able to process or accept electronic transfers via ACH.

**A.2. Funding Acknowledgement**

Your funds for MasterCard, Visa, Discover, PayPal Full Service and American Express transactions will be processed and transferred to your financial institution within two (2) business days from the time a batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard, Visa, Discover, PayPal Full Service and American Express transactions will be processed via the Federal Reserve or ACH within two (2) business days from the time a batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

**A.3. Additional Fees and Early Termination**

The Discount Rates for MasterCard, Visa, Discover and PayPal as shown on your fee schedule are based on the assumption that your Credit Card and Non-PIN Debit transactions will qualify at the Anticipated Interchange Levels associated with your account. If a transaction fails to qualify for your Anticipated Interchange Levels, you will be billed a Non-Qualified Interchange Fee, plus a Non-Qualified Surcharge for each such non-qualifying transaction (see Section 11.1 and Glossary).

Your initial MasterCard, Visa and Discover rates are stated on your Application and may be adjusted from time to time including to reflect:

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

A Minimum Processing Fee will be calculated beginning thirty (30) days after the date the Client's Application is approved. (See Service Fee Schedule).

In addition to the debit card transaction fees set forth on the Application, Client shall be responsible for the amount of any fees imposed upon a transaction by the applicable debit network.

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

The parties further agree and acknowledge that, in addition to any remedies contained herein or otherwise available under applicable law and, if (a) Client breaches this Agreement by improperly terminating it prior to the expiration of the initial term of the Agreement, or (b) this Agreement is terminated prior to the expiration of the initial term of the Agreement due to an Event of Default, then Servicer will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, in an effort to liquidate in advance the sum that should represent such damages, the parties have agreed that the amount calculated in the manner specified below is a reasonable pre-estimate of Servicer's probable loss. Such amount shall be paid to Servicer within 15 days after Client's receipt of Servicer's calculation of the amount due.

In the event that Client terminates this Agreement or Processor terminates this Agreement due to the occurrence of an event of default, at any time prior to the end of the three (3) year term of this Agreement, Client will be charged twenty-five dollars (\$25.00) per month multiplied by the remaining months left in the term of the Agreement. The fees stated above shall not apply to a termination of solely a Third Party Agreement included herein.

**A.4. 6050W of the Internal Revenue Code**

Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return for each calendar year reporting all payment card transactions and third party network transactions with payees occurring in that calendar year. Accordingly, you will receive a Form 1099-K reporting your gross transaction amounts for each calendar year. Your gross transaction amount refers to the gross dollar amount of the card transactions processed through your merchant account with us.

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

**A.5. Addresses For Notices****PNC Merchant Services Company**

1307 Walt Whitman Road  
Melville, NY 11747  
Attn: Controller

**PNC Bank, N.A.**

Merchant Services  
One PNC Plaza  
249 Fifth Avenue  
Pittsburgh, PA 15222  
Attn: General Manager

**Important Phone Numbers:**

(see also Sections 3.3 and 5.4 of the  
Operating Procedures Guide)

**Customer Service**

1-800-742-5030

**Authorizations**

1-800-501-8749

**POS Help Desk**

1-800-501-8748

# **EXHIBIT**

**B**



One PNC Plaza  
Pittsburgh, PA 15265-0000

## YOUR CARD PROCESSING STATEMENT

CHOIS BEER SHOP LLC  
KYUNG HWA CHOI  
1642 SOUTH ST  
PHILADELPHIA PA 19146-1542

Page 1 of 5

**THIS IS NOT A BILL**

Statement Period	08/01/19 - 08/31/19
Merchant Number	
Customer Service	Website - <a href="http://www.businessstrack.com">www.businessstrack.com</a> Phone - 1-800-742-5030

### SUMMARY

An overview of account activity for the statement period.

Page 1	<b>Total Amount Submitted</b>	\$45,261.52
Page 4	<b>Chargebacks/Reversals</b>	0.00
Page 4	<b>Adjustments</b>	0.00
Page 4	<b>Fees</b>	-\$1,308.23
	<b>Total Amount Processed</b>	<b>\$43,953.29</b>

## IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

### 2019 Annual Fee

PNC Merchant Services will be assessing the Annual Fee of \$109.95 on or after September 1, 2019. This fee offsets the cost of implementing upgrades. Our commitment is to continue to maintain the highest industry standards and security for your payment transactions. If we can answer any questions regarding the fee or your merchant account, please contact our Customer Help Desk at 1-800-742-5030.

### STAR Pin Debit Annual Participation Fee Billing

Please be advised that the STAR pin debit network annual participation fee will bill in October. STAR is increasing the fee amount to \$16.00.

### Pulse Pin Debit Annual Participation Fee Billing

Please be advised that the Pulse pin debit network annual participation fee will bill in October. The fee amount is \$12.00.

## SUMMARY BY DAY

Date Submitted	Submitted Amount	Chargebacks/ Reversals	Adjustments	Fees	Amount Processed
08/01/19	\$1,133.34	0.00	0.00	0.00	\$1,133.34
08/02/19	\$1,481.89	0.00	0.00	0.00	\$1,481.89
08/03/19	\$2,589.41	0.00	0.00	0.00	\$2,589.41
08/04/19	\$2,987.77	0.00	0.00	0.00	\$2,987.77
08/05/19	\$1,132.59	0.00	0.00	0.00	\$1,132.59
08/06/19	\$570.32	0.00	0.00	0.00	\$570.32
08/07/19	\$816.74	0.00	0.00	0.00	\$816.74
08/08/19	\$1,029.17	0.00	0.00	0.00	\$1,029.17
08/09/19	\$1,600.53	0.00	0.00	0.00	\$1,600.53
08/10/19	\$2,512.42	0.00	0.00	0.00	\$2,512.42
08/11/19	\$2,163.61	0.00	0.00	0.00	\$2,163.61

**YOUR CARD PROCESSING STATEMENT**

Merchant Number XXXXXXXXXX  
 Customer Service Website - www.businesstrack.com  
 Phone - 1-800-742-5030

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Statement Period

08/01/19 - 08/31/19

**SUMMARY BY DAY**

Date Submitted	Submitted Amount	Chargebacks/ Reversals	Adjustments	Fees	Amount Processed
08/12/19	\$856.33	0.00	0.00	0.00	\$856.33
08/13/19	\$685.81	0.00	0.00	0.00	\$685.81
08/14/19	\$994.30	0.00	0.00	0.00	\$994.30
08/15/19	\$805.86	0.00	0.00	0.00	\$805.86
08/16/19	\$1,491.14	0.00	0.00	0.00	\$1,491.14
08/17/19	\$2,752.46	0.00	0.00	0.00	\$2,752.46
08/18/19	\$2,456.33	0.00	0.00	0.00	\$2,456.33
08/19/19	\$862.66	0.00	0.00	0.00	\$862.66
08/20/19	\$729.75	0.00	0.00	0.00	\$729.75
08/21/19	\$904.14	0.00	0.00	0.00	\$904.14
08/22/19	\$929.75	0.00	0.00	0.00	\$929.75
08/23/19	\$1,236.22	0.00	0.00	0.00	\$1,236.22
08/24/19	\$2,518.06	0.00	0.00	0.00	\$2,518.06
08/25/19	\$2,504.96	0.00	0.00	0.00	\$2,504.96
08/26/19	\$934.97	0.00	0.00	0.00	\$934.97
08/27/19	\$983.21	0.00	0.00	0.00	\$983.21
08/28/19	\$922.24	0.00	0.00	0.00	\$922.24
08/29/19	\$927.24	0.00	0.00	0.00	\$927.24
08/30/19	\$1,017.38	0.00	0.00	0.00	\$1,017.38
08/31/19	\$2,730.92	0.00	0.00	0.00	\$2,730.92
Month End Charge	0.00	0.00	0.00	-\$1,308.23	-\$1,308.23
<b>Total</b>	<b>\$45,261.52</b>	<b>0.00</b>	<b>0.00</b>	<b>-\$1,308.23</b>	<b>\$43,953.29</b>

**SUMMARY BY CARD TYPE**

Card Type	Average Ticket	Total Gross Sales You Submitted		Refunds		Total Amount You Submitted	
		Items	Amount	Items	Amount	Items	Amount
Mastercard	\$19.13	313	\$5,986.24	0	0.00	313	\$5,986.24
VISA	\$18.91	856	\$16,191.15	0	0.00	856	\$16,191.15
Discover	\$19.07	64	\$1,220.42	0	0.00	64	\$1,220.42
AMEX ACQ	\$19.07	115	\$2,193.00	0	0.00	115	\$2,193.00
Debit/Atm	\$16.61	1,184	\$19,670.71	0	0.00	1,184	\$19,670.71
<b>Total</b>		<b>2,532</b>	<b>\$45,261.52</b>	<b>0</b>	<b>0.00</b>	<b>2,532</b>	<b>\$45,261.52</b>

**SUMMARY BY BATCH**

Batch	Submit Date	Average Ticket	Total Gross Sales You Submitted		Refunds		Total Amount You Submitted	
			Items	Amount	Items	Amount	Items	Amount
843947011342	08/01/19	\$20.15	32	\$644.70	0	0.00	32	\$644.70
843947011343	08/01/19	\$14.81	33	\$488.64	0	0.00	33	\$488.64
843947021344	08/02/19	\$19.20	37	\$710.58	0	0.00	37	\$710.58
843947021345	08/02/19	\$17.14	45	\$771.31	0	0.00	45	\$771.31
843947031346	08/03/19	\$21.23	69	\$1,464.68	0	0.00	69	\$1,464.68
843947031347	08/03/19	\$17.57	64	\$1,124.73	0	0.00	64	\$1,124.73
843947041348	08/04/19	\$22.37	85	\$1,901.32	0	0.00	85	\$1,901.32
843947041349	08/04/19	\$18.73	58	\$1,086.45	0	0.00	58	\$1,086.45
843947051350	08/05/19	\$18.72	36	\$673.96	0	0.00	36	\$673.96
843947051351	08/05/19	\$15.29	30	\$458.63	0	0.00	30	\$458.63
843947061352	08/06/19	\$13.94	23	\$320.58	0	0.00	23	\$320.58
843947061353	08/06/19	\$11.35	22	\$249.74	0	0.00	22	\$249.74
843947071354	08/07/19	\$17.56	27	\$474.11	0	0.00	27	\$474.11
843947071355	08/07/19	\$13.71	25	\$342.63	0	0.00	25	\$342.63

**YOUR CARD PROCESSING STATEMENT**

Merchant Number XXXXXXXXXX  
 Customer Service Website - www.businesstrack.com  
 Phone - 1-800-742-5030

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Statement Period 08/01/19 - 08/31/19

**SUMMARY BY BATCH**

Batch	Submit Date	Average Ticket	Total Gross Sales You Submitted		Refunds		Total Amount You Submitted	
			Items	Amount	Items	Amount	Items	Amount
843947081356	08/08/19	\$17.23	34	\$585.76	0	0.00	34	\$585.76
843947081357	08/08/19	\$13.86	32	\$443.41	0	0.00	32	\$443.41
843947091358	08/09/19	\$20.10	42	\$844.33	0	0.00	42	\$844.33
843947091359	08/09/19	\$18.00	42	\$756.20	0	0.00	42	\$756.20
843947101360	08/10/19	\$21.81	74	\$1,614.26	0	0.00	74	\$1,614.26
843947101361	08/10/19	\$15.76	57	\$898.16	0	0.00	57	\$898.16
843947111362	08/11/19	\$21.82	54	\$1,178.11	0	0.00	54	\$1,178.11
843947111363	08/11/19	\$17.92	55	\$985.50	0	0.00	55	\$985.50
843947121364	08/12/19	\$16.15	30	\$484.64	0	0.00	30	\$484.64
843947121365	08/12/19	\$16.16	23	\$371.69	0	0.00	23	\$371.69
843947131366	08/13/19	\$15.91	24	\$381.93	0	0.00	24	\$381.93
843947131367	08/13/19	\$12.66	24	\$303.88	0	0.00	24	\$303.88
843947141368	08/14/19	\$18.04	31	\$559.30	0	0.00	31	\$559.30
843947141369	08/14/19	\$15.00	29	\$435.00	0	0.00	29	\$435.00
843947151370	08/15/19	\$14.54	31	\$450.88	0	0.00	31	\$450.88
843947151371	08/15/19	\$14.20	25	\$354.98	0	0.00	25	\$354.98
843947161372	08/16/19	\$16.65	41	\$682.45	0	0.00	41	\$682.45
843947161373	08/16/19	\$16.85	48	\$808.69	0	0.00	48	\$808.69
843947171374	08/17/19	\$19.35	83	\$1,605.79	0	0.00	83	\$1,605.79
843947171375	08/17/19	\$18.80	61	\$1,146.67	0	0.00	61	\$1,146.67
843947181376	08/18/19	\$20.05	66	\$1,323.10	0	0.00	66	\$1,323.10
843947181377	08/18/19	\$18.89	60	\$1,133.23	0	0.00	60	\$1,133.23
843947191378	08/19/19	\$14.98	30	\$449.42	0	0.00	30	\$449.42
843947191379	08/19/19	\$15.89	26	\$413.24	0	0.00	26	\$413.24
843947201380	08/20/19	\$15.29	28	\$428.15	0	0.00	28	\$428.15
843947201381	08/20/19	\$13.71	22	\$301.60	0	0.00	22	\$301.60
843947211382	08/21/19	\$17.42	31	\$540.04	0	0.00	31	\$540.04
843947211383	08/21/19	\$14.56	25	\$364.10	0	0.00	25	\$364.10
843947221384	08/22/19	\$16.10	37	\$595.57	0	0.00	37	\$595.57
843947221385	08/22/19	\$13.37	25	\$334.18	0	0.00	25	\$334.18
843947231386	08/23/19	\$18.89	34	\$642.26	0	0.00	34	\$642.26
843947231387	08/23/19	\$14.49	41	\$593.96	0	0.00	41	\$593.96
843947241388	08/24/19	\$20.43	67	\$1,368.56	0	0.00	67	\$1,368.56
843947241389	08/24/19	\$19.48	59	\$1,149.50	0	0.00	59	\$1,149.50
843947251390	08/25/19	\$21.31	64	\$1,363.58	0	0.00	64	\$1,363.58
843947251391	08/25/19	\$18.41	62	\$1,141.38	0	0.00	62	\$1,141.38
843947261392	08/26/19	\$16.32	24	\$391.62	0	0.00	24	\$391.62
843947261393	08/26/19	\$17.53	31	\$543.35	0	0.00	31	\$543.35
843947271394	08/27/19	\$15.28	41	\$626.40	0	0.00	41	\$626.40
843947271395	08/27/19	\$17.84	20	\$356.81	0	0.00	20	\$356.81
843947281396	08/28/19	\$14.92	32	\$477.35	0	0.00	32	\$477.35
843947281397	08/28/19	\$13.48	33	\$444.89	0	0.00	33	\$444.89
843947291398	08/29/19	\$17.00	24	\$407.93	0	0.00	24	\$407.93
843947291399	08/29/19	\$14.43	36	\$519.31	0	0.00	36	\$519.31
843947301400	08/30/19	\$16.48	38	\$626.09	0	0.00	38	\$626.09
843947301401	08/30/19	\$16.30	24	\$391.29	0	0.00	24	\$391.29
843947311402	08/31/19	\$22.45	79	\$1,773.36	0	0.00	79	\$1,773.36
843947311403	08/31/19	\$20.37	47	\$957.56	0	0.00	47	\$957.56
<b>Total</b>			<b>2,532</b>	<b>\$45,261.52</b>	<b>0</b>	<b>0.00</b>	<b>2,532</b>	<b>\$45,261.52</b>

**YOUR CARD PROCESSING STATEMENT**

Merchant Number XXXXXXXXXX  
 Customer Service Website - www.businesstrack.com  
 Phone - 1-800-742-5030

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Statement Period 08/01/19 - 08/31/19

**CHARGEBACKS/REVERSALS**

Transactions that are challenged or disputed by a cardholder or card-issuing bank.

Date	Reference No.	Description	Card Number (Last 4 Digits)	Amount
No Chargebacks/Reversals for this Statement Period				
<b>Total</b>				<b>0.00</b>

**ADJUSTMENTS**

The amounts credited to, or deducted from, your account to resolve processing and billing discrepancies.

Date	Description	Amount
No Adjustments for this Statement Period		
<b>Total</b>		<b>0.00</b>

**FEES**

Amount charged to authorize, process and settle card transactions, along with transaction-based and/or fixed amounts charged for specific card processing services.

TRANSACTION FEES	Type	Amount
<b>MASTERCARD</b>		
MASTERCARD ASSESSMENT FEE .0013 TIMES \$5986.24	Interchange charges	-\$7.78
MASTERCARD NON-QUAL SALES DISC .029 DISC RATE TIMES \$200.18	Service charges	-\$5.81
MASTERCARD DEBIT SALES DISC .017 DISC RATE TIMES \$140.47	Service charges	-\$2.39
MC LICENSE VOLUME FEE .00008 DISC RATE TIMES \$5986.24	Service charges	-\$0.48
MASTERCARD SALES DISCOUNT .017 DISC RATE TIMES \$733.17	Service charges	-\$12.46
MASTERCARD MID-QUAL SALES DISC .0209 DISC RATE TIMES \$4912.42	Service charges	-\$102.67
MC CVC2 TRANSACTION FEE 2 TRANSACTIONS AT .0025	Fees	-\$0.01
MC FOREIGN HANDLING FEE .008 TIMES \$284.22	Fees	-\$2.27
MC ACQUIRER AVS BILLING 1 TRANSACTIONS AT .01	Fees	-\$0.01
MASTERCARD AUTH FEE 309 TRANSACTIONS AT .1	Fees	-\$30.90
MC NETWORK ACCESS AUTH FEE 295 TRANSACTIONS AT .0195	Fees	-\$5.75
<b>VISA</b>		
VI NTWK ACQ PROC FEE INTL D/P 3 TRANSACTIONS AT .035500	Fees	-\$0.11
VI NTWK ACQ PROC FEE INTL CR 3 TRANSACTIONS AT .039500	Fees	-\$0.12
VISA ASSESSMENT FEE CR .0014 TIMES \$14098.34	Interchange charges	-\$19.74
VISA ASSESSMENT FEE DB .0013 TIMES \$2092.81	Interchange charges	-\$2.72
VISA SALES DISCOUNT .017 DISC RATE TIMES \$2101.2	Service charges	-\$35.72
VI DEBIT NON-QUAL SALES DISC .029 DISC RATE TIMES \$4.12	Service charges	-\$0.12
VISA DEBIT SALES DISCOUNT .017 DISC RATE TIMES \$2074.04	Service charges	-\$35.26
VI DEBIT MID-QUAL SALES DISC .0209 DISC RATE TIMES \$14.65	Service charges	-\$0.31
VISA NON-QUAL SALES DISCOUNT .029 DISC RATE TIMES \$7198.85	Service charges	-\$208.77
VISA MID-QUAL SALES DISCOUNT .0209 DISC RATE TIMES \$4798.29	Service charges	-\$100.28
VI NTWK ACQ PROC FEE US CR 682 TRANSACTIONS AT .0195	Fees	-\$13.30
VISA FOREIGN HANDLING FEE .012 TIMES \$101.39	Fees	-\$1.22
VISA AUTH FEE 844 TRANSACTIONS AT .1	Fees	-\$84.40
VI NTWK ACQ PROC FEE US DB/PP 154 TRANSACTIONS AT .0155	Fees	-\$2.39
<b>DISCOVER</b>		
DISCOVER DUES/ASSESSMENT FEE .0013 TIMES \$1220.42	Interchange charges	-\$1.59
DISCOVER DATA USAGE FEE 64 TRANSACTIONS AT .0195	Service charges	-\$1.25
DISCOVER NONQUAL SALES DISC .029 DISC RATE TIMES \$283.95	Service charges	-\$8.23
DISCOVER MIDQUAL SALES DISC .0209 DISC RATE TIMES \$936.47	Service charges	-\$19.57
NETWORK AUTHORIZATION FEE 61 TRANSACTIONS AT .0025	Fees	-\$0.15
DISCOVER AUTH FEE 61 TRANSACTIONS AT .1	Fees	-\$6.10
<b>AMERICAN EXPRESS</b>		
AMEX AUTH FEE 113 TRANSACTIONS AT .1	Fees	-\$11.30



**YOUR CARD PROCESSING STATEMENT**

Merchant Number XXXXXXXXXX  
 Customer Service Website - www.businesstrack.com  
 Phone - 1-800-742-5030

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Statement Period 08/01/19 - 08/31/19

**FEES**

Amount charged to authorize, process and settle card transactions, along with transaction-based and/or fixed amounts charged for specific card processing services.

**AMEX ACQ**

AMEX ASSESSMENT FEE .0015 TIMES \$2193	Interchange charges	- \$3.29
AMEX MID-QUAL SALES DISCOUNT .0235 DISC RATE TIMES \$28.3	Service charges	- \$0.67

**Other**

MASTERCARD KILOBYTE FEE	Service charges	- \$0.74
CLOVER SECURITY PLUS MONTHLY	Service charges	- \$17.99
AMEX SALES DISCOUNT .017 DISC RATE TIMES \$2164.7	Service charges	- \$36.80
VI BASE II SYSTEM FILE FEE 834 TRANSACTIONS AT .0018	Service charges	- \$1.50
AVS WATS AUTHORIZATION FEE 3 TRANSACTIONS AT .035	Fees	- \$0.11

<b>TOTAL TRANSACTION FEES</b>		<b>- \$784.28</b>
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**DEBIT NETWORK FEES**

	Type	Amount
INTERLINK BUS REG	Interchange charges	- \$2.59
INTERLINK BUS	Interchange charges	- \$0.68
INTERLINK	Interchange charges	- \$19.50
PAVD REG	Interchange charges	- \$67.66
STAR W	Interchange charges	- \$2.77
SHAZAM	Interchange charges	- \$0.43
MAESTRO REG	Interchange charges	- \$7.36
PAVD	Interchange charges	- \$22.83
PULSE PAY CHOICE REG	Interchange charges	- \$5.88
INTERLINK REG	Interchange charges	- \$171.90
STAR NE REG	Interchange charges	- \$1.51
PULSE PAY CHOICE	Interchange charges	- \$1.87
PULSE	Interchange charges	- \$0.72
STAR NE	Interchange charges	- \$1.91
NYCE REG	Interchange charges	- \$0.22
STAR SE	Interchange charges	- \$0.76
MAESTRO	Interchange charges	- \$10.60
DEBIT/ATM CARD TRANSACTION FEE 1184 TRANSACTIONS AT .17	Service charges	- \$201.28

<b>TOTAL DEBIT NETWORK FEES</b>		<b>- \$520.47</b>
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**ACCOUNT FEES**

	Type	Amount
MC MONTHLY LOCATION FEE	Fees	- \$1.25
DISCVR INTL SERVICE FEE 1 TRANS TOTALING \$15.70	Fees	- \$0.13
VISA NETWORK FEE CP 1B-01	Fees	- \$2.00
VI TRANSACTION INTEGRITY FEE 1 TRANSACTIONS AT .1	Fees	- \$0.10

<b>TOTAL ACCOUNT FEES</b>		<b>- \$3.48</b>
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<b>TOTAL</b>		<b>- \$1,308.23</b>
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<b>Total Interchange Charges</b>	<b>- \$354.31</b>
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<b>Total Service Charges</b>	<b>- \$792.30</b>
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<b>Total Fees</b>	<b>- \$161.62</b>
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<b>Total (Service Charges, Interchange Charges, and Fees)</b>	<b>- \$1,308.23</b>
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**TOTAL GROSS REPORTABLE SALES BY TIN**

Total dollar amount of aggregate reportable payment card transactions funded and third party network transactions, for each participating payee, without regard to any adjustments for credits, cash equivalents, discount amount, fees, refunded amounts, or any other amounts per respective tax identification number.

Month	Description	Total
JULY	GROSS REPORTABLE SALES-TIN#####8297	<span style="background-color: black; color: black;">XXXXXXXXXX</span>
	<b>2019 YTD Gross Reportable Sales</b>	<span style="background-color: black; color: black;">XXXXXXXXXX</span>



# **EXHIBIT**

**C**



One PNC Plaza  
Pittsburgh, PA 15265-0000

## YOUR CARD PROCESSING STATEMENT

CHOIS BEER SHOP LLC  
KYUNG HWA CHOI  
1642 SOUTH ST  
PHILADELPHIA PA 19146-1542

Page 1 of 5

**THIS IS NOT A BILL**

Statement Period	09/01/19 - 09/30/19
Merchant Number	
Customer Service	Website - <a href="http://www.businesstrack.com">www.businesstrack.com</a> Phone - 1-800-742-5030

### SUMMARY

An overview of account activity for the statement period.

Page 1	<b>Total Amount Submitted</b>	<b>\$52,073.20</b>
Page 3	<b>Chargebacks/Reversals</b>	<b>0.00</b>
Page 3	<b>Adjustments</b>	<b>-\$109.95</b>
Page 3	<b>Fees</b>	<b>-\$1,487.55</b>
<b>Total Amount Processed</b>		<b>\$50,475.70</b>

### SUMMARY BY DAY

Date Submitted	Submitted Amount	Chargebacks/ Reversals	Adjustments	Fees	Amount Processed
09/01/19	\$2,751.61	0.00	0.00	0.00	\$2,751.61
09/02/19	\$1,631.32	0.00	0.00	0.00	\$1,631.32
09/03/19	\$943.58	0.00	0.00	0.00	\$943.58
09/04/19	\$903.61	0.00	0.00	0.00	\$903.61
09/05/19	\$856.39	0.00	0.00	0.00	\$856.39
09/06/19	\$1,480.68	0.00	0.00	0.00	\$1,480.68
09/07/19	\$2,646.10	0.00	0.00	0.00	\$2,646.10
09/08/19	\$4,574.12	0.00	0.00	0.00	\$4,574.12
09/09/19	\$2,086.77	0.00	0.00	0.00	\$2,086.77
09/10/19	\$606.90	0.00	0.00	0.00	\$606.90
09/11/19	\$752.78	0.00	0.00	0.00	\$752.78
09/12/19	\$839.12	0.00	0.00	0.00	\$839.12
09/13/19	\$1,100.78	0.00	0.00	0.00	\$1,100.78
09/14/19	\$2,724.31	0.00	0.00	0.00	\$2,724.31
09/15/19	\$3,231.42	0.00	0.00	0.00	\$3,231.42
09/16/19	\$1,928.66	0.00	0.00	0.00	\$1,928.66
09/17/19	\$949.57	0.00	0.00	0.00	\$949.57
09/18/19	\$1,174.51	0.00	0.00	0.00	\$1,174.51
09/19/19	\$1,096.12	0.00	0.00	0.00	\$1,096.12
09/20/19	\$1,081.90	0.00	0.00	0.00	\$1,081.90
09/21/19	\$2,835.83	0.00	-\$109.95	0.00	\$2,725.88
09/22/19	\$3,052.29	0.00	0.00	0.00	\$3,052.29
09/23/19	\$1,509.82	0.00	0.00	0.00	\$1,509.82
09/24/19	\$532.78	0.00	0.00	0.00	\$532.78
09/25/19	\$1,094.07	0.00	0.00	0.00	\$1,094.07
09/26/19	\$1,043.73	0.00	0.00	0.00	\$1,043.73
09/27/19	\$1,879.83	0.00	0.00	0.00	\$1,879.83
09/28/19	\$3,068.58	0.00	0.00	0.00	\$3,068.58



**YOUR CARD PROCESSING STATEMENT**

Merchant Number XXXXXXXXXX  
 Customer Service Website - www.businesstrack.com  
 Phone - 1-800-742-5030

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Statement Period 09/01/19 - 09/30/19

**SUMMARY BY DAY**

Date Submitted	Submitted Amount	Chargebacks/ Reversals	Adjustments	Fees	Amount Processed
09/29/19	\$2,856.65	0.00	0.00	0.00	\$2,856.65
09/30/19	\$839.37	0.00	0.00	0.00	\$839.37
Month End Charge	0.00	0.00	0.00	-\$1,487.55	-\$1,487.55
<b>Total</b>	<b>\$52,073.20</b>	<b>0.00</b>	<b>-\$109.95</b>	<b>-\$1,487.55</b>	<b>\$50,475.70</b>

**SUMMARY BY CARD TYPE**

Card Type	Average Ticket	Total Gross Sales You Submitted		Refunds		Total Amount You Submitted	
		Items	Amount	Items	Amount	Items	Amount
Mastercard	\$20.24	318	\$6,437.06	0	0.00	318	\$6,437.06
VISA	\$19.39	984	\$19,080.09	0	0.00	984	\$19,080.09
Discover	\$20.66	80	\$1,652.61	0	0.00	80	\$1,652.61
AMEX ACQ	\$19.62	139	\$2,726.89	0	0.00	139	\$2,726.89
Debit/Atm	\$17.49	1,268	\$22,176.55	0	0.00	1,268	\$22,176.55
<b>Total</b>		<b>2,789</b>	<b>\$52,073.20</b>	<b>0</b>	<b>0.00</b>	<b>2,789</b>	<b>\$52,073.20</b>

**SUMMARY BY BATCH**

Batch	Submit Date	Average Ticket	Total Gross Sales You Submitted		Refunds		Total Amount You Submitted	
			Items	Amount	Items	Amount	Items	Amount
843947011404	09/01/19	\$23.56	73	\$1,720.03	0	0.00	73	\$1,720.03
843947011405	09/01/19	\$19.84	52	\$1,031.58	0	0.00	52	\$1,031.58
843947021406	09/02/19	\$19.19	47	\$901.73	0	0.00	47	\$901.73
843947021407	09/02/19	\$23.54	31	\$729.59	0	0.00	31	\$729.59
843947031408	09/03/19	\$22.81	16	\$365.02	0	0.00	16	\$365.02
843947031409	09/03/19	\$18.66	31	\$578.56	0	0.00	31	\$578.56
843947041410	09/04/19	\$15.57	28	\$436.09	0	0.00	28	\$436.09
843947041411	09/04/19	\$12.64	37	\$467.52	0	0.00	37	\$467.52
843947051412	09/05/19	\$18.54	30	\$556.33	0	0.00	30	\$556.33
843947051413	09/05/19	\$16.67	18	\$300.06	0	0.00	18	\$300.06
843947061414	09/06/19	\$16.81	49	\$823.67	0	0.00	49	\$823.67
843947061415	09/06/19	\$16.85	39	\$657.01	0	0.00	39	\$657.01
843947071416	09/07/19	\$21.09	76	\$1,603.11	0	0.00	76	\$1,603.11
843947071417	09/07/19	\$18.30	57	\$1,042.99	0	0.00	57	\$1,042.99
843947081418	09/08/19	\$23.52	129	\$3,034.69	0	0.00	129	\$3,034.69
843947081419	09/08/19	\$20.26	76	\$1,539.43	0	0.00	76	\$1,539.43
843947091420	09/09/19	\$19.19	58	\$1,112.73	0	0.00	58	\$1,112.73
843947091421	09/09/19	\$18.73	52	\$974.04	0	0.00	52	\$974.04
843947101422	09/10/19	\$22.98	15	\$344.66	0	0.00	15	\$344.66
843947101423	09/10/19	\$13.80	19	\$262.24	0	0.00	19	\$262.24
843947111424	09/11/19	\$13.60	22	\$299.22	0	0.00	22	\$299.22
843947111425	09/11/19	\$15.12	30	\$453.56	0	0.00	30	\$453.56
843947121426	09/12/19	\$15.16	30	\$454.81	0	0.00	30	\$454.81
843947121427	09/12/19	\$15.37	25	\$384.31	0	0.00	25	\$384.31
843947131428	09/13/19	\$18.23	33	\$601.64	0	0.00	33	\$601.64
843947131429	09/13/19	\$15.13	33	\$499.14	0	0.00	33	\$499.14
843947141430	09/14/19	\$21.04	72	\$1,514.94	0	0.00	72	\$1,514.94
843947141431	09/14/19	\$17.78	68	\$1,209.37	0	0.00	68	\$1,209.37
843947151432	09/15/19	\$19.40	100	\$1,940.04	0	0.00	100	\$1,940.04
843947151433	09/15/19	\$18.72	69	\$1,291.38	0	0.00	69	\$1,291.38
843947161434	09/16/19	\$19.30	58	\$1,119.54	0	0.00	58	\$1,119.54
843947161435	09/16/19	\$19.73	41	\$809.12	0	0.00	41	\$809.12

**YOUR CARD PROCESSING STATEMENT**

Merchant Number XXXXXXXXXX  
 Customer Service Website - www.businesstrack.com  
 Phone - 1-800-742-5030

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Statement Period 09/01/19 - 09/30/19

**SUMMARY BY BATCH**

Batch	Submit Date	Average Ticket	Total Gross Sales You Submitted		Refunds		Total Amount You Submitted	
			Items	Amount	Items	Amount	Items	Amount
843947171436	09/17/19	\$19.20	31	\$595.21	0	0.00	31	\$595.21
843947171437	09/17/19	\$16.11	22	\$354.36	0	0.00	22	\$354.36
843947181438	09/18/19	\$16.80	32	\$537.67	0	0.00	32	\$537.67
843947181439	09/18/19	\$14.47	44	\$636.84	0	0.00	44	\$636.84
843947191440	09/19/19	\$15.01	36	\$540.40	0	0.00	36	\$540.40
843947191441	09/19/19	\$15.88	35	\$555.72	0	0.00	35	\$555.72
843947201442	09/20/19	\$15.67	42	\$658.18	0	0.00	42	\$658.18
843947201443	09/20/19	\$14.61	29	\$423.72	0	0.00	29	\$423.72
843947211444	09/21/19	\$19.18	75	\$1,438.44	0	0.00	75	\$1,438.44
843947211445	09/21/19	\$19.41	72	\$1,397.39	0	0.00	72	\$1,397.39
843947221446	09/22/19	\$20.95	93	\$1,948.08	0	0.00	93	\$1,948.08
843947221447	09/22/19	\$18.72	59	\$1,104.21	0	0.00	59	\$1,104.21
843947231448	09/23/19	\$17.69	52	\$920.08	0	0.00	52	\$920.08
843947231449	09/23/19	\$17.35	34	\$589.74	0	0.00	34	\$589.74
843947241450	09/24/19	\$15.91	13	\$206.78	0	0.00	13	\$206.78
843947241451	09/24/19	\$15.52	21	\$326.00	0	0.00	21	\$326.00
843947251452	09/25/19	\$16.53	25	\$413.31	0	0.00	25	\$413.31
843947251453	09/25/19	\$16.60	41	\$680.76	0	0.00	41	\$680.76
843947261454	09/26/19	\$19.54	32	\$625.16	0	0.00	32	\$625.16
843947261455	09/26/19	\$14.95	28	\$418.57	0	0.00	28	\$418.57
843947271456	09/27/19	\$20.60	49	\$1,009.46	0	0.00	49	\$1,009.46
843947271457	09/27/19	\$16.74	52	\$870.37	0	0.00	52	\$870.37
843947281458	09/28/19	\$19.92	94	\$1,872.43	0	0.00	94	\$1,872.43
843947281459	09/28/19	\$15.95	75	\$1,196.15	0	0.00	75	\$1,196.15
843947291460	09/29/19	\$20.78	84	\$1,745.63	0	0.00	84	\$1,745.63
843947291461	09/29/19	\$19.49	57	\$1,111.02	0	0.00	57	\$1,111.02
843947301462	09/30/19	\$20.65	27	\$557.57	0	0.00	27	\$557.57
843947301463	09/30/19	\$13.42	21	\$281.80	0	0.00	21	\$281.80
<b>Total</b>			<b>2,789</b>	<b>\$52,073.20</b>	<b>0</b>	<b>0.00</b>	<b>2,789</b>	<b>\$52,073.20</b>

**CHARGEBACKS/REVERSALS**

Transactions that are challenged or disputed by a cardholder or card-issuing bank.

Date	Reference No.	Description	Card Number (Last 4 Digits)	Amount
No Chargebacks/Reversals for this Statement Period				
<b>Total</b>				<b>0.00</b>

**ADJUSTMENTS**

The amounts credited to, or deducted from, your account to resolve processing and billing discrepancies.

Date	Description	Amount
09/21/19	MISC ADJUSTMENT ANNUAL FEE	-\$109.95
<b>TOTAL</b>		<b>-\$109.95</b>

**FEES**

Amount charged to authorize, process and settle card transactions, along with transaction-based and/or fixed amounts charged for specific card processing services.

TRANSACTION FEES	Type	Amount
<b>MASTERCARD</b>		
MASTERCARD ASSESSMENT FEE .0013 TIMES \$6437.06	Interchange charges	-\$8.37
MC DEBIT MID-QUAL SALES DISC .0209 DISC RATE TIMES \$13.6	Service charges	-\$0.28

**YOUR CARD PROCESSING STATEMENT**

Merchant Number XXXXXXXXXX  
 Customer Service Website - www.businesstrack.com  
 Phone - 1-800-742-5030

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Statement Period 09/01/19 - 09/30/19

**FEES**

Amount charged to authorize, process and settle card transactions, along with transaction-based and/or fixed amounts charged for specific card processing services.

MASTERCARD DEBIT SALES DISC .017 DISC RATE TIMES \$125.6	Service charges	-\$2.14
MASTERCARD SALES DISCOUNT .017 DISC RATE TIMES \$761.66	Service charges	-\$12.95
MASTERCARD NON-QUAL SALES DISC .029 DISC RATE TIMES \$161.87	Service charges	-\$4.69
MASTERCARD MID-QUAL SALES DISC .0209 DISC RATE TIMES \$5374.33	Service charges	-\$112.32
MC LICENSE VOLUME FEE .00008 DISC RATE TIMES \$6437.06	Service charges	-\$0.51
MC ACQUIRER AVS BILLING 1 TRANSACTIONS AT .01	Fees	-\$0.01
MC NETWORK ACCESS AUTH FEE 322 TRANSACTIONS AT .0195	Fees	-\$6.28
MC FOREIGN HANDLING FEE .008 TIMES \$128.02	Fees	-\$1.02
MC CVC2 TRANSACTION FEE 2 TRANSACTIONS AT .0025	Fees	-\$0.01
MASTERCARD AUTH FEE 333 TRANSACTIONS AT .1	Fees	-\$33.30

**VISA**

VI NTWK ACQ PROC FEE INTL D/P 6 TRANSACTIONS AT .035500	Fees	-\$0.21
VI NTWK ACQ PROC FEE INTL CR 6 TRANSACTIONS AT .039500	Fees	-\$0.24
VISA ASSESSMENT FEE CR .0014 TIMES \$17022.33	Interchange charges	-\$23.83
VISA ASSESSMENT FEE DB .0013 TIMES \$2057.76	Interchange charges	-\$2.68
VI DEBIT NON-QUAL SALES DISC .029 DISC RATE TIMES \$74.74	Service charges	-\$2.17
VISA DEBIT SALES DISCOUNT .017 DISC RATE TIMES \$1913.48	Service charges	-\$32.53
VISA SALES DISCOUNT .017 DISC RATE TIMES \$2508.1	Service charges	-\$42.64
VI DEBIT MID-QUAL SALES DISC .0209 DISC RATE TIMES \$69.54	Service charges	-\$1.45
VISA NON-QUAL SALES DISCOUNT .029 DISC RATE TIMES \$8829.34	Service charges	-\$256.05
VISA MID-QUAL SALES DISCOUNT .0209 DISC RATE TIMES \$5684.89	Service charges	-\$118.81
VISA FOREIGN HANDLING FEE .012 TIMES \$204.12	Fees	-\$2.45
VI NTWK ACQ PROC FEE US DB/PP 135 TRANSACTIONS AT .0155	Fees	-\$2.09
VISA AUTH FEE 1031 TRANSACTIONS AT .1	Fees	-\$103.10
VI NTWK ACQ PROC FEE US CR 878 TRANSACTIONS AT .0195	Fees	-\$17.12

**DISCOVER**

DISCOVER DUES/ASSESSMENT FEE .0013 TIMES \$1652.61	Interchange charges	-\$2.15
DISCOVER DATA USAGE FEE 80 TRANSACTIONS AT .0195	Service charges	-\$1.56
DISCOVER NONQUAL SALES DISC .029 DISC RATE TIMES \$430.99	Service charges	-\$12.50
DISCOVER MIDQUAL SALES DISC .0209 DISC RATE TIMES \$1221.62	Service charges	-\$25.53
NETWORK AUTHORIZATION FEE 86 TRANSACTIONS AT .0025	Fees	-\$0.22
DISCOVER AUTH FEE 86 TRANSACTIONS AT .1	Fees	-\$8.60

**AMERICAN EXPRESS**

AMEX AUTH FEE 144 TRANSACTIONS AT .1	Fees	-\$14.40
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**AMEX ACQ**

AMEX ASSESSMENT FEE .0015 TIMES \$2726.89	Interchange charges	-\$4.09
AMEX MID-QUAL SALES DISCOUNT .0235 DISC RATE TIMES \$112.04	Service charges	-\$2.63

**Other**

CLOVER SECURITY PLUS MONTHLY	Service charges	-\$17.99
MASTERCARD KILOBYTE FEE	Service charges	-\$0.77
AMEX SALES DISCOUNT .017 DISC RATE TIMES \$2614.85	Service charges	-\$44.45
VI BASE II SYSTEM FILE FEE 1016 TRANSACTIONS AT .0018	Service charges	-\$1.83
AVS WATS AUTHORIZATION FEE 5 TRANSACTIONS AT .035	Fees	-\$0.18

**TOTAL TRANSACTION FEES** **-\$924.15**

**DEBIT NETWORK FEES**

	Type	Amount
PULSE PAY CHOICE REG	Interchange charges	-\$4.32
STAR NE	Interchange charges	-\$2.94
MAESTRO REG	Interchange charges	-\$10.40
INTERLINK BUS	Interchange charges	-\$0.27
INTERLINK	Interchange charges	-\$19.44
PAVD	Interchange charges	-\$24.37
PAVD REG	Interchange charges	-\$68.04
SHAZAM	Interchange charges	-\$0.28
INTERLINK REG	Interchange charges	-\$195.91
INTERLINK BUS REG	Interchange charges	-\$4.50
PULSE PAY CHOICE	Interchange charges	-\$4.37
PULSE PAY LIMITED/PREPAID	Interchange charges	-\$0.59

**YOUR CARD PROCESSING STATEMENT**

Merchant Number XXXXXXXXXX  
 Customer Service Website - www.businesstrack.com  
 Phone - 1-800-742-5030

Page 5 of 5

Statement Period 09/01/19 - 09/30/19

**FEES**

Amount charged to authorize, process and settle card transactions, along with transaction-based and/or fixed amounts charged for specific card processing services.

PULSE	Interchange charges	-\$0.94
MAESTRO	Interchange charges	-\$7.82
DEBIT/ATM CARD TRANSACTION FEE 1268 TRANSACTIONS AT .17	Service charges	-\$215.56
<b>TOTAL DEBIT NETWORK FEES</b>		<b>-\$559.75</b>

**ACCOUNT FEES**

	Type	Amount
MC MONTHLY LOCATION FEE	Fees	-\$1.25
VISA NETWORK FEE CP 1B-01	Fees	-\$2.00
VI TRANSACTION INTEGRITY FEE 4 TRANSACTIONS AT .1	Fees	-\$0.40
<b>TOTAL ACCOUNT FEES</b>		<b>-\$3.65</b>

**TOTAL** **-\$1,487.55**

**Total Interchange Charges** **-\$385.31**

**Total Service Charges** **-\$909.36**

**Total Fees** **-\$192.88**

**Total (Service Charges, Interchange Charges, and Fees)** **-\$1,487.55**

**TOTAL GROSS REPORTABLE SALES BY TIN**

Total dollar amount of aggregate reportable payment card transactions funded and third party network transactions, for each participating payee, without regard to any adjustments for credits, cash equivalents, discount amount, fees, refunded amounts, or any other amounts per respective tax identification number.

Month	Description	Total
AUGUST	GROSS REPORTABLE SALES-TIN#####8297	<span style="background-color: black; color: black;">XXXXXXXXXX</span>
	<b>2019 YTD Gross Reportable Sales</b>	<span style="background-color: black; color: black;">XXXXXXXXXX</span>





# **EXHIBIT**

**D**

SENT BY U.S. MAIL ON OCTOBER 9, 2019

TO: PNC MERCHANT SERVICES  
PNC BANK, N.A.

FROM: CHOIS BEER SHOP LLC  
KYUNG HWA CHOI  
1642 SOUTH ST  
PHILADELPHIA, PA 19146-1542  
Merchant #: [REDACTED]

We hereby dispute the \$109.95 annual fee we were assessed by PNC Merchant Services on our September 2019 merchant statement. According to the statement, the fee was assessed on September 21, 2019. PNC Merchant Services debited this improper fee from our account in early October 2019.

The fee is improper on a number of grounds, including that it was not assessed with at least 30 days' advance written notice, is not reasonable, and was not imposed to defray the cost of necessary system technology upgrades, communication requirements, and reporting, as the contract requires.

We dispute this fee on our own behalf and behalf of all other PNC Merchant Services customers who were assessed this fee.

JS 44 (Rev. 02/19)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

CHOI'S BEER SHOP, LLC

(b) County of Residence of First Listed Plaintiff Philadelphia Co., PA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

E. Adam Webb/Webb, Klase & Lemond, LLC/1900 The Exchange S.E.,  
Suite 480/Atlanta, GA 30339/(770) 444-0998

**DEFENDANTS**

PNC MERCHANT SERVICES COMPANY, L.P.

County of Residence of First Listed Defendant New Castle Co, DE  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Justin Kontul/Reed Smith LLP/Reed Smith Centre/225 Fifth Avenue/  
Pittsburgh, PA 15222/(412) 288-3131

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 245 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC Sec. 1332(d)(2)

Brief description of cause:  
Defendant wrongfully charged annual fees to Plaintiff and Class members in breach of contract.

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Garaufis

DOCKET NUMBER 17-cv-6255/18-cv-5906

DATE  
October 11, 2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, E. Adam Webb, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☒  
☒  
☐

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:  
 Plaintiff has no parent corporation and no publicly held corporations own 10% or more of its stock.

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☒ No
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☐ Yes ☒ No
  - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☒ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☐ Yes ☒ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: E. Adam Webb

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