



# CONTRACT AMENDMENT

Solicitation No. P11-0015 (B) Page 1 of 1

Description: Banking Services (Credit Cards)

Amendment No. Two (2) Date: 12/8/16

**Materials Management Procurement**  
9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
Peoria, AZ 85345  
Telephone: (623) 773-7115  
Fax: (623) 773-7118  
**Buyer: Jennifer Miller**

In accordance with the Contract Special Terms and Conditions, Contract Extension, the above referenced contract shall expire on 2/28/17.

**The New Contract Term Is: 3/1/17 to 2/28/18**

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

<u>David Randolph</u> Signature	<u>1/6/17</u> Date	<u>David Randolph, VP</u> Typed Name and Title	<u>Bank of America, N.A.</u> Company Name
<u>201 E. Washington St.</u> Address	<u>Phoenix</u> City	<u>AZ</u> State	<u>85004</u> Zip Code

Attested By:

Rhonda Geriminsky  
for Rhonda Geriminsky, City Clerk



Copyright 2003  
City of Peoria, Arizona

CC Number

ACON05411B  
Contract Number

Brent Mattingly  
Director: Brent Mattingly, Chief Financial Officer

Sonia Andrews  
Department Rep: Sonia Andrews, Financial Services Manager

Approved as to Form:

Steve Burg  
Steve Burg, City Attorney

The above referenced Contract Amendment is hereby Executed:

Jan. 12 2017 at Peoria, Arizona  
Dan Zenko  
Dan Zenko, Materials Manager



# CONTRACT AMENDMENT

Solicitation No. P11-0015 (B) Page 1 of 1

Description: Banking Services (Credit Cards)

Amendment No. One (1) Date: 12/8/15

**Materials Management  
Procurement**  
9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
Peoria, AZ 85345  
Telephone: (623) 773-7115  
Fax: (623) 773-7118  
Buyer: Jennifer Miller

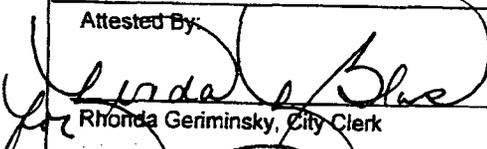
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Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

	3/1/16	Aleisha Ligon David Randolph - VP	Bank of America, N.A.
Signature	Date	Typed Name and Title	Company Name
201 E. Washington St.		Phoenix	AZ 85004
Address		City	State Zip Code

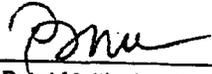
Attested By:

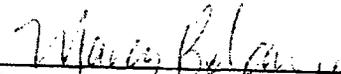
  
Rhonda Geriminsky, City Clerk

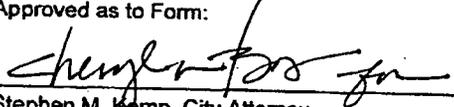


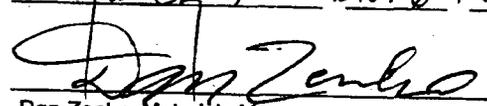
City Seal  
Copyright 2003  
City of Peoria, Arizona

CC Number  
  
ACON05411A  
Contract Number

  
Director: Brent Mattingly, Chief Financial Officer

  
Department Rep: Marcy Belanger, Finance Manager

Approved as to Form:  
  
Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed:  
March 10 2016 at Peoria, Arizona  
  
Dan Zenko, Materials Manager

**ACON05411A**



# City of Peoria, Arizona

## Notice of Request for Proposal



Request for Proposal No: **P11-0015**  
 Materials and/or Services: **Banking Services**

Proposal Due Date: **October 20, 2010**  
 Proposal Time: **5:00 P.M. AZ Time**  
 Contact: **Jennifer Miller**

Mailing Address: **City of Peoria, Materials Management**  
**9875 N. 85<sup>th</sup> Avenue, 2<sup>nd</sup> Floor, Peoria, AZ 85345**

In accordance with City of Peoria Procurement Code competitive sealed proposals for the material or services specified will be received by the City of Peoria Materials Management at the specified location until the date and time cited above. Proposals shall be in the actual possession of the City of Peoria Materials Management on or prior to the exact date and time indicated above. Late proposals will not be considered, except as provided in the City of Peoria Procurement Code. **Proposals shall be submitted in a sealed envelope with the Request for Proposal number and the offeror's name and address clearly indicated on the front of the envelope.** All proposals shall be completed in ink or typewritten. Offerors are strongly encouraged to carefully read the **entire** Request for Proposal Package.

### OFFER

To the City of Peoria: The undersigned on behalf of the entity, firm, company, partnership, or other legal entity listed below offers on its behalf to the City a proposal that contains all terms, conditions, specifications and amendments in the Notice of Request for Proposal issued by the City. Any exception to the terms contained in the Notice of Request for Proposal must be specifically indicated in writing and are subject to the approval of the City prior to acceptance. The signature below certifies your understanding and compliance with Paragraph 1 of the City of Peoria Standard Terms and Conditions (form COP 202) contained in the Request for Proposal package issued by the City.

For clarification of this offer contact:

Name: Dawn Haddock Telephone: 602-523-4113 Email: dawn.e.haddock@bam1.com  
Bank of America, N.A. [Signature]  
 Company Name Authorized Signature for Offer  
201 E. Washington St. Dawn Haddock  
 Address Printed Name  
Phoenix AZ 85004 SVP, Sr. Treasury Officer  
 City State Zip Code Title

### ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of Peoria Use Only)

Your offer is accepted by the City, subject to approval of each written exception that your proposal contained. The contract consists of the following documents: 1.) Request for Proposal issued by the City; 2.) Your offer in Response to the City's Request for Proposal; 3.) This written acceptance and contract award.

As the contractor, you are now legally bound to sell the materials and/or services listed by the attached award notice, based on the solicitation of proposals, including all terms, conditions, specifications, amendments and your offer as now accepted by the City. The Contractor shall not commence any billable work or provide any material, service or construction under this contract until the Contractor receives an executed Purchase Order or written Notice to Proceed.

Attested by: <u>Wanda Nelson</u> City Clerk  CC: _____ Contract Number: <u>ACON05411</u> Official File: _____	City of Peoria, Arizona. Effective Date: <u>2-3-11</u> Approved as to form: <u>Ellen Van Riper, Assistant City Attorney</u> <u>[Signature]</u> Stephen M. Kemp, City Attorney Contract Awarded Date: <u>February 2 2011</u> <u>[Signature]</u> Herman Koebergen, Materials Manager
---	--

SCANNED      A    CON    05411

Wednesday, October 20, 2010

Ms. Jennifer Miller  
City of Peoria  
9875 N. 85th Avenue, 2nd Floor



**City of Peoria, Arizona  
Notice of Request for Proposal**



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Name: Dawn Haddock Telephone: 602-523-4113 Email: dawn.e.haddock@bam1.com  
Bank of America, N.A. [Signature]  
 Company Name Authorized Signature for Offer  
201 E. Washington St. Dawn Haddock  
 Address Printed Name  
Phoenix AZ 85004 SUP. Sr. Treasury Officer  
 City State Zip Code Title

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Your offer is accepted by the City, subject to approval of each written exception that your proposal contained. The contract consists of the following documents: 1.) Request for Proposal issued by the City; 2.) Your offer in Response to the City's Request for Proposal; 3.) This written acceptance and contract award.

As the contractor, you are now legally bound to sell the materials and/or services listed by the attached award notice, based on the solicitation of proposals, including all terms, conditions, specifications, amendments and your offer as now accepted by the City. The Contractor shall not commence any billable work or provide any material, service or construction under this contract until the Contractor receives an executed Purchase Order or written Notice to Proceed.

Attested by: Wanda Nelson City of Peoria, Arizona. Effective Date: 2-3-11  
 City Clerk Approved as to Form: Ellen Van Riper, Assistant City Attorney  
[Signature]  
 Stephen M. Kemp, City Attorney  
 CC: \_\_\_\_\_  
 Contract Number: ACON05411 Contract Awarded Date: February 2 2011  
[Signature]  
 Herman Koebergen, Materials Manager  
 Official File: \_\_\_\_\_



**A CON 05411**

# Response to City of Peoria Request for Proposal for Banking Services

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16. Custody/Safekeeping Clearance and Settlement Instructions
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20. Bond Proceeds Program Disclosures
21. Sample Lockbox Reports & Image System Screen Shots
22. Bank of America Arizona Fact Sheet
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### Enclosure

2009 Bank of America Annual Report

**Response to City of Peoria  
Banking Services  
Request for Proposals**

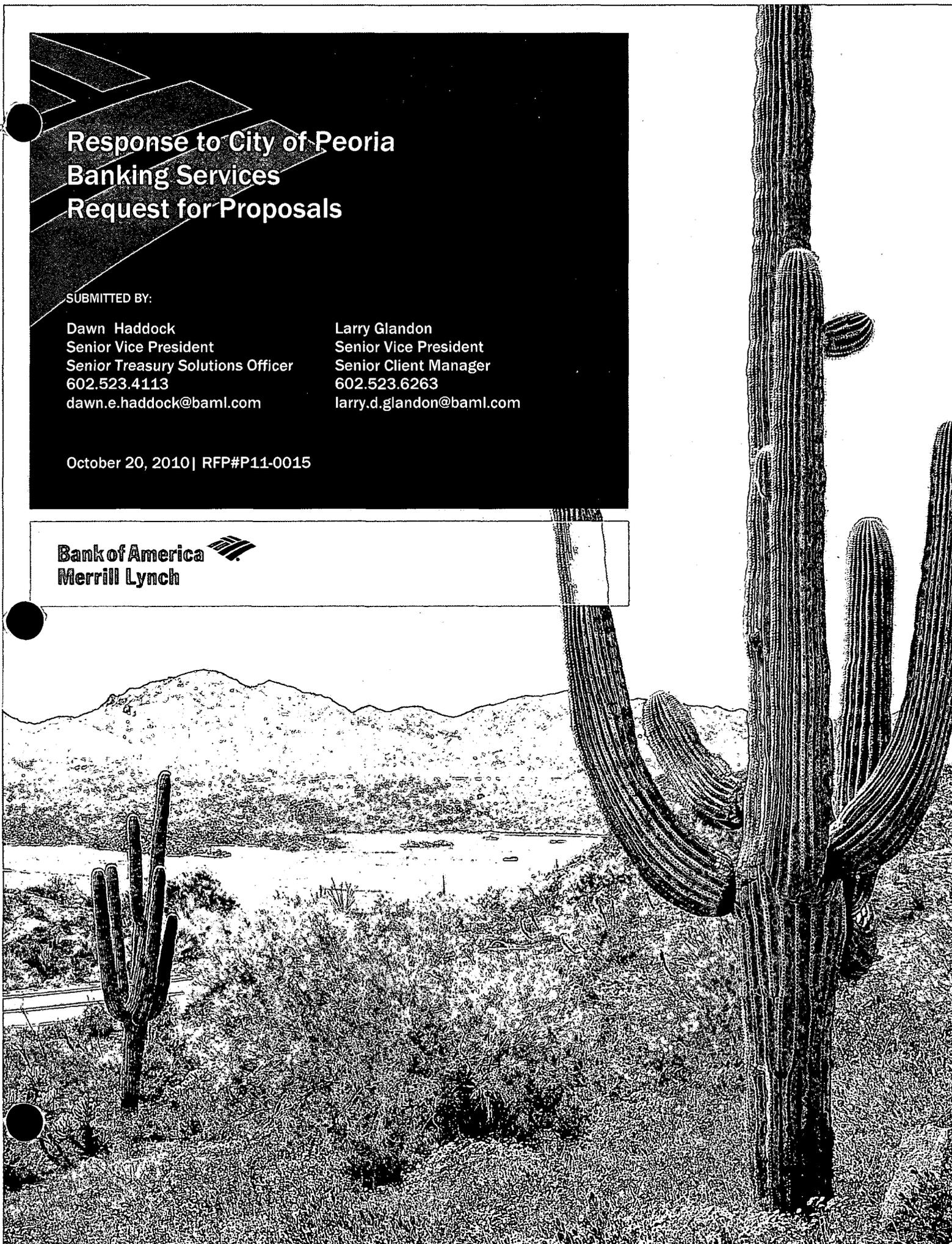
SUBMITTED BY:

Dawn Haddock  
Senior Vice President  
Senior Treasury Solutions Officer  
602.523.4113  
dawn.e.haddock@baml.com

Larry Glandon  
Senior Vice President  
Senior Client Manager  
602.523.6263  
larry.d.glandon@baml.com

October 20, 2010 | RFP#P11-0015

**Bank of America**   
**Merrill Lynch**



## Executive Summary

As one of the leading banks in Arizona for more than 120 years, we have unmatched capacity to deliver customized treasury services for the City of Peoria. We are one of the most recognized and respected names in government banking, providing custom financial solutions to federal, state and municipal governments since 1910. We are extremely proud of our dedicated government division, created in 1982 and our continuous focus on the needs of government clients in Arizona.

**The City will greatly benefit from the expanded services, treasury enhancements, efficiencies and increased cash flow we can provide to you.** Within our proposal, we are pleased to provide details regarding treasury enhancements that the City may consider as complementary services to the banking solutions you have in place today.

### Our Distinguishing Characteristics

Our proposal offers several other key distinguishing characteristics for the City, including:

- **Financial Strength and Stability:** We are consistently ranked the #1 rated treasury solutions provider in the U.S. Our strong balance sheets, liquidity, credit ratings and tier one capital ratio clearly evidence our strength and stability.
- **Specialized Government Banking Expertise:** We will provide the City a dedicated government banking team with national banking expertise – located conveniently in Arizona.
- **State of the Art Technology:** Our award winning web-based treasury management platform, CashPro Online, will streamline the City's treasury transactions and information reporting – using one secure portal.
- **Commitment to the Arizona Community:** We are deeply committed to communities in Peoria, Maricopa County and Arizona. Currently, we have over 11,500 full-time and part-time associates, who live, work and are deeply engaged in Arizona communities.

### The Bank of America Advantage Specialized Commitment to the Government Sector

We have over 9,000 government clients, including:

- The United States Federal Government, including agencies such as:
  - Department of Treasury
  - Department of Defense
  - Department of Education
- State Governments:
  - Arizona
  - California
  - Florida
  - Nevada
  - New York
  - Massachusetts
  - Maryland
  - Washington

### The Bank of America Advantage Our Longstanding Commitment to the Arizona Marketplace:

We are deeply committed to provide banking services throughout Arizona. We have provided more than \$291,657,184 in small-business loans and lines of credit and \$13,321,058 in investments to nonprofits, including many Community Development Financial Institutions (CDFIs), to promote neighborhood revitalization.

# Response to City of Peoria Banking Services Request for Proposals



Executive Summary

## Financial Strength and Stability the City Can Count On

We are the world's leading financial services company and continue to be the #1 rated treasury solutions provider in the U.S. As one of the most financially sound companies in the world, we have tremendous liquidity, driven by cash flow and capital management. This gives us the financial wherewithal to absorb shocks in the market as well as continue to invest in new technologies and services to better serve our clients. Additionally, our credit ratings, as highlighted in our response, remain strong.

## Specialized Government Banking Expertise

The City will benefit from the expertise of a local Arizona based client team, with extensive government treasury experience. We strive to attract and retain the most talented and seasoned treasury professionals, many of whom have spent numerous years working in, or directly servicing, the government sector. Our division is strategically designed to focus on specific industries, allowing our associates to concentrate on our government clients' unique service needs and operating environments, and making the best recommendations to assist the City with working capital management.

## Streamlined Treasury Management with CashPro Online

We are pleased to provide the City a sophisticated yet easy-to-use banking solution through our CashPro Online system. From initiating ACH transactions and funding disbursements, to managing wire transfers and obtaining custom information reporting, CashPro Online will deliver simple access and greater control over all the financial solutions the City uses, wherever and whenever you choose.

### The Bank of America Advantage Seamless Implementation

We understand the complexities of new systems implementation. For that reason, we have a dedicated implementation group that will coordinate with the City and your client team to ensure a seamless service conversion.

## Our Broad Reach in Arizona

Our deep commitment to communities in the State of Arizona is long standing and demonstrated in a variety of ways. Currently, we have over 11,500 full-time and part-time associates, who live, work and are deeply engaged in Arizona communities. We have 178 banking centers and 637ATMs across the state to provide wide reaching accessibility to our services.

## Our Commitment to the Communities in Peoria, Maricopa County and Arizona

We are pleased to provide funding for a variety of local organizations, which exemplifies our commitment to your local community. In 2009, we funded over \$3 million in direct grants, matching gifts, volunteer grants, sponsorships and in-kind contributions to non-profits and other organizations in Arizona.

# Response to City of Peoria Banking Services Request for Proposals



## Executive Summary

In Arizona, Bank of America Charitable Foundation supports non-profit work in Affordable Housing, Neighborhood Preservation, Financial Education, Workforce Development and Health & Human Services.

Our Arizona associates have contributed more than 33,600 volunteer hours to local community activities such as:

- Habitat for Humanity home building
- Arizona Saves Financial Education
- St. Mary's Food Bank
- UMOM Day Center
- Junior Achievement
- EITC Volunteer Income Tax Preparation assistance

### **The Bank of America Advantage Outstanding Rankings for Community Reinvestment in Arizona**

Our corporate commitment to Community development earned Bank of America an "Outstanding" rating nationally and in Arizona from federal regulators who monitor and evaluate the bank's compliance with the Community Reinvestment Act – A key measure of any bank's community involvement.

### Neighborhood Excellence Initiative

Our Neighborhood Excellence Initiative was established in 2004 to reinforce our commitment to the local communities in which it does business. In each selected market, a committee of community leaders chooses two non-profit organizations to each receive a \$200,000 Neighborhood Builders grant for operating support, plus leadership training to further the capacity and strength of the organizations.

In 2009, the Community Builder awards went to Central Arizona Shelter Services and St. Mary's Food Bank Alliance. Past NEI Community Builders have included:

- Arizona Women's Education and Employment, Inc.
- Habitat for Humanity
- Arizona Saves
- New Town CDC
- Community Housing Resources of Arizona
- Neighborhood Housing Services of Phoenix
- Desert Mission Renewal CDC
- Native American Connections CDC
- UMOM Day Center,
- Housing our Communities, Inc.

### Meeting the Needs of Entrepreneurs

An example of our efforts to meet the need of entrepreneurs is the \$3.5 million line of credit provided to ACCION Arizona, New Mexico and Colorado to make microloans to entrepreneurs and small businesses unable to access traditional financing.

# Response to City of Peoria Banking Services Request for Proposals



## Executive Summary

ACCION provides technical assistance and micro-lending to a variety of businesses, including landscapers, restaurants, trucking and transportation companies, day care providers and senior assistance facilities.

### We Are Proud of our Associates

Since 2008, our associates have worked with Arizona Saves and Arizonans for Children, volunteering at foster care group homes in Maricopa County delivering financial education workshops to teens 13-18 years of age. These workshops are delivered over a three week time frame, emphasizing basic understanding of money and economic principles like “opportunity costs”, basic tenants of savings, and what credit really is, and when and how it should be used.

### Bank of America Charitable Foundation

Our foundation provided a \$1 million grant to Arizona State University's Herberger College of Fine Arts to establish the Bank of America Arts Work Endowed Fund. The grant is devoted exclusively to supporting arts programs that serve disadvantaged youth in Phoenix who might not otherwise have access to arts education.

In conclusion, we are well positioned to be the City’s treasury partner. We are confident our proposal evidences the value we will provide the City, our financial strength and the bank’s extensive footprint in the State of Arizona. Our ability to deliver a tailor-made solution to meet your objectives is second to none. We look forward to working with the City as your treasury partner. Thank you for your consideration.

**Response to City of Peoria Banking Services  
Request for Proposals**



Signed Notice of Request for Proposal Offer Page

**Signed Notice of Request for Proposal Offer Page**

Page left intentionally blank. Completed form provided on next page.

## **Response to Required Information**

**Financial institutions must include the following information in their response to this proposal. All responses shall be presented in the same order as the numbered sections of the Questionnaire. Financial institutions may elect to respond to only those sections corresponding to the services they provide. "Non-compliance" or "no answer" items should be labeled as NO BID.**

- a) For each numbered section of the attached Questionnaire, Proposers must (1) acknowledge that their financial institution is able to provide the service outlined, (2) briefly describe how the City's service requirements will be met, (3) identify all third party contractors (subcontractors) that will be utilized to provide the service, and (4) provide a numbered response, including "NO BID" entries, to all specific questions outlined in the Questionnaire. All responses must be clearly labeled as "Response to Questionnaire" and must be identified by appropriate section and question number within the proposal.**

We have structured our Response to Proposal Questionnaire in accordance with the City's requirements as described above.

- b) Banking Services Fee Schedule (Attachment A)**

We have completed the Banking Services Fee Schedule, which is provided under Attachment A.

- c) Sample copies of all agreements (including third party agreements) required to provide services**

Sample copies of all agreements, including our Treasury Services Terms and Conditions, Depository, Tri-Party Collateral and Merchant Services Agreements are provided in the Appendices section.

- d) List of current government or municipal client references**

A list of current government/municipal client references is provided under the References section. Additionally, separate lockbox references are provided under the Response to Proposal Questionnaire Section, Lockbox Item P.

# Response to City of Peoria Banking Services Request for Proposals

**e) Annual Report for most current fiscal year**

In an effort to conserve paper, a web link to our annual report for the most current fiscal year is provided below. One physical copy is also provided as an Enclosure to our proposal, separate from this RFP Response binder.

**Bank of America 2009 Annual Report**

[http://media.corporate-ir.net/media\\_files/irol/71/71595/reports/2009\\_AR.pdf](http://media.corporate-ir.net/media_files/irol/71/71595/reports/2009_AR.pdf)

**f) Sample monthly analysis statement (or equivalent monthly report)**

A Sample Monthly Analysis Statement is provided in the Appendices section.

**g) Earnings credit rate for prior 12 month period (ending June 30, 2010)**

The earnings credit rate for the prior 12 month period (ending June 30, 2010) is provided below. Based on the City's indication that balances will not be kept to offset fees standard rates of been provided. Should the City reconsider leaving balances we will be happy to provide an increased rate option based on amount of balances.

**Earnings Credit Rate**

May 2009 and June 2009

- \$0 - \$99,999 = .25%
- \$100,000 - \$249,999 = .25%
- \$250,000 and over = .40%

July 2009 through June 2010

- \$0 - \$99,999 = .20%
- \$100,000 - \$249,999 = .20%
- \$250,000 and over = .35%

**h) Money Market Fund Prospectus**

Our recommended Money Market Fund Prospectus and related information is provided in the Appendices section.

# Response to City of Peoria Banking Services Request for Proposals

- i) **Proof of license and a participant in the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF) for general banking and trustee services.**

A copy of our FDIC Certificate, which provides proof of license and participation in the FDIC is included in the Appendices section.

Please note, effective December 31, 2010, the FDIC will insure 100% of all checking account funds on deposit. This will alleviate the need for collateralization for these types of accounts. The FDIC has said that this program will remain in force until December 31, 2012.

- j) **Must currently meet, and maintain throughout the term of the contract, FDIC capital adequacy requirements for general banking and trustee services. The contract may be immediately terminable upon notification to the City of a failure to meet FDIC or NCUSIF capital adequacy requirements.**

We currently meet and will maintain throughout the term of the contract, FDIC capital adequacy requirements for general banking and trustee services.

**The City also encourages financial institutions submitting proposals to include information and attachments for any other banking service that would assist the City in its evaluation of proposal responses. Specific guidelines on RFP submittal procedures are outlined in the Special Terms and Conditions.**

Bank of America welcomes the opportunity on a regular basis to discuss banking industry changes and recommendations based on best practices in the government industry. With our experience in working with Arizona government clients we have selected services we feel would be beneficial. Our recommendations for additional services are provided under the Response to Proposal Questionnaire Section, Item 13, Other Enhancements.

## Response to Technical Specifications

### 1. Account Structure and General Information

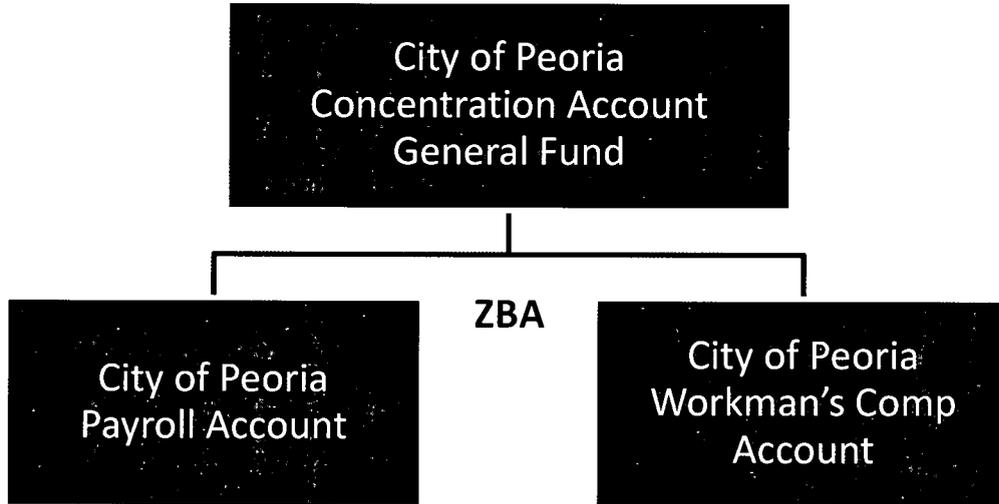
The City of Peoria (City) uses a Concentration Account, Controlled Disbursement, and Zero-Balance Account (ZBA) structure for its main bank accounts. All of the City's cash receipts are deposited to the General Account (Concentration Account). The City's Concentration Account averages \$7 million monthly in cash deposits and \$15 million monthly in credit card transactions, excluding ACH (Automated Clearing House) items, incoming wires, and other special transactions. Deposits are made daily primarily by armored car or through the servicing bank's lockbox facility; to a lesser extent, deposits are made by City personnel and/or through a night depository. Because personnel are required to make deposits periodically, the City requires the servicing bank to maintain a local branch within the City of Peoria for the general banking services portion of this proposal.

The City maintains one (1) controlled disbursement account for Accounts Payable; two (2) zero balance accounts for Payroll and Workmen's Compensation; and one (1) general checking account for Flex Spending. Amounts sufficient to cover daily clearings in the controlled disbursement and zero balance accounts are automatically transferred each day from the Concentration Account by the City's servicing bank. Monies are transferred each payroll period for the Flex Spending account. All funds not required to cover daily clearings and/or transfers must be swept overnight by the servicing bank into a *Money Market Fund* which is SEC registered and approved by the City. *Financial Institutions must include a prospectus of the money market fund to be used in their response to this proposal.*

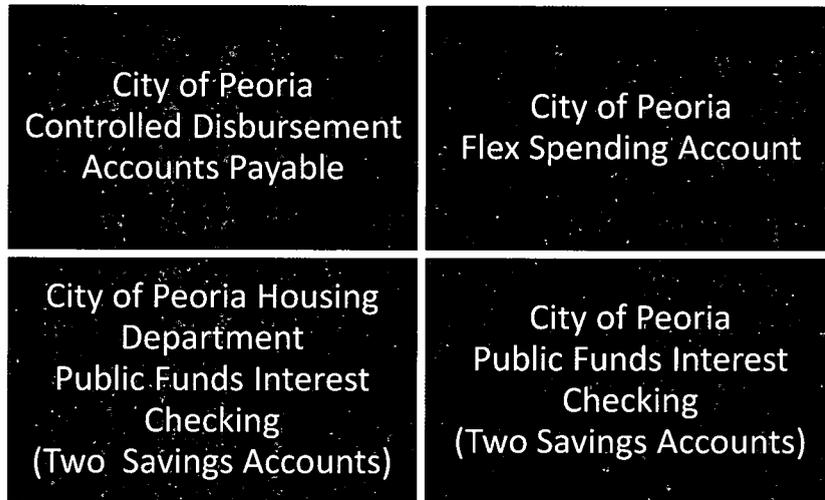
The account structure recommended by Bank of America is based on our working knowledge and direct experience with many other Arizona municipal clients. Our comprehensive understanding of general city operations meets the City's requirements stated above. It uses automated money movement solutions such as investment sweep services (when appropriate), hierarchical tiered ZBA and/or depository accounts for funds that can be co-mingled at the master concentration account level, and stand alone accounts for agencies in the City where segregation of funds is necessary.

We will help engineer, if needed, a revised structure that provides ease in funds movement, maximizes daily investable cash, streamlines operational processes and simplifies overall management of City funds. Our preliminary recommendation will be to fine tune the City's existing general ledger structure, account reconciliation processes and specific departmental operating needs. Our recommended account structure for the City is provided on the following page.

**City of Peoria Account Structure**



**Stand Alone Accounts**



The City may also maintain your existing account structure. Zero Balance Subsidiary Accounts (ZBA sub accounts) are linked to the City's Concentration account. Transfers between the ZBA sub accounts and the master account are automatically made on a daily basis, leaving a zero, or if you prefer, your designated target balance, in each of the subsidiary accounts.

With ZBA sub accounts, the City may choose between having the ending balances only, or, additionally, all detailed transactions, automatically transferred to the Master account. Each zero balance account receives its own bank statement, listing each transaction including easily identifiable transfers to the master account.

# Response to City of Peoria Banking Services Request for Proposals



Response to Technical Specifications

Settlement options for the ZBA sub-accounts with the master account include:

- **Net:** a single net entry summarizing all transactions for the day.
- **Total Debit/Total Credit:** up to two transactions per day, one for the total debits and one for the total credits.

Zero balance accounts move ledger balances with float and can be tiered up to nine levels including the master account level.

## Armored Car Services for the City

We suggest the City continue using your current armored carrier service with Dunbar. We will be happy to coordinate with the City and Dunbar for deposit delivery and any other supplemental services. Details regarding our cash vault specific requirements for deposit delivery by third-party vendors are provided under the Response to Proposal Questionnaire Section, Question 7, Armored Car Services, Item A.

## Local Banking Centers for the City

The City can use any of our banking locations for services, but the following branch will act as your primary full-service location:

91 Ave & Union Hills Banking Center for the City	
<b>Address</b>	9245 W. Union Hills Drive Peoria, Arizona 85382
<b>Phone:</b>	623.876.3163
<b>Hours</b>	<b>Lobby Hours:</b> Monday through Friday: 9 - 7 Saturday: 9 - 6 Sunday: 10 - 4

A map of local banking centers and ATMs in the Peoria area is provided in the Appendices section.

## Overnight Sweep

A Prospectus for our recommended solution is provided in the Appendices section.

**Fees and Charges for Service: The City intends to pay for all banking services on a fee basis and not through compensating balances.**

We acknowledge this requirement.

# Response to City of Peoria Banking Services Request for Proposals



Response to Technical Specifications

**Account Executive:** The City requires the servicing bank to assign an account executive to administer the City's overall banking relationship and ensure the successful delivery of services as outlined in the banking services contract. An account executive must be assigned to the City at all times during the term of the contract. The servicing bank must provide the City with written notice in the event there is a change in staff assignment for this position. The assigned account executive must provide the City with a list of designated staff contacts for key areas of responsibility within the bank and notify the City.

We will seamlessly meet the City's account executive requirements as stated above. Senior Client Manager Larry Glandon will be the City's designated account executive and will ensure the successful delivery of services as outlined in the banking services contract. Each member of the City's core service team is conveniently located in Phoenix. For the City's convenience, a list of designated staff contacts for key areas of responsibility within the bank is provided on the following pages.

## The City's Designated Bank of America Team



# Response to City of Peoria Banking Services Request for Proposals



Response to Technical Specifications

<p><b>Joyce Henderson</b> Program Management Consultant 25 Years Experience The City's dedicated contact and consultant for Lockbox services. Office: 602.523.2372 Email: joyce.a.henderson@baml.com</p>	<p><b>Catherine Hudson</b> Merchant Account Executive 13 Years Experience The City's expert consultant for all merchant service needs. Office: 602.237.3865 Email: cathy.hudson@bankofamericamerchant.com</p>
<p><b>The City's Product Specialist Team</b></p>	
<p><b>Nancy Nuerenberg</b> Credit Products Officer 21 Years Experience The City's consultant for structuring, underwriting, documentation &amp; ongoing monitoring of your credit products including negotiation and closing of loan transactions. Office: 206.358.6279 Email: nancy.d.nuerenberg@baml.com</p>	<p><b>Mark Tranchina</b> Senior Investment Solutions Officer 28 Years Experience The City's dedicated contact for investment of excess liquidity. Mark will help tailor investment solutions including deposit solutions, fixed income, money market mutual funds and customized managed portfolios. Office: 214.209.2816 Email: mark.s.tranchina@baml.com</p>

**Availability of Funds Deposited:** The City requires same day availability of cash, wire transfers, ACH credits, items drawn on servicing bank, and investment settlements, maturities, and coupon payments. Funds for items drawn on local banks must be available to the City the next day. All other items must be available to the City, at a minimum, as per the Federal Reserve availability schedule.

We can meet the City's availability requirements as stated above. An Availability Schedule is provided in the Appendices section.

The City can also increase availability by using solutions such as Remote Deposit Service Online and Image Cash Letter. These solutions encourage the use of imaging and will help further move the City toward a Check-21 environment. Details regarding both products are provided under Response to Proposal Questionnaire, Question 13. Other Enhancements.

# Response to City of Peoria Banking Services Request for Proposals

**Delay of Funds: If the servicing bank delays funds to the City beyond the availability schedule outlined above, or due to an error on the part of the servicing bank, the bank shall pay interest to the City at the current Federal Funds rate.**

We will comply with this requirement. However, Bank of America cannot be held liable for delays due to circumstances beyond the bank's control. We suggest that our Treasury Services Terms and Conditions, Limitation of Liabilities section, govern with respect to this proposal response.

**Overdrafts: The City requires a one (1) day grace period to remedy any account overdrafts. All charges associated with overdraft protection must be specified where indicated on the Bank Services Fee Schedule.**

We are prepared to assist the City with sufficient credit facilities to accommodate for an occasional overdraft and periodic daylight overdrafts resulting from the significant movement or settlement of funds. The bank does not charge for daylight overdrafts.

All charges associated with overdraft protection are included on the Bank Services Fee Schedule, Attachment A.

**Returned Checks: All returned checks are to be immediately redeposited once before being returned to the City for collection. The City currently utilizes a process where a returned check is converted into an ACH item to be redeposited a second time. The City requires that insufficient funds notices and return checks be mailed to the City.**

We will meet the City's returned check requirements as stated above.

Please note, for items returned unpaid by a drawee bank for either insufficient or uncollected funds upon first presentment, the paper check may be automatically recleared once; however, a special instruction setup is required.

## **Special Instructions for Automatic Reclear**

Special instructions may indicate that all eligible items are to be recleared or only items more than a specified dollar amount. Items recleared are not charged back, but are redeposited and sent for collection. A client will have a line-item charge on their account analysis statement for "Returned Item Reclear," which represents the number of items that have been recleared by the bank. If the same item is returned unpaid a second time, the item will be charged back to the designated account.

# Response to City of Peoria Banking Services Request for Proposals

## Re-presented Check Solution for the City

By using our Re-presented Check via ACH (RCK) service, the City can represent a returned item up to two additional times. "Returned Item Reclear" is a standard option supported in all our returned item processing locations and can be set up by location number or to cover all locations.

We can provide a notice of items which have been redeposited to the depositing location or the City's central office.

We offer our Re-presented Check to the City by using an ACH (RCK) service to represent checks as an ACH. This service typically increases the collection rate by about 15% to 20% over the average collection rate of the paper reclear process (which is typically approximately 50%).

**Number of presentments** – Three debit attempts are allowed:

- Two ACH-based (RCK) presentments plus the initial debit attempt.
- If there were two previous physical paper check debit attempts, only one additional ACH-based (RCK) debit attempt can be made.

**Debit and Credit Advices: The City requires debit and credit advices for all activity on all accounts. Advices must be delivered to the City electronically or by fax within twenty-four (24) hours, or via mail within three (3) days.**

We will meet the City's requirements for debit and credit advices.

We provide provisional credit based on the City's deposit total up to the point of verification. Upon identifying an adjustment, the bank posts a separate debit or credit to the account for any adjustment amounts; declared deposit amounts are not altered. Discrepancies below the adjustment threshold are written off. The threshold may vary and is subject to change without notice.

The City can view deposit adjustments via CashPro Online Information Reporting and Online Statements, and supporting documentation is mailed on the adjustment date. Through Deposit Correction Notice Fax Service adjustment information is delivered via fax the day after the deposit has been verified and the deposit correction has been posted. Deposits are generally verified within 48 hours of receipt by the bank. We will provide the dollar amount of the adjustment, the deposit bag number (last four digits if provided on the deposit slip), the account number (truncated for security) and the location number (if applicable). Denominational breakdown is available on cash vault adjustments.

# Response to City of Peoria Banking Services Request for Proposals



Response to Technical Specifications

**Notification: Any change in the financial institution's ratings, reassignment of key banking personnel, and all business acquisitions or mergers occurring during the contract period must be reported immediately to the City of Peoria in the form of a written notice addressed to the Finance Director, City of Peoria, 8401 W Monroe Street, Peoria, AZ, 85345**

We will meet the City's notification requirement as stated above.

## 2. Zero Balance/Controlled Disbursement Account Information and ACH Capabilities

**Payroll Account: The City has a bi-weekly payroll. Currently, there are approximately 1,100 part-time, full-time, and seasonal employees on the City's payroll at various times throughout the year. Approximately 90% of employees are paid through the ACH (Automated Clearing House) system and the remaining employees are paid by check. The Payroll Account, a zero balance account, clears an average of 400 checks monthly. On a bi-weekly basis, the City's direct deposit amount is approximately \$1.8 million, with a total bi-weekly payroll of approximately \$2.0 million.**

We acknowledge the City's current payroll account processes and can provide an exceptional payroll solution. We will be pleased to work with the City to help implement a new direct deposit program and increase your 90% participation rate even further.

### Procedures for Direct Deposit Service

#### Timeline

- Employee authorizes Direct Deposit of Payroll
- The City's payroll area creates ACH deposits and sends to Bank of America, PC-initiated CPU-to-CPU vendor
- Bank of America ACH Processing originates file, retains on-us items for posting, forwards other transactions to ACH for delivery to receiving financial institutions
- ACH network processes file, distributes items
- Receiving institutions validate and balance entries, post credits to accounts, post statement information

#### **The Bank of America Advantage Benefits for the City's Employees**

We provide free checking services to customers who use Direct Deposit, and your employees will avoid fees related to cashing payroll checks.

## Promoting Direct Deposit of Payroll

Companies that continually promote Direct Deposit of Payroll have higher participation rates than those companies that run only an initial promotion to get a program up and running. We provide the following tips to help the City maintain and increase your high participation rate:

- Assume direct deposit for new hires in your orientation package.
- Promote direct deposit in employee newsletters, communications and internal websites, and let satisfied employees endorse the service at staff meetings.
- Use paycheck stuffers, bulletin board posters and other techniques available from NACHA to enhance awareness.
- Redirect promotional dollars and send \$1 or more to your employees' accounts after the pre-note has been accepted

## Value-added Advantage for the City: Reimbursements and Dividends

In addition to using ACH credits for payroll, the City can also offer direct deposit for employee reimbursements including:

- Travel and entertainment expenses
- Bonuses and commissions
- Pension payments
- Insurance benefits
- Profit sharing and shareholder dividend

## Group Banking for the City

We are pleased to offer and recommend our value-added group banking services for the City. In this tough economic environment, we recognize that ongoing promotion of direct deposit and offering attractive employee benefits, yet controlling costs, are key objectives of many government clients. Therefore, we are pleased to provide our group banking products and services to the City and will work with your staff to deliver a successful and well-rounded program.

### **The Bank of America Advantage Group Banking for the City**

Our Group Banking program enhances employee benefits packages **at no additional cost to the City.**

Providing this comprehensive no-cost solution enhances voluntary benefit offerings, promotes employee goodwill with real money-savings and encourages all employees to move to less costly direct deposit.

# Response to City of Peoria Banking Services Request for Proposals

## Value-added Payroll Solutions for the City and Your Employees

We can help the City reduce administrative costs by driving direct deposit of payroll, while adding a valuable employee benefit that brings financial resources to your employees.

- We provide banking benefits to thousands of employers and millions of employees coast to coast.
- Our national and global banking network lets your employees handle their banking needs more easily. Here are a few reasons why:
  - Toll-free telephone banking
  - Online Banking service with Bill Pay<sup>1</sup>

## Benefits for the City

Our Bank of America at Work<sup>®</sup> program is a comprehensive package of preferred financial services, which we will offer to the City's employees. Bank of America at Work will give your employees checking, savings and borrowing solutions as well as access to online education resources.

The City's employees who sign up for direct deposit will have faster, more secure access to their money as well as banking product benefits. Offering this exclusive banking package to employees is a cost-effective way to enrich the City's benefits package and at the same time, offer employees added incentives to participate in a direct deposit of payroll program; all of this comes at no additional cost to the City.

The City can look forward to:

- Increased direct deposit participation by offering employees an attractive package of banking products and services
- Reduced overall payroll expenses through electronic transactions.
- Decreased financial paper footprint and achieving processing efficiencies by eliminating outdated, paper-based payroll systems.
- Supplementing the City's benefits package to increase employee satisfaction and reduce turnover.
- Greatly minimizing the risk of stolen or lost checks and check fraud
- Free promotional material such as targeted flyers, posters, email communications and our Bank of America at Work website.

### **The Bank of America Advantage Benefits for the City's Employees**

The Bank of America at Work program offers your employees a wide range of banking services as well as savings tips and financial education resources.

- Opportunity to increase savings when they shop through the Add It Up<sup>®2</sup> program
- Promotional cash incentives available to eligible employees who meet the terms and conditions of the offer<sup>3</sup>
- Elimination of check-cashing fees
- Convenience and security of direct deposit and confidence of knowing their paycheck is available the day it's deposited

# Response to City of Peoria Banking Services Request for Proposals

Here are some of the many ways the City's employees save through the Bank of America at Work program:

- No-monthly-maintenance fee Checking with Direct Deposit Checking account options and additional features include:
  - MyAccess Checking<sup>®</sup> with qualifying monthly Direct Deposit<sup>4</sup>
  - A second regular checking account
  - Opportunity to enroll in the Keep the Change<sup>®5</sup> program
  - A Bank of America Photo Security<sup>®</sup> Visa<sup>®</sup> debit card
  - No charge for first order of standard checks
- Savings Accounts
- Employees get a regular savings account with no monthly maintenance fee when they open their new savings account, a new personal checking account and enroll in the Keep The Change program, all on the same day.<sup>6</sup>
- Home Equity Lines of Credit and Loans<sup>7</sup>
  - No application fee, no closing costs for lines and loans of \$500,000 or less, and no balance transfer fees.
- Certificates of Deposit and No-Fee IRAs<sup>8</sup>
  - Group Banking clients enjoy competitive rates on our CD products.<sup>9</sup>
- Money Orders, Cashier's Checks and Safe Deposit Box Rentals<sup>10</sup> - No purchase fee and discounted annual fees for Group Banking clients.

## Free Employee Communications

The City will receive free promotional materials to communicate the benefits and details of the program. Examples include:

- Brochures, payroll stuffers, posters.
- Email and intranet-ready communications to place on your internal benefits site.

We are committed to optimal implementation and ongoing program success. Our Group Banking team will work with you to tailor and implement the program to meet your needs -- typically using your normal channels of communication. We provide promotional materials, communication plans, on-site enrollment events, website links and more.

Our team will continually assess your program's effectiveness to maintain optimal participation. We do not require the City to offer our program exclusively; we encourage you to give your employees a choice of financial services providers.

Program disclosures are provided in the Appendices section.

# Response to City of Peoria Banking Services Request for Proposals

## CashPay Solution for the City's Employees

The City may also benefit from our CashPay solution, our Visa® card-based payroll solution. CashPay enables the City to automate payroll by allowing you to offer direct deposit to employees that either do not qualify for, or choose not to have traditional bank accounts. Details regarding this value-added solution are provided under Response to Proposal Questionnaire, Question 13. Other Enhancements, Item A.

**Accounts Payable Account: The City of Peoria issues vendor payments weekly utilizing PeopleSoft Financial software. Vendors are paid by check, ACH (Automated Clearing House) or wire transfer. An average of 1,000 checks clear through the City's Accounts Payable Controlled Disbursement Account monthly. The City processes an average of \$13 0 million in vendor payments on a monthly basis.**

We can meet the City's account payables needs. Through CashPro Online, our web-based treasury management solution, the City can seamlessly execute vendor payments via ACH and wire through one secure portal. The City can also significantly improve vendor payment efficiencies and reduce costs through our ePayables solution. Details on the benefits of ePayables are provided under Response to Proposal Questionnaire, Question 1. General Banking, Item F.

**Workmen's Compensation Account: The City is self- insured and utilizes a third party to administer their claims. An average of 20 checks clear through the City's Workmen's Compensation Account monthly. The third party provider processes an average of \$14,000 in claim payments on a monthly basis.**

We recommend the City continue to use your third-party provider to administer workmen's compensation claims payments.

**Flex Spending Account: The City utilizes a third party to administer the flex spending account for its employees. An average of 20 checks and 50 electronic funds transfers (EFT's) clear through the City's Flex Spending Account monthly. The third party provider processes an average of \$45,000 in payments on a monthly basis.**

We recommend the City continue to use your third-party provider to administer flex spending account payments.

# Response to City of Peoria Banking Services Request for Proposals



Response to Technical Specifications

**ACH Direct Debit/Credit Payments:** The City currently utilizes ACH (Automated Clearing House) debit and credit transactions for customer, employee and vendor payments. An average of 7,000 ACH debits and 1,000 credits are generated monthly and transmitted to the servicing bank for processing. The number of ACH transactions is likely to increase as the City expands its electronic payment options.

We acknowledge the City's need for expanded ACH services and will provide a custom solution to meet your growing needs.

## Our ACH Benefits for the City

The City will benefit from our full range of ACH services that enable you to originate ACH transactions to customers, employees and vendor payments, while providing the following additional benefits:

### The Bank of America Advantage ACH Rankings

We are the largest receiver and second-largest originator of ACH, which enables us to efficiently accommodate the City's high volume of ACH transactions.

- Support for a variety of file formats (NACHA and ANSI) with all ACH record types (PPD, CCD, CCD+, CTX, etc.), which enables the City to originate any type of payment, therefore meeting the needs of your customers, employees and vendors.
- Expedited handling and notification of returned ACH transactions and "Notifications of Change" (NOC) to streamline the City's records and enables you to react quickly to changes.
- Online detailed reporting of current- and previous-day transactions to assist with information management.
- Internal controls and security procedures to screen for duplicate payments and monitor ACH file limits.

## Simplified ACH Initiation for the City

Through our web-based treasury management platform, CashPro Online, the City can originate an unlimited number of ACH transactions, such as vendor payments, internal book transfers and direct deposit of payroll – all in a single session. Simple screens instruct the City's authorized users on how to enter information. Data can also be imported to avoid manual keying. For greater efficiency, authorized users can release multiple batches of ACH transactions rather than one batch at a time. If needed, all items within a batch can be reversed online in one easy step.

## Processing Deadlines

Our ACH input deadlines are extremely competitive, allowing the City maximum flexibility in moving your funds via ACH. Further details regarding our ACH processes are provided under Response to Proposal Questionnaire, Zero Balance/Controlled Disbursement Account Information and ACH Capabilities Item 2.

### 3. City of Peoria, Housing Department Accounts

The City of Peoria uses segregated checking and savings accounts to ensure a market rate of return and to manage its housing funds in compliance with U.S. Department of Housing and Urban Development (HUD) guidelines. Securities pledged as collateral for monies held in the City's housing accounts must be held by a third party safekeeping institution and maintained in a separate pledge account in the name of the City of Peoria, Housing Department. A HUD General Depository Agreement (Form HUD-51999) must be completed between the City of Peoria and the servicing bank. All securities pledged for monies held in the City's housing accounts must comply with HUD Regulations. See Section - Collateral Requirements for additional information.

Currently, there are two (2) interest bearing savings accounts. Average monthly cash balances for the two savings accounts combined is \$400,000. Currently, housing deposits are made directly into the City's Concentration Account and then transferred monthly to the appropriate account.

We understand and acknowledge the City's Housing Department account structure and requirements as stated above. The bank will provide separate collateral for the City of Peoria Housing Department accounts.

The City will complete a set of collateral agreements to include:

- Tri-Party Collateral Management Agreement
- Collateral Security Agreement
- Inform Client Set-Up Request Form

These agreements will be used to establish the third-party collateral custody account for the Housing Authority and provide access to daily on-line collateral reports whenever the deposits exceed FDIC coverage. This will allow for separate collateral, unique collateral requirements and separate collateral reports to be available for the Housing Authority accounts.

### 4. Savings Accounts

The City currently has two (2) savings accounts which are utilized for special funds that must be maintained in segregated, interest bearing accounts. The current total combined balance for the City's two savings accounts is \$150,000.

We can provide the City with an efficient savings account structure, maintained as segregated, interest-bearing accounts, as described above.

## 5. Monthly Analysis Reporting and Service Charge

The servicing bank's monthly statement shall provide, at a minimum, the following information on each account and on a total account basis: average daily ledger balances, average daily collected balances, daily average float, FDIC rate, earnings allowance, and detail transaction volumes and prices. Financial Institutions must include a sample monthly analysis with their response to this proposal to be considered for general banking services.

The City intends to pay for analysis service charges through hard dollars and not through compensating balances. The City will pay service charges through a hard dollar debit to the City's account. The servicing bank shall debit the City's Concentration Account within ten (10) days after the City's receipt of the monthly statement, unless the City notifies the servicing bank of a discrepancy or error on the statement.

We can provide the City monthly analysis reporting as required above. A sample monthly analysis statement is provided in the Appendices section.

### Payment

The City may elect to pay for services on the direct fee method or the compensating balance method, defined as follows:

- **Direct Fee Method:** Payment of net banking service charges is made on a periodic basis, most commonly monthly. The account analysis serves as an invoice and payment of banking fees is made by check or direct charge by the bank each month.
- **Compensating Balance Method:** The City may accumulate account analysis excesses and deficits from month to month. The bank will not compensate the City for excess service charge credits. Surpluses and deficits may not be carried over from year to year.

Analysis is usually billed monthly, but in an effort to help the City smooth ledger balance peaks and valleys, we are pleased to offer the City the option of net quarterly, semi-annual or annual billing if requested. Interest bearing accounts may be included in a relationship along with non-interest bearing accounts. While interest bearing balances are ineligible for earnings allowance, this allows balances on non-interest bearing accounts to help compensate for treasury management services used by interest bearing accounts.

### Convenient Adjustments for the City

Generally, the City should review its account analysis statement and raise any discrepancies within 30 days of receipt of the analysis. However, we recognize that the City has many priorities and should you need more time, we will work to accommodate the need for an extended review period. Any adjustments made by the 25th of the month will be on that month's account analysis statement. Any adjustments requested after that date will be reflected on a subsequent analysis statement.

## 6. Collateral Requirements

The City of Peoria, in accordance with Arizona Revised Statutes, Chapter 35, requires that its servicing bank or financial institution maintain collateral to cover all anticipated overnight balances, in time and demand deposits, above the current Federal Depository Insurance Corporation (FDIC) insured limit. The collateral for these deposits must be held in an independent third party safekeeping institution (independent of the bank or the holding company) and marked to market at least once a month. The City requires that a minimum margin of 102% be maintained at all times. If mortgage-backed securities are pledged as collateral, the City requires that a minimum margin of 105% be maintained. It is the responsibility of the servicing bank to monitor and maintain the margin balance. Collateral must be in the form of "approved securities" as outlined in Arizona Revised Statutes, Chapter 35. In the event collateralized mortgage obligations (CMO's) are pledged as collateral, they must pass the standardized bank test. All securities pledged are subject to approval by the City of Peoria. Substitution rights will be given to the servicing bank with prior approval by the City, of which said rights shall not be unnecessarily withheld. New collateral must be received before the then current collateral is released.

A tri-party agreement between the financial institution selected for contract award, the City of Peoria, and the third party safekeeping bank must be executed as part of the City's overall banking services contract.

The agreement shall indicate that the third party safekeeping bank provide the City of Peoria with original, third party safekeeping receipts which detail clearly that the security is pledged to the City of Peoria; type, description, and cusip number of security pledged; par value; market value; and maturity date. The City of Peoria requires that the third party custodian bank independently price the securities pledged and provide the City with a monthly pledge report for all City accounts and a separate monthly pledge report for the City of Peoria, Housing Department accounts. All safekeeping reports shall be directly from the third party custodian bank to the City of Peoria.

As stated in Section 3 above, the City requires that all collateral for the City's Housing accounts be pledged and held separately in the name of the City of Peoria, Housing Department as required by U.S. Department of Housing and Urban Development (HUD) guidelines. All securities pledged for the City of Peoria, Housing Department accounts must comply with HUD Regulations, and a HUD General Depository Agreement must be executed between the servicing bank and the City of Peoria. A copy of the HUD General Depository Agreement is included as Attachment B.

We use the Bank of New York Mellon as the independent third-party collateral custodian.

# Response to City of Peoria Banking Services Request for Proposals

The City will complete the following documents to establish the collateral custody account, meet FIRREA regulations and establish access to daily online collateral reports with detailed collateral information for whenever the City's deposits exceed FDIC coverage:

- Tri-Party Collateral Management Agreement
- Collateral Security Agreement
- Inform Client Set-Up Request Form

For the City's convenience, the documents listed above are provided in the Appendices section. Collateral will be pledged to meet the requirements of the Arizona Revised Statutes, Chapter 35, and the City's collateral requirements and Investment Policy.

The City will set the eligible collateral and required coverage margin requirements as part of the Tri-Party Collateral Management Agreement. This list of eligible securities will include collateral types as allowed by Arizona Revised Statutes. More restrictive collateral requirements may result in a collateral charge. The custodian bank will mark the value of the pledged collateral to market value on a daily basis using independent pricing sources. Collateral substitutions, pledges and releases are governed by the Tri-Party Collateral Management Agreement.

## 7. Armored Car Services

**The City separately contracts for armored car services. The City currently has a contract with Dunbar Armoured, Inc. to pick up deposits at various locations within the City and deliver them to the servicing bank's designated vault.**

We suggest the City continue using your current armored carrier service with Dunbar. We will be happy to collaborate with the City and Dunbar for deposit delivery and any other supplemental services. Details regarding our cash vault specific requirements for deposit delivery by third-party vendors are provided under the Response to Proposal Questionnaire Section, Question 7, Armored Car Services, Item A.

## 8. Investment Settlement, Custody, and Safekeeping Services

The City of Peoria currently utilizes external investment management services to provide professional oversight for its investment portfolio. The external investment management firm works directly with the City's Treasury Division to manage cash flows and invest the City's funds. The external investment manager initiates investment transactions through a list of authorized brokers and then faxes the trade tickets to the City of Peoria Treasury Division for review and approval. Upon approval by authorized personnel at the City of Peoria, the signed trade tickets are faxed to the servicing bank's settlement area. The servicing bank settles the City's investment transactions on a "delivery vs. payment" basis for all investment accounts only after the trade tickets, with authorized signature from the City of Peoria, are received. The servicing bank will be required to provide safekeeping services for all investments held in the City's name. All investment transactions must comply with the City of Peoria Investment Policy. A copy of the City's Investment Policy and Procedures is included as Attachment C.

The City's current investment portfolio consists of a main custodial account and several segregated, custodial accounts for the investment of bond proceeds. The main custodial account is valued at approximately \$250 million, with \$60 million in the various custodial bond accounts, for a total investment portfolio of \$310 million. An average of 5 investment transactions, excluding coupon payments and maturities, are settled on a monthly basis for all of the investment accounts combined. An average of 60 securities, mainly Agency and/or Treasury securities, are held in the City's investment portfolio on a monthly basis. Failure to credit the City's account on a same day basis will require interest to be paid to the City at that day's Fed Funds rate. The City requires same day credit on all coupons and maturity payments. The City will not be required to maintain any balances in the bank or place investments through the bank's brokerage service.

We can meet the City's investment settlement, custody, and safekeeping needs. Details are provided under Response to Proposal Questionnaire, Question 8. Investment Settlement, Custody, and Safekeeping Services.

## 9. Positive Pay Check Fraud Services

In an effort to minimize fraud, the City requires positive pay check services or reverse positive pay check services for all of its bank accounts with checks issued.

We encourage the City to use Positive Pay services to minimize fraud and are pleased to offer the City a variety of innovative Positive Pay and Reverse Positive Pay services. Details are provided under the Response to Proposal Questionnaire Section, Question 9. Positive Pay Check Fraud Services.

## 10. Check 21 Capabilities

**The City is currently implementing Check 21 scanning capabilities in the cashiering section of our Customer Service area. Customer checks are scanned and the images are electronically transmitted to the bank daily for processing.**

We encourage the City's implementation of Check 21 scanning capabilities. In fact, we can further your initiative through our Image Cash Letter solution. Details are provided under the Response to Proposal Questionnaire Section, Item 13, Other Enhancements.

Our Positive Pay services also work seamlessly with Check 21/image initiatives. Details are provided under the Response to Proposal Questionnaire, Question 9. Positive Pay Check Fraud Services.

## 11. CD Imaging of Checks and Deposit Items

**The City of Peoria requires the optical imaging of its checks, both front and back, for all accounts, along with optical imaging of deposit items. The servicing bank currently provides a CD of check images to the City after month end. The servicing bank provides the software required for the City to retrieve and/or print the check images from CD's provided to the City each month.**

We can meet the City's requirements for optical imaging of checks for all accounts. Details are provided under Response to Proposal Questionnaire, Item 10. CD Imaging of Checks and Deposit Items.

## 12. Online Banking Capabilities

**The City of Peoria requires the ability to obtain daily balance and transaction information, both detail and summary, for all of its accounts electronically via the Internet, as well as the ability to place stop payments, initiate wire transfers and make transfers between City accounts.**

We will meet the City's need for online banking capabilities through CashPro Online, our award-winning, web-based treasury management system. Full details regarding the system's reporting and transaction capabilities are provided under Response to Proposal Questionnaire, Question 11. Online Banking Capabilities.

## 13. Automated Bank Reconciliation Process

**The City currently downloads data from the servicing bank's internet website in an Excel or compatible file format to be used with the City's Peoplesoft Financial Software Reconciliation module. This process automates the reconciliation process for the City's concentration, controlled disbursement and 3 zero balance accounts.**

We acknowledge the City's current reconciliation process and will work with you to provide state-of-the-art Account Reconciliation solutions that fit your specific needs. With Bank of America, the City can choose between Full or Partial Account Reconciliation services, giving you the flexibility to determine a solution right for you. Our Account Reconciliation reports are available in a variety of formats, including excel; enabling the City to make modifications as needed and then seamlessly import information into your current Peoplesoft application. Details regarding our Full and Partial Account Reconciliation services are provided under the Response to Proposal Questionnaire Section, Question 12. Automated Bank Reconciliation Process.

## 14. Automated Payment Processing (Retail Lockbox)

**The City requires lockbox service and uses a scannable remittance advice for all utility payments. Currently, the City pays for its own unique post office box at the Peoria Post Office from which the bank retrieves mail daily. The City requires daily processing and depositing, and requires payment information from the processing center by next day open of business. Documentation, daily activity reports, and supporting information must be available by 9 a.m. the following morning.**

**The Customer Service Division would like to have processed payment information available electronically by midnight of each day from the servicing bank, so that an automated process could be implemented to receive the lockbox file and have the City's system automatically post payments prior to 7:00 a.m. of each work day.**

We understand the City's lockbox requirements and are pleased to present our ALF Lockbox solution to meet your needs. Details are provided under the Response to Proposal Questionnaire, Lockbox Section, Question 1. Automated Payment Processing (Retail Lockbox), Items A – P.

Please note the lockbox services proposed within this RFP Response are contingent upon full banking services award. We will provide lockbox services only upon award of entire contract.

## 15. Merchant Credit Card Services

**The City currently has several locations that require the ability to electronically accept VISA, MasterCard, American Express, and Novus/Discover credit card payments and debit card payments. The City requires daily automated credit card settlement into the City's Concentration Account.**

Currently, the City has several locations that require an ability to electronically accept VISA, MasterCard, American Express and Novus/Discover credit card payments and debit card payments. The City requires daily automated credit card settlement into the City's Concentration Account.

## 16. Bond Registrar/Transfer Agent/Paying Agent/Trustee Services

**The City requires bond registrar, transfer agent, paying agent, and trustee services for any bonds issued by the City or its agencies, during the contract term and any extension, through the final maturity date of such bonds. The City might also require these services for existing bonds that are transferred from other financial institutions.**

**The City of Peoria generally issues bonds as required, with each bond issuance averaging \$30 — \$50 million in size. All payments to the Trustee/Paying Agent/Transfer Agent should be due on the actual due date and not one day prior.**

We will not provide bond registrar, transfer agent, paying agent or trustee services to the City.

However, our Global Liquidity Solutions Group (GLS) offers a convenient, comprehensive Bond Proceeds program that allows the investment of bond proceeds into various liquid, variable and fixed rate investments. To assist in compliance with IRS Arbitrage Rebate regulations, a tracking and calculation service option is provided.

Details are provided under the Response to Proposal Questionnaire Section, Item 13. Other Enhancements.

## 17. Other Enhancements

**The City would like to develop other banking options to enhance its customer service capabilities and improve overall cash management efficiencies. Offerors are encouraged to submit information and pricing for other services that would benefit the City.**

Our recommendations for other enhancements are provided under Response to Proposal Questionnaire, Question 13. Other Enhancements.

## Merchant Credit Card Services

### 1. Merchant Credit Card Services

We can provide Merchant Credit Card Services as outlined by the City. Bank of America Merchant Services will provide the City a comprehensive merchant solution. First Data Inc. will be used as a third party provider for processing on-line debit transactions and details are provided within this Merchant Credit Card Services section.

A complete description of how Bank of America will seamlessly meet your Merchant service requirements is provided below.

- a. Does your institution allow for settlement discounts with the additional requirement of the CVN number or billing zip code being provided with customer credit card transactions?**

In order to meet the qualified rate, we will request the City provide the AVS information which is the credit card holders billing address as well as the five digit billing zip code.

- b. Please describe your institution's automated settlement process.**

We are pleased to provide the City with settlement operations that are centralized and top rated in the industry for accuracy and quality of service. We receive the settlement file from the merchant and send it to the card brands (Visa/MasterCard/Discover). Our Settlement Operations receive the file back from card brands and generates a funding file and transmits to the treasury for funding. The treasury approves and initiates the deposit to the merchant deposit account.

#### **Processing Procedures for the City**

- Receipt of the "import" file containing transaction for settlement.
- We import the transactions into our settlement system and create a transaction record for each transaction.
- We run each transaction through our qualifier to determine the best Interchange rate.
- We calculate and assess the "Interchange" on each transaction based on the Interchange rate for which the transaction qualifies. Additionally, we assess any and all "per transaction items".
- We create the merchant payment record based on the sum of gross sales minus all applicable Interchange/per item fees/adjustments.
- The merchant payment is processed through the Federal Reserve (Funding via ACH).
- Transactions are submitted to Visa/MC/Discover for Interchange processing.

# Response to City of Peoria Banking Services Request for Proposals

Our settlement process depends on the type of transaction—credit, debit, etc. The City can receive next day funding via ACH.

## **Processing Schedules for the City**

As the City aware, processing schedules and cutoff times depend on the type of transaction and method of funding. Our latest standard cutoff time is 2 a.m. Eastern and 2 p.m. Eastern for debit transactions. Batch file submission/transmission may have different close times.

**c. Does your institution accept debit card payments as part of its merchant credit card services?**

Yes. As one of the nation's largest third-party processors of PIN-debit transactions, our partner, First Data processes a majority of all on-line debit transactions. Competitors and clients alike view us as a leader in this segment. First Data actually serves as the processor of debit items for many of our competitors.

**d. Would one designated contact person be assigned to handle the City's merchant credit card services and all concerns, inquiries, and research requests? If so, please indicate the name, phone number, and availability of that person and a back up point of contact.**

Yes. Our intention is to continue to provide the City with the finest customer service experience. With this in mind, the City will continue receiving support from your Relationship Manager, Catherine Hudson and your Account Manager, Stacy Cormier.

The City's Relationship Manager, Catherine Hudson is responsible for:

- Managing the overall relationship and promotes strategic partnership
- New product sales
- Contract negotiations
- Rate reviews/pricing
- On-site visitations
- Relationship building
- PCI and Interchange management, strategy, and performance
- Quarterly or semi-annual business reviews

# Response to City of Peoria Banking Services Request for Proposals



Response to Proposal Questionnaire

## Contact Information for the City's Merchant Services Relationship Manager

**Catherine Hudson**  
**Merchant Account Executive**  
**13 Years Experience**

*The City's expert consultant for all merchant service needs.*

**Office: 602.237.3865**  
**Email: [cathy.hudson@bankofamericamerchant.com](mailto:cathy.hudson@bankofamericamerchant.com)**

## The City's Back Up Point of Contact

The City's Account Manager, Stacey Cormier is responsible for:

- Daily account maintenance, settlement inquiries, billing inquiries, and reconciliation
- Post-implementation location or outlet adds or downloads
- Transaction and funding research
- Bank change requests
- Processing reports
- One-call resolution

## The Bank of America Advantage: A Variety of Additional Merchant Resources

Additional resources are available to assist with the various needs of the operational divisions of the City. Some of the areas who provide resources, as needed, are: Product Development, Front-end Authorization Network, Telecom, Network Planning/Engineering, Activations and Conversions, Settlement, Interchange, Compliance, Retrievals and Chargebacks. In addition, we provide the following support:

Support Teams	Functional Responsibilities
<b>Help Desk</b>	<p>Our Customer Services Help Desk will be your first line of contact for your member locations with Merchant Services. Toll-free numbers allow us to accurately and efficiently route calls through an ACD to Customer Services and Help Desk representatives trained to professionally answer questions pertaining to your specific industry or account. Our client services and terminal Help Desk are staffed 24x7x365 with knowledgeable and experienced personnel.</p> <p>We strive for first call resolution on every call. In the event an issue is not resolved on the first merchant contact, most research and resolution is completed within 72 hours with the highest priority issues impacting operations being assigned resources first. Our customer service team is focused on the customer experience</p>

# Response to City of Peoria Banking Services Request for Proposals



Response to Proposal Questionnaire

Support Teams	Functional Responsibilities
	by measuring your customer's voice through first call resolution and other continuously monitored and analyzed performance measures.
<b>Technical Help Desk</b>	Our Technical Help Desk is truly interactive, operating 24x7x365. Representatives have on line, real time access to the transaction database as transactions are processed. In addition, they have access to merchant and terminal profiles that contain the information necessary to provide technical assistance. First Data can also be the first/front line contact point for many POS partners. If the problem is determined to be external to First Data, our representatives route the caller to the next level or outside contact.
<b>Call Centers</b>	We support primary Call Centers in Omaha, NE; Hagerstown, MD; and Corpus Christi, TX. In addition, we have secondary Call Centers in Memphis, TN; and Chicago, IL; which support specific functions and call types. Some functions are outsourced as needed.

**e. How are customer declines, vendor disputes, and research inquiries handled by your institution?**

The City can contact our customer service help desk to handle all customer declines, vendor disputes and research inquiries. The standard turnaround time for a dispute resolution is 48 hours from receipt of a dispute unless additional research of the dispute requires more time.

**f. Does your institution's merchant services processing area have the ability to accept transactions from all financial institutions such as credit unions and savings and loan organizations? If no, please describe any limitations.**

Bank of America Merchant Services supports most current forms of electronic payment, such as Visa, MasterCard, American Express, Discover, JCB, Diners, Electronic Check Acceptance (ECA), debit, private label cards, stored-value Gift Cards, loyalty programs and payroll cards. We will be happy to confirm our acceptance of other forms of payment not mentioned.

**g. Does your institution provide online inquiry/reporting capabilities? If so, please provide a brief description of the process and all costs associated with this service.**

The City may continue to use ClientLine for all your online inquiries and reporting. As you know, ClientLine reporting users, especially reconciliation users, can choose from a wide range of standard data fields to personalize, filter, and sort transaction information, ad hoc, and scheduled reports. There are hundreds of reports available through ClientLine online reporting. Data can be shown based on your billing hierarchy.

# Response to City of Peoria Banking Services Request for Proposals

## Convenient Standard Reports for the City

ClientLine contains over 150 prebuilt standard reports. Listed below is a small sample of standard reports available through ClientLine:

- Transaction Summary By Store/Date/Card Type
- Transaction Summary By Store/Date
- Transaction Summary By Merchant/Date/Card Type
- Transaction Summary By Merchant/Date
- Credit Card Detail By Date
- Credit Card Detail By Store/Terminal/Date
- Credit Card Detail By Store/Date
- Debit Card Detail By Store/Date
- Debit Card Detail By Store/Terminal/Date
- Debit Card Summary By Store/Terminal/Date
- Debit Card Summary By Merchant/Date
- Debit Card Summary By Network
- Debit Card Detail By Network/Date
- Bank Deposit By Store/Day
- Bank Deposit By Day

Through an aggressive Interchange Management System, we provide consultative recommendations to our clients on solutions that help control their overall payment costs. We act as the advocate for merchants on a daily basis with the credit card associations and debit networks.

- h. Does your institution have a formal disaster recovery plan in place in the event of a systems failure or other disaster? If so, please describe the plan and indicate when it was last updated and tested? Have disaster recovery procedures ever been implemented for a real disaster? Does your institution compensate in the event of loss?**

Yes. We have an extensive formal disaster recovery plan in place in the event of a systems failure or other disaster. Plan details are provided below.

### Formal Disaster Recovery

We are committed to Business Continuity Planning (BCP) for both Work Area and for the Data Centers recoveries. For authorization systems, we have built very robust processes which include hot backup to allow almost instantaneous recovery into separate physical locations.

For the post-authorization or Settlement systems, we use an internal recovery location in Omaha, NE, known as Commsite2.

# Response to City of Peoria Banking Services Request for Proposals

## Work Area Recoveries

For the work area recoveries, departments such as Call Centers have redundancy built in between two different sites. For other high priority departments, recoveries are done in our other locations within 24 hours. These plans are proprietary documented procedures which have been in existence for over five years and are tested at least once per year depending on their prioritization classification.

The First Data division also employs five full time BCP planners and three Disaster Recovery Planners to help ensure that this process is tested and is on a regular maintenance schedule.

## Mainframe Applications

Depending on platform, merchant services are a combination of either authorizations and mainframe applications, or authorizations and Unix applications (distributed systems). Distributed systems production sites are either located in Chandler, AZ or Omaha, NE. The DR site is located at the alternate data center. Mainframe applications production sites are located in Chandler, AZ or Omaha, NE; the DR for either location is CommSite2 in Omaha, NE. Authorizations are active/active between Chandler, AZ and Omaha, NE, processed simultaneously at the primary and DR locations. In the event of the loss of either authentication site, clients transparently fail over to the alternate.

Mainframe applications and authorizations are backed up electronically to CommSite2 in Omaha, NE, and stored in a virtual tape system (VTS). Distributed Systems are backed up electronically to either to a SAN in its DR site, or backed up to tape and stored with a professional records management vendor located near, but at a safe distance from, the production location. The application's specific RTO, established in the Business Impact Analysis, also determines which backup strategy is employed. Electronic backups are typically written to the backup facility within minutes of the transaction. Tape backups are rotated offsite once per day.

## Real Disaster Implementations

There has not been a disaster recovery situation for First Data Merchant Services (north or south platforms) where the production facility was down and production had to start running from the disaster recovery site. There have been rare occasions when it was necessary to restore a production file from a disaster recovery tape. In such cases, restoration and retrieval took approximately five minutes.

Please refer to the attached Bank of America Merchant Services Agreement which includes indemnification.

## **Attachment A – Fee Schedule**

Page left intentionally blank. Attachment A and all applicable proposal pricing is provided on the following pages.

## References

Please list three (3) Municipal owner references whom Evaluation Committee may contact:

We are pleased to provide the following references of clients similar in size and scope to the City.

### Maricopa County

**Contact:** Richard Challoner

**Address:** 301 W. Jefferson Ste. 100  
Phoenix, Arizona 85003

**Phone:** 602.506.3413

**Description of Work:** Full Banking Services

### City of Goodyear

**Contact:** Theresa Simms

**Address:** 190 N. Litchfield Rod  
Goodyear, Arizona 85338

**Phone:** 623.882.7895

**Description of Work:** Full Banking Services

### City of Glendale

**Contact:** Diane Goke

**Address:** 5850 W. Glendale Ave  
Glendale, Arizona 85301

**Phone:** 623.930.2116

**Description of Work:** Full Banking Services

## **Minority and Women-Owned Business Information**

Page left intentionally blank. Completed form provided on the next page.



## QUESTIONNAIRE

Solicitation Number: **P11-0015**

**Materials Management  
Procurement**  
9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
Peoria, Arizona 85345-6560  
Phone: (623) 773-7115  
Fax: (623) 773-7118

Has your firm been certified by any jurisdiction in Arizona as a minority or woman owned business enterprise? Yes \_\_\_\_\_, No       X      .

If yes, please provide details and documentation of the certification.

## **Addendum Acknowledgement**

Page left intentionally blank. Completed form provided on the next page.



# SOLICITATION AMENDMENT

**Materials Management  
Procurement**  
9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
Peoria, Arizona 85345-6560  
Telephone: (623) 773-7115  
Fax: (623) 773-7118

Solicitation No: P11-0015  
Description: Banking Services  
Amendment No: One (1)  
Solicitation Due Date: October 20, 2010  
Solicitation Due Time: 5:00 p.m.

**Buyer: Jennifer Miller**

## RFP Questions and Clarifications

1. Will you allow certain items such as our agreements and appendix to be printed double sided? We will ensure that the main body of our response is printed on only one side of the page.

*Standard agreements and appendices may be double sided.*

2. Can the third party safekeeping institution that holds the collateral for the city's housing accounts be Wells Fargo or will Wells Fargo need to open a separate account at another institution such as the Bank of New York to hold the collateral?

*The City's pledged collateral and the City's Housing Account(s) collateral must be held separately from the servicing bank either through the establishment of another account with another institution or through the Federal Reserve.*

3. Can you provide a list of holdings in the investment portfolio?

*See attachment.*

4. Can you provide the name of the investment manager you utilize for investment management services on the portfolio?

*The City currently has an investment services management contract with First Southwest from Austin,*

Vendor hereby acknowledges receipt and agreement with the amendment.

*[Signature]*                      10/20/10  
Signature                                      Date

Dawn Haddock, SVP, Sr. Treasury  
Typed Name and Title

Bank of America, N.A.  
Company Name

201 E. Washington St.  
Address

Phoenix                      AZ                      85004  
City                                      State                      Zip

The above referenced Solicitation Amendment is hereby Executed

October 6, 2010

at Peoria, Arizona

*[Signature]*  
Jennifer Miller, Contract Administrator  
City of Peoria, Materials Management



## SOLICITATION AMENDMENT

### Materials Management Procurement

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**Buyer: Jennifer Miller**

TX.

5. Can you confirm that one custody account will be necessary to hold the main account of \$250mm? Additionally, how many custody accounts are needed to hold the \$60 million in the "various custodial bond accounts"?

*The City utilizes one main custodial account to invest its general portfolio of approximately \$250 million. Four additional custodial accounts are currently used to invest the City's segregated bond proceeds of approximately \$55 million. A new segregated custodial account will be required for each bond issue as the City issues new debt. The City also has approximately \$20 million in Vistancia Community Facilities District funds in three custodial accounts with a designated trustee. The City does not plan to move these funds from the designated trustee.*

6. What is the average annual cash sweep balance, if any?

*Funds transfers are requested by staff between the City's concentration account and the various custodial investment accounts as required. There is no sweep mechanism in place for investments.*

7. Can you confirm who would be acting in the capacity of custodian on the investment portfolio?

*The bank selected to provide general banking services will be acting in the capacity of a custodian for the investment portfolio as a separate contracted investment management services firm works with city staff to perform the investment function.*

8. Can you provide a percentage of you monthly utility payments that come in as:
- a. Match payments: dollar of check matches amount due on OCR scan line 84%
  - b. Unmatched payments: dollar of check does not match amount due on OCR scan line 1%
  - c. Multiple payments: receive either multiple checks paying against amount due on scan line or multiple invoices with one check 8%
  - d. Check only payments: payment comes in without OCR coupon 7%

9. Can you provide copy of your return envelope?

*See attachment.*

10. Can you provide us copy of the file format required to meet your AR system requirements?

*The file format utilized is a text file.*



## SOLICITATION AMENDMENT

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**Buyer: Jennifer Miller**

11. Do you currently provide a stop file?

*No.*

12. Do you currently provide account lookup file?

*No.*

13. If processing times were more advantageous would you be open to the idea of a Phoenix PO box?

*Yes, with appropriate planning.*

14. What are the various credit card processing solutions in place today?

- Terminal type including pin pad for debit: model and connection type
- Software: name, vendor and version number
- Internet gateway: name and version

*The Customer Service area, which takes in customer utility payments, utilizes the I-Nova cashiering/receipting system. Cards are either hand keyed into the cashiering system or scanned via ID Tech Mini-Mag Strip scanners. All transactions whether made in person, IVR or through the website settle through the Internet via PayPal/Verisign.*

*The Community Services Department and the Rio Vista Recreation Center, which take in customer payments for recreation, fitness and special event activities, utilizes the Class POS system for cashiering. Cards are either hand keyed or swiped via computer keyboard for input into the cashiering system. All transactions whether made in person, IVR or through the website settle through the Internet via the Visa Vitalnet system.*

*The Police Department utilizes a Verifone model #570 terminal via a Cat 5 line connection for receipt of debit card transactions.*

*The Library utilizes a Hypercom T7 Plus terminal via a Cat 5 line connection for receipt of debit card transactions. The Branch Library utilizes a Verifone Model VX570 terminal via a Cat 5 line connection for receipt of debit card transactions.*

*The Court utilizes three Verifone Omni 3200se terminals via a Cat 5 line connection for debit and credit card transactions.*



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**Buyer: Jennifer Miller**

*The software brand utilized for each of the above terminals is not available at this time.*

15. Are you accepting Electronic Checks today?

*At the present time, the City provides this option for Sales Tax customers only, but we would like to introduce this payment option in other areas of the City.*

16. Do you have a Gift Card program in place?

*No.*

17. In reference to the City using Armored Car, how much do you pay on a monthly basis? Is it reflected on your Account Analysis? We have two in-store branches within the City limits that are open until 7pm daily. We would offer this in lieu of night depository services. Would this be acceptable to the City?

*The City has a contract in place with Dunbar Armored, Inc. for armored car services. Pick up's are made Monday through Thursday at the City Hall, Court and DCSB Development Services buildings which are all located on the main campus at 8401 W. Monroe Street, Peoria, AZ. Payment for these services are made directly to Dunbar and are not included on the monthly analysis statement. Any additional services you would like to propose should be included in your response to the City's Request for Proposals.*

18. Who is the current banking service provider for the City? Are you happy with their services? And why are you going out to bid? Would you send me a copy of your most recent Account Analysis statement?

*The City has current contracts in place with JP Morgan Chase, Bank of New York Mellon, Wells Fargo, Bank of America, and Regulus Group for various banking services. The City's Procurement Code requires competitive bidding for these services.*

19. Are you looking for changes in services you currently have? Is there a banking service that has a particular interest for the City but the start up costs or implementation is seen as too costly?

*As stated, the City is legally required to periodically competitively bid for these services. All additional banking services should be included as additional services offered in the City's Request For Proposal.*



## SOLICITATION AMENDMENT

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**Buyer: Jennifer Miller**

20. How many scanners is the City using? Who is the manufacture and model? Current capacity? Does the City own or lease these? Are you looking to upgrade?

*The City is just beginning the process of implementing Check 21 scanning capabilities. At the present time, we utilize a Canon Image Formula CR25 scanner which the City purchased. Scanning and capacity capabilities for this particular scanner are not available.*

*The City currently has several locations that require the ability to electronically accept VISA, MasterCard, American Express, and Novus/Discover credit card payments and debit card payments. The City requires daily automated credit card settlement into the City's Concentration Account.*

21. Does the City accept ACH payments over their Website also for payment of Utility bills or Rec class registration, etc? Very nice Website by the way.

*The City currently offers ACH payment capabilities in several areas of the City – most require the completion of a consent form online or in person. Sales tax customers and Utility Billing customers may pay via an ACH payment. Sales Tax customers may sign up for this option online while Utility Billing customers must manually complete and sign a consent form. The Finance Department also makes ACH electronic payments to vendors after completion of a consent form. Additionally, the Community Services Department provides an ACH payment capability for its AM/PM (after school care) program after completion of a consent form.*

# Response to City of Peoria Banking Services Request for Proposals

## Disclosures

Please note that the information contained in this proposal is only valid for 90 days from the proposal due date, unless expressly reaffirmed in writing.

Some products and/or services offered within this proposal may be subject to credit approval. Please note that all corporate card services are offered by FIA Card Services, N.A., a Bank of America company.

## **Merchant Services Specific Clarifications**

The bank, as a supervised financial institution, is subject to certain laws and regulations. Also, the bank and its affiliate, Banc of America Merchant Services, LLC (BAMS) (together with bank, Bank of America Merchant Services; references to “our”, “we” and “us mean Bank of America Merchant Services) are acquirer members and processors of the Visa, MasterCard and Discover Network organizations (Card Organizations) and are subject to their rules and procedures.

Bank of America’s national bank status requires us to comply with certain laws and regulations that affect some of the terms of the merchant services provided. Our Card Organization relationships require us to enter into agreements with specific terms and conditions that are not part of the RFP. For these reasons, we include with our response our standard merchant agreement and related appendices and schedules (the documents will be referred to hereinafter as the “Agreement”). Although no modifications have been made, we are willing to meet with the City to discuss your requirements for the contract and to incorporate the requirements that are mutually agreed to by the parties. If selected, our relationship with the City will be governed by the terms negotiated by the parties and subsequently included in an agreement.

### **RFP, Standard Terms and Conditions, 3. Applicable Law**

We comply with all Federal and State laws that related to the services we are providing pursuant to this Agreement.

### **RFP, Standard Terms and Conditions, 4. Legal Remedies**

We are unable to allow the City of Peoria Procurement Act to resolve all claims and controversies arising out of the Agreement, as both parties are subject to the rules and procedures of the Card Organization Rules.

### **RFP, Standard Terms and Conditions, Standard Terms and Conditions. 12. No Delegation or Assignment**

Subject to the Card Organization Rules we may assign or transfer this Agreement without your prior written consent.

### **RFP, Standard Terms and Conditions, 15. Indemnification**

We require the indemnity provisions set forth in our Agreement.

### **RFP, Standard Terms and Conditions, 19. Right to Audit Records.**

Generally, we do not permit our customers to audit our records for confidentiality and operational reasons. We provide you with information and tools necessary to review and reconcile transactions processed by us and your behalf.

# Response to City of Peoria Banking Services Request for Proposals

## RFP, Standard Terms and Conditions, 21. Warranties

Bank of America requires that the provisions of the Merchant Agreement must govern the applicable warranties.

## RFP, Standard Terms and Conditions, 35. Funding

If awarded this RFP, we will negotiate appropriate terms regarding termination for lack of legally available funding. However, the provisions governing processing and settlement of Card transactions, all related adjustments, fees and other amounts due from you, the resolution of any related Chargebacks, disputes or other issues involving Card transactions, compromise or disclosure of Cardholder Data will continue to apply even after termination of the Agreement, until all Card transactions made prior to the termination are paid in full. In addition, we reserve the right to establish a reserve account pursuant to the terms of the Agreement.

## RFP, Standard Terms and Conditions, 51. Identity Theft Protection

We are compliant with all PCI DSS requirements.

## RFP, Standard Terms and Conditions, 55. Cancellation

If awarded this RFP we will negotiate appropriate termination for cause provisions.

**MERCHANT PROCESSING APPLICATION AND AGREEMENT (Page 1 of 5)**  
**COMPLETE SECTIONS (1-12)**

Merchant #: \_\_\_\_\_

TeleCheck Subscriber #: \_\_\_\_\_

Add'l TeleCheck Product Subscriber #: \_\_\_\_\_

Loc. \_\_\_\_\_ of \_\_\_\_\_

BMSMM1305(ia)

**(1) TELL US ABOUT YOUR BUSINESS**

BAMSMM1305(ia)

Client (Your Business LEGAL Name): \_\_\_\_\_

Store #: \_\_\_\_\_

Same as Legal Name **or** Provide DBA/Outlet Name: \_\_\_\_\_

First/Last Contact Name: \_\_\_\_\_

(No P.O. Box) Address: \_\_\_\_\_

Suite #: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Your Business Phone: \_\_\_\_\_

Same as Business Phone **or**

Merchant's Customer Service Phone: \_\_\_\_\_

Your Fax Phone: \_\_\_\_\_

Select One for

Retrieval Requests:  (02) Dedicated 24 Hour Fax  (03) No fax; mail  (05) eIDs

Your E-Mail Address (Required for IP or TeleCheck): \_\_\_\_\_

Your Customer Service E-Mail Address: \_\_\_\_\_

Website Address: \_\_\_\_\_

**(2) MC/VISA/DISCOVER® NETWORK/AMERICAN EXPRESS® ONEPOINT**

Your Total Cash and Credit Sales  
(For All Outlets)

\$ \_\_\_\_\_,000

Estimated MC/Visa Average Ticket/Sales Amount:

\$ \_\_\_\_\_

Total Annual MC/Visa Volume:  
(For All Outlets)

\$ \_\_\_\_\_,000

Estimated Discover Network Average Ticket for this Outlet:

\$ \_\_\_\_\_

Total Annual Discover Network Volume:  
(For All Outlets)

\$ \_\_\_\_\_,000

Estimated American Express Average Ticket for this Outlet:

\$ \_\_\_\_\_

Total Annual American Express Volume:  
(For All Outlets)

\$ \_\_\_\_\_,000

Annual MC/Visa Volume for this Outlet: (For Multiple Outlets Only)

\$ \_\_\_\_\_,000

Est. Discover Network Annual Sales Vol. for this Outlet: (For Multiple Outlets Only)

\$ \_\_\_\_\_,000

Est. American Express Annual Sales Vol. for this Outlet: (For Multiple Outlets Only)

\$ \_\_\_\_\_,000

**(3) TELECHECK PRODUCTS AND SERVICES**

A\* Warranty  ECA Verification

LockBox Warranty  LockBox Verification  Check Cashing Warranty  Check Cashing Verification  Other: \_\_\_\_\_

Paper Warranty  Paper Verification  COD Warranty  Mail Order Warranty

Existing Subscriber No.: \_\_\_\_\_

**(4) ENTITLEMENTS**

MC/Visa  Discover Network Full Processing (Discover Network systems and rules also process and govern JCB transactions. Elect JCB if a desired Card type.)

Global ePricing (for eCommerce merchants only)

Voyager Fleet Annual Voyager Vol.: \$ \_\_\_\_\_ Participation in Voyager Tax Exempt Program:  Yes  No (if yes, additional request form required)

WEX Full Acquiring Annual WEX Volume: \$ \_\_\_\_\_  WEX (Non-Full Svc)  MC Fleet

Non-Lic. JCB (EDC) \_\_\_\_\_ (Existing Account #) **or**  JCB License 2 8 0 9 0 0 9 9 0 1

American Express OnePoint/Full Service (EDC)  American Express ESA/Pass Through: \_\_\_\_\_ **or**  Existing SE # \_\_\_\_\_

Amer. Exp. Cap # \_\_\_\_\_ Franchise Name: \_\_\_\_\_

Check one for ESA/Pass Through:  Split Dial  Single Settle  EDC  PIP  Reverse PIP

Debit Package 7 7 7 3 6 2 0 5  EBT FNS # (XREF): \_\_\_\_\_  \*Gift Card  \*Loyalty Solutions \*A separate Setup Form is required.

**(5) PROVIDE MORE BUSINESS DATA**

State Incorpor. \_\_\_\_\_ Month/Yr. Started: \_\_\_\_\_  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 D&B #: \_\_\_\_\_ No. of Employees: \_\_\_\_\_

**NOTE:** Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations (See Part IV, Section A.3 of your Program Guide for further information.)

Name (as it appears on your income tax return)	<input type="checkbox"/> Federal Tax ID#: (as it appears on your income tax return)	<input type="checkbox"/> I certify that I am a foreign entity/nonresident alien. (If checked, please attach IRS Form W-8.)
--	---	--

Mag Swipe \_\_\_\_\_ % + Keyed Manually \_\_\_\_\_ % = 100% Product/Services You Sell: \_\_\_\_\_

POS Card Present (MAG Swipe and/or Manual Imprint) \_\_\_\_\_ % + Mail Order/Direct Marketing \_\_\_\_\_ % + Phone Order \_\_\_\_\_ % + Internet \_\_\_\_\_ % = 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: \_\_\_\_\_

Client Initials \_\_\_\_\_

**MERCHANT PROCESSING APPLICATION AND AGREEMENT (Page 2 of 5)**

DBA Name: \_\_\_\_\_ Loc. \_\_\_\_\_ of \_\_\_\_\_

BAMSM1305(ia) **(6) DESCRIBE EQUIPMENT DETAILS** BAMSM1305(ia)

Network:  (206) CARDnet\*  ( ) Nashville  ( ) Bypass  Other Specify Security Code: ( )

Rental • Purchase Cust.-Owned • Lease Installment Purchase (circle one)	QTY	IP	Equipment Type (i.e. Terminal/VAR/Internet)	Retail • Restaurant • MOTO/Internet Lodging • Supermarket • Car Rental Quick Service Restaurant • Petr	Model Code and Name	Unit Price w/o Tax	For Customer-Owned Equipment Track / Version/Serial #
R P C L I		<input type="checkbox"/>		R Re MOTO/I L S C QSR P		\$	
R P C L I		<input type="checkbox"/>		R Re MOTO/I L S C QSR P		\$	
R P C L I		<input type="checkbox"/>		R Re MOTO/I L S C QSR P		\$	

The Installment Purchase plan is a 3 month option only.

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

**Installation/Training:**

- MAG/MIG to Train  Sales Rep. to Train (Receive training via phone, 1-800-430-7162, M-F 8:00 am - 10:00 pm EST & Sat. 10:00 am - 2:00 pm EST)  
 No Merchant Training  Installer / In-House (Check training via phone, 1-800-366-1054, M-F 8:00 am - 10:00 pm EST & Sat. 10:00 am - 2:00 pm EST)

First/Last Contact Name: \_\_\_\_\_ Contact Phone #: \_\_\_\_\_ Best Time To Call: \_\_\_\_\_  am  pm

Imprinter Purchase:  Yes  No If Yes \$ \_\_\_\_\_ x Qty: \_\_\_\_\_ = \$ \_\_\_\_\_ (w/o Tax) Wireless Provider:  GPRS Cingular or  Other: \_\_\_\_\_

Check one:  Gateway Solutions  Dial Solutions  Global Gateway (FDGG)  VSAT\*\*\*  Frame  Other: \_\_\_\_\_  IC Verify Serial # \_\_\_\_\_

VAR/Internet/Software: Name: \_\_\_\_\_ (Nashville Only: Product ID # \_\_\_\_\_ Vendor ID # \_\_\_\_\_)

**NOTE: \*\*\*Requires separate agreement between VSAT Provider prior to implementation of this telecommunications protocol.**

**LEASE COMPANY: (04) First Data Global Leasing** Lease Term: \_\_\_\_\_ Months Annual Tax Handling Fee: **\$10.20**  
 Monthly Lease Charge for This Location: \$ \_\_\_\_\_ w/o taxes, late fees, or other charges that may apply. \*See Multiple Locations form for the Monthly Lease Charge for each individual location. See Lease Agreement for details. This is a **NON-CANCELABLE** lease for the full term indicated.

**(7) PROVIDE YOUR OWNER INFORMATION**

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

**(8) FLAT RATE / IC PLUS / TIER PRICING SCHEDULE**

**Start-Up Fees (One-Time Charge)**

**Non-Taxable Fees:**

Application Fee (Non-Refundable) (247) \$ \_\_\_\_\_

Reprogramming Fee (31A) \$ \_\_\_\_\_

Debit Set-up Fee (31B) \$ \_\_\_\_\_

Misc. Fee (31J) \$ \_\_\_\_\_

\*Equipment Purchase (ACH) \$ \_\_\_\_\_

Other: \_\_\_\_\_ ( ) \$ \_\_\_\_\_

Total Amount \$ \_\_\_\_\_ w/o tax

**Billed Monthly Fees (If Applicable)**

Monthly Service Charge (335) \$ \_\_\_\_\_

Minimum Processing Fee (954) \$ \_\_\_\_\_

Wireless Access Fee (399) \$ \_\_\_\_\_

FEE PER TID # OF TIDs TOTAL

\$ \_\_\_\_\_ x \_\_\_\_\_ = \$ \_\_\_\_\_

ClientLine\* (32R) \$ \_\_\_\_\_

Paper Statement Fee (323) \$ \_\_\_\_\_

Premium Equip Svc Program

Yes  No (per location) (32U) \$ \_\_\_\_\_

Other: \_\_\_\_\_ \$ \_\_\_\_\_

**PIN Debit**

**Unbundled PIN Debit**  
 (018, Key 0-590, Key 0-593) \$ \_\_\_\_\_  
 (plus the applicable network fees)

**Entitlements**

AUTHORIZATION

American Express ESA/Pass Through (10P) \$ \_\_\_\_\_

JCB (10M) \$ \_\_\_\_\_

JCB License (754) \_\_\_\_\_%

**Internet**

**Start-Up Fees**

FDGG Set-up Fee (31X)

FEE PER TID \$ \_\_\_\_\_ x # OF TIDs \_\_\_\_\_ = TOTAL \$ \_\_\_\_\_

Internet Set-up Fee (30R)

FEE PER TID \$ \_\_\_\_\_ x # OF TIDs \_\_\_\_\_ = TOTAL \$ \_\_\_\_\_

**Billed Monthly Fees**

FDGG (31Z)

FEE PER TID \$ \_\_\_\_\_ x # OF TIDs \_\_\_\_\_ = TOTAL \$ \_\_\_\_\_

Internet Service Fee (394)

FEE PER TID \$ \_\_\_\_\_ x # OF TIDs \_\_\_\_\_ = TOTAL \$ \_\_\_\_\_

Global ePricing MC/V Svc Fee (897, 898) \_\_\_\_\_%

**NOTE: Client shall be subject to any foreign currency exposure in connection with Global ePricing transactions.**

**Trans/Other Fees**

Internet/FDGG MC, V, Amex, Dis, Check (03R, 04R, 06I, 07I, 43S, L19) \$ \_\_\_\_\_

\*You will be charged the applicable State/City/Local Sales Tax.

**Compliance Service Fees**

Annual Fee (32Q) \$ \_\_\_\_\_

or

Quarterly Fee (33A, 33D, 33G, 32Q) \$ \_\_\_\_\_

Client Initials \_\_\_\_\_

# MERCHANT PROCESSING APPLICATION AND AGREEMENT (Page 3 of 5)

BAMSMM1305(i)

**(8) FLAT RATE / IC PLUS / TIER PRICING SCHEDULE (cont'd)**

BAMSMMCorpFee1305(ia)

DBA Name: \_\_\_\_\_ Pricing Type: \_\_\_\_\_ Schedule Version: \_\_\_\_\_ Loc. \_\_\_\_\_ of \_\_\_\_\_

### Discount Fees (Based On Gross Transaction Volume)

**Accept all MasterCard, Visa and Discover Network Transactions**  
(presumed, unless any selections below are checked)

**MasterCard Acceptance**

- Accept MC Credit transactions only
- Accept MC Non-PIN Debit trans. only

**Visa Acceptance**

- Accept Visa Credit transactions only
- Accept Visa Non-PIN Debit trans. only

**Discover Network Acceptance**

- Accept Discover Network Credit transactions only
- Accept Discover Network Non-PIN Debit trans. only

See Section 1.9 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 18.1 of the Program Guide).

**MC/Visa/Discover Network IC Pass Thru**  
You will be charged the applicable interchange rate from MasterCard (563), Visa (553), or Discover Network (529) plus a MasterCard Assessment Fee (273) of .11%, a Visa Assessment Fee (274) of .0925% or a Discover Network Assessment Fee (6AC) of .0925%, plus any other fees indicated on this Service Fee Schedule.

<b>Pricing Method:</b> (Select One)	<b>MC/Visa/Discover Network/American Express Discount Rate</b>	<b>MC/Visa/Discover Network 2-Tier</b>	<b>MC/Visa/Discover Network 3-Tier</b>	<b>Transaction Fees</b> (Applies to MC/Visa/Discover Network 2-Tier and MC/Visa/Discover Network 3-Tier ONLY)
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**QUALIFIED DISCOUNT RATES**

<b>MC Credit Discount Rate</b> (800)	_____ %	_____ %	_____ %	MC/Visa Qual Credit Trans Fee (001, 002, 005, 006) \$ _____	_____ %
<b>Visa Credit Discount Rate</b> (804)	_____ %	_____ %	_____ %	Discover Qual Credit Trans Fee (015, 016) \$ _____	_____ %
<b>Discover Network Credit Discount Rate</b> (170)	_____ %	_____ %	_____ %		_____ %
<b>American Express OnePoint** Credit Discount Rate</b> (Key 0-570)	_____ %				
<b>MC Non-PIN Debit Discount Rate</b> (850)	_____ %	_____ %	_____ %	MC/Visa Qual Non-PIN Debit Trans Fee (130, 131, 134, 135) \$ _____	_____ %
<b>Visa Non-PIN Debit Discount Rate</b> (854)	_____ %	_____ %	_____ %	Discover Qual Non-PIN Debit Trans Fee (787, 788) \$ _____	_____ %
<b>Discover Network Non-PIN Debit Discount Rate</b> (964)	_____ %	_____ %	_____ %		_____ %

**MID-QUALIFIED DISCOUNT RATES (Does not apply to MC / Visa / Discover 2 Tier)**

<b>MC Credit Discount Rate</b> (810)	_____ %	_____ %	_____ %	MC/Visa Mid-Qual Credit Trans Fee (611, 612, 615, 616) \$ _____	_____ %
<b>Visa Credit Discount Rate</b> (814)	_____ %	_____ %	_____ %	Discover Mid-Qual Credit Trans Fee (717, 718) \$ _____	_____ %
<b>Discover Network Credit Discount Rate</b> (990)	_____ %	_____ %	_____ %		_____ %
<b>MC Non-PIN Debit Discount Rate</b> (870)	_____ %	_____ %	_____ %	MC/Visa Mid-Qual Non-PIN Debit Trans Fee (140, 141, 144, 145) \$ _____	_____ %
<b>Visa Non-PIN Debit Discount Rate</b> (874)	_____ %	_____ %	_____ %	Discover Mid-Qual Non-PIN Debit Trans Fee (791, 792) \$ _____	_____ %
<b>Discover Network Non-PIN Debit Discount Rate</b> (968)	_____ %	_____ %	_____ %		_____ %

**NON-QUALIFIED DISCOUNT RATES**

<b>MC Credit Discount Rate</b> (820)	_____ %	_____ %	_____ %	MC/Visa Non-Qual Credit Trans Fee (621, 622, 625, 626) \$ _____	_____ %
<b>Visa Credit Discount Rate</b> (824)	_____ %	_____ %	_____ %	Discover Non-Qual Credit Trans Fee (721, 722) \$ _____	_____ %
<b>Discover Network Credit Discount Rate</b> (994)	_____ %	_____ %	_____ %		_____ %
<b>MC Non-PIN Debit Discount Rate</b> (880)	_____ %	_____ %	_____ %	MC/Visa Non-Qual Non-PIN Debit Trans Fee (150, 151, 154, 155) \$ _____	_____ %
<b>Visa Non-PIN Debit Discount Rate</b> (864)	_____ %	_____ %	_____ %	Discover Non-Qual Non-PIN Debit Trans Fee (795, 796) \$ _____	_____ %
<b>Discover Network Non-PIN Debit Discount Rate</b> (978)	_____ %	_____ %	_____ %		_____ %

<b>MC/Visa Authorization &amp; Return Transaction Fee</b> (10A, 10D) (002, 006) (131, 135)	\$ _____				\$ _____
<b>Discover Network Auth &amp; Return Transaction Fee</b> (10J, 016, 788)	\$ _____				\$ _____
<b>American Express OnePoint Transaction Fee</b>	\$ _____				

<b>Non-Qual Surcharge Fee</b> (30D, 20N) Including interchange pass-through fees, see Section 18.1 Applies to Non-qualified MC, Visa, Discover Network, American Express Credit, and/or Non-PIN Debit Transactions.	_____ %				
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\*\*Retail and Restaurant merchants will be charged an additional 0.30% for non-swiped American Express transactions.

Client Initials \_\_\_\_\_

**MERCHANT PROCESSING APPLICATION AND AGREEMENT (Page 4 of 5)**

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

Loc. \_\_\_\_\_ of \_\_\_\_\_

BAMSM1305(i)

**(8) FLAT RATE / IC PLUS / TIER PRICING SCHEDULE (cont'd)**

BAMSMCorpFee1305(a)

WEX Full Acquiring Fees	Byypass Fees	Other Fees		Other Pmt Fees
WEX Auth Fee (0D4) \$ _____	Datawire Micronode <input type="checkbox"/> Yes <input type="checkbox"/> No	Chargeback Fee (205, 725, 20L) \$ _____	Discover Ntwk Access Fee (526) \$ _____	American Express ESA/Pass Through Fees**
WEX Sales Discount (840) _____ %	Datawire Micronode Monthly Fee (354) \$ _____ (each)	MC Cross Border Fee USD (605) _____ %	Visa Zero Amt + AVS Fee (10X) \$ _____	**Amex Discount Rate _____ %
WEX Refund Discount (841) _____ %	<b>Authorization Fees</b>	US Cross Border Fee Non-USD (606) _____ %	Visa Zero Amount Fee (10Y) \$ _____	Amex Trans. Fee \$ _____
WEX Chargeback Discount (842) _____ %	Voyager (0D0, 0D1, 0DV) \$ _____	Visa International Svc Fee (22A) _____ %	Visa Misuse of Auth Fee (04G) \$ _____	<input type="checkbox"/> Amex Monthly Fee \$ _____ (Flat Fee)
WEX Chargeback Reversal Discount (843) _____ %	WEX (Non-Full Svc) (0B0, 0B1, 0BV) \$ _____	MC/V/Discover Network / American Express* Voice Auth (10B, 10E, 10K, 10Q) \$ _____	Visa Zero Floor Limit (04I) \$ _____	*Billed separately by American Express.
WEX Chargeback Fee (29H) \$ _____	<b>Other Payment Fees</b>	EBT (18E, 18I, 02X, 18H) \$ _____	Visa Partial Auth NP Trans Fee (12D) \$ _____	**Retail & Restaurant merchants will be charged an additional 0.30% for non-swiped American Express transactions.
WEX Retrieval Fee (29I) \$ _____	<b>Voyager:</b>	AVS (405, 406, 407, 408) \$ _____	Visa Int'l Acquirer Fee (22F) _____ % (for MCC codes 5962, 5966, 5967 only)	
	Sales Discount Rate (844) _____ %	Discover Network AVS (07A, 07B, 07C, 079) \$ _____	Discover International Processing Fee (22G) _____ %	
	Credit Discount Rate (845) _____ %	ACH Reject Fee (401) \$ _____	Discover Int'l Service Fee (22H) _____ %	
		Batch Settlement Fee (227) \$ _____	Other: _____ \$ _____	
		MC/V Network Access Fee (197, 198) \$ _____		

Note: See Part IV "Additional Important Information Page for Card Processing" in Section A.3 for early termination fees.

**(9) TELECHECK RATES, SERVICE FEES, AND SET UP INFORMATION**



**TeleCheck Services, Inc.**  
P.O. Box 4514  
Houston, TX 77210-4514  
1-800-366-1054

Set-Up Fees: \_\_\_\_\_  
No. of Physical Locations: \_\_\_\_\_ 1st Location: @ \_\_\_\_\_ Add'l Location(s): @ \_\_\_\_\_ ea. Total Set-Up Fee: \$ \_\_\_\_\_  
TeleCheck Monthly POS Support Fee: \$ \_\_\_\_\_ (per Terminal / Per Month. TeleCheck Equip. Only)  
Total TeleCheck Monthly POS Support Fee: \$ \_\_\_\_\_

Check ALL TeleCheck Services that apply:	<input type="checkbox"/> ECA Warranty or Paper Warranty	<input type="checkbox"/> ECA Verification or Paper Verification	<input type="checkbox"/> LockBox Warranty	<input type="checkbox"/> LockBox Verification
Average Check Size	\$ _____	\$ _____	\$ _____	\$ _____
Total Monthly Check / Call Volume	\$ _____	\$ _____	\$ _____	\$ _____
Inquiry Rate	_____ %	_____ %	_____ %	_____ %
Transaction Fee	\$ _____	\$ _____	\$ _____	\$ _____
Advantage Billing	\$ _____	\$ _____	\$ _____	\$ _____
One Rate	\$ _____	\$ _____	\$ _____	\$ _____
Monthly Minimum Fee	\$ _____	\$ _____	\$ _____	\$ _____
Customer Request Operator Call / Voice Authorization Fee	\$ _____	\$ _____	\$ _____	\$ _____
Monthly Processing / Statement Fee	\$ _____	\$ _____	\$ _____	\$ _____
December Risk Surcharge	_____ %	_____ %	_____ %	_____ %
Warranty Maximum	<input type="checkbox"/> Face Amt. of Authorized Item or \$ _____	<input type="checkbox"/> Face Amt. of Authorized Item or \$ _____	<input type="checkbox"/> Face Amt. of Authorized Item or \$ _____	<input type="checkbox"/> Face Amt. of Authorized Item or \$ _____
MICR Floor Limit	_____	_____	_____	_____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____

Check ALL TeleCheck Services that apply:	<input type="checkbox"/> COD Warranty	<input type="checkbox"/> Mail Order Warranty	<input type="checkbox"/> Check Cashing Warranty	<input type="checkbox"/> Check Cashing Verification	<input type="checkbox"/> Other
Average Check Size	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Total Monthly Check / Call Volume	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Inquiry Rate	_____ %	_____ %	_____ %	_____ %	_____ %
Transaction Fee	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Advantage Billing	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
One Rate	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Monthly Minimum Fee	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Customer Request Operator Call / Voice Authorization Fee	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Monthly Processing / Statement Fee	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
December Risk Surcharge	_____ %	_____ %	_____ %	_____ %	_____ %
Warranty Maximum	<input type="checkbox"/> Face Amt. of Authorized Item or \$ _____	<input type="checkbox"/> Face Amt. of Authorized Item or \$ _____	See Section 2.1(a) of Check Cashing Warranty Addendum	<input type="checkbox"/> Face Amt. of Authorized Item or \$ _____	<input type="checkbox"/> Face Amt. of Authorized Item or \$ _____
MICR Floor Limit	_____	_____	_____	_____	_____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

See TeleCheck Agreement for definitions and any additional fees.

Note: See Section 1.38 "Damages" of the TeleCheck Agreement for early termination fees/liquidated damages.

Client Initials \_\_\_\_\_

**MERCHANT PROCESSING APPLICATION AND AGREEMENT (Page 5 of 5)**

DBA Name: \_\_\_\_\_ Loc. \_\_\_\_\_ of \_\_\_\_\_

**(9) TELECHECK RATES, SERVICE FEES, AND SET UP INFORMATION (cont'd)**

**TELECHECK BILL TO INFORMATION**

Your Head Office/Bill To Name:		First/Last Contact Name:			Phone Number:
Address:	Suite #	City:	State:	Zip:	Your Fax Phone:

TeleCheck Auto Settle Time: \_\_\_\_\_ hh ET (Must be at least 1 hour after Card Auto Settle Time)

**TELECHECK REPORT INFORMATION**

**Funding Report:**  Bill To  Location **Delivery Method:**  E-Mail  Fax  US Mail **Frequency:**  \$ \_\_\_\_\_ Monthly  \$ \_\_\_\_\_ Weekly  \$ \_\_\_\_\_ Daily

Contact Name: \_\_\_\_\_ Contact Telephone #: \_\_\_\_\_

Report Fax #: \_\_\_\_\_ Report E-Mail Address: \_\_\_\_\_

Batch Closing Options: \_\_\_\_\_  am  pm *Must close by 11:30 pm CST* **Format:**  CSV (E-Mail only)  PDF

**TELECHECK BANKING INFORMATION**

**Funding:**  Per Bill To  Per Location **Fund By:**  Product  Terminal  Location  Agent  Batch  Day

<b>ACH Credits to TeleCheck by Subscriber (For Invoice Payment):</b>	ABA Transit #: _____	Account #: _____	<input type="checkbox"/> Ck
<input type="checkbox"/> Same as above or		<input type="checkbox"/> Same as above or	
<b>Debits/Credits (Settlement) to Subscriber by TeleCheck and/or Franking Information:</b>	ABA Transit #: _____	Account #: _____	<input type="checkbox"/> Ck

**Special Instructions which are part of this Agreement:** \_\_\_\_\_

**Please note on separate funding check or bank letterhead the designated TeleCheck Service. A separate funding check or bank letterhead/logo for TeleCheck Services is NOT required UNLESS Merchant will be using different banking account(s) for TeleCheck Services.**

**(10) AGREEMENT APPROVAL**

**APPLICABLE IF MERCHANT ACCEPTS AMERICAN EXPRESS® CARDS:** By signing below, I represent that I have read and am authorized to sign and submit this application for the above entity which agrees to be bound by the American Express® Card Acceptance Agreement ("Agreement"), and that all information provided herein is true, complete and accurate. I authorize First Data Merchant Services Corporation ("FDMS"), American Express Travel Related Services Company, Inc. ("AXP") and AXP's agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies, and disclose such information to their agent, subcontractors, Affiliates and other parties for any purpose permitted by law. I authorize and direct FDMS and AXP and AXP's agents and Affiliates to inform me directly, or through the entity above, of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize AXP to use the reports from consumer reporting agencies for marketing and administrative purposes.

I understand that upon AXP's approval of this application, the entity will be sent the Agreement and materials welcoming it, either to AXP's program for FDMS to perform services for AXP or in AXP's standard Card acceptance program, which has different servicing terms (e.g., different speeds of pay). I understand that if the entity does not qualify for the FDMS servicing program, that the entity may be enrolled in AXP's standard Card acceptance program, and the entity may terminate the Agreement. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to do so, the entity agrees to be bound by the Agreement.

**APPLICABLE TO ALL MERCHANTS:** By signing below, each of the undersigned represents that they have read and are authorized to sign and submit this Merchant Processing Application and Agreement (Merchant Processing Application) for the above named Client ("Client") and that all information provided herein is true, complete, and accurate. Client acknowledges having received and read a copy of (i) the Interchange Qualification Matrix, (ii) the Non-Qualified Rate Schedule (specific to Client's industry), Interchange Rate Schedule or Qualification Tier Rate Schedule, as applicable to Client's Pricing Method, and a Confirmation Page, and (iv) the Merchant Processing Application, consisting of Sections 1-12, (together, the Merchant Processing Application, its attachments and schedules and Parts I and IV of the Program Guide are referred to in this Section 10 as the "Merchant Agreement"), as modified from time to time in accordance with the applicable provisions of the Program Guide, 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. This signature page also serves as the signature page to the Equipment Lease Agreement and the American Express® Card Acceptance Agreement (for purposes of this paragraph, the "AXP Agreement"), which appear in Part II of the Program Guide, and agrees to be bound by the "Additional Agreements", if selected; the Client being the "Lessee" for purposes of such Equipment Lease Agreement and/or "You" and "Your" for the purposes of the AXP Agreement and TeleCheck Services Agreement.

By signing below, each of the undersigned authorizes Banc of America Merchant Services, LLC ("Processor") and Bank of America, N.A. ("Bank") (together, Processor and Bank are "Servicers" and also referred to as "our," "us" and "we" in this Section 10) to (a) request and obtain from consumer reporting agencies, individual and business credit reports (collectively, "Credit Reports"), in connection with the approval of this Merchant Processing Application and any maintenance, updating, renewal or extension of the Merchant Agreement (if this Merchant Processing Application is approved), and (b) exchange Credit Reports and any other information about each of the undersigned personally with First Data Merchant Services Corporation, TeleCheck Services, Inc. and any other service providers, to the extent such parties provide services that Client has selected on this Merchant Processing Application (or as hereafter elected by Client). Each of the undersigned furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all individual and business credit financial information to us. Each of the undersigned further authorizes us to disclose any information obtained from any source in connection with this Merchant Processing Application, including Credit Reports, to any governmental, administrative or regulatory entity, upon request, or our respective vendors and affiliates, as necessary to provide the products and services elected under the Merchant Agreement, or to comply with applicable law or order, including, without limitation, the USA PATRIOT Act. It is our practice to obtain certain information in order to verify your identity while processing your Merchant Processing Application, as described in the USA PATRIOT Act.

**THIS MERCHANT PROCESSING APPLICATION AND AGREEMENT HAS BEEN EXECUTED ON BEHALF OF AND BY THE AUTHORIZED MANAGEMENT OF CLIENT AS OF THE EFFECTIVE DATE.**

**Client's Business Principal:** (Please sign below)

<b>X</b> Signature _____	<b>(PROCESSOR):</b> Banc of America Merchant Services, LLC
Print Name _____ Date _____	<b>(BANK):</b> Bank of America, N.A.
Title: <input type="checkbox"/> Pres. <input type="checkbox"/> V.P. <input type="checkbox"/> Member L.L.C. <input type="checkbox"/> Owner <input type="checkbox"/> Partner <input type="checkbox"/> Other: _____	<b>X</b> Signature _____
<b>X</b> Signature _____	Approved TeleCheck Manager _____ Date: _____
Print Name _____ Date _____	
Title: <input type="checkbox"/> Pres. <input type="checkbox"/> V.P. <input type="checkbox"/> Member L.L.C. <input type="checkbox"/> Owner <input type="checkbox"/> Partner <input type="checkbox"/> Other: _____	<b>IF TELECHECK SERVICES HAVE BEEN SELECTED, PLEASE SIGN BELOW:</b>
	<b>X</b> Signature _____

**(11) TELECHECK ACH AUTHORIZATION**

ACH Debit and Credit Authorization: Client authorizes its Financial Institution to pay and charge to its account by electronic fund transfer the amount due TeleCheck under this Agreement and to accept all credits and debits made to its account by electronic fund transfer as a result of TeleCheck's services. This authorization shall remain in effect until thirty days after revoked in writing.

**X** Signature \_\_\_\_\_ Print Name/Title: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Signature on TeleCheck Account for ACH

**(12) PERSONAL GUARANTY**

I hereby change for Banc of America Merchant Services, LLC, Bank of America, N.A., and American Express' acceptance of, as applicable, the Agreement and/or the Equipment Lease Agreement and/or American Express Card Acceptance Agreement, the undersigned unconditionally guarantees 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 Bank of America, N.A., Banc of America Merchant Services, LLC, and American Express are relying upon this Guaranty in entering into, as applicable, the Agreement, the Equipment Lease Agreement, and American Express Card Acceptance Agreement.

**Signature (Please sign below):** \_\_\_\_\_ **Signature (Please sign below):** \_\_\_\_\_

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

**Bank of America**



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**Merchant Services**

## 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,<sup>®</sup> MasterCard<sup>®</sup> and Discover<sup>®</sup> Network Credit Card and Non-PIN Debit Card payments. The Program Guide also includes provisions applicable to American Express<sup>®</sup> and Other Services. Other Services include all services related to: JCB<sup>®</sup> Card, PIN Debit Card, and Electronic Benefits Transfer payments, TeleCheck<sup>®</sup> check services, Equipment purchase and rental, Gift Card Services, and acceptance of Cards from other Non-Bank Card Organizations such as Voyager Fleet Systems, Inc. ("Voyager"), Wright Express Corporation and Wright Express Financial Services Corporation (collectively, "WEX"). Your Merchant Processing Application will indicate the types of payments and Services you have elected to accept.

**This Program Guide, your Merchant Processing Application and the schedules thereto (collectively, the "Agreement"), including, without limitation, the Interchange Qualification Matrix and one of the following as applicable to your pricing method as set forth in the Merchant Processing Application: Interchange Rate Schedule, Non-Qualified Rate Schedule (specific to your industry), or Qualification Tier Rate Schedule, contains the terms and conditions under which Processor and/or Bank and/or other third parties, such as TeleCheck for check services, will provide services to you. We will not accept any alterations or strike-outs to the Program Guide and, if made, any such alterations or strike-outs shall not apply. Please read this booklet completely as it contains important information.**

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

### IMPORTANT INFORMATION ABOUT BANK'S RESPONSIBILITIES:

**Discover Network Card Transactions, American Express Card Transactions and Other Services are not provided to you by Bank, but are provided by Processor and/or third parties.**

**The provisions of this Agreement regarding Discover Network Card Transactions, American Express Card Transactions and Other 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 Network Card Transactions, American Express Card Transactions and Other Services, and Bank is not responsible, and shall have no liability, to you in any way with respect to Discover Network Card Transactions, American Express Card Transactions and Other 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 Network") 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 Network transactions) that acquire them from merchants such as yourself 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 and assessments for submitting transactions into their systems. A substantial portion of the Discount Rate or Transaction Fees that you pay will go toward these fees 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, which are part of this Agreement. The Card Organization Rules and applicable laws 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 capitalized terms used in the Agreement, including this Preface (if not defined above).

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## PART I: CARD SERVICES

### A. OPERATING PROCEDURES

This part of the Program Guide (through Section 13) 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.

Processor 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®, and Discover® Network Cards carried by your customers, as well as to the independent Card Issuers of American Express®, Optima® and JCB®. The Operating Procedures contained in this part focus primarily on certain of the MasterCard, Visa, and Discover Network Card Organizations Rules, and seek to provide you with the principles for a sound Card program; however, you should consult the Card Organization Rules for complete information and to ensure full compliance with them. They 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 and Discover Network, 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. The Card Organization Rules are made a part of this Part I of the Program Guide by this reference to them, and reference to this Agreement or the Program Guide shall be deemed to include the Card Organization Rules, unless stated otherwise. Capitalized terms not defined in this Agreement are defined in the Card Organization Rules.

#### I. MasterCard, Visa and Discover Network Acceptance

**1.1. Card Descriptions.** At the point of sale, the Card must be carefully examined to determine whether it is a legitimate and valid Card. The name of the Card (e.g., Visa, MasterCard or Discover Network) should appear in bold letters on the Card. For all MasterCard and Visa Cards and for some Discover Network Cards, the Issuer (e.g., XYZ Bank, etc.) should also appear in bold letters on the Card. The following is a description of the authorized Visa, MasterCard and Discover Network Card designs:

**Visa:** Visa Cards have the Visa symbol on the right-hand side of the Card. Above the Visa symbol is the 3-dimensional hologram of the Visa Dove design. The expiration date must be followed by one space and may contain the symbol "V." Visa Cards contain a 16-digit account number embossed across the middle of the Cards and the first digit is always a four (4). In addition, Visa Cards have the first four digits of the account number printed directly below the embossed number. You must always check these numbers carefully to ensure that they are the same. Beginning January 2006, Visa has a new Card design which differs significantly from the previous description. You are required to familiarize yourself with the new design by consulting the document entitled "Card Acceptance and Chargeback Management Guidelines for Visa Merchants" (VRM 08. 12.16). You may download the document free of charge from Visa's website at <http://www.visa.com/merchant> or order a hardcopy to be mailed to you for a nominal charge by telephoning Visa Fulfillment at 800-VISA-311. Both the old and new Visa Card designs will be circulating concurrently in the marketplace through the year 2010. Only Visa Cards fitting the old or new descriptions may be accepted.

Beginning May 2008, Visa issued a new card design for un-embossed Visa cards. Unlike embossed Visa cards with raised numbers, letters and symbols, the un-embossed card has a smooth, flat surface. Because of the un-embossed cards flat surface, it cannot be used for transactions that require a card imprint. Un-embossed cards can only be used by merchants who process with an electronic Point Of Sale Terminal. As a result, the bottom of the card bears the following note, "Electronic Use Only."

**MasterCard:** MasterCard Cards are issued under the following names: MasterCard, EuroCard, Access, Union, Million and Diamond. The MasterCard symbol appears on the front or back of the Card. MasterCard and the Globe designs appear in a 3-dimensional hologram above the symbol. In addition, the words Classic, Preferred, Gold or Business may appear. MasterCard account numbers are sixteen (16) digits, and the first digit is always a five (5). The first four digits of the account must be printed directly below the embossed number. Only MasterCard Cards fitting this description may be accepted. Pursuant to an alliance with MasterCard, Diners Club Cards issued in the United States and Canada are being re-issued with a sixteen (16) digit account number the first two digits of which are now fifty-five (55) and with the MasterCard Mark and hologram on the front of the Diners Club Card. These Diners Club Cards shall be accepted and processed in the same manner as MasterCard transactions. Diners Club International Cards that are issued outside the U.S. and Canada may be re-issued with the MasterCard Mark on the back of the Card. These Diners Club Cards will have account numbers that are fourteen (14) digits, the first two digits of which are thirty-six (36). When these Diners Club Cards are used within the United States, Canada and other designated areas, they will be processed as MasterCard transactions. Beginning January 2006, MasterCard has a new Card design significantly different from the previous description. You are required to familiarize yourself with the new design by consulting a document "MasterCard Card Identification Features". You may download the document free of charge from MasterCard's website at <http://www.mastercardmerchant.com>. Both the old and new MasterCard Card designs will

be circulating concurrently in the marketplace through the year 2010. Only MasterCard Cards fitting the old or new descriptions may be accepted.

**Discover Network:** All valid standard rectangular plastic Cards bearing the Discover Network Acceptance Mark or the Discover/NOVUS Acceptance Mark, as indicated below, include the following common characteristics and distinctive features.

- Card Numbers comprising at least 16 digits are displayed on the front of the Card.
- Card Numbers are clear and uniform in size and spacing within groupings.
- Expiration date, if present, appears in mm/yy format and indicates the last month in which the Card is valid.
- **Cards manufactured before October 3, 2008** display the Discover Network three-dimensional hologram, bearing a distinct circular shape and images of a globe pierced by an arrow, water, and stars on a repetitive pattern background (the "Discover Network Hologram") on the front of the Card.
- The Discover Network Hologram reflects light and appears to move as the Card is rotated.
- All Cards display a magnetic stripe on the reverse side of the Card. **Cards manufactured on or after October 3, 2008** feature a three-dimensional holographic design that is incorporated into the magnetic stripe. A series of distinct circular shapes will be visible across the length of the magnetic stripe, with blue glows between each shape. When the Card is rotated, the holographic design will reflect light and there will be apparent movement and color switching within the circular shape.
- Cards displaying either the Discover Network Hologram or the holographic magnetic stripe are valid after the effective dates indicated above, with the Discover Network Hologram eventually replaced by the holographic magnetic stripe for new Cards. Although both the Discover Network Hologram and the holographic magnetic stripe will each appear on Cards, valid Cards will not display both designs.
- Depending on the issuance date of the Card, the word "DISCOVER" or "DISCOVER NETWORK" will appear in ultraviolet ink on the front of the Card when it is held under an ultraviolet light.
- An underprint of "void" on the signature panel becomes visible if erasure of the signature is attempted.
- The Card Number or the portion of the Card Number displayed on the signature panel on the back of the Card should match the number displayed on the front of the Card and appear in reverse indent printing.
- **CID must be printed in a separate box to the right of the signature panel** on the back of the Card.
- An overprint on the signature panel reads "Discover Network." On some cards, the overprint may display the name of the Card (i.e., Discover, Discover 2GO®, Discover Platinum).
- A Discover Network Zip Indicator may appear on the back of a standard rectangular plastic Card indicating the Card can be used to conduct Contactless Card Transactions.

**NOTE:** Valid Cards may not always be rectangular in shape (e.g., Discover 2GO® Cards) and certain valid Contactless Payment Devices approved by us for use in accessing Card Accounts (e.g., radio frequency (RF) enabled Cards, key fobs, and Mobile Commerce Devices) and to conduct Contactless Card Transactions may not display the features described above.

#### Prepaid Gift Card Security Features

The features described below are found on Prepaid Gift Cards; however, the placement of these features may vary:

- Depending on the issue date of the Card, the Discover Network Acceptance Mark or the Discover/NOVUS Acceptance Mark will appear on the front or back of the Card.
- The embossed, stylized "D" appears on the front of the Card.
- **A valid expiration date is embossed on the front of the Card.**
- The front of the Card may display "Temporary Card," "Prepaid Card," "Gift Card," or "Electronic Use Only."

**NOTE:** Prepaid Gift Cards accepted at a limited, specific list of Merchants are not required to include the Discover Network Hologram and may, but are not required to, bear the Discover Network Acceptance Mark or the Discover/NOVUS Acceptance Mark on the Card.

- You are required to remain familiar with Discover Card designs and may reference the document "Discover Network Security Features." You may download the document free of charge from Discover Network's website at <http://www.discovernetwork.com/fraudsecurity/fraud.html>.

**1.2. Effective/Expiration Dates.** At the point of sale, the Card should be carefully examined for the effective (valid from) (if present) and expiration (valid thru) dates which are located on the face of the Card. The sale date must fall on or between these dates. Do not accept a Card prior to the effective date or after the expiration date. If the Card has expired, you cannot accept it for a Card sale unless you have verified through your Authorization Center that the Card is in good standing, otherwise, you are subject to a Chargeback and could be debited for the transaction.

**1.3. Valid Signature.** Check the back of the Card. Make sure that the signature panel has not been disfigured or tampered with in any fashion (an altered signature panel may appear discolored, glued or painted, or show erasure marks on the surface). The signature on the back of the Card must compare favorably with the signature on the Sales Draft. The

Sales Draft must be signed by the Card presenter in the presence of your authorized representative (unless a Card Not Present Sale) and in the same format as the signature panel on the Card; e.g., Harry E. Jones should not be signed H.E. Jones. The signature panels of Visa, MasterCard and Discover Network Cards now have a 3-digit number (CVV2/CVC2/CID) printed on the panel known as the Card Validation Code.

**Visa, MasterCard and Discover Network:** If the signature panel on the Card is blank, in addition to requesting an Authorization, you must do all the following:

Review positive identification bearing the Cardholder's signature (such as a passport or driver's license that has not expired) to validate the Cardholder's identity.

- Indicate the positive identification, including any serial number and expiration date, on the Credit Draft or Sales Draft; provided that you must effect PAN Truncation, and must not include the expiration date, on the copy of the Sales Draft or Credit Draft that you provide to the Cardholder.
- Require the Cardholder to sign the signature panel of the Card prior to completing the Transaction.

**1.4. Users Other Than Cardholders.** A Cardholder may not authorize another individual to use his/her Card for purchases. Be sure the signature on the Card matches with the one on the Sales Draft. Furthermore, any Card having two signatures on the back panel is invalid and any sale made with this Card can result in a Chargeback. For Cards bearing a photograph of the Cardholder, ensure that the Cardholder appears to be the person depicted in the picture which appears on the Card. If you have any questions, call the Voice Authorization Center and request to speak to a Code 10 operator.

**1.5. Special Terms.** If you limit refund/exchange terms or impose other specific conditions for Card sales, the words "No Exchange, No Refund," etc. must be clearly printed (in 1/4" letters) on the Sales Draft near or above the Cardholder's signature. The Cardholder's copy, as well as your copy, must clearly show this information.

During a liquidation and/or closure of any of your outlets, locations and/or businesses, you must post signs clearly visible to customers stating that "All Sales Are Final," and stamp the Sales Draft with a notice that "All Sales Are Final."

Generally, do not give cash, check or in-store Credit refunds for Card sales. Visa allows for the following exclusions: a cash refund to the Cardholder for a small ticket transaction or a no signature required transaction, a cash refund, Credit, or other appropriate form of Credit to the recipient of a gift purchased as a Mail/Phone Order transaction, or a cash refund or in-store Credit for a Visa prepaid card transaction if the Cardholder states that the Visa prepaid card has been discarded. **Note:** A disclosure does not eliminate your liability for a Chargeback. Consumer protection laws and Card Organization Rules frequently allow the Cardholder to dispute these items notwithstanding such disclosures.

**Delayed Delivery or Deposit Balance.** In a delayed delivery transaction where the Cardholder makes a deposit toward the full amount of the sale, you should execute two separate Sales Drafts (each completed fully as described in Section 3.1), the first for a deposit and the second for payment of the balance upon delivery of the merchandise or the performance of the services.

**Visa:** For Visa transactions, you must obtain an authorization if the cumulative total of both Sales Drafts exceeds the floor limit. You must obtain an authorization for each Sales Draft on each transaction date. You must assign the separate authorization numbers to each Sales Draft, respectively. You must note on such Sales Drafts the words "delayed delivery," "deposit" or "balance," as appropriate, and the authorization dates and approval codes.

**MasterCard:** For MasterCard transactions, you must obtain one authorization. You must note on both Sales Drafts the words "delayed delivery," "deposit" or "balance," as appropriate, and the authorization date and approval code.

**Discover Network:** For Discover Network transactions, you must label one Sales Draft "deposit" and the other "balance," as appropriate. You must obtain the "deposit" authorization before submitting the sales data for the "deposit" or the "balance" to us. If delivery of the merchandise or service purchased will occur more than thirty (30) calendar days after the "deposit" authorization, you must obtain a subsequent authorization for the "balance." In addition, you must complete Address Verification at the time of the "balance" authorization, and you must obtain proof of delivery upon delivery of the services/merchandise purchased. You may not submit sales data relating to the "balance" to us for processing until the merchandise/service purchased has been completely delivered.

**NOTE:** For MasterCard and Visa transactions, if delivery is more than twenty-five (25) days after the original transaction date and the initial authorization request (as opposed to the thirty (30) days in Discover Network transactions), you should reauthorize the unprocessed portion of the transaction prior to delivery. If the transaction is declined, contact the Cardholder and request another form of payment. For example: On January 1, a Cardholder orders \$2,200 worth of furniture and you receive an authorization for the full amount; however, only a \$200 deposit is processed. The above procedures are followed, with a \$2,000 balance remaining on the furniture; the \$2,000 transaction balance should be reauthorized.

**1.7. Recurring Transaction and Preauthorized Order Regulations.** If you process recurring transactions and charge a Cardholder's account periodically for recurring goods or services (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees, etc.), the Cardholder shall complete and deliver to you a Cardholder approval for such goods or services to be charged to his account. The approval must at least specify the Cardholder's name, address, account number and expiration date, the transaction amounts, the timing or frequency of recurring charges and the duration of time for which

the Cardholder's permission is granted. For Discover Network transactions, the approval must also include the total amount of recurring charges to be billed to the Cardholder's account, including taxes and tips and your Merchant Number.

If the recurring transaction is renewed, the Cardholder must complete and deliver to you a subsequent written request for the continuation of such goods or services to be charged to the Cardholder's account. You may not complete a recurring transaction after receiving a cancellation notice from the Cardholder or Issuer or after a request for authorization has been denied.

If we or you have terminated this Agreement, you may not submit authorization requests or sales data for recurring transactions that are due after the termination date of this Agreement.

You must obtain an authorization for each transaction and write "Recurring Transaction" (or "P.O." for MasterCard transactions) on the Sales Draft in lieu of the Cardholder's signature. A positive authorization response for one recurring transaction Card Sale is not a guarantee that any future recurring transaction authorization request will be approved or paid.

For all recurring transactions, you should submit the 3-digit Card Validation Code number with the first authorization request, but not subsequent authorization requests. Discover Network Card Organization Rules specifically require that you follow this Card Validation Code procedure for Discover Network recurring transactions.

Also, for Discover Network recurring transactions, the Sales Draft must include a general description of the transaction, your merchant name and a toll-free customer service number that the Cardholder may call to obtain customer assistance from you or to cancel the written approval for the recurring transaction.

All recurring transactions or preauthorized orders may not include partial payments for goods or services purchased in a single transaction.

You may not impose a finance charge in connection with a Recurring Transaction or Preauthorized Order.

If you process recurring payment transactions, the Recurring Payment Indicator must be included in each authorization request. Penalties can be assessed by the Card Organizations for failure to use the Recurring Payment Indicator.

**1.8. Requirements.** The following rules are requirements strictly enforced by Visa, MasterCard and Discover Network:

- You cannot establish minimum or maximum amounts as a condition for accepting a Card, except that for Discover Network transactions, you may limit the maximum amount a Discover Network Cardholder may spend if, and only if, you have not received a positive authorization response from the Issuer
- You cannot impose a surcharge or fee for accepting a Card.
- You cannot establish any special conditions for accepting a Card.
- You cannot establish procedures that discourage, favor or discriminate against the use of any particular Card. However, you may choose not to accept either U.S. issued Debit Cards or U.S. issued Credit Cards under the terms described in Section 1.9.
- You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address; or driver's license number) unless instructed by the Authorization Center. The exception to this is for a mail/telephone/Internet order or delivery-required transaction, and zip code for a card-present key-entered transaction in order to obtain an Address Verification. 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.
- You cannot submit a transaction or sale that has been previously charged back.
- 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.
- You cannot submit a transaction or sale to cover a dishonored check.
- 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.
- 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.

**1.9. Card Acceptance.** If you have indicated either in the Application or by registering with us at least thirty (30) days in advance that, as between Non-PIN Debit Card transactions and Credit Card transactions, you will limit your acceptance to either (i) only accept Non-PIN Debit transactions; or (ii) only accept Credit Card transactions, then the following terms in this Section 1.9 will apply:

**1.9.1.** 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 Network so long as you accept any type of MasterCard, Visa or Discover Network branded Card.

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

**1.9.3. Reserved.**

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

**1.9.5.** 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 28 shall apply to such services.

**1.10. 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 1.10 is deemed a cash advance, and cash advances are prohibited.

**1.11. Merchants in the Lodging Industry.**

**1.11.1. Generally.** There are additional rules and requirements that apply to merchants in the lodging industry for practices including, but not limited to, Guaranteed Reservations and charges for no shows, advance deposits, overbookings, and priority checkout. If you are a merchant in the lodging industry, **you must contact us for these additional rules and requirements. Failure to do so could result in additional charges or termination of this Agreement.**

**1.11.2. Lodging Service Programs.** In the event you are a lodging merchant and wish to participate in Visa's and/or MasterCard's lodging services programs, please contact your sales representative or relationship manager for details and the appropriate MasterCard and Visa requirements.

**1.12. Customer Activated Terminals and Self-Service Terminals.** Prior to conducting Customer Activated Terminal ("CAT") transactions or Self-Service Terminal transactions **you must contact us for approval and further instructions, rules and requirements that apply to CAT and Self-Service Terminal transactions. Failure to do so could result in additional charges or termination of this Agreement.**

**1.13. Displays and Advertising.** You must prominently display appropriate Visa, MasterCard, Discover Network and, if applicable, other Card Organization decals and program Marks at each of your locations, in catalogs, on websites and on other promotional materials as required by Card Organization Rules. You may not indicate that Visa, MasterCard, Discover Network or any other Card Organization endorses your goods or services.

Your right to use the program Marks of the Card Organizations terminates upon the earlier of (i) if and when your right to accept the Cards of the respective Card Organization terminates (e.g., if your right to accept Discover Network Cards terminates, you are no longer permitted to use Discover Network Program Marks), (ii) delivery of notice by us or the respective Card Organization to you of the termination of the right to use the Mark(s) for that Card Organization, or (iii) termination of the license to use the program Marks by the respective Card Organization to us.

**1.13.1. Discover Network Sublicense to Use Discover Network Program Marks.** You are prohibited from using the Discover Network Program Marks, as defined below, other than as expressly authorized in writing by us. "Discover Network Program Marks" means the brands, emblems, trademarks and/or logos that identify Discover Network Cards, including, without limitation, Diners Club International Cards. Additionally, you shall not use the Discover Network Program Marks other than as a part of the display of decals, signage, advertising and other forms depicting the Discover Network Program Marks that are provided to you by us or otherwise approved in advance in writing by us.

You may use the Discover Network Program Marks only to promote the services covered by the Discover Network Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by us in writing.

You shall not use the Discover Network Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Network Program Marks. You recognize that you have no ownership rights in the Discover Network Program Marks. You shall not assign to any Person any of the rights to use the Program Marks.

**1.14. 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.

**1.15. Discover Network Cash Over Transactions.** Cash Over transactions are not available for MasterCard or Visa transactions. You may issue Cash Over in connection with a Discover Network Card sale, provided that you comply with the provisions of this Agreement, including the following requirements:

- You must deliver to us a single authorization request for the aggregate total of goods/services purchase amount and the Cash Over amount of the Card sale. You may not submit separate authorization requests for the purchase amount and the Cash Over amount.
- The Sales Draft must include both the purchase amount and the Cash Over amount, and you may not use separate Sales Drafts for the purchase amount and Cash Over amount.
- No minimum purchase is required for you to offer Cash Over to a Discover Network Cardholder, provided that some portion of the total Card sale must be attributable to the purchase of goods or services.
- The maximum amount of cash that you may issue as Cash Over is \$100.00.

**(Cash Over may not be available in certain markets. Contact us for further information).**

**1.16. 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. Suspect Transaction

If the appearance of the Card being presented or the behavior of the person presenting the Card is suspicious in nature, you must immediately call the Voice Authorization Center and ask to speak to a Code 10 operator. Answer all their questions and follow their instructions. While not proof that a transaction is fraudulent, the following are some suggestions to assist you in preventing fraudulent transactions that could result in a Chargeback:

**Ask yourself, does the Customer:**

- appear nervous/agitated/hurried?
- appear to be making indiscriminate purchases (e.g., does not care how much an item costs, the size, etc.)?
- make purchases substantially greater than your usual customer (e.g., your average transaction is \$60, but this transaction is for \$360)?
- insist on taking the merchandise immediately (e.g., no matter how difficult it is to handle, is not interested in free delivery, alterations, etc.)?
- appear to be purchasing an unusual amount of expensive items?
- take an unusual amount of time to sign the Sales Draft, or look at the back of the Card as he signs?
- talk fast or carry on a conversation to distract you from checking the signature?
- take the Card from a pocket instead of a wallet?
- repeatedly come back, in a short amount of time, to make additional purchases?
- cause an unusual, sudden increase in the number and average sales transactions over a one- to three-day period?
- tell you he has been having some problems with his Issuer and request that you call a number (that he provides) for a "special" handling or authorization?

**Does the Card:**

- have characters the same size, height, style and all within alignment?
- appear to be re-embossed (the original numbers or letters may be detected on the back of the Card)?
- have a damaged hologram?
- have a Magnetic Stripe on the back on the Card?
- have an altered signature panel (e.g., appear discolored, glued or painted, or show erasure marks on the surface)?
- have "valid from" (effective) and "valid thru" (expiration) dates consistent with the sale date

If you use an electronic terminal and swipe the Card, make sure the account number displayed on the terminal and/or the Sales Draft matches the number on the Card. If you cannot or do not verify the account number and accept the sale, you are subject to a Chargeback and could be debited for the amount of the transaction. **IF THE NUMBERS DO NOT MATCH, DO NOT ACCEPT THE CARD AS A FORM OF PAYMENT, EVEN THOUGH AN AUTHORIZATION CODE FOR THE MAGNETICALLY SWIPE CARD NUMBER MAY BE RECEIVED.**

**Fraud-Prone Merchandise Tips:**

- Jewelry, video, stereo, computer and camera equipment, shoes and men's clothing are typically fraud-prone because they can easily be resold.
- Be suspicious of high dollar amounts and transactions with more than one fraud-prone item, e.g., two VCRs, three gold chains, etc.

#### If you suspect fraud:

- Call the Voice Authorization Center and ask to speak to a Code 10 operator.
- If the terminal does not display the Card number, call the POS Help Desk for terminal assistance.

**REMEMBER: AN AUTHORIZATION CODE ONLY INDICATES THE AVAILABILITY OF CARDHOLDER'S CREDIT AT THE TIME OF THE TRANSACTION. IT DOES NOT WARRANT THAT THE PERSON PRESENTING THE CARD IS THE RIGHTFUL CARDHOLDER. IF PROPER PROCEDURES ARE NOT FOLLOWED AT THE TIME OF THE TRANSACTION, YOU ARE SUBJECT TO A CHARGEBACK AND YOUR ACCOUNT MAY BE DEBITED FOR THE AMOUNT OF THE TRANSACTION.**

### 3. Completion of Sales and Credit Drafts

You must prepare a Sales Draft or Credit Draft, as applicable, for each Card transaction and provide a copy of it or a transaction receipt or copy of the Draft to the Cardholder at the time the Card transaction is completed.

**3.1. Information Required.** All of the following information must be contained on a single page document constituting a Sales Draft:

- Cardholder's account number must appear on the Credit Draft or Sales Draft in the manner required by applicable law and Card Organization Rules. **NOTE: The copy of the Sales Draft or Credit Draft you provide to a Cardholder must not include the Cardholder's Card expiration date or any more than the last four digits of the Cardholder's Card number. Some states have similar requirements that also apply to the Sales Drafts or Credit Drafts you retain. MasterCard requires that Card expiration dates be excluded from the Sales Drafts or Credit Drafts your business retains. You are solely responsible to determine the Card account number truncation requirements and Card expiration date exclusion requirements for your state/jurisdiction;**
- Clear imprint of the Card. Whenever the term "imprint" is used it refers to the process of using a manual imprinting machine to make an impression of the Card on a Sales Draft; it does not include the printout from a printer attached to an electronic device. If you use an electronic device (e.g., authorization/draft capture terminal, cash register, POS Device, etc.) and swipe the Card to read and capture the Card information via the Magnetic Stripe, you do not have to imprint the Card. **HOWEVER, IF THE TERMINAL FAILS TO READ THE MAGNETIC STRIPE OR IF YOU ARE REQUIRED TO OBTAIN A VOICE AUTHORIZATION, THEN YOU MUST IMPRINT THE CARD. IN ADDITION, THE SALES DRAFT MUST HAVE THE CARDHOLDER'S SIGNATURE. FAILURE TO FOLLOW THESE PROCEDURES WILL PREVENT YOU FROM DEFENDING A TRANSACTION IN THE EVENT THAT IT IS CHARGED BACK UNDER A CLAIM THAT THE RIGHTFUL CARDHOLDER DID NOT AUTHORIZE THE PURCHASE. ENTERING INFORMATION INTO A TERMINAL MANUALLY WILL NOT PREVENT THIS TYPE OF CHARGEBACK. FOR MAIL, TELEPHONE, INTERNET AND OTHER CARD NOT PRESENT ORDERS SEE SECTION 3.2;**
- Cardholder's signature. However, eligible merchants participating in MasterCard's Quick Payment Service Program, Visa's Small Ticket and No Signature Programs, and Discover Network's No Signature Program, and/or certain Discover Network transactions (see note below) are not required to obtain the Cardholder's signature under certain conditions set forth by each program;
- Date of the transaction;
- Amount of the transaction (including the approved currency of the sale);
- Description of the goods and/or services involved in the transaction (if there are too many items, combine them into one description; e.g., "clothing" instead of "one pair of pants, one shirt"). Do not carry information onto a second Sales Draft;
- A valid authorization code; and
- Merchant's Doing Business As ("D/B/A") name and location (city and state required) and Merchant Account Number.

When imprinting Sales Drafts, do not alter the Cardholder account number, circle or underline any information on the Sales Draft or alter a Sales Draft in any way after the transaction has been completed and signed. Stray marks and other alterations on a Sales Draft may render it electronically unscannable, unreadable or illegible. This may result in a Chargeback or Summary Adjustment to your account.

For Discover Network sales using a paper Sales Draft (as opposed to Electronic Draft Capture), the paper Sales Draft must also contain the initials of your representative or employee that conducted the transaction. For Discover Network Credits, the Credit Draft must contain the signature of your authorized representative or employee that conducted the transaction.

Discover Card Sales in an amount more than \$25.00 including sales taxes, tip, and/or Cash Over amount are not eligible for treatment as No Signature Required Card Sales and you may lose a dispute of such a Card Sale if the Merchant fails to obtain the Cardholder's signature on the Sales Draft.

Eligible merchants participating in Quick Payment Service and/or Small Ticket are only required to provide the Cardholder with the completed Sales Draft when requested by the Cardholder.

**NOTE:** For Discover Network transactions, if you are a merchant operating under certain merchant category codes approved by Discover Network, you are not required to obtain

the Cardholder's signature so long as the full track data is transmitted in the authorization request and the sale amount is \$25.00 or less.

**3.2. Mail/Telephone/Internet (Ecommerce) Orders and Other Card Not Present Sales.** You may only engage in mail/telephone/Internet orders provided they do not exceed the percentage of your total payment Card volume reflected on your application. Failure to adhere to this requirement may result in cancellation of your Agreement. Merchants conducting Internet transactions using MasterCard or Visa Cards must have special codes (an "Electronic Commerce Indicator") added to their authorization and settlement records. Discover Network does not use an Electronic Commerce Indicator. Failure to register as a merchant conducting Internet transactions can result in fines imposed by the Card Organizations.

Mail, Telephone, Internet and other Card Not Present transactions have a substantially higher risk of Chargeback. Since you will not have an imprinted or magnetically swiped transaction and you will not have the Cardholder's signature on the Sales Draft as you would in a face-to-face transaction, you will assume all risk associated with accepting a mail/telephone/Internet or other Card Not Present transaction. The following procedures, while they will not eliminate Chargebacks, are useful in reducing them and should be followed by you:

- Obtain the expiration date of Card.
- On the Sales Draft, clearly print the Cardholder's account number; effective and expiration dates; date of transaction; description of the goods and services; amount of the transaction (including shipping, handling, insurance, etc.); Cardholder's name, billing address and shipping address; authorization code; and merchant's name and address (city and state required); provided, that you must effect PAN Truncation, and must not include the expiration date, on the copy of the Sales Draft or Credit Draft that you provide to the Cardholder.
- For mail orders, write "MO"; for telephone orders, write "TO" on the Cardholder's signature line.
- If feasible, obtain and keep a copy of the Cardholder's signature on file on a form authorizing you to submit telephone and mail order transactions.
- You should utilize the Address Verification Service for all Card Not Present Transactions (see note below). Address Verification is specifically required for all Discover Network Card Not Present Transactions, and if you do not receive a positive match through AVS, you may not process the Discover Network Card Not Present Transaction. If you do not have AVS, contact us immediately.
- You should obtain the 3-digit Card Validation Code number and include it with each authorization request. Discover Network Card Organization Rules specifically require that you submit the Card Validation Code with the authorization request for all Discover Network Card Not Present Transactions.
- For telephone orders, it is recommended that written verification of the sale be requested from the Cardholder (sent by mail or fax).
- You may not submit a transaction for processing until after the merchandise has been shipped or the service has been provided to the customer. (The Card Organizations will permit the immediate billing of merchandise manufactured to the customer's specifications [i.e., special/custom orders] provided the Cardholder has been advised of the billing details.)
- You should provide a copy of the Sales Draft to the Cardholder at the time of delivery. You must also obtain proof of delivery of the goods or services to the address designated by the Cardholder (i.e., by getting a signature of the Cardholder or person designated by the Cardholder through the delivery carrier). If the Cardholder visits one of your locations to receive the goods or services purchased, obtain an imprint of the card and the Cardholder's signature.
- Notify the Cardholder of delivery time frames and special handling and/or cancellation policies. Merchandise shipping dates must be within seven (7) days of the date authorization was obtained. If, after the order has been taken, additional delays will be incurred (e.g., out of stock), notify the Cardholder and reauthorize the transaction.
- You may not require a Cardholder to complete a postcard or other document that displays the Cardholder's account number in clear view when mailed.
- If you accept orders via the Internet, your web site must include the following information in a prominent manner:
  - Complete description of the goods or services offered;
  - Merchandise return and refund policy;
  - Customer service contact, including email address and/or telephone number;
  - Transaction currency (U.S. dollars, unless permission is otherwise received from Servicers);
  - Any applicable export or legal restrictions;
  - Delivery policy;
  - Consumer data privacy policy;
  - A description of the transaction security used on your website; and
  - The sale or disclosure of databases containing Cardholder account numbers, personal information, or other Card transaction information to third parties is prohibited.
- You may not accept Card Account Numbers through Electronic Mail over the Internet.

**NOTE:** Address Verification Service ("AVS") does not guarantee against Chargebacks, but used properly, it assists you in reducing the risk of fraud by confirming whether certain elements of the billing address provided by your customer match the billing address maintained by the Issuer. AVS also may help you avoid incurring additional interchange expenses. AVS is a separate process from obtaining an Authorization and will provide a separate response. A transaction may not match addresses when submitted for AVS and still receive an Authorization. It is your responsibility to monitor the AVS responses and use the information provided to avoid high-risk transactions.

**3.2.1. Discover Network Protocol for Internet Transactions:** Each Internet Discover Network Card transaction accepted by you and submitted to us shall comply with Discover Network standards, including, without limitation, Discover Network standards governing the formatting, transmission and encryption of data, referred to as the "designated protocol." You shall accept only those Internet Discover Network Card transactions that are encrypted in accordance with the designated protocol. As of the date of these Operating Procedures, the designated protocol for the encryption of data is Secure Socket Layer (SSL). We may, at our discretion, withhold Settlement until security standards can be verified. However, the designated protocol, including any specifications with respect to data encryption, may change at any time upon thirty (30) days advance written notice. You shall not accept any Internet Discover Network Card transaction unless the transaction is sent by means of a browser which supports the designated protocol.

**3.3. Customer Service Telephone Numbers** for Card types which are funded by individual non-bank Card Organizations include:

<b>American Express/Optima</b>	<b>1-800-528-5200</b>
<b>JCB, International</b>	<b>1-800-366-4522</b>
<b>TeleCheck</b>	<b>1-800-366-1054</b>
<b>Voyager</b>	<b>1-800-987-6591</b>

#### 4. Data Security and Persons Used by Client

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.

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

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

For the purposes of this Section 4, "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 Card processing 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 4.1, including, without limitation, PCI DSS, SDP, CISP and DISC, and any additional Card Organization requirements applicable to 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: <https://sdp.mastercardintl.com>.

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

#### 4.2. Data Security Requirements. You must comply with the data security requirements shown below:

- You must install and maintain a secure network firewall to protect data across public networks.
- You must encrypt stored data and data sent across networks.
- You must use and regularly update anti-virus software and keep security patches 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.
- Don't 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 Validation Codes (three-digit values printed in the signature panel of most Cards, and a four-digit code printed on the front of an American Express Card).
- You cannot store or retain Magnetic Stripe data, PIN data or AVS data. Only Cardholder account number, Cardholder Name and Cardholder expiration date can be retained subsequent to transaction authorization.
- 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 services and Merchant Equipment that have been certified as PCI-DSS compliant by the Card Organizations.

**4.3. 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.

**4.4. 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.

**4.5. 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, of any data security breach of Card or transaction data, (ii) perform or cause to be performed any remedial actions recommended by any such investigation, and (iii) cooperate with us in the investigation and resolution of any security breach. 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 and Merchant Providers' procedures and records and issue a written report of its findings.

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

**4.7. Merchant Providers.** The data security standards set forth in this Section 4 also apply 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 periodic and other reporting required by a Card Organization; and (iii) comply with an 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 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.

**4.8. Noncompliance Fees.** If you are not compliant with the PCI DSS standards within the first 120 days of the date of the Agreement, you will be charged a monthly compliance fee as set forth in the Application or as otherwise communicated to you, for the period beginning upon expiration of the 120 day period, until such time as you become compliant or this Agreement is terminated, whichever comes first. This monthly compliance 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.

**4.9. 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 (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.

## 5. Authorizations

Each authorization request you submit to us must fully comply with the applicable provisions of this Agreement. Submission of an authorization request that does not fully comply may result in assessment of additional fees to you, a declined authorization response or a Chargeback to you.

You must obtain an Authorization Approval Code from us (or a Person, as provided in Section 5.4) for all transactions. A positive authorization response for MasterCard remains valid for seven (7) days for electronic processed transactions. For true paper merchants MasterCard and Visa transactions the Authorization remains valid for thirty (30) days. A positive authorization response for Discover Network transactions remains valid for ninety (90) days. Failure to settle within these timeframes may result in a late presentment Chargeback.

Failure to obtain an Authorization Approval Code for a sales transaction may result in a Chargeback and/or the termination of your Agreement. Authorization Approval Codes can be obtained through your POS Terminal or a Voice Response Unit ("VRU"). Any fees related to authorizations will be charged for a request for an Authorization Approval Code, whether or not the transaction is approved.

Do not attempt to obtain an Authorization Approval Code provided by someone other than us except as described in Section 5.4. If a Cardholder or another service provider provides you with either an authorization number or with a telephone number for obtaining authorizations, the Authorization Approval Code you receive may not be valid. Even if the transaction is initially processed and funded, it may be charged back at a later date. Also, if you receive a purported Authorization Approval Code from someone other than us, we will not have the supporting records and will be unable to verify that you received the authorization if that is later questioned in a Chargeback.

An Authorization Approval Code only indicates the availability of credit on an account at the time the authorization is requested. It does not warrant that the person presenting the Card is the rightful Cardholder, nor is it a promise or guarantee that you will not be subject to a Chargeback.

If you obtain Address Verification, you must review the AVS response separately from the authorization response and make your own decision about whether to accept the transaction. A transaction can receive an Authorization Approval Code from the Issuer even if AVS is unavailable or reflects that the address provided to you does not match the billing address on file at the Issuer. If the authorized Cardholder disputes such a transaction, you will be responsible for the resulting Chargeback.

If you receive a Referral response to an attempted authorization, you may not submit the transaction without calling for and receiving a voice authorization. After receiving a Referral response you may not attempt another authorization on the same Card through your POS Terminal.

If you fail to obtain an Authorization Approval Code or if you submit a Card transaction after receiving a decline (even if a subsequent authorization attempt results in an Authorization Approval Code), your transaction may result in a Chargeback and may be assessed fines or fees by the Card Organizations for which you will be responsible. These currently range from \$25 to \$150 per transaction. To avoid these costs and related Chargebacks, always obtain an Authorization Approval Code directly from your terminal before submitting a transaction for settlement.

For Cards other than MasterCard, Visa and Discover Network (e.g., American Express, etc.) or for check acceptance, you must follow the procedures for authorization and acceptance for each.

You may not attempt to obtain multiple authorizations for a single transaction. If a sale is declined, do not take alternative measures with the same Card to obtain an approval of the sale from other authorization sources. Instead, request another form of payment. If you accept and process a transaction that was declined, or attempt multi-transactions and/or multi-authorizations, you are subject to a Chargeback, Card Organization fines and/or cancellation of your Agreement.

**5.1. Card Not Present Transactions.** You must obtain the 3-digit Card Validation Code (CVV2, CVC2, CID) and submit this Code with all authorization requests with respect to transactions where the Card is not present (e.g., telephone, mail or internet sales). However, for recurring transaction authorizations you should submit the Card Validation Code with the first authorization request only, and not with subsequent recurring transaction authorization requests. (See Section 1.7).

**NOTE: For each Card Not Present Discover Network transaction, you must also verify the name and billing address of the Discover Network Cardholder using the Address Verification System (AVS), and if you do not receive a positive match, do not process the Discover Network Card Not Present transaction.**

**5.2. Authorization via Telephone (Other Than Terminal/Electronic Device Users).**

- Call your designated voice authorization toll free number and enter the authorization information into the VRU using a touch tone phone or hold for an authorization representative.
- If advised to pick up a Card, use reasonable and peaceful means to do so, and do not take any action that will alarm or embarrass the Card presenter. You will bear all responsibility for claims, liabilities, costs and expenses as a result of any action by you, your employees, vendors or agents, that attempt to retain a Card without the Issuer's direct request or failure to use reasonable, lawful means in retaining or attempting to retain the Card. Forward the Card to: Attn: Rewards Department, P.O. Box 5019, Hagerstown, MD 21740. You may be paid a reward for the return of the Card.
- On occasion, the Authorization Center will ask you to obtain identification from the Cardholder before issuing an approval code. If you are instructed to do so, clearly write the appropriate identification source and numbers in the space provided on the Sales Draft unless otherwise prohibited by law.
- If the sale is declined, please remember that our operators are only relaying a message from the Issuer. The fact that a sale has been declined should not be interpreted as a reflection of the Cardholder's creditworthiness. The Cardholder should be instructed to call the Issuer.

**5.3. Authorization via Electronic Devices.**

- If you use an electronic terminal to obtain an Authorization Approval Code, all sales should be authorized through this equipment. Authorizations through other methods will result in additional charges to you.
- If your terminal malfunctions, refer to your Quick Reference Guide, if necessary, or call the POS Help Desk. The problem will either be corrected promptly or may require terminal programming or replacement. During the period in which your terminal is not functioning, remember to check it periodically since most terminal problems are temporary in nature and are quickly corrected.
- If a terminal is moved or if wires are disconnected, causing malfunction, call the POS Help Desk immediately and follow their instructions. You may be responsible for any service charges incurred for reactivation of the terminal.
- Until the terminal becomes operable, you must call your designated voice authorization toll free number and enter authorization information into the VRU using a touchtone phone. During this time, each transaction must be imprinted using a manual Imprinter machine. Failure to obtain an Authorization Approval Code and to imprint these transactions could result in a Chargeback to your account.

**5.4. Third Party Authorization System.** If you have contracted with another authorization network to obtain Credit Card authorization, i.e., your terminal can Split Dial, liability resulting from discrepancies with that network must be resolved between you and that network. We will not research Chargebacks resulting from Authorization Approval Codes obtained from another authorization service organization. Such Chargebacks will be passed through to you for resolution. If an authorization provided by a third party authorization system is challenged in a Chargeback, you must obtain proof (e.g., third party authorization logs) from the authorization source and submit it to us within the time frame specified on the Chargeback documentation.

**IF YOU CONTRACTED TO USE ONE OF OUR AUTHORIZATION SERVICES, DO NOT USE ANOTHER THIRD PARTY SYSTEM WITHOUT NOTIFYING CUSTOMER SERVICE. OTHERWISE, WE WILL BE UNABLE TO SUCCESSFULLY RESEARCH AND DEFEND ANY AUTHORIZATION RELATED CHARGEBACKS ON YOUR BEHALF. THIS DELAY WILL SIGNIFICANTLY DECREASE YOUR TIME TO RESEARCH AND PROVIDE PROOF OF AUTHORIZATION, THUS REDUCING YOUR OPPORTUNITY TO REVERSE A CHARGEBACK.**

If you utilize another authorization network, you will be responsible for the downgrade of any transactions to a higher cost interchange that result from a mismatch of information to our systems and those of third party authorization networks (see Section 18.1).

If you use a third party authorization network, you must also comply with Section 4.7.

**Call the following for other Card types:**

<b>American Express/Optima</b>	<b>1-800-528-5200</b>
<b>JCB, International</b>	<b>1-800-522-9345</b>
<b>TeleCheck</b>	<b>1-800-366-5010</b>
<b>Voyager</b>	<b>1-800-987-6589</b>

**Available 24 hours/day; 7 days/week.**

All approved sales authorized in this manner must be entered manually as "post authorization" transactions into the terminal, once the terminal becomes operational. All Credit transactions must be entered into the terminal for data capture. You may be subject to a Chargeback if you receive a Referral and subsequently receive an approval. To reduce the risk of such a Chargeback, the Card should be imprinted using a manual Imprinter machine. (For specific procedures on Electronic Data Capture, refer to the Terminal Operating Instructions/Users Guide.) If the terminal malfunctions for more than twenty-four (24) hours, contact Customer Service for further instructions on processing your transactions.

**5.5. Automated Dispensing Machines.** Records must be produced for all transactions whose origin and data capture are automated dispensing machines or Limited Amount Terminals. Records should include the Cardholder account number, merchant's name, terminal location, transaction date and amount.

**5.6. Pre-Authorization for T&E (Travel & Entertainment) and Restaurant Merchants.** If you are a business engaged in providing travel and/or entertainment services (e.g., car rentals, hotels, motels, etc.) or a restaurant business, and engage in the practice of "pre-authorization" you must comply with the following general procedures:

- A hotel, motel, or car rental merchant may obtain an estimated Visa, MasterCard or Discover Network authorization at the time of check-in.
- Restaurants must not add an estimated tip amount to the authorization request beyond the value of the goods provided, or services rendered, plus any applicable tax.
- You must notify the Cardholder of the dollar amount you intend to "Pre-Authorize."
- If the customer decides to use another form of payment (e.g., cash, check, etc.) you must promptly call the Voice Authorization Response Unit to delete the authorization hold. Provide the Cardholder's account number, original dollar amount and date of the transaction, and the authorization code. If a new transaction takes place, a new imprinted and signed Sales Draft for the exact amount and a new authorization code for that amount must be obtained.
- **VEHICLE RENTAL PROVIDERS MAY NOT INCLUDE POTENTIAL VEHICLE DAMAGE OR INSURANCE DEDUCTIBLES IN ANY PREAUTHORIZATIONS.**
- If you receive a decline on a transaction, you must wait twenty-four (24) hours before attempting to reauthorize. If you reauthorize prior to this time frame and receive an approval, you may be subject to a Chargeback and a fine imposed by the Card Organizations.
- Hotels, motels, and car rental merchants are allowed up to a 15% variance above the amount authorized. If the final amount charged to the Cardholder exceeds the original estimate by more than 15% above the preauthorization, you must authorize any additional amounts, and all incremental authorization codes must be written in the authorization area along with the date of authorization and the amount authorized.
- Restaurants are allowed up to a 20% (instead of 15%) variance above the amount authorized. If the final amount exceeds the amount "authorized" by more than 20%, you must authorize the additional amount. Estimating the Authorization amount to include a tip is prohibited. The authorization request should include only the amount associated with the bill presented to the consumer.
- You should obtain an authorization for the initial estimated charges and then monitor the charges to ensure that the actual charges made do not exceed the estimated charges. If the actual charges exceed the amount of the initial estimated authorization (and any subsequent estimated authorizations), then you must secure a positive authorization for the additional amount. **NOTE:** Subsequent authorizations should only be for the additional amount of total charges and not include amounts already authorized.
- The estimated amount of any pre-authorization for lodging accommodations must be based on (i) the intended length of stay; (ii) the room rate; (iii) applicable taxes and service charges; and (iv) other miscellaneous charges as dictated by experience.
- If an authorization request is declined, no charges occurring after that date will be accepted for that Cardholder.
- You do not need to obtain a final authorization if the total sum of charges (the final amount) does not exceed 120% of the previously authorized charges. You must record the dates, authorized amounts, and their respective Authorization Approval Codes on the Sales Draft(s).

**5.7. Discover Network Procedure for Request for Cancellation of Authorization.** If a Discover Network Card sale is cancelled or the amount of the transaction changes following your receipt of authorization for the sale, you must call your Authorization Center directly and request a cancellation of the authorization. An authorization may be cancelled at any time within fifteen (15) days of your receipt of the authorization, but must be cancelled before the sales data relating to the transaction is submitted to us, after which the authorization cannot be changed. For an authorization cancellation, you must provide us with the following information, in this order:

- The Discover Network Merchant Number used in the authorization;
- The Card number;
- The original amount of the authorization being cancelled;
- The new amount of the total transaction (if any);
- The original authorization code for the authorization being cancelled;
- The expiration date of the Card; and
- A brief reason for the authorization cancellation.

**5.8. Partial Authorization and Authorization Reversal.**

Partial authorization provides an alternative to a declined transaction by permitting an Issuer to return an authorization approval for a partial amount, an amount less than the transaction amount requested by the merchant when the available card balance is not sufficient to approve the transaction in full. The Cardholder is able to use up the remaining funds on the card and select another form of payment (i.e. another payment card, cash, check) for the remaining balance of the transaction. If you support partial authorizations, a partial authorization indicator must be included in each authorization request.

An authorization reversal must be submitted if the authorization is no longer needed, a partial amount of the total authorized is submitted for the settled transaction, or the Cardholder elects not to complete the purchase. The transaction sent for settlement must be no more than the amount approved in the partial authorization response. In the event that you wish to support the partial authorization functionality, you must contact us for additional rules and requirements.

**6. Submission/Deposit of Sales and Credit Drafts**

**6.1. Submission of Sales for Merchants Other Than Your Business.** You may present for payment only valid charges that arise from a transaction between a bona fide Cardholder and your establishment. If you deposit or attempt to deposit transactions that arise from sales between Cardholders and a different business than the one approved by us in our Agreement with you, then the transaction may be charged back, we may suspend or debit funds associated with all such transactions, and we may immediately terminate your account and the Agreement.

**6.1.1. Factoring.** For Discover Network transactions, Factoring is considered merchant fraud and strictly prohibited. Factoring is the submission of authorization requests and/or Sales Drafts by a merchant for Card transactions transacted by another business. If you submit Sales Drafts on behalf of another person, you will suffer any losses associated with the disputes of the Discover Network Card Sales. Also if any fraud is involved, you could face criminal prosecution.

**6.2. Timeliness.** In order to qualify for the lowest interchange Discount Rate, all Sales and Credit Drafts must be properly completed and submitted daily. If you have not received payment for submitted Sales Drafts after one (1) week from your normal payment date, contact Customer Service. **Late Submission of Sales or Credit Drafts may result in increased interchange rates or fees or in a Chargeback to you.**

**6.3. Mail/Branch Deposit Procedures.** Complete the appropriate summary form designated for your use. Imprint the completed summary with your Merchant Identification Card, if applicable, and sign it. Please do not staple or clip Sales Drafts together or to summary forms. This will distort the Cardholder's account number and may result in a Summary Adjustment or Chargeback to you. Mail your deposits daily to us, or, if your Agreement allows deposit at a local bank branch, you must make daily deposits.

Do not send us the merchant copies (which are for your records); submit only the Bank hard copies of the transactions. If merchant copies are submitted, they will be returned to you unprocessed.

**6.4. Electronic Merchants: Daily Batching Requirements & Media Submission.** Batches must be transmitted to us by the time indicated in Section A.2. of Part IV, of this Agreement) in order to be processed on the date of transmission. Additionally, if you deposit via magnetic tape, electronic transmissions, or Electronic Data Capture terminal, and have contracted to send the actual Sales Drafts and Credit Drafts to us for imaging and retrieval, the Media must be batched daily by register/terminal following the procedures below. Failure to do so may result in a processing fee and/or a Chargeback due to our inability to retrieve the Media as requested by the Issuer.

- A register/terminal Batch header form must be filled out for each Batch of Media.
- The Batch header must be imprinted with your Merchant Identification Card, and all areas completed properly (i.e., Batch number, date, amount, number of items, etc.).
- The Batch/deposit total must match to the settled/reconciled amount displayed on the terminal upon closing the Batch.
- Any discrepancies between the actual Media and electronic display must be reconciled and corrected before storing the Media (for merchants who contract to hold their Media) or before sending us the copies of the deposit. Otherwise, transactions may appear to be a new Submission and may be manually keyed (causing duplicate billing to Cardholders and resulting in Chargebacks) or we may not be able to retrieve an item requested by the Issuer.
- It is your responsibility to ensure that the actual Media is batched correctly and, depending on the terms of your Agreement, either stored at your location or sent to Processor. (In some cases, the actual Media is sent daily to your head office, and forwarded to Processor for imaging.)

- **You must confirm that your equipment has transmitted its Batches to us at least once daily.** Even if your equipment is designed or programmed to close and submit Batches without your intervention, it is ultimately your responsibility to confirm that the Batches have been transmitted to us for processing.

## 7. Settlement

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

If you have been classified by Discover Network as having a Discover Direct Strategic Relationship with Discover Network, we will not acquire your Discover Network transactions and they will be subject to your agreement with Discover Network.

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.

## 8. Refunds/Exchanges (Credits)

### 8.1. Refunds

- You must promptly complete and submit a Credit Draft for the total amount of the Credit, which must include the following information:
  - The account number and expiration date;
  - The Cardholder's name;
  - Your name, city, state and Merchant Account Number;
  - A description of the goods or services;
  - The transaction date of the Credit;
  - The total amount of the Credit; and
  - For Discover Network transactions, the approved currency used and the signature of your authorized representative or employee.
- Full refunds must be for the exact dollar amount of the original transaction including tax, handling charges, etc. (You must identify the shipping and handling charges incurred.) The refund amount may not be for more than the original Card sale amount.
- All dollar amounts and other handwritten information must be clearly written. (Stray marks on the Credit Draft will render it unscannable/illegible.)
- Do not circle or underline any information on the Credit Draft.
- Imprint the Credit Draft with the same Card used by the Cardholder to make the original purchase when applicable. You should not credit an account that differs from the account used for the original transaction.
- Never give cash, check or in-store Credit refunds for Card sales.
- Have the Cardholder sign the Credit Draft, give the Cardholder the appropriate copy, and deposit the Credit Draft immediately. Failure to process a Credit within five (5) calendar days may result in a Chargeback.
- Authorization is not required for Credits.
- You cannot intentionally submit a sale and an offsetting Credit at a later date solely for the purpose of debiting and crediting your own or a customer's account.
- You are responsible for paying all refunds submitted to us on your merchant account. We assume no responsibility for verifying any Credits or refunds.
- **YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

### 8.2. Exchanges.

- No additional paperwork is necessary for an even exchange. Just follow your standard company policy.
- For an uneven exchange, complete a Credit Draft (follow the procedures outlined in Section 8.1) for the total amount of only the merchandise returned. The Cardholder's account will be credited for that amount. Then, complete a new Sales Draft for the total amount of any new merchandise purchased.

## 9. Retention of Records For Retrievals and Chargebacks

### Retain Legible Copies.

**For MasterCard and Visa:** You must securely retain legible copies of all Sales Drafts and Credit Drafts or any other transaction records for a period of eighteen (18) months from the date of each transaction and a period of five (5) years for the retention of healthcare Sales Drafts and Credit Drafts.

**For Discover Network:** You must securely retain legible copies of all Sales Drafts and Credit Drafts or any other transaction records for the longer of (i) 365 days or (ii) the resolution of any pending or threatened disputes, claims, disagreements or litigation involving the Card transaction. You must also keep images or other copies of Sales Drafts for no less than three (3) years from the date of the Discover Network transaction.

**9.2. Provide Sales and Credit Drafts.** You must provide all Sales Drafts and Credit Drafts or other transaction records requested by us within the shortest time limits established by Card Organization Rules. You are responsible for any deficiencies in Card transaction data transmitted or otherwise delivered to us.

**9.3. Ensure Proper Retrieval Fulfillment.** To ensure proper Retrieval fulfillments and/or Chargeback processing, Sales Drafts and Credit Drafts must contain the full sixteen (16) digit account number and expiration date. Failure to retain this information could result in a future Chargeback to your account.

## 10. Chargebacks, Retrievals and Other Debits

### 10.1. Chargebacks.

**10.1.1. Generally.** Both the Cardholder and the Issuer have the right to question or dispute a transaction. If such questions or disputes are not resolved, a Chargeback may occur. As a result, we will debit your Settlement Account or settlement funds for the amount of each Chargeback. It is strongly recommended that, whenever possible, you contact the Cardholder directly to resolve a disputed transaction or Chargeback, **unless** the dispute involves a Discover Network Cardholder, in which case Discover Network rules and regulations expressly prohibit you from contacting the Discover Network Cardholder regarding the dispute. You are responsible for all Chargebacks, our Chargeback fees, and related costs arising from your transactions.

**10.1.2. Transaction Documentation Requests.** In some cases, before a Chargeback is initiated, the Issuer will request a copy of the Sales Draft via a request for transaction documentation. We will forward the request to you. **You must respond to the request within the time frame and manner set forth in the request. We will then forward your response to the Issuer. If you fail to timely respond, we will so notify the Issuer and a Chargeback may result.** Upon receipt of a transaction documentation request, immediately retrieve the requested Sales Draft(s) using the following guidelines:

- Make a legible copy, centered on 8½ x 11-inch paper (only one (1) Sales Draft per page).
- Write the 'case number' from the request for transaction documentation on each copy/page.
- If applicable, make copies of a hotel folio, car rental agreement, mail/phone/internet order form, or other form of receipt.
- If a Credit transaction has been processed, a copy of the Credit Draft is also required.
- Letters are not acceptable substitutes for Sales Drafts.
- Fax or mail legible copies of the Sales Draft(s) and Credit Drafts, if applicable, to the fax number or mail address provided on the request form.
- If you fax your response, please set your fax machine to print your fax number and name on the documents that you send. We can use this information to help determine where the documentation received originated from should additional research be required.
- Additionally, please set the scan resolution on your fax machine to the highest setting. The higher resolution setting improves the clarity of characters and graphics on the documentation transmitted and helps reduce the number of illegible fulfillments and/or Chargebacks.

If we do not receive a clear, legible and complete copy of the transaction documentation within the timeframe specified on the request, you may be subject to a Chargeback for "non-receipt" for which there is no recourse.

A handling fee may be charged by the Issuer and will be debited from your Settlement Account or settlement funds if a transaction documentation request results from a difference in the following information on the Sales Draft and the transmitted record: Merchant name or an incorrect city, state, foreign country and/or transaction date.

**10.1.3. Chargeback Process.** Regardless of whether you respond to a transaction documentation request, a Chargeback may be debited to your Settlement Account for numerous reasons (see below). If the Issuer submits a Chargeback, we will send you a Chargeback notification, which may also include a request for transaction documentation. **Due to the short time requirements imposed by MasterCard, Visa and Discover Network, it is extremely important that you respond to a Chargeback notification and transaction documentation request within the time frame set forth in the notification.** Do not process a Credit transaction once a Chargeback is received; the Issuer will credit the Cardholder's account. If the information you provide is both timely and, in our sole discretion, sufficient to warrant a representation of the transaction and/or reversal of the Chargeback, we will do so on your behalf. However, representation and/or reversal is/are ultimately contingent upon the Issuer and/or Cardholder accepting the transaction under applicable Card Organization guidelines. Representation or reversal is not a guarantee that the Chargeback has been resolved in your favor.

**For Visa Chargebacks:** If we reverse the Chargeback and represent the transaction to the Issuer, the Issuer, at its sole discretion, may elect to submit the matter for arbitration before Visa. Visa currently charges a \$250 filing fee and a \$250 review fee. If a decision is made in favor of the Cardholder and/or Issuer, and the Chargeback is upheld, you will be

responsible for all such fees and any other applicable fees and penalties imposed by Visa, as they may change from time to time. Such fees and penalties will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

**For MasterCard Chargebacks:** If we reverse the Chargeback and represent the transaction to the Issuer, the Issuer, at its sole discretion, may elect to resubmit the Chargeback. In such event, at the discretion of Processor, we will debit your Settlement Account or settlement funds for the Chargeback. However, if you feel strongly that it is an invalid Chargeback, we may, on your behalf and at your request, submit the matter for arbitration before MasterCard. MasterCard currently charges a \$150 filing fee and a \$250 review fee. If a decision is made in favor of the Cardholder and/or Issuer, and the Chargeback is upheld, you will be responsible for all such fees and any other penalties imposed by MasterCard as they may change from time to time. Such fees and penalties will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

**For Discover Network Chargebacks:** If Discover Network rejects our representation request and you feel strongly that the Chargeback is invalid, we may, at the discretion of Processor and on your behalf and at your request, submit the matter for dispute arbitration before Discover Network. Discover Network charges fees for representation requests and an arbitration fee as published in their fee schedule.

If the Chargeback is not disputed within the applicable time limits set forth by MasterCard, Visa, and Discover Network rules and regulations, reversal rights are forfeited. Our only alternative, for Visa and MasterCard non-fraud Chargeback reason codes, is to attempt a "good faith collection" from the Issuer on your behalf. This process can take up to six (6) months and must meet the Issuer's criteria (e.g., at or above a set dollar amount). Good faith collection attempts are not a guarantee that any funds will be collected on your behalf. Issuers normally charge good faith collection fees, which are deducted from the transaction amount if accepted in addition to any processing fees that are charged by us.

**NOTE:** Discover Network does not offer good faith collection for Acquirers.

MasterCard and Visa Card Organization Rules require that a merchant make a good faith attempt and be willing and able to resolve any disputes directly with the Cardholder. Discover Network rules and regulations, however, prohibit you and/or us from contacting the Cardholder directly regarding dispute(s) or any other matter, except as required for acceptance of Discover Network transactions, and require you and/or us to submit any responses to dispute notices directly to Discover Network.

Due to Card Organization Rules, you may not re-bill a Cardholder after a Chargeback is received for that transaction, even with Cardholder authorization.

We strongly recommend that you include a detailed rebuttal letter along with all pertinent documents when responding to a transaction request or a Chargeback notification (e.g., rental agreement, imprinted portion of the invoice or Sales Draft; the portion signed by the Cardholder; and the area where the authorization codes, with amounts and dates, are located).

Due to the short time frames and the supporting documentation necessary to successfully (and permanently) reverse a Chargeback in your favor, we strongly recommend the following:

- Avoid Chargebacks by adhering to the guidelines and procedures outlined in these Operating Procedures.
- If you do receive a Chargeback, investigate, and if you dispute the Chargeback, submit the appropriate documentation within the required time frame.
- Whenever possible, contact the Cardholder directly to resolve the dispute, unless the dispute relates to a Discover Network Cardholder, in which case direct contact with the Discover Network Cardholder regarding the dispute is prohibited by Discover Network Card Organization Rules.
- If you have any questions, call Customer Service.

**10.1.4. Chargeback Reasons.** The following section outlines the most common types of Chargebacks. This list is not exhaustive. For ease of understanding, we have combined like Chargebacks into six groupings. We have included recommendations on how to reduce the risk of Chargebacks within each group. These are recommendations only, and do not guarantee that you will be able to prevent Chargebacks.

1. **Authorization Issues:** Proper Authorization procedures were not followed and valid Authorization was not obtained

**The following scenarios could cause an Authorization Related Chargeback to occur:**

- Authorization not obtained.
- Authorization was declined.
- Transaction processed with an expired card and Authorization was not obtained.
- Transaction was processed with an invalid account number and Authorization was not obtained.
- Card Recovery Bulletin (CRB) or Exception File was not checked (transactions below floor limit).

**To reduce your risk of receiving an Authorization Related Chargeback:**

- Obtain valid Authorization on the day of the transaction
- Card Present Transactions – Authorization must be obtained on the transaction date for the amount settled.

- Card Not Present Transactions – Authorization must be obtained on the transaction date for the amount settled. However, if merchandise is being shipped, Authorization must be obtained within seven calendar days of the transaction ship date
- If a declined response is received, then request another form of payment from the Cardholder.
- If a Referral response is received, then follow proper voice procedures to obtain a Authorization and obtain an imprint of the card.
- "Pick-up" response indicates that the Issuer is requesting for the card to be retained and returned back to them. The Card should not be accepted for payment. Additionally, you can choose to retain the Credit Card and return it to the Acquirer.
- Merchants should not exceed any predetermined thresholds for specific terminal types as specified by each Card Organization.

2. **Cancellations and Returns:** Credit was not processed properly or the Cardholder has cancelled and/or returned items

**The following scenarios could cause a Cancellation and Return Related Chargeback to occur:**

- Cardholder received damaged or defective merchandise.
- Cardholder continued to be billed for cancelled recurring transaction.
- Credit transaction was not processed.

**To reduce your risk of receiving a Cancellation and Return Related Chargeback:**

- Issue Credit to the Cardholder on the same account as the purchase in a timely manner.
- Do not issue Credit to the Cardholder in the form of cash, check or in store/merchandise Credit as we may not be able to recoup your funds in the event the transaction is charged back.
- Ensure customers are fully aware of the conditions for recurring transactions. Cancel recurring billings as soon as notification is received from the Cardholder or as a Chargeback, and Issue a Credit as needed to the Cardholder in a timely manner.
- Pre-notify the Cardholder of billings within 10 days (Domestic) and 15 (International) prior to billing, allowing the Cardholder time to cancel the transaction.
- Provide proper disclosure of your refund policy for returned/cancelled merchandise, or services to the Cardholder at the time of transaction.
- Card present, Cardholder signed the Sales Draft containing disclosure.
- If applicable, the words "NO EXCHANGE, NO REFUND," etc. must be clearly printed in 1/4 inch lettering on the Sales Draft near or above the Cardholder signature.
- Ecommerce, provide disclosure on website on same page as check out showing Cardholder must click to accept prior to completion.
- Card Not Present, provide cancellation policy at the time of the transaction.
- Provide cancellation numbers to Cardholder's when lodging services are cancelled.
- Ensure delivery of the merchandise or services ordered to the Cardholder.

3. **Fraud:** Transactions that the Cardholder claims are unauthorized; the account number is no longer in use or is fictitious, or the merchant was identified as "high risk".

**The following scenarios could cause a Fraud Related Chargeback to occur:**

- Multiple transactions were completed with a single card without the Cardholder's permission.
- Counterfeit card was utilized and proper acceptance procedures were not followed.
- Authorization was obtained; however, full track data was not transmitted.
- Cardholder states that they did not authorize or participate in the transaction.

**To reduce your risk of receiving a Fraud Related Chargeback: Card Present Transactions:**

- Obtain an Authorization for all transactions.
- If you are an electronic merchant, magnetically swipe all Card transactions through your electronic authorization device to capture Cardholder information and ensure the displayed Cardholder number matches the number on the Card.
- If you are unable to swipe the Card or if a Referral response is received, imprint the Card using a valid imprinting device that will capture the embossed Card and merchant information. Do not alter the imprint on the draft in any way. Manually entering the information into the terminal does not protect you from this type of Chargeback. All pertinent information relating to the transaction must be written on the manually imprinted draft (transaction date, dollar amount, authorization code and merchandise description) along with the Cardholder signature.

**NOTE:** Do not imprint on the back of a signed Sales Draft. The imprint must be on the transaction document that contains all transaction elements to prove the Card present at the time of the transaction.

- Obtain the Cardholder signature for all transactions; ensure the signature on the Sales Draft matches the signature on the back of the Card.
- Process all transactions one time and do not Batch out transactions multiple times.
- Educate staff on procedures to eliminate point of sale (POS) fraud.

### **Card Not Present Transactions:**

- Participation in recommended Fraud Prevention Tools:
- Verified by Visa Program
- MasterCard SecureCode
- Address Verification Services
- CVV2, CVC2 and CID Verification

**NOTE:** While transactions utilizing these tools may still be disputed, the service may assist you with your decision to accept the Card for the transaction.

- Ensure you ship to the AVS confirmed address (bill to and ship to should match).
  - Obtain Authorization for all transactions.
  - Ensure merchant descriptor matches the name of the business and is displayed correctly on the Cardholder statement.
  - Ensure descriptor includes correct business address and a valid customer service number.
4. **Cardholder Disputes:** Merchandise or services not received by the Cardholder, Merchandise defective or not as described.

### **The following scenarios could cause a Cardholder Dispute Chargeback to occur:**

- Services were not provided or merchandise was not received by the Cardholder.
- The Cardholder was charged prior to merchandise being shipped or merchandise was not received by agreed upon delivery date or location.
- Cardholder received merchandise that was defective, damaged or unsuited for the purpose sold, or did not match the description on the transaction documentation/verbal description presented at the time of purchase.
- Cardholder paid with an alternate means and their Card was also billed for the same transaction.
- Cardholder cancelled service or merchandise and their Card was billed.
- Cardholder billed for a transaction that was not part of the original transaction document.

### **To reduce your risk of receiving a Cardholder Dispute Related Chargeback:**

- Provide Services or Merchandise as agreed upon and described to the Cardholder; clearly indicate the expected delivery date on the sales receipt or invoice.
- Contact the Cardholder in writing if the merchandise or service cannot be provided or is delayed, and offer the Cardholder the option to cancel if your internal policies allow.
- In the event that the Cardholder received defective merchandise or the merchandise received was not as described; resolve the issue with the Cardholder at first contact.
- If the merchandise is being picked up by the Cardholder, have them sign for the merchandise after inspection that it was received in good condition.
- Do not charge the Cardholder until the merchandise has been shipped, ship according to the agreed upon terms and obtain signed Proof of Delivery from the Cardholder.
- If unable to provide services or merchandise, issue a Credit to Cardholder in a timely manner.
- Accept only one form of payment per transaction and ensure the Cardholder is only billed once per transaction.
- Do not bill Cardholder for loss, theft or damages unless authorized by the Cardholder.

5. **Processing Errors:** Error was made when transaction was processed or it was billed incorrectly.

### **The following scenarios could cause a Processing Error Chargeback to occur:**

- Transaction was not deposited within the Card Organization specified timeframe.
- Cardholder was issued a Credit Draft; however, the transaction was processed as a sale.
- Transaction was to be processed in a currency other than the currency used to settle the transaction.
- The account number or transaction amount utilized in the transaction was incorrectly entered.
- A single transaction was processed more than once to the Cardholder's account.
- Cardholder initially presented Card as payment for the transaction; however Cardholder decided to use an alternate form of payment.
- Limited amount or self-service terminal transaction was processed for an amount which is over the pre-determined limit.

### **To reduce your risk of receiving a Processing Error Related Chargeback:**

- Process all transactions within the Card Organization specified timeframes.
  - Ensure all transactions are processed accurately and only one time.
- NOTE:** In the event that a transaction was processed more than once; immediately issue voids, transaction reversals or Credits.
- Ensure that credit transaction receipts are processed as Credits and sale transaction receipts are processed as sales.
  - Ensure all transactions received a valid Authorization Approval Code prior to processing the transaction and obtain a legible magnetic swipe or imprinted Sales Draft that is signed.

- Do not alter transaction documentation or make any adjustments unless the Cardholder has been contacted and agrees to any modifications of the transaction amount.
  - Ensure limited amount, self-service and automated fuel dispenser terminals are set properly to conform to the pre-determined limits.
6. **Non Receipt of Information:** Failure to Respond to a Retrieval Request or Cardholder Does Not Recognize

### **The following scenarios could cause Non Receipt of Information Chargeback to occur:**

- The transaction documentation was not provided to fulfill the retrieval request.
- The retrieval request was fulfilled with an illegible Sales Draft or was an invalid fulfillment. (Incorrect sales slip or sales slip did not contain required information which may include signature).
- The Cardholder does not recognize or is unfamiliar with the transaction due to the merchant name and/or location not matching the name and/or location where the transaction took place.

### **To reduce your risk of receiving a Non Receipt of Information Related Chargeback:**

- Provide a clear and legible copy of the Sales Draft that contains all required data elements within the required timeframe that is specified on the retrieval request.
- Ensure that the most recognizable merchant name, location and/or customer service phone number is provided on all transactions.
- Retain copies of all transaction documentation for the required timeframe that is specified by each Card Organization.
- Develop efficient methods to retrieve transaction documentation to maximize ability to fulfill requests.

**10.2. 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 15:

- 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 Fee – Excessive Chargeback Handling Fee.
- 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 interchange fees.
- Costs or expenses associated with responding to any subpoena, garnishment, levy or other legal process associated with your account.

**10.3. Summary (Deposit) Adjustments/Electronic Rejects.** Occasionally, it is necessary to adjust the dollar amount of your summaries/Submissions (deposits) and credit or debit your Settlement Account or settlement funds accordingly. The following is a list of the most frequent reasons for Summary (Deposit) Adjustments/Electronic Rejects:

- Your summary reflected an arithmetic error.
- Submitted sales not included in your Agreement (e.g., American Express).
- The dollar amount is unreadable/illegible.
- The Cardholder's account number is unreadable/illegible.
- Duplicate Sales Draft submitted.
- Card number is incorrect/incomplete.
- Summary indicated credits, but no credits were submitted.

**10.4. Disputing Other Debits and Summary Adjustments.** In order to quickly resolve disputed debits and Summary Adjustments, it is extremely important that the items listed in this section be faxed or sent to the address listed on the notification.

If the Summary Adjustment is for an unreadable or incorrect Cardholder account number, resubmit the corrected Sales Draft with your next deposit. Also, if the transaction is over thirty (30) calendar days old, you must reauthorize and obtain a valid Authorization Approval Code.

A clear and legible copy of the Sales Draft containing the following should be obtained from your files:

- Date of sale/Credit;
- Cardholder's account number, name and signature;
- Total amount of the sale and description of goods and services; and
- Date and Authorization Approval Code.

Include a dated cover letter detailing the reasons for requesting a review of the debit or Summary Adjustment and documentation to support your dispute. (You should retain a copy of the correspondence and all documentation for your files.) If the inquiry is related to prior correspondence, be sure to include the control number we previously used.

Immediately fax or mail the Sales Draft or Credit Drafts to the fax number or address provided on your notification letter.

If you have any questions, please call the Customer Service number provided on the last page of this Program Guide. If a Customer Service Representative informs you that additional documentation is required in order to fully review the item, please immediately submit your rebuttal and transaction documentation to the fax number or address listed on the debit notification.

## 11. Account Maintenance

**11.1. 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 and Discover Network (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.

**11.2. Change in Your Legal Name or Structure.** You must call Customer Service or your Relationship Manager and request a new Agreement.

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

**11.4. 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 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.

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

## 12. Card Organization Monitoring

MasterCard, Visa and Discover Network have established guidelines, merchant monitoring programs and reports to track merchant activity such as, but not limited to excessive Credits and Chargebacks, and increased deposit activity. In the event you exceed the guidelines 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) Chargebacks and/or increased fees; (iii) settlement delay or withholding; (iv) termination of your Agreement; or (v) audit and imposition of fines.

## 13. 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.

## 14. Services

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

## 15. 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 4 above. From time to time, we may amend the Operating Procedures, by providing you with at least 20 days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the 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 <http://usa.visa.com/merchants/> and <http://mastercardmerchant.com>, as those links may change from time to time.

## 16. Settlement of Card Transactions

**16.1.** 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.

**16.2.** All settlements for Visa, MasterCard and Discover Network Card transactions will be net of Credits, Summary 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.

**16.3.** All credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our right to deduct fees, our final audit, Chargebacks (including our related losses), and fees and fines imposed by the Card Organization. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees, pending Chargebacks and any other amounts owed to us or any of our respective Affiliates, or we may deduct such amounts from settlement funds or other amounts due to 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.

**16.4.** We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by you or any Person.

**16.5.** In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 23.4) 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.

**16.6.** 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.

**16.7.** 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.

## 17. Exclusivity

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

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

**18.1.** In consideration of the Services provided by us, you shall be charged, and you agree to pay us any and all fees set forth in this Agreement (for the purposes of clarity, 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).

**18.2.** 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.

**18.3.** 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.

**18.4.** The fees for Services set forth in this Agreement may be adjusted to reflect increases, or new fees imposed by Card Organizations, including without limitation, interchange, assessments and other Card Organization fees, or to pass through increases or new fees charged to us by other Persons related to the Services. 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 Person as specified in our notice to you.

**18.5.** Subject to Section 23.3, we may also increase our fees or add new fees for Services for any reason at any time, by notifying you twenty (20) days' prior to the effective date of any such change or addition.

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

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

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

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

**18.10.** You must promptly and carefully review statements or reports provided or made available to you (physically, electronically or otherwise) reflecting Card transaction activity, including, activity in the Settlement Account and Reserve Account, whether provided by us or others. 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 such time period, we may, in our discretion, assist you, at your expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but we shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

**18.11.** 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) the per annum rate equal to Bank's then current prime rate plus two percent (2%), based on a 360 day year, or (ii) the maximum rate permitted by applicable law.

## 19. Chargebacks

**19.1.** 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.

**19.2.** 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.

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

**20.1.** 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:

**20.1.1.** 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;

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

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

**20.1.4.** each Card transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased or rented or other payments to you 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;

**20.1.5.** 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;

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

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

**20.1.8.** 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;

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

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

**20.1.11.** you are not doing business under a name or style not previously disclosed to us;

**20.1.12.** 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 merchant category code under Card Organization Rules, in a way not previously disclosed to us;

**20.1.13.** 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;

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

**20.1.15.** 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.

**20.1.16.** 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;

**20.2.** 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.

**20.3.** 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.

**20.4.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 26 OR 20.5), 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.

**20.5.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 26), OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 16.4, 16.6 OR 35.1, WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK, FROM TIME TO TIME, LESS ONE PERCENT (1%).

**20.6.** 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 AMERICAN EXPRESS CARD, 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.

## 21. Confidentiality

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

**21.2.** 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.

**21.3.** 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 or Bank, 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 or Bank a competitive advantage over its competitors; (iii) user IDs, security codes, passwords, personal identification numbers, and other security devices and procedures for the Services or related thereto; and (iv) 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 copy-rightable 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.

**21.3.1.** Our confidential information shall be used by you only to exercise your rights and to perform your obligations hereunder. Client 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. Client 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 termination of this Agreement, Client shall return to us or destroy all of our confidential information in its possession or control.

**21.3.2.** 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 Client; (ii) was received from a third party free of any obligation of confidence of Client to the third party and which third party, to Client's knowledge, was not under an obligation to keep the information confidential; (iii) was already in Client's 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 Client's employees, consultants or agents without use of or reference to our confidential information.

**21.3.3.** 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 Client. Except as specifically provided for herein, no license is hereby granted to Client under any patent, trademark, copyright, trade secret or other proprietary rights of ours.

**21.3.4.** Client acknowledges 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.

**21.4.** With respect to any information received by us from Client via its use of the Services, we will keep such information confidential in accordance with applicable law; provided, that we may disclose such information (i) to third parties as we deem appropriate to provide the Services, (ii) our auditors and attorneys (internal and external) and regulators, (iii) as required or permitted by law, regulation or court order (iv) to our respective Affiliates as we deem appropriate.

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

**21.6.** 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 of such intellectual property, shall be and remain, as among the Parties, our exclusive property of us.

## 22. Assignments

**22.1.** Any transfer or assignment of this Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable by us. Any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Agreement. 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 22, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

**22.2.** 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 Person. 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.

**22.3.** Upon notice to you, another Visa and MasterCard member may be substituted for Bank under whose sponsorship this Agreement is performed with respect to Visa and MasterCard transactions. Upon substitution, such other Visa and MasterCard member shall be responsible for all obligations required of Bank for Visa and MasterCard transactions, including without limitation, full responsibility for its 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 and obligations hereunder and/or may delegate our duties hereunder, in whole or in part, to any Person, whether in connection with a change in sponsorship, as set forth in the preceding paragraph, or otherwise, without notice to you or your consent.

**22.4.** 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.

## 23. Term; Events of Default

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

**23.2.** 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 we or you terminate the Agreement upon written notice to the other.

**23.3.** 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 23.4 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 18.5, you may terminate this Agreement without further cause or penalty by providing us 30 days' advance written notice of termination. You must terminate within 30 days after we provide notice of any fee changes pursuant to Section 18.5; any such fee changes shall not take effect in the event you provide timely notice of termination. 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.

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

**23.4.1.** a material adverse change in your business, financial condition, or business prospects; or

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

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

**23.4.4.** 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

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

**23.4.6.** you default in any material respect in the performance or observance of any term, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 24; or

**23.4.7.** 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

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

**23.4.9.** 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 action for the purpose of authorizing any of the foregoing; or

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

**23.4.11.** 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 35.2 ("Compliance with Laws"),

then, upon the occurrence of (1) an Event of Default specified in subsections 23.4.4, 23.4.9 or 23.4.11, we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by 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.

**23.5.** 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.

If any Event of Default occurs, regardless of whether such Event of Default has occurred, 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 24.

**23.7.** 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.

**23.8.** The Card Organizations often maintain lists of merchants who have had their merchant agreements or Card Acceptance rights terminated for cause. If this Agreement is terminated for cause, 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 or Discover Network. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

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

## 24. Reserve Account; Security Interest

**24.1.** You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 24. 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.

**24.2.** 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; (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 Card transactions and Chargebacks in accordance with Card Organization Rules. We will hold funds pursuant to this Section 24.2 in master account(s) with your funds allocated to separate sub accounts.

**24.3.** 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.

**24.4.1.** To secure your obligations to us and our respective Affiliates under this Agreement and any other agreement for the provision of related equipment or related services (including any obligations for which payments on account of such obligations are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause), you grant to us 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 our possession, whether now or hereafter due or to become due to you from us. Any such funds, money or amounts now or hereafter in our possession may be commingled with other funds of ours, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of ours. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, we are hereby authorized by you at any time and from time to time, without notice or demand to you or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of your obligations to us and our respective Affiliates under this Agreement and any other agreement with us 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 us such instruments and documents as we may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

**24.4.2.** To the extent funds are held in a separate Reserve Account, the Reserve Account shall be subject to (i) Servicers' security interest pursuant to this subsection 24.4, and (ii) an account control agreement (as defined by the applicable sections of the Uniform Commercial Code, hereinafter referred to as "Control Agreement") among you, the institution at which the Reserve Account is held (such institution hereinafter referred to as "Settlement Account Bank") and Servicers (such investment account hereinafter referred to as the "Control Account"). The Control Agreement shall be in form and substance satisfactory to Servicers. The Settlement Account Bank shall be a national bank which is mutually acceptable to you and Servicers.

**24.4.3.** For sake of clarification and notwithstanding anything in the Agreement to the contrary, in the event Servicers deduct, holdback, suspend, off set or set off 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 (as described in this subsection 24.4) unless such Set Off Funds are wired or deposited by Servicers into any Control Account, pursuant to a Control Agreement in which case Servicers will transfer Set Off Funds from their commingled Reserve Account(s) to the Control Account as soon as practicable using commercially reasonable efforts.

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

## 25. Financial and Other Information

**25.1.** Upon request, you will provide us quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of 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, or our representatives or regulators (as well as those of the Card Organizations) reasonable access to your or your Merchant 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 the costs incurred by us for such inspection, including, but not limited to, costs incurred for airfare and hotel accommodations.

**25.2.** 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.

## 26. Indemnification

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

**26.2.** We agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall not apply to Bank with respect to Discover Network Card Transactions, American Express Card Transactions and Other Services, including JCB Card, PIN Debit Card, and Electronic Benefits Transfer Transactions, TeleCheck check services, 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.

## 27. Special Provisions Regarding Non-Bank Cards

**27.1.** Non-Bank Card transactions are provided to you by Processor and not by Bank and include transactions made using Discover Network, American Express, JCB, Voyager and WEX Card types. The Services provided, transactions processed and other matters contemplated under this Section 27 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 27 directly conflict with another provision of this Agreement, in which case the terms of this Section 27 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 any 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, JCB (and Discover Network on its behalf), Discover Network or any other Non-Bank Card Organization.

**27.2.** You understand that for American Express transactions, authorizations are obtained from and are 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.

**27.3. If you accept JCB Cards,** you acknowledge and agree that JCB transactions will be processed under and subject to Discover Network Card Organization Rules.

**27.4. If you accept JCB Cards** you also agree to be bound by all other provisions of this Agreement which are applicable to JCB and/or Discover Network.

**27.5. 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.

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

**27.7. If you accept Voyager Cards:**

- In addition to the information stated in Section 1 (MasterCard, Visa and Discover Network Acceptance) of the Operating Procedures, you should check Fleet Cards for any printed restrictions at the point of sale.
- In addition to the information provided under Section 1.5 (Special Terms) of the Operating Procedures, you shall establish a fair policy for the exchange and return of merchandise. You shall promptly submit credits to us for any returns that are to be credited to a Voyager Cardholder's account. Unless required by law, you shall not give any cash refunds to any Voyager Card holder in connection with a sale.
- In addition to the information required under Section 3.1 (Information Required) of the Operating Procedures, the following information must be contained on the single page document constituting the Sales Draft for Voyager transactions:
  - Time of transaction
  - Type of fuel sold
  - As permitted by the applicable POS device, odometer reading
- For all cashier-assisted Sales Drafts and Credit Drafts processed manually using an Imprinter if required, the identification number from the source credentials provided by Cardholder to valid Cardholder's identity (e.g., Driver's License number).
- If an increase in the number of Voyager transaction authorization calls from you not due to our or Voyager system outages in excess of 15% for a given month as compared to the previous month occurs, we may, in our discretion, deduct telephone charges, not to exceed \$.25 (25 cents) per call, for the increased calls, from your settlement of your Voyager transactions.
- In addition to the information provided under Section 7 (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. Neither we nor Voyager shall be required to reimburse you for sales submitted more than sixty (60) days from the date of purchase.
- For daily transmission of sales data, you shall maintain true and complete records in connection with the information required to be provided under this paragraph for a period of not less than thirty-six (36) months from the date of the generation of the data. You may store records on electronic media. You are responsible for the expense of retaining sales data records and Sales Drafts.
- In addition to the scenario identified in Section 10.1.4 of this Program 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 20 (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.

## 28. Special Provisions For PIN Debit Card

The special provisions outlined in this Section 28 apply only to those PIN Debit Card transactions that are processed by a Cardholder entering a PIN. These provisions do not apply to Non-PIN Debit Card transactions which do not involve entry of a PIN. The Services provided, transactions processed and other matters contemplated under this Section 28 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 28 directly conflict with another provision of this Agreement, in which case the terms of this Section 28 will control.

**28.1. PIN Debit Card Acceptance.** Most, but not all, ATM Cards (Debit Cards) can be accepted at the point of sale at participating locations. Examine the back of the PIN Debit Card to determine if the Card participates in a 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 PIN 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 PIN 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 PIN 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 PIN 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 PIN Debit Card transaction.

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

- All PIN Debit Card transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for PIN Debit Card transactions.
- You may not complete a PIN Debit Card transaction that has not been authorized. If you cannot obtain an Authorization at the time of sale, you should request another form of payment from the 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.
- You may not complete a PIN Debit Card transaction without entry of the PIN by the Cardholder. The PIN must be entered into the PIN pad only by the Cardholder. You cannot accept the PIN from the Cardholder verbally or in written form.
- The PIN Debit Network used to process your transaction will depend upon, among other things, the availability of the PIN Debit network at the time of the transaction, whether a particular PIN Debit Card is enabled for a particular PIN Debit network and the routing requirements established by the PIN Debit networks and the Issuers. We may, at our sole discretion, utilize any PIN Debit network available to us for a given transaction.
- You must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN Truncation on it.
- You may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, you must request another form of payment from the Cardholder.
- Any applicable tax must be included in the total transaction amount for which Authorization is requested. Tax may not be collected separately in cash.
- **YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

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

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

**28.5. Adjustments.** An adjustment is a transaction that is initiated to correct a PIN Debit Card transaction that has been processed in error. You will be responsible for all applicable adjustment fees that may be charged by a PIN Debit Card 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, either too little or too much.
- The Cardholder was charged more than once for the same transaction.

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

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

## 29. Special Provisions Regarding Electronic Benefit Transfer ("EBT")

If you elect to engage in EBT transactions, the terms and conditions of this Section 29 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 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 section of this Agreement, in which case the terms of this Section 29 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.

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

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

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

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

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

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

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

**29.6. Term and Termination.** If you are disqualified or withdrawn from the food stamp program, your authority to issue benefits will be terminated concurrently therewith. Such disqualification or withdrawal will be deemed a breach of this Agreement with respect to your authority to issue Cash Benefits and, in the event of such disqualification, we shall have the right to immediately terminate the provision of service under this Section 29.6 or the Agreement in its entirety. With respect to the issuance of Cash Benefits only, your authority to issue Cash Benefits may be suspended or terminated immediately at the sole discretion of us, the state or its EBT service provider, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination in

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

The provision of services under this Section 29.6 shall terminate automatically in the event that our Agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

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

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

The use of information obtained by you in the performance of your duties under this Section 29.7 will be limited to purposes directly connected with such duties.

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

#### **29.9. Miscellaneous**

**29.9.1. Amendments.** If any of these terms and conditions are found to conflict with federal or state law, regulation or policy of the rules, these terms and conditions are subject to reasonable amendment by a state or its EBT service provider to address such conflict upon twenty (20) days' written notice to you provided that you may, upon written notice, terminate your obligation under this Section 29 upon receipt of notice of such amendment.

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

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

If you elect to purchase any Wireless Equipment from us as indicated on the Application, then the following terms and conditions of this Section 30, referred to as the "**Wireless Services Terms**," shall apply. THE WIRELESS SERVICES ARE NOT BEING SOLD TO YOU FOR HOME OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank. The Services provided, transactions processed and other matters contemplated under this Section 30 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 30 directly conflict with another section of this Agreement, in which case this the terms of this Section 30 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Wireless Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our," and "us" refer only to the Processor and not to the Bank.

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

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

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

**30.1. Purchase of Wireless Services.** In connection with your purchase of Wireless Equipment, you will purchase the Wireless Networks' service and obtain sublicenses to use any Wireless Software (as defined in Section 30.2) associated therewith (collectively "Wireless Services"). The prices that you will pay for the Wireless Services are set forth on the Application.

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

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

**30.2. Software Licenses.** We hereby grant to you a non-exclusive, non-transferable limited sublicense to use any Wireless Software solely in connection with your purchase and use of the Wireless Services. As used in this Section 30, "Wireless Software" means all software used in, for or in connection with the Wireless Equipment, the Wireless Services or the access thereto in whatever form, including without limitation source code, object code and microcode, including any computer programs and any documentation relating to or describing the Wireless Software. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this Section.

**30.3. 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 30.10, or for any Person's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services, or Wireless Networks, regardless of the form of action (whether in contract, tort (including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor's, Bank's, and Wireless Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services. In no event shall Servicers, Wireless Vendor(s) or our respective Affiliates be liable for any indirect incidental, special, consequential or punitive damages. The remedies available to you under these Wireless Services Terms will be your sole and exclusive remedies.

**30.4. Indemnification.** In addition to any other indemnifications as set forth in this Agreement, you will indemnify and hold Servicers, Wireless Vendor(s) and our respective officers, directors, employees, and Affiliates harmless from and against any and all losses, claims, liabilities, damages, costs or expenses arising from or related to: (a) the purchase, delivery, acceptance, rejection, ownership, possession, use condition, liens against, or return of the Wireless Equipment; (b) your negligent acts or omissions; (c) any breach by you of any of your obligations under this Section 30; or (d) any Person's unauthorized access to Client's data and/or unauthorized financial activity occurring on your Merchant Account Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

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

**30.6. Termination.** In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 30 may terminate:

- Immediately upon termination of the agreement between us (or our Affiliates) and Wireless Vendor(s), provided that we will notify you promptly upon our notice or knowledge of termination of such agreement, provided further that if Wireless Vendor(s) loses its authority to operate less than all of the Wireless Services or if the suspension of any authority or non-renewal of any license relates to less than all of the Wireless Services, then these Wireless Services Terms will terminate only as to the portion of the Wireless Services affected by such loss of authority, suspension or non-renewal; or
- Immediately if either we or our Affiliates or Wireless Vendor(s) are prevented from providing the Wireless Services by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority (including without limitation the FCC).

**30.7. Effect of Termination.** Upon termination of these Wireless Services Terms for any reason, you will immediately pay to us all fees due and owing to us hereunder. If the Wireless Services Terms terminate due to a termination of the agreement between us or our Affiliates and Wireless Vendor(s), then we may, in our sole discretion, continue to provide the Wireless Services through Wireless Vendor(s) to 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.

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

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

**30.10. 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 WIRELESS VENDOR(S) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATING TO WIRELESS SERVICES. WE CANNOT PROMISE UNINTERRUPTED OR ERROR-FREE WIRELESS SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF.

### **31. Special Provisions Regarding Gift Card Services**

Gift Card Services are provided to you by Processor. The Services processed and other matters contemplated under this Section 31 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 31 directly conflict with another provision of this Agreement, in which case this the terms of this Section 31 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.**

**31.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 31.1 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 maintained.
- d) "Designated Location" means any store or other place of business (including a direct marketing program or Internet site), located in the U.S.A., and at or through which Client issues Gift Cards and/or processes transactions using Gift Cards issued under the Program. Designated Locations include any help desk or IVR through which transactions are processed under the Program.
- e) "Gift Card" means an encoded device that accesses Gift Card Data maintained in the Database.
- f) "Gift Card Data" means the current value and record of transactions corresponding to each Gift Card issued under the Program.
- g) "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.
- h) "Gift Card Holder" means any person in possession of or that uses a Gift Card.
- i) "Gift Card Number" means the identifying number of a Gift Card.
- j) "Gift Card Production Company" means a company selected and retained by Processor to produce Gift Cards and provide related products or services for the Program.
- k) "IVR" means an automated Interactive Voice Response system accessed via a toll-free telephone number.
- l) "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.
- m) "Program" means Client's program pursuant to which Client issues 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.
- n) "Services" means the services provided by Processor in connection with the Program as further described in this Section.

**31.2. 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 and maintain Gift Card Data on the Database.
- c) Processor shall provide Client and its 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 Client's 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 Client. Client understands and agrees 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 Client and Gift Card Holders may obtain Gift Card balances.
- f) Processor shall provide a Gift Card product support help desk through which Client may process selected non-financial 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 Client with Gift Card transaction reports, accessible by Client 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 Client from time to time, at a fee to be determined by Processor.
- h) Client 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 Client's 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 Client's Gift Card Data to Client in a mutually agreeable format. Processor shall have no obligations with respect to Client's Gift Card Data following delivery to Client.

**31.3. Responsibilities of Client.** The responsibilities of Client are set forth below and elsewhere in this Section.

- a) Client will accept for processing any transaction initiated by one of its customers using a Gift Card pursuant to the Services without discrimination with regard to the customer who initiated the transaction.
- b) Client will 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. Client will download and store any and all Gift Card transaction reports for future reference. In the event that Client needs a report for a period past such six (6) months, Processor may provide such requested report to Client at a fee to be determined by Processor.
- c) Client will make its 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) Client shall be responsible, at its 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) Client shall obtain, operate and maintain, at its sole cost and expense, all Gift Card Equipment required to enable Client and Affiliated Issuers to electronically transmit Gift Card Data in accordance with Processor's specifications from all Designated Locations to the Database.
- f) Client is solely responsible for obtaining Authorization in advance of each transaction. Client is solely responsible for any losses it may incur 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. Client assumes all risk of erroneous or fraudulently obtained Authorizations, unless such erroneous or fraudulently obtained Authorization is caused directly by Processor. Client understands and agrees 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. Client is responsible for the accuracy of all data transmitted by it for processing by Processor.
- g) Client 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. Client acknowledges that Processor will make adjustments to Gift Card accounts pursuant to Client's instructions, and Processor shall have no liability for any errors to Gift Card accounts that are made in accordance with Client's instructions.

- h) Client shall comply and shall ensure that all Affiliated Issuers comply with all laws and regulations applicable to the Program. Client acknowledges and agrees that it is 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 Client 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 Client and Processor, Client 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 Client or Client's Designated Location, as applicable, and (ii) in the case of Gift Cards obtained by Client from a Person or Gift Cards which Client requests to be delivered in a pre-activated state, whether such loss occurs before or after delivery of such Gift Cards to Client or Client's Designated Location.
- j) Processor and Client agree that during the term: (i) Processor will be the sole and exclusive provider of the Services to Client and its Affiliated Issuers; and (ii) Client will not directly or indirectly either itself or through a Person, offer or promote any other proprietary, closed network, online Gift Card or similar access device.
- k) Client may allow Affiliated Issuers to participate in the Program; provided, however that (i) Client 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) Client 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) Client is responsible for any settlement of funds among Affiliated Issuers and Designated Locations.

**31.4. Fees and Payment.** In addition to all other rights we have under the Agreement, Client shall pay Processor the fees set forth on the Gift Card Set-Up Form. Client 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 Client. To authorize the ACH transfers, Client agrees to execute the ACH Authorization on the Gift Card Set-Up Form. In the event that fees cannot be collected from Client as set forth above, Processor reserves and may exercise all other rights to collect any fees due.

**31.5. 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 Client fails to pay any amount due within ten (10) Business Days after written notice to Client of its failure to pay such amount; (iii) by Processor upon written notice to Client in the event that Client's operation of the Program results in a violation of law or regulation (by Client, an Affiliated Issuer or Processor); (iv) by Client if Processor increases its rates under Section 31.4(c) above and Client provides 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) Client suspends or terminates the Program prior to the expiration of the initial term except as provided for in Section 31.5 (a) (iv), nothing in this subsection shall prohibit or limit Processor's right to recover damages or any other amounts due and owing Processor in the event that the Gift Card Services are terminated by Processor due to a breach by Client or shall be deemed to waive or otherwise limit Client's obligations pursuant to Section 31.6(a).
- c) If requested by Client, 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 Client's agreement to pay for such Services and to conduct its 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 Client's 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 31.3 (f), (g), (h), (i), (k) and (l), and Sections 31.4, 31.5(b), 31.5(c), 31.5(d), 31.6 and 31.7 hereof shall survive any termination of this Agreement.

**31.6. Indemnification.**

- a) Client 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 Client or an Affiliated Issuer to comply with any law or regulation applicable to the Program; (ii) any dispute between Client and any Affiliated Issuer, or Client 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 Client 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 Client 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 Client using artwork, designs, specifications or concepts provided by Client.
- b) Processor shall indemnify and hold harmless Client and its 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 Client or is otherwise made in accordance with Client's instructions.

**31.7. Patents, Copyrights, Intellectual Property, etc.** Client 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 Client 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 Client remains the property of Processor. Client retains ownership of any artwork supplied to Processor.

**31.8. 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 CLIENT AND, IN ANY EVENT, SHALL NOT EXCEED THE LESSER OF (I) THE AMOUNT OF FEES PAID TO PROCESSOR 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).

**32. Special Provisions Regarding Loyalty Program Services**

If you elect to utilize the Loyalty Services, the terms and conditions of this Section 32, shall apply.

Loyalty Services are provided to you by Processor and not by Bank. The Services provided, transactions processed and other matters contemplated under this Section 32 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 32 directly conflict with another provision of this Agreement, in which case the terms of this Section 32 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Loyalty 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.

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

**32.2. Provision of Loyalty Services by Processor.**

- a) **Loyalty Services.** During the term of this Agreement and subject to the fees set forth on the Loyalty Set-Up Form, Processor will provide the Loyalty Services to Client. ("Loyalty Services" means the services provided by Processor as further described in this Section). Client acknowledges and agrees that the Loyalty Services hereunder may be provided in whole or in part by Affiliates, or vendors of Processor, and further, that Processor may subcontract with one or more Affiliates, or vendors to provide any service(s) required to be provided by Processor hereunder; provided, however, that such use of an Affiliate(s) or vendors) shall not relieve Processor of its obligations under this Section.
- b) **FDLS Website.** Processor will establish and maintain Client on its First Data<sup>SM</sup> Loyalty Solution platform ("FDLS") and provide Client access to a Processor-hosted website with the features and functionality described herein (the "FDLS Website"). Client's access to the FDLS Website (pursuant to Section 32.2(a) above) will include providing Client with user IDs and passwords for each participating location, with capability to support issuing unique user IDs and passwords for multiple individuals at each location so that each participating location can access store-level loyalty information and other resources such as the customer support toolkit. The FDLS Website

layout, features (including, without limitation reporting) and functionality may be modified from time to time by Processor in its sole discretion. The FDLS Website is not designed to be accessed by Client's loyalty customers. If Client wishes to establish a website for use by its loyalty customers, Client will be solely responsible for the development and maintenance of such website and all costs associated therewith.

**Loyalty Campaigns.** Processor can support a variety of loyalty campaigns as set forth on the FDLS Website, provided, however, that the types of promotions (e.g., by way of example, and not as a limitation, recency, frequency, SKU-based and monetary algorithms) that are supported may be changed from time to time at Processor's sole discretion. Processor shall not have any obligations or liability of any kind whatsoever related to the loyalty campaigns selected and offered by Client, which selection and offering is Client's sole responsibility. Client acknowledges that any requests to Processor for modification or customization of loyalty campaigns, or any consulting or other additional work requested by Client will be subject to additional fees as determined by the Processor, at its sole discretion, from time to time.

- d) **Processing of Loyalty Transactions.** For each loyalty transaction transmitted to Processor by Client and/or a participating location's Point of Sale Terminal (according to current specifications established by Processor), Processor will determine if a reward is applicable, based upon the then-current loyalty campaigns offered by Client at its participating locations. If a reward is applicable, Processor will send back an applicable response message to Client and/or a participating location's Point of Sale Terminal, such as, but not limited to, the number of points to be issued or the discount to be applied.
- e) **Reporting.** Processor will provide Client with Processor's standard reporting for Client's loyalty transactions via the FDLS Website. Client acknowledges that reporting on the FDLS Website is generated from a data warehouse that is updated with a particular day's loyalty transaction data at the end of the day, and therefore, not available in real time. Historical reporting will be available in accordance with Processor's then-current policies.
- f) **Help Desk.** Processor will provide a support help desk for Client issues relating to the Loyalty Service. Full Client support will be available each day from 7am-12am CT and partial Client support will be available each day from 12am-7am CT. The hours and days of support are subject to change at any time; provided, however, that Processor will provide notice of any change in hours and days. Client acknowledges that help desk is for Client issues only and that Client is solely responsible for providing customer support or service to loyalty customers. Support for Client's loyalty customers will be made available to Client only as agreed to separately in writing by the parties.

### 3. Responsibilities of Client.

**Loyalty Services; Exclusivity.** During the Term, Client shall use Processor as its sole and exclusive provider of all Loyalty Services for Client and its participating locations. Client is responsible for managing the participating locations, which includes changes to, or additions or removals of, the participating locations by providing written notice to Processor or by other means established by Processor from time to time.

- b) **Terminals/POS Systems.** Client shall be responsible at its sole cost and expense for (i) obtaining, operating and maintaining (including modifications to) Point of Sale Terminals required to enable Client to electronically submit loyalty transactions to Processor in accordance with Processor's specifications, and (ii) the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of, the Point of Sale Terminals.
- c) **Transmission of loyalty transactions.** Loyalty transactions shall be electronically transmitted to Processor according to current specifications established by Processor.
- d) **Loyalty Campaign Rewards.** As between Client and Processor, Client shall be responsible for the provision of, and all costs associated with, any rewards (including, but not limited to, discounts, points, coupons, or other loyalty reward or benefit) provided to a loyalty customer under Client's loyalty campaigns. As between Client and Processor, Client is responsible for the accuracy of all data transmitted by it or any participating location for processing hereunder by Processor.
- e) **Running of Loyalty Campaigns.** At all times during the term of this Agreement, Client will have running at least one loyalty campaign and use commercially reasonable efforts to promote such loyalty campaign from the loyalty programs supported by the FDLS. Client and/or participating locations may select and modify its loyalty campaigns through the FDLS Website.
- f) **Transaction and Loyalty Campaign Information.** Client will download and store any and all data and information relating to loyalty transactions and loyalty campaigns available to Client for future reference. After termination of this Agreement, Client will not have access to FDLS Website and Processor will have no obligation to provide Client with any reports or other data.
- g) **Loyalty Identifiers.** Client shall be responsible, at its sole cost and expense, for designing, producing and issuing loyalty identifiers and for any marketing or advertising of Client's loyalty program. Client's loyalty identifiers must meet Processor's program specifications, which may be modified from time to time by Processor upon reasonable notice to Client. As requested by Client, Processor will arrange for the production of the loyalty identifiers in accordance with the specifications and fees set forth on the Loyalty Set-Up Form.

h) **Promotion of Loyalty Program.** Client shall be solely responsible for (i) promoting the Client loyalty program and enrolling customers in Client's loyalty program, and (ii) preparing all marketing and informational materials to be provided to its customers in connection with enrollment and participation in Client's loyalty program, which includes, without limitation Client's terms and conditions for Client's loyalty program and Client's privacy policy. Client shall not, and shall not permit any participating locations to act in contravention of its privacy policy, as it may be amended from time to time. Client shall be responsible for obtaining authorization from each loyalty customer, in accordance with applicable laws and governmental regulations, for Client, Processor and any other Affiliates, or vendors, as applicable to use such loyalty customer's transaction data and information for purposes of participating in Client's loyalty program and as otherwise contemplated herein. In no event shall Processor be responsible for, or have any liability related to, any of the materials contemplated by Subsection 32.3(h)(ii).

- i) **Applicable Laws.** Client acknowledges that Client's loyalty program will be subject to various state and federal laws and regulations that may differ from each other and that are subject to change at any time. Client shall comply, and shall ensure that all participating locations comply, with all applicable state and federal laws and regulations, including, but not limited to, advertising sweepstakes, telemarketing, email and fax marketing, privacy and other consumer protection laws and laws applicable to Client's role as a provider of a loyalty program (collectively, "Applicable Laws"). Client acknowledges and agrees that, as between Client and Processor, it will be solely responsible for monitoring, interpreting and establishing compliance with all Applicable Laws. Processor shall be entitled to rely upon and use any and all information and instructions provided by Client or any participating locations for use in performing its obligations hereunder, and Processor shall have no liability whatsoever for any errors in such information or instructions, or for any noncompliance of such information or instructions with laws or regulations.
- j) **Acknowledgements:** Client acknowledges and agrees that: (i) Processor may, in its sole discretion at any time, issue and require Client to publish and comply with a privacy policy with respect to the Loyalty Services; and (ii) it shall not submit, and shall require the participating locations to not submit, any loyalty transaction information not based on bona fide loyalty transactions; and (iii) it shall bear all risk related to the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of the loyalty identifiers, the loyalty program, and improper award and/or redemption of rewards.

### 32.4. Term and Termination.

- a) **Termination Rights.** The terms of this Section 32 may be terminated at any time by Processor if Processor has reason to believe that Client has materially breached any of its obligations with respect to the Loyalty Services." The terms of this Section may be terminated at any time by either party in the event of an Event of Default. In addition to the foregoing, the terms of this Section may be terminated: (i) by Processor upon written notice to Client in the event that Client's operation of Client's loyalty program results in a violation of law or regulation (by Client, a participating location or Processor), which shall include, without limitation any misuse of loyalty customer or transaction information, or (ii) by Client if Processor increases its rates under Section 32.5(c) below and Client provides written notice of termination within thirty (30) days of receiving notice of said increase.
- b) **Obligation to Pay Fees.** Termination of the terms of this Section shall not affect Client's obligation to pay for services rendered or obligations due and owing under this Section 32 prior to termination. In addition, if an early termination fee is set forth in the Loyalty Set-Up Form, then in addition to any other remedies contained herein or otherwise available to Processor, Client shall pay Processor, as liquidated damages, an early termination fee in the amount calculated in the Loyalty Set-Up Form, which shall be paid to Processor in the event of an early termination (unless as a result of Section 32.4(a)(ii)). Client acknowledges and agrees that the amount of the early termination fee is a reasonable estimate of Processor's probable damages in the event of such termination or suspension and does not constitute a penalty. Nothing in this section shall prohibit or limit Processor's right to recover damages in the event that this Agreement is terminated by Processor due to a breach by Client or shall be deemed to waive or otherwise limit Client's obligations pursuant to Section 32.7(a).

### 32.5. Fees and Payment

- a) **Fees.** Client shall pay Processor the fees set forth on the Loyalty Set-Up Form. Client 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 Loyalty Services shall be paid via an ACH transfer of funds from a bank account designated by Client.
- b) **Adjustments for Increases in Costs.** Processor may increase the fees from time to time to the extent necessary to pass through increases in the costs of the underlying goods and services used or provided by Processor in connection with the provision of Loyalty Services. Any such adjustments shall become effective upon written notice to Client.
- c) **Other Adjustments to Fees.** Processor may also increase fees for any other reason upon thirty (30) days written notice to Client.

**32.6. Indemnification by Client.** Client shall indemnify and hold harmless Processor, 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 or an a participating location to comply with this Agreement or any law or regulation applicable to the Program; (ii) any dispute between Client and a loyalty customer or between a participating location and a loyalty customer Client, including, without limitation, any dispute regarding the goods or services purchased in connection with a loyalty transaction or the discount or other form of reward owed or alleged to be owed by one or more such persons to any other such persons; (iii) any instructions or procedures that Client may provide to Processor in connection with the Loyalty Services 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 Loyalty ID; or (v) any claim(s) brought by a loyalty customer(s) with respect to Client's loyalty program, including, but not limited to, any collection and use of loyalty customer information by Processor and/or affiliate(s), or vendor(s) in accordance with the terms of this Section 32.

### 33. Terms of Equipment Purchase or Rental

This Section 33 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 the Equipment Documents that your equipment is leased, then the provisions of your lease are governed by Section 1 of Part II (Third Party Agreement). Equipment rented to or purchased by you under the Equipment Documents is referred to in this Section 33 as the "Equipment." THE EQUIPMENT IS NOT BEING SOLD OR RENTED TO YOU FOR HOME OR PERSONAL USE. Sales and rentals of equipment are made by Processor. The Services provided, Equipment, Equipment Documents and other matters contemplated under this Section 33 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 33 directly conflict with another provision of this Agreement, in which case the terms of this Section 33 will control; provided, however, that 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.

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASED 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.

**33.1. Purchased Equipment; Supplies.** We will sell to you, and you will buy from us the Equipment identified in the Equipment Documents throughout the term of this Agreement as being purchased by you (individually and collectively, the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 33.7), except that any "Software" (as defined in Section 33.8) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 33.8 of this Agreement. You shall pay the purchase price specified for the Purchased Equipment and the related software license(s), including all applicable tax, prior to the effective date of this Agreement or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 33.5. 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 33.5. (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.)

**33.2. Rental Equipment.** We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Equipment Documents as being rented to you (individually and collectively, the "Rental Equipment"), according to the terms and conditions of this Section 33. In addition, any Equipment ordered by and rented to you during the term of this Agreement shall constitute Rental Equipment and be governed by the terms of this Section 33.

**33.3. Effective Date and Term of Section 33.** This Section 33 shall become effective on the first date you receive any piece of Equipment covered by this Section 33. This Section 33 will remain in effect until all of your obligations and all of our obligations under this 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 this Agreement and/or any other agreement then in effect with us for Card services. The provisions of this Section 33 shall survive the termination of this Agreement and continue until all Rental Equipment is returned or paid for.

Warranties, if any, for First Data POS Value Exchange<sup>SM</sup> Equipment or Software originate from the 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 First Data POS Value Exchange<sup>SM</sup> Equipment or Software packaging shipped from the Vendor. We do not make or provide any warranty with respect to the First Data POS Value Exchange<sup>SM</sup> Equipment or Software or any related services provided hereunder, and specifically disclaim all other warranties of any kind, expressed or implied, including warranties of merchantability, fitness for a particular purpose or non-fringement, arising out of or related to them, which are hereby excluded by agreement of the parties. We will only provide help desk support and related services for First Data POS Value Exchange<sup>SM</sup> Equipment purchased from us hereunder, and will not provide any such support or related services for any other products or equipment.

**33.4. 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.

- 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 Equipment from loss, damage, unauthorized use, misuse or theft; we should be notified immediately if any of the foregoing occurs.
- 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).

You shall ensure the following requirements have been met at each of your locations prior to any appointment for installation of the First Data POS Value Exchange<sup>SM</sup> Equipment: (i) retail counter prepared for the products – minimum dimensions for each component; (ii) retail counter grommet hole drilled if CPU box below the counter; (iii) retail counter has valid, working IP connectivity to Internet; (iv) network cable in place between POS stations if multi-lane; (v) specified power to POS retail counter; (vi) product boxes within short distance from POS retail counter. You shall comply with the following during installation of First Data POS Value Exchange<sup>SM</sup> equipment: (i) access to POS retail counter with no interruptions by merchant staff; (ii) merchant store manager available for scheduling of installation services and sign-off.

### 33.5. Payment of Amounts Due.

- a) You agree to pay the monthly rental charge specified in the Equipment Documents which shall be due and payable on the first day of each month of the rental period for each piece of Rental Equipment, except that the first payment of the monthly rental charge for each piece of Rental Equipment shall be due and payable upon acceptance of such Equipment by you at the location designated in the Equipment Documents or, upon delivery if the site is not prepared for installation (as provided in Section 33.3). 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 Section 33 by initiating debit entries for such amounts to the Settlement Account or by deducting such amounts from amounts due to you from TeleCheck or Servicers.
- 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, duties or assessments, however designated, levied or based on such charges, or on this Agreement or Equipment and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income.
- d) Separate charges will apply for supplies; they are not included in monthly rental charges.

### 33.6. 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. 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.

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 Agreement, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Rental Equipment to any other person, firm or organization without our prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of such consent shall be void.
- e) 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 33.11(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 33.11(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 33.5 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 pencils to the Equipment indicating our ownership.
- You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the Rental Equipment 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 Equipment Documents and shall not be removed from there without our prior written consent (except where normal use of the Equipment requires temporary removal).
- l) In order to return equipment, 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. Company 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.

**33.7. 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.

**33.8. Software License.** Anything in this Agreement to the contrary notwithstanding, we 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 non-exclusive license to use the Software in your operation of the Equipment. You shall not reverse engineer, disassemble or decompile the Software. You shall not give any Person access to the Software without our prior written consent. Your obligations under this Section 33.8 shall survive the termination of this Agreement.

You acknowledge that Software embodied in or provided in connection with the Data POS Value Exchange<sup>SM</sup> Equipment is owned and copyrighted by third party suppliers, including Hewlett-Packard Co. and Microsoft, Corp., and 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 and be bound by all applicable terms and conditions of use and other license terms applicable to such Software.

**33.9. Limitation on Liability.** Notwithstanding any provision of this Agreement to the contrary, our liability arising out of or in any way connected with the Equipment shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved.

**33.10. 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.

#### 33.11. 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 Section 33, or if any other default occurs under this Agreement, any such event shall be a default hereunder.
- b) Upon the occurrence of any Event of Default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Section 33, 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 Section 33 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.

### 34. Choice of Law; Venue; Waiver of Jury Trial

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

**34.2. Venue.** The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the courts of the State of North Carolina and the United States for the Western District of North Carolina, Charlotte Division, located in Charlotte, North Carolina.

**34.3. 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.

### 35. Other Terms

**35.1. 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.

**35.2. 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.

**35.3. Notices.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier), if to you at your address appearing in the Application and if to us at our address appearing in Section A.4 of Part IV of this Agreement, with a copy to Attention: General Counsel's Office, 5565 Glenridge Connector N.E., Atlanta, Georgia 30342, and shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when

actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to the Merchant's last known address, as indicated in our records, shall constitute effective notice to the Merchant under this Agreement.

**35.4. 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.

**35.5. 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.

**35.6. 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.

**35.7. Amendment.** We may modify any provision of this Agreement by providing written notice to you. You may choose not to accept the requirements of any such change by terminating the Agreement within twenty (20) days of receiving notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any early 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 35.7 does not apply to fee changes, which are governed by Sections 18.4 and 18.5.

**35.8. 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, any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Agreement.

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

**35.10. Publicity.** Client may not use our Marks (or those of our agents) in any manner, including without limitation, in any advertisements, displays, or press releases, without our prior written consent.

## 36. Glossary

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

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

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

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

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

**Application:** Consists of (i) the Merchant Processing Application, (ii) Interchange Qualification Matrix, (iii) the Non-Qualified Rate Schedule (specific to your industry), Interchange Rate Schedule or Qualification Tier Rate Schedule (corresponding to the 2-Tier or 3-Tier Pricing Method), as applicable to your Pricing Method set forth in the Merchant Processing Application, and (iv) all additions and modifications to the foregoing; each of the foregoing is a document that is part of the Agreement.

**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.

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

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

**Bank:** Bank of America, N.A. or its successors or assigns.

**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.

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

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

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

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

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

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

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

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

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

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

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

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

**Credit Card:** A valid device bearing Organization the Mark of Visa, MasterCard, Discover Network 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 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.

**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 and further described in Section A.3 of Part IV of this Agreement. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 18.1 and as further described in Section A.3 of Part IV of this Agreement.

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

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

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

**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 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 Debit Card. The Magnetic Stripe contains essential Cardholder and account information.

**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 or transaction data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs).

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

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

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

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

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

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

**Non-Qualified Interchange Fee:** For certain Pricing Methods only, the percentage rate or amount defined and further described in Section A.3 of Part IV of this Agreement, that will be charged for transactions that do not qualify for an anticipated interchange level. The Non-Qualified Interchange Fee may also be referred to as the "Non-Qualified Interchange Rate" in the Application.

**Non-Qualified Surcharge:** For certain Pricing Methods only, a surcharge applied to any transaction that fails to qualify for an anticipated interchange level and is therefore downgraded to a more costly interchange level, as further described in Section A.3 of Part IV of this Agreement. The Non-Qualified Surcharge (the amount of which is set forth on the Application, if applicable) is in addition to the Non-Qualified Interchange Fee, which is also your responsibility (see above, Section 18.1 and Section A.3. of Part IV of this Agreement).

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

**Other Services:** Other Services include all services related to JCB Card, PIN Debit Card, and Electronic Benefits Transfer Transactions, TeleCheck check services, Gift Card Services, Loyalty 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.

**PAN Truncation:** A procedure by which a Cardholder's copy of a Sales Draft 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 device bearing the Marks of ATM networks (such as NYCE or Star) used at a merchant location by means of a Cardholder-entered PIN in the merchant PIN Pad.

**PIN Debit Sponsor Bank:** The Bank identified on the Application signed by you.

**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:** Banc of America Merchant Services, LLC or its successors and assigns.

**Program Guide:** The booklet which contains Operating Procedures, General Terms, Third Party Agreements and Confirmation Page, which together with the Application and the Schedules thereto and documents incorporated therein, as well as the Card Organization Rules, constitute your Agreement with Processor and Bank. References to the Program Guide will be deemed to include the Card Organization Rules unless otherwise stated.

**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.

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

**Reserve Account:** An account established and funded by at our request or on your behalf, pursuant to Section 24 of the Agreement.

**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.

**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 concurrently with or after the date 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 and Discover Network transactions undertaken by Cardholders at Client's location(s) in the United States, and all other activities necessary for Processor to perform the functions required by this Agreement for Discover Network and all other Cards covered by this Agreement.

**Servicers:** For Visa and MasterCard Credit, Non-PIN Debit Card transactions, PIN Debit, Bank and Processor collectively, in which case, Bank and Processor shall be jointly, but not also severally, liable to the Client. For all other Card transactions, Processor. The words "our," "us" and "we" refer to Servicers.

**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.

**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 10.3 and 10.4).

**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 II: 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 Agreement.

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.

### 1.0. Equipment Lease Agreement

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

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

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

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

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

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

#### 1.4. Payment of Amounts Due.

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

- c) Your lease payments will be due despite dissatisfaction with the Equipment for any reason.
- d) Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than \$5.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of \$10.00 for any debit we attempt to make against your Settlement Account that is rejected.
- e) In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense charge of \$50.00 for each aggregate payment requiring a collection effort.

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

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

**1.6. Title to Equipment.** The Equipment is, and shall at all times be and remain, our sole and exclusive property, and you shall have no right, title or interest in or to the Equipment except as expressly set forth in this Lease Agreement or otherwise agreed in writing. Except as expressly provided in Section 8, no transference of intellectual property rights is intended by or conferred in this Lease Agreement. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Equipment, then we shall be deemed to have a first lien security interest on the Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto.

**1.7. Return or Purchase of Equipment at End of Lease Period.** Upon the completion of your lease term or any extension, you will have the option to: (a) return the Equipment to us, or (b) purchase the Equipment from us for the lesser of fair market value at the time (as determined in good faith by us) or an amount equal to ten-percent (10%) of the total lease payments under this Lease Agreement with respect to each item of Equipment. In the absence of an affirmative election by you to return or purchase the Equipment, this lease will continue on a month-to-month basis at the existing monthly lease payment; or (c) after the final lease payment has been received by FDGL, the Agreement will revert to a month by month rental at the existing monthly lease payment. If Client does not want to continue to rent the equipment, then Client will be obligated to provide FDGL with 30 day prior written notice to terminate and return the equipment to FDGL.

If we terminate this Lease Agreement pursuant to Section 12 (b) due to a default by you, then you shall immediately return the Equipment to us no later than the tenth Business Day after termination, or remit to us the fair market value of the Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 7 by debiting your Settlement Account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

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

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

**1.10. Warranties.**

- a) All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment, or non-infringement.
- b) You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.

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

**1.12. Default; Remedies.**

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

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

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

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

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

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

**2.0. AMERICAN EXPRESS® CARD ACCEPTANCE AGREEMENT**  
**TERMS AND CONDITIONS FOR AMERICAN EXPRESS® CARD ACCEPTANCE**  
**ESTABLISHMENT SALES AND SERVICING PROGRAM**

**2.1. Scope and Other Parts of Agreement; Definitions**

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

**b. Other Parts of the Agreement.**

**i. Merchant Regulations.** The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 2.8.j below. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please contact Customer Service at the number set forth in your Merchant Processing Agreement. You may be charged a fee for each copy that you request.

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

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

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

**Agreement** means these General Provisions, Schedule A and any other accompanying schedules and exhibits, and the Merchant Regulations, collectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We, our, and us mean American Express Travel Related Services Company, Inc.

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

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

**2.2. Accepting the Card**

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

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

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

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

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

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

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

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

### 2.3. Protective Actions

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

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

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

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

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

### 2.4. Notices

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

**b. Our Notice Address.** Unless we notify you otherwise, you shall send notices to through our agent, at: American Express Travel Related Services Company, Inc. c/o First Data Merchant Services Corporation, 1307 Walt Whitman Road, Melville, NY 11747

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

### 2.5. Indemnification and Limitation of Liability

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

**b. Limitation of Liability.** In no event shall we or our Affiliates, agents, successors, or assigns be liable to you for any incidental, indirect, speculative, consequential, special, punitive, or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory) arising out of or in connection with the Agreement, even if advised of such potential damages. Neither you nor we (and our agent) will be responsible to the other for damages arising from delays or problems caused by telecommunications carriers or the banking system, except that our (and our agent's) rights to create Reserves and exercise Chargebacks will not be impaired by such events.

### 2.6. Term and Termination

**a. Effective Date/Termination Date.** The Agreement begins as of the date (i) you first accept the Card after receipt of the Agreement or otherwise indicate your intention to be bound by the Agreement or (ii) we approve your application to accept the Card, whichever occurs first. Either party can terminate the Agreement without cause (and notwithstanding any other rights established under the Agreement) at any time by notifying the other party. Termination will take effect according to the notice period specified in section 2.4.a above.

**b. Grounds for Termination.** In addition to our rights in sections 2.3. and 2.6 above, we may terminate the Agreement at any time without notice to you and without waiving our other rights and remedies if you have not submitted a Charge within any twelve month period. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

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

**d. Effect of Termination.** Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 2.1, 2.3, 2.5, 2.6, 2.7, and 2.8 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our and our agent's right of direct access to the Demand Deposit Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

### 2.7. Dispute Resolution

**a. Arbitration Rights.** All Claims shall be resolved, upon your or our election, through arbitration pursuant to this section 2.7 rather than by litigation.

**b. Arbitration Rules/Organizations.** The party asserting the Claim shall select one of the following arbitration organizations, which shall apply its rules in effect at the time the Claim is filed. In the event of an inconsistency between this section 2.7 and any rule or procedure of the arbitration organization, this section 2.7 controls. The party asserting the Claim shall simultaneously notify the other party of its selection. If our selection is not acceptable to you, then you may select another of the following organizations within thirty days after you receive notice of our initial selection. Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located.

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

**c. Limitation of Rights.** IF ARBITRATION IS CHOSEN BY A PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE SHALL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES OR PROCEDURES OF NAF OR AAA, AS APPLICABLE. FURTHER, YOU SHALL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. NOTWITHSTANDING ANY OTHER PROVISION IN THE AGREEMENT AND WITHOUT WAIVING EITHER PARTY'S RIGHT TO APPEAL SUCH DECISION, IF ANY PORTION OF THIS SECTION 7.c OR OF SECTION 7.d BELOW IS DEEMED INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION 7 (OTHER THAN THIS SENTENCE) SHALL NOT APPLY.

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

you and us alone, and the arbitrator's authority to make awards is limited to awards to you and us alone.

**e. Application of Provision.** For the avoidance of any confusion, and not to limit its scope, this section 2.7 applies to any putative class action lawsuit that has been filed against us prior to the effective date of the Agreement relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the Agreement as described in sections 2.1 and 2.2 of these General Provisions and Chapter 3 (Card Acceptance) of the Merchant Regulations, or prior versions of a Card acceptance agreement.

**f. Equitable Relief.** The arbitrator shall have the power and authority to grant equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section 2.7, nor to determine any matter or make any award except as provided in this section 2.7.

**g. Small-Claims Court; Injunctive Relief.** We shall not elect to use arbitration under this section for any individual Claim that you properly file in a small claims court so long as the Claim is pending only in that court. Injunctive relief sought to enforce the provisions of sections 2.8.a and 2.8.b of these General Provisions is not subject to the requirements of this section 2.7. This section 2.7 is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

**h. Governing Law / Appeal / Entry of Judgment.** This section 2.7 is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. § 16 et seq. (FAA). The arbitrator shall apply New York law and applicable statutes of limitations, honor claims of privilege recognized by law and, at the timely request of either party, provide a written and reasoned opinion explaining his or her decision. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA or if the amount of the award exceeds US \$100,000, in which case either party can appeal that award to a three-arbitrator panel administered by NAF or AAA, as applicable, which shall reconsider de novo any aspect of the initial award requested by majority vote and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. The costs of such an appeal shall be borne by the appellant regardless of the outcome of the appeal. Judgment upon the award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

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

**j. Split Proceedings for Equitable Relief.** Either you or we may seek equitable relief in arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered. Except as otherwise provided in section 2.7.c. above, if any portion of this section 2.7 (other than section 2.7.c. or 2.7.d) is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this section 2.7, the Agreement, or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

## 2.8. Miscellaneous

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

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

**c. Your Representations and Warranties.** You represent and warrant to us that: (i) you are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which you are organized; (ii) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business; (iii) you have full authority to enter into the Agreement and all necessary assets and liquidity to perform your obligations and pay your debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on your business or your ability to perform your obligations or pay your debts hereunder; (v) you are authorized to enter into this Agreement on behalf of your Establishments and Affiliates, including those indicated in this Agreement, and the individual who signs this Agreement or otherwise enters into it has authority to bind you and them to it; (vi) you are not (1) listed on the

U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperating with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (vii) you have not assigned to any third party any payments due to you under this Agreement; (viii) all information that you provided in connection with this Agreement is true, accurate, and complete; and (ix) you have read this Agreement and kept a copy for your file. If any of your representations or warranties in this Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate this Agreement in our discretion.

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

**e. Governing Law; Jurisdiction; Venue.** The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Notwithstanding the immediately preceding sentence, the parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 et seq. (E-Sign Act). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein. Subject to section 2.7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

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

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

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

**i. Savings Clause.** Other than as set forth in the last sentence of section 2.7.c above, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.

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

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

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

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

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

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

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

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

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

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

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

By:

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

**SCHEDULE A**

**Other Important Provisions For Card Acceptance American Express OnePoint Program**

**Overview of American Express OnePoint Program**

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

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

First Data Merchant Services Corporation

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

**2. Doing Business With American Express**

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

**b. Merchant Number; Your Merchant Information.** Under the American Express OnePoint Program, you will not receive a standard American Express Merchant Number. Our agent will instead assign a unique OnePoint Program "merchant" or "account" number to your Establishment; if you have more than one Establishment (or a sales channel for

Internet Orders), it may assign to each a separate number. You will need that number each time you call our agent under the American Express OnePoint Program. (If you are enrolled in or transition to our standard Card acceptance program, we (not our agent) will assign you a standard American Express Merchant Number.) You must notify our agent of any changes in your business and banking information and any closings of your Establishments. Our agent may verify and disclose information about you, including by requesting reports about you and the person signing your application to accept the Card.

**3. Authorization**

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

**4. Submission**

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

**5. Settlement**

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

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

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

**6. Protecting Cardmember Information**

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

**7. Risk Evaluation**

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

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

**8. Inquiries and Chargebacks**

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

## PART III: TELECHECK CHECK SERVICES

### 1.0. TeleCheck Services Agreement

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

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

**1.2. Definitions.** As used in this Agreement, the following definitions apply: "**ACH Network**" means the Automated Clearing House Network, a processing and delivery system that provides for the distribution and settlement of electronic credits and debits. "**Authorization Receipt**" means the written authorization receipt, in the form approved by TeleCheck, signed by Consumer for each ECA Warranty Transaction or ECA Verification Transaction, as applicable. "**Batch**" means a collection of saved transactions transmitted to TeleCheck for settlement processing. "**Claim**" means any claim, demand, directive, suit or other proceeding, notice, damage, expense (including reasonable attorney's fees), assessment, fine or liability of any kind. "**Collection Items**" means the Return Items processed as ECA Verification Transactions (other than an ECA Verification Transaction processed as a paper check) and shall include the Return Item Fee. "**Consumer**" means a person or entity that authorizes an Item. "**ECA Verification Transaction**" or "**ECA Warranty Transaction**" means a transaction processed by TeleCheck as an electronic funds transfer, a remotely created check or a paper check for the contemporaneous purchase of goods or services by a Consumer. "**Item**" means an outstanding financial obligation pursuant to a paper check, electronic funds transfer or remotely created check processed under this Agreement. "**LockBox Warranty Transaction**" means the payment of goods or services by a paper check sent to Subscriber through the U.S. mail or delivered to Subscriber's drop box, which payment is processed by TeleCheck as an electronic fund transfer, a remotely created check or a paper check. "**NACHA Rules**" means the National Automated Clearing House Association Operating Rules and Guidelines, as amended from time to time, that govern the ACH Network. "**Paper Warranty Transaction**" means a transaction for the contemporaneous purchase of goods or services pursuant to TeleCheck's Paper Warranty Services program. "**Return Item Fee**" means any fee or exemplary damages allowed by law that may be assessed on a Return Item. "**Return Items**" mean any Items that are dishonored, returned, reversed, charged back or otherwise unpaid by a Consumer's financial institution upon presentment for payment, regardless of the reason or timing. "**Returned Payment**" means any financial obligation pursuant to this Agreement not paid by Subscriber's financial institution. "**Subscriber's Account**" means Subscriber's financial institution account. "**TeleCheck Approval Code**" means (a) for warranty services, that TeleCheck has authorized an Item for warranty coverage under this Agreement, and (b) for verification services, that TeleCheck has authorized an Item as eligible for processing. "**TeleCheck Operational Procedures**" means TeleCheck's published policies and procedures contained in various documents provided to Subscriber concerning the services, equipment and maintenance provided pursuant to this Agreement. "**TeleCheck Parties**" means TeleCheck, its affiliates, officers, directors, employees, shareholders, agents and attorneys. "**Warranty Maximum**" (a) for an Item processed as an ECA Warranty Transaction or LockBox Warranty Transaction means the lower of (i) the face amount of the Item (ii) the amount set forth on the Merchant Processing Application; or (iii) \$25,000.00; and (b) for an Item processed as a Paper Warranty Transaction means the lower of (i) the face amount of the Item; (ii) the amount set forth on the Merchant Processing Application; or (iii) \$99,999.99.

### TERMS APPLICABLE ONLY TO TELECHECK ECA WARRANTY SERVICES

#### 1.3. ECA Warranty Services.

**1.3.1. Description.** The TeleCheck ECA Warranty Services provide Subscriber (a) coded information to assist Subscriber in deciding whether or not to accept an Item, (b) processing services; and (c) warranty services for ECA Warranty Transactions that comply with the warranty requirements of Section 1.3.3, all in accordance with this Agreement.

**1.3.2. Processing Services.** For each ECA Warranty Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following Subscriber's regular close-out of the point of sale terminal and transmission of the saved ECA Warranty Transactions to TeleCheck for settlement processing, provided that the Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for ECA Warranty Transactions, including, without limitation, chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as an ECA Warranty Transaction.

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

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

- a) The check is a first party check drawn on Consumer's account at a United States financial institution and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer;
- b) Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum [as more fully described in Section 1.3.6(f)], including through split sales;
- c) The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;
- d) The signature of Consumer on the Authorization Receipt is not substantially different from the name imprinted on the check;
- e) The date of the check and the ECA Warranty Transaction accurately coincides within one calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than one calendar day the date of the inquiry call and the transaction date);
- f) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- g) The transaction is not subject to any stop payment, dispute or set-off;
- h) Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules;

- i) Consumer authorized the debiting of Consumer's account and the debit entry is in an amount agreed to by Consumer. Subscriber received a separate signed and completed Authorization Receipt from Consumer for each ECA Warranty Transaction;
- j) The paper check to which the ECA Warranty Transaction relates: (i) has not been used in any other transaction, (ii) is voided on the front by Consumer or Subscriber, and (iii) is returned to Consumer;

The amount entered into the TeleCheck system and on the Authorization Receipt match exactly and does not exceed the Warranty Maximum; and

- l) If the ECA Warranty Transaction is approved as a paper check not eligible for processing as an electronic funds transfer, each representation and warranty set forth Section 1.4.2 shall be applicable to such ECA Warranty Transaction.

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

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

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

- a) The goods or services, in whole or in part, for which the ECA Warranty Transaction was submitted, have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- b) Subscriber has received full or partial payment or security in any form to secure payment of the Item, or the goods or services for which the Item was issued or authorized were initially delivered on credit or under a lease;
- c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the Item is not permitted by applicable law; or a court of law determines that the Item is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- d) Any of the representations made by Subscriber as set forth in Section 1.3.3 are or become false or inaccurate;
- e) Subscriber failed to comply with this Agreement;
- f) Subscriber, or any of Subscriber's owners, agents or employees (i) materially altered either the check or the Authorization Receipt; or (ii) processed the transaction with reason to know that the Item was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction;
- g) The Authorization Receipt was incomplete or unsigned, or a legible copy of the Authorization Receipt was not received by TeleCheck within seven days of a request by TeleCheck;
- h) A duplicate ECA Warranty Transaction relating to the same transaction was received and processed, or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;
- i) Consumer disputes authorizing the ECA Warranty Transaction or the validity or accuracy of the transaction;
- j) Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within three business days of Subscriber's receipt of such notice; or
- k) The closeout of the Batch and transmission of the ECA Warranty Transaction to TeleCheck for settlement processing did not occur within seven days from the date the TeleCheck Approval Code was issued for the transaction.

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the Item is charged back or reassigned as provided herein, (a) TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the Item, (b) deduct or offset such Item against any amounts to be paid to Subscriber for ECA Warranty Transactions, or (c) upon request, Subscriber shall remit the amount of the Item to

TeleCheck. TeleCheck may also chargeback to Subscriber any amount over the Warranty Maximum on any ECA Warranty Transaction where TeleCheck has not received payment for such transaction within 60 days of the date of the ECA Warranty Transaction. Upon charging back or reassigning an Item, TeleCheck shall have no further liability to Subscriber on such Item. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

**1.3.7. Account Reconciliation.** Payments processed by TeleCheck will be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in the reports, or of any funding failures or errors. In the event any ECA Warranty Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 1.3.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

**1.3.8. "Goodwill" of a Non-Compliance Item.** TeleCheck, in its sole discretion, may voluntarily elect not to chargeback or reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 1.3.3. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to chargeback or reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

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

**1.3.10. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Inquiry Rate" is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Transaction Fee" is the additional per transaction charge for each ECA Warranty Transaction. The "Advantage Billing" or "One Rate" is a monthly fee for the ECA Warranty Services, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee, Monthly Processing/Statement Fee and December Risk Charge. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The "Monthly Minimum Fee" is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "December Risk Surcharge" is an additional percentage charge for each transaction in December. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also charged by TeleCheck: The "Dual ID Surcharge" is an additional 85 basis points (0.85%) charge for each transaction if the amount of the Item exceeds the MICR floor limit established by TeleCheck for Subscriber, and Subscriber is prompted for but does not obtain a second form of identification. The

"Funding Report Fee" is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The "POS Support Fee" is a \$10.00 monthly fee for point of sale support services. The "Chargeback Fee" is a \$5.00 handling fee for each chargeback of an ECA Warranty Transaction. The "Correction Fee" is a \$5.00 fee payable on each Item that must be corrected due to Subscriber's error or at Subscriber's request. The "Recovery Processing Fee" is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A "Warranty Research Fee" of \$7.50 may be charged each time Subscriber requests substantiation of a warranty payment/non-payment. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### TERMS APPLICABLE ONLY TO TELECHECK PAPER WARRANTY SERVICES

##### 1.4. Paper Warranty Services.

**1.4.1. Description.** The TeleCheck Paper Warranty services provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept a check; and (b) warranty services for checks that meet the warranty requirements of Section 1.4.2, all in accordance with this Agreement.

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

- a) The check is a first party check drawn on Consumer's account at a United States or Canadian financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer. If a P.O. Box is used or an address is not imprinted by the check manufacturer, a physical address description is written on the check according to TeleCheck Operational Procedures;
- b) Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 1.4.4(f)), including through split sales;
- c) The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;
- d) The signature in the signature block on the check is not substantially different from the name imprinted on the check;
- e) The date of the check accurately coincides within one calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);
- f) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- g) The TeleCheck Subscriber Number, Consumer's telephone number (including area code), identification type and number and TeleCheck Approval Code are printed or written on the check;
- h) The amount shown in words and figures on the check is (i) less than or equal to the amount entered into the TeleCheck system; or (ii) no more than \$1.00 over the amount entered into the TeleCheck system;
- i) The check is deposited in Subscriber's Account and received by TeleCheck for purchase within 30 days of the date of the check. Such check has been sent directly from Subscriber's financial institution after being presented for payment only once (no representations shall be allowed, whether paper or electronic); and
- j) The transaction is not subject to any stop payment, dispute or set-off.

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

**1.4.4. Reassignment.** TeleCheck may reassign to Subscriber any check purchased by TeleCheck pursuant to the Paper Warranty Services provisions of this Agreement, in any of the following circumstances:

- a) The goods or services, in whole or in part, for which the check was issued have been returned to Subscriber, have not been delivered by Subscriber, claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- b) Subscriber has received full or partial payment or security in any form to secure payment of the check, or the goods or services for which the check was issued were initially delivered on credit or under a lease;
- c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer of TeleCheck of the check is not permitted by applicable law; or a court of law determines that the check is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- d) Any of the representations made by Subscriber as set forth in Section 1.4.2 are or become false or inaccurate;
- e) Subscriber failed to comply with this Agreement;
- f) Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered the check; or (ii) accepted the check with reason to know that it was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction; or
- g) Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within three business days of Subscriber's receipt of such notice.

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the check is reassigned as provided herein, TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the check, or upon request, Subscriber shall remit the amount of the check to TeleCheck. Upon reassignment of a check, TeleCheck shall have no further liability to Subscriber on such check. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

**1.4.5. "Goodwill" of a Non-Compliance Item.** TeleCheck, in its sole discretion, may voluntarily elect not to reassign to Subscriber a specific non-compliance Item or fails to comply with the warranty requirements set forth in Section 1.4.2. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

**1.4.6. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Inquiry Rate" is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Transaction Fee" is the additional per transaction charge for each transaction. The "Advantage Billing" or "One Rate" is a monthly fee for the TeleCheck service, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee, Monthly Processing/Statement Fee and December Risk Charge. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The "Monthly Minimum Fee" is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "December Risk Surcharge" is an additional percentage charge for each transaction in December. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "Dual ID Surcharge" is an additional 85 basis points (0.85%) charge for each transaction if the amount of the Item exceeds the MICR floor limit established by TeleCheck for Subscriber and Subscriber is prompted for but does not obtain a second form of identification. The "POS Support Fee" is a \$10.00 monthly fee for point of sale support services. The "Recovery Processing Fee" is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A "Warranty Research Fee" of \$7.50 may be

charged each time Subscriber requests substantiation of a warranty payment/non-payment. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

## TERMS APPLICABLE ONLY TO TELECHECK ECA VERIFICATION SERVICES

### 1.5. ECA Verification Services.

**1.5.1. ECA Verification Services.** The TeleCheck ECA Verification services provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; and (b) processing services, all in accordance with this Agreement. TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber for any loss from transactions processed through the ECA Verification services. Subscriber assumes all risks that Items accepted by Subscriber may result in Return Items. The maximum amount of an ECA Verification Transaction which can be processed through TeleCheck is the lesser of (a) the face amount of the Item, or (b) \$25,000; it being understood that TeleCheck may also decline to process Items in excess of its risk parameters.

**1.5.2. ECA Processing.** For each ECA Verification Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within two banking days following Subscriber's regular close-out of the point of sale terminal and transmission of the saved ECA Verification Transactions to TeleCheck for settlement processing, provided that the Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for ECA Verification Transactions, including, without limitation, chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as an ECA Verification Transaction.

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

### 1.5.3. ECA Verification Transaction Requirements and Representations.

Subscriber represents and warrants with respect to each ECA Verification Transaction submitted to TeleCheck for processing under this Agreement that:

- a) The check is a first party check drawn on a Consumer's account at a United States financial institution and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer;
- b) Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code;
- c) The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;
- d) The signature of Consumer on the Authorization Receipt is not substantially different from the name imprinted on the check;
- e) The date of the check and the ECA Verification Transaction accurately coincides within one calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);
- f) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- g) Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules;
- h) Consumer authorized the debiting of Consumer's account and the debit entry is in an amount agreed to by Consumer. Subscriber received a separate signed Authorization Receipt from Consumer for each ECA Verification Transaction;

- i) The paper check to which the ECA warranty Transaction relates: (i) has not been used in for any other transaction, (ii) is voided on the front by Consumer or Subscriber, and (iii) is returned to Consumer; and
- j) The amount entered into the TeleCheck system and on the Authorization Receipt match exactly.

**1.5.4. Account Reconciliation.** Payments processed by TeleCheck shall be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in such reports, or of any funding failures or errors. In the event any ECA Verification Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 1.5.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of the transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

**1.5.5. Return Items and Returned Payments.** Subscriber shall be fully responsible and liable to TeleCheck for all Return Items and Returned Payments, regardless of the reason or timing. TeleCheck shall deduct or offset all Return Items and Returned Payments against any amounts to be paid to Subscriber for ECA Verification Transactions or, alternatively, TeleCheck may initiate debits to Subscriber's Account for all such Return Items and Returned Payments.

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

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

**1.5.8. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Transaction Fee" is the per transaction charge for each Item for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Advantage Billing" is a monthly fee for the ECA Verification service, and is intended to replace the Transaction Fee, Monthly Minimum Fee and Monthly Processing/Statement Fee. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The "Monthly Minimum Fee" is the minimum aggregate amount of Transaction Fees that Subscriber shall pay on a monthly basis. If the total Transaction Fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "POS Support Charge" is a \$10.00 monthly fee for point of sale support services. The "Funding Report Fee" is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The "Chargeback Fee" is a \$5.00 handling fee for each

chargeback of an ECA Verification Transaction. The **“Correction Fee”** is a \$5.00 fee payable on each Item that must be corrected due to Subscriber's error or at Subscriber's request. A **“Terminal Application Update Fee”** of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. The **“Administrative Return Fee”** is a \$0.10 handling fee for each Return Item that is returned under NACHA Rules, and is classified by TeleCheck as an administrative return.

## TERMS APPLICABLE ONLY TO TELECHECK PAPER VERIFICATION SERVICES

### 1.6. Paper Verification Services.

**1.6.1. Description.** The TeleCheck Paper Verification services provide Subscriber with coded information to assist Subscriber in deciding whether or not to accept a check. TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber for any loss from transactions processed through the Paper Verification services. Subscriber assumes all risks that checks accepted by Subscriber may result in Return Items.

**1.6.2. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The **“Transaction Fee”** is the per transaction charge for each Item for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The **“Advantage Billing”** is a monthly fee for the Paper Verification service, and is intended to replace the Transaction Fee, Monthly Minimum Fee and Monthly Processing/Statement Fee. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The **“Monthly Minimum Fee”** is the minimum aggregate amount of Transaction Fees that Subscriber shall pay on a monthly basis. If the total Transaction Fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The **“Customer Requested Operator Call Fee”** or **“Voice Authorization Fee”** is an additional fee per operator-assisted call not requested by TeleCheck. The **“Monthly Statement/Processing Fee”** is a monthly fee for handling Subscriber's account. The **“Set Up Fees”** are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The **“POS Support Fee”** is a \$10.00 monthly fee for point of sale support services. A **“Terminal Application Update Fee”** of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

## TERMS APPLICABLE ONLY TO TELECHECK LOCKBOX WARRANTY SERVICES

### 1.7. LockBox Warranty Services.

**1.7.1. Description.** The TeleCheck LockBox Warranty Services (formerly known as PayIt™) provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; (b) processing services; and (c) warranty services for LockBox Warranty Transactions that comply with the warranty requirements of Section 1.7.3, all in accordance with this Agreement.

**1.7.2. Processing Services.** For each LockBox Warranty Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within two banking days following TeleCheck's receipt and acceptance of completed LockBox Warranty Transactions received prior to 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for LockBox Warranty Transactions, including, without limitation, chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as a LockBox Warranty Transaction.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due should an excessive amount of Return Items or other questionable activity occur as determined by TeleCheck in its discretion, or as otherwise required by law. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if Subscriber breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within three business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and

payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Subscriber or as a result of a Subscriber error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Subscriber. TeleCheck may also recover from Subscriber the amount of any fees paid by a Consumer to Consumer's financial institution which resulted from a Subscriber error.

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

- a) The check is a first party check drawn on Consumer's account (not a corporate check) at a United States financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer and check serial number are imprinted on the check by the check manufacturer;
- b) The check is sent to Subscriber through the U.S. mail or delivered to Subscriber's drop box;
- c) Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 1.7.6(f)), including through split sales;
- d) The signature in the signature block on the check is not substantially different from the name imprinted on the check;
- e) The check is not post-dated or dated earlier than 20 days from the date of inquiry to TeleCheck, and the amount called into TeleCheck and the amount shown in words and figures on the check match exactly;
- f) Consumer did not notify Subscriber that the check was not to be converted to an electronic funds transfer;
- g) The transaction represents an obligation of Consumer for the purchase or payment for goods or services from Subscriber for the price of such goods or services;
- h) The transaction is not subject to any stop payment, dispute or set-off;
- i) Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules;
- j) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability; and
- k) If the LockBox Warranty Transaction is approved as a paper check not eligible for processing as an electronic funds transfer, each representation and warranty set forth Section 1.4.2 shall be applicable to such LockBox Warranty Transaction, except that the check is (i) received by TeleCheck for purchase within 45 days of the check, (ii) sent to Subscriber through the U.S. mail or delivered to Subscriber's drop box, and (iii) not post-dated or dated earlier than 20 days from the date of inquiry to TeleCheck.

**1.7.4. Additional Requirements for LockBox Warranty Transaction Notices.** Subscriber shall provide Consumer with notice that includes the following, or substantially similar, language: “When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.” In addition, until January 1, 2010, the notice shall also include the following, or substantially similar language: “When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.”

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

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

- a) The goods or services, in whole or in part, for which the Item was submitted have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- b) Subscriber has received full or partial payment or security in any form to secure payment of the Item, or the goods or services for which the Item was issued or authorized were initially delivered on credit or under a lease;

- c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the Item is not permitted by applicable law; or a court of law determines that the Item is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- d) Any of the representations made by Subscriber as set forth in Section 1.7.3 are or become false or inaccurate;

Subscriber failed to comply with this Agreement;

- 1) Subscriber, or any of Subscriber's owners, agents or employees (i) materially altered the check; or (ii) processed the transaction with reason to know that the Item was likely to be dishonored (including failure to receive a TeleCheck Approval Code); or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction;
- g) A duplicate LockBox Warranty Transaction relating to the same transaction was received and processed, or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;
- h) Consumer disputes authorizing the transaction or the validity or accuracy of the transaction; or
- i) Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice.

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

**1.7.7. Account Reconciliation.** Payments processed by TeleCheck will be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in the reports, or of any funding failures or errors. In the event any LockBox Warranty Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 1.7.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

**1.7.8. Information Storage.** Subscriber shall use commercially reasonable methods to securely store the check used in a LockBox Warranty Transaction until destruction and all banking information relating to the transaction.

**1.7.9. "Goodwill" of a Non-Compliance Item.** TeleCheck, in its sole discretion, may voluntarily elect not to chargeback to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 1.7.3. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to chargeback or reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

**1.7.10. Reserve Account Establishment and Funding.** Subscriber expressly authorizes TeleCheck to establish a reserve account for LockBox Warranty Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon three days' notice to Subscriber or in instances of fraud or breach of this Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following: (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. If Subscriber's funds

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

**1.7.11. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Inquiry Rate" is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Transaction Fee" is the additional per transaction charge for each LockBox Warranty Transaction. The "Advantage Billing" is a monthly fee for the LockBox Warranty service, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee, Monthly Processing/Statement Fee and December Risk Charge. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The "Monthly Minimum Fee" is the aggregate minimum amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "December Risk Surcharge" is an additional percentage charge for each transaction in December. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "POS Support Fee" is a \$10.00 monthly fee for point of sale support services. The "Funding Report Fee" is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The "Chargeback Fee" is a \$5.00 handling fee for each chargeback of a LockBox Warranty Transaction. The "Correction Fee" is a \$5.00 fee payable on each Item that must be corrected due to Subscriber's error or at Subscriber's request. The "Recovery Processing Fee" is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A "Warranty Research Fee" of \$7.50 may be charged each time Subscriber requests substantiation of a warranty payment/non-payment. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

## TERMS APPLICABLE ONLY TO TELECHECK LOCKBOX VERIFICATION SERVICES

### 1.8. LockBox Verification Services.

**1.8.1. Description.** The TeleCheck LockBox Verification Services (formerly known as PayIt<sup>SM</sup>) provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; and (b) processing services, all the foregoing in accordance with this Agreement. TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber for any loss from transactions processed through the LockBox Verification services. Subscriber assumes all risks that Items accepted by Subscriber may result in Return Items. The maximum amount of a LockBox Verification Transaction which can be processed through TeleCheck is the lesser of (a) the face amount of the Item, or (b) \$25,000; it being understood that TeleCheck may also decline to process Items in excess of its risk parameters.

**1.8.2. Processing Services.** For each LockBox Verification Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within two banking days following TeleCheck's receipt and acceptance of completed LockBox Verification Transactions received prior to 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for LockBox Verification Transactions, including, without limitation, chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as a LockBox Verification Transaction.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due should an excessive amount of Return Items or other questionable activity occur as determined by TeleCheck in its

discretion, or as otherwise required by law. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if Subscriber breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within three business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Subscriber or as a result of a Subscriber error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Subscriber. TeleCheck may also recover from Subscriber the amount of any fees paid by a Consumer to Consumer's financial institution which resulted from a Subscriber error.

#### 1.8.3. LockBox Verification Transaction Requirements and Representations.

Subscriber represents and warrants with respect to each LockBox Verification Transaction submitted to TeleCheck for processing under this Agreement that:

- a) The check is a first party check drawn on Consumer's account (not a corporate check) at a United States financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer and check serial number are imprinted on the check by the check manufacturer;
- b) The check is sent to Subscriber through the U.S. mail or delivered to Subscriber's drop box;
- c) Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code;
- d) The signature in the signature block on the check is not substantially different from the name imprinted on the check;
- e) The check is not post-dated or dated earlier than 20 days from the date of inquiry to TeleCheck, and the amount called into TeleCheck and the amount shown in words and figures on the check match exactly;
- f) Consumer did not notify Subscriber that the check was not to be converted to an electronic fund transfer;
- g) Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules;
- h) The transaction represents an obligation of Consumer for the purchase or payment for goods or services from Subscriber for the price of such goods or services; and
- i) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability.

#### 1.8.4. Additional Requirements for LockBox Verification Transaction Notices.

Subscriber shall provide Consumer with notice that includes the following, or substantially similar, language: "When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction." In addition, until January 1, 2010, the notice shall also include the following, or substantially similar language: "When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution."

**1.8.5. Account Reconciliation.** Payments processed by TeleCheck will be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in the reports, or of any funding failures or errors. In the event any LockBox Verification Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 1.8.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

**1.8.6. Return Items and Returned Payments.** Subscriber shall be fully responsible and liable to TeleCheck for all Return Items and Returned Payments, regardless of the reason or timing. TeleCheck shall deduct or offset all Return Items and Returned Payments against any amounts to be paid to Subscriber for LockBox Verification Transactions or, alternatively, TeleCheck may initiate debits to Subscriber's Account for all such Return Items and Returned Payments.

**1.8.7. Information Storage.** Subscriber shall use commercially reasonable methods to securely store the check used in a LockBox Verification Transaction until destruction and all banking information relating to the transaction.

**1.8.8. Reserve Account Establishment and Funding.** Subscriber expressly authorizes TeleCheck to establish a reserve account for LockBox Verification Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon three days' notice to Subscriber or in instances of fraud or breach of this Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following:

- (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to

make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by either TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck 10 months after termination of this Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. If Subscriber's funds in the reserve account are not sufficient to cover the delinquent fees, chargebacks or rejected and reassigned warranty Items, or any other fees and charges due from Subscriber to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In the event of a failure by Subscriber to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

**1.8.9. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Transaction Fee" is the per transaction charge for each Item for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Advantage Billing" is a monthly fee for the LockBox Verification service, and is intended to replace the Transaction Fee, Monthly Minimum Fee and Monthly Processing/Statement Fee. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The "Monthly Minimum Fee" is the minimum aggregate amount of Transaction Fees that Subscriber shall pay on a monthly basis. If the total Transaction Fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "Funding Report Fee" is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The "POS Support Fee" is a \$10.00 monthly fee for point of sale support services. The "Chargeback Fee" is a \$5.00 handling fee for each chargeback of a LockBox Verification Transaction. The "Correction Fee" is a \$5.00 fee payable on each Item that must be corrected due to Subscriber's error or at Subscriber's request. The "Administrative Return Fee" is a \$0.10 handling fee for each Return Item that is returned under NACHA Rules, and is classified by TeleCheck as an administrative return. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

### GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES

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

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

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

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

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

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

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

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

to a TeleCheck affiliate for TeleCheck's credit review; and (c) TeleCheck may provide or receive any experiential information regarding Subscriber or Subscriber's customers to or from any TeleCheck affiliate.

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

**1.17. Limitation of Liability.** In no event shall either TeleCheck or Subscriber be liable to the other party, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental, indirect or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL TELECHECK'S LIABILITY UNDER THIS AGREEMENT FOR ALL CLAIMS ARISING UNDER, OR RELATED TO, THIS AGREEMENT EXCEED, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY SUBSCRIBER AGAINST TELECHECK, WHETHER RELATED OR UNRELATED), THE LESSER OF: (A) THE TOTAL AMOUNT OF FEES PAID TO TELECHECK BY SUBSCRIBER PURSUANT TO THIS AGREEMENT DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE EVENT GIVING RISE TO SUCH CLAIMS OCCURRED; OR (B) \$75,000.00.

**1.18. Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER. All decisions to reject any Item, driver's license or other form of identification or payment for Subscriber's products or services are solely Subscriber's responsibility.

**1.19. Changes in Law or NACHA Rules.** Notwithstanding anything to the contrary in this Agreement, if the continued performance of all or any portion of the obligations of TeleCheck becomes impossible or illegal due to changes in applicable federal, state or local laws or regulations, or by NACHA Rules, as determined by TeleCheck in its reasonable discretion, TeleCheck may, upon 30 days written notice to Subscriber, request to modify or discontinue TeleCheck's performance of its obligations to the extent necessary to avoid a violation of law or NACHA Rules or, if TeleCheck chooses in its sole discretion to incur additional expenses to comply, request to increase its fees to cover the additional cost of compliance. Additionally, if any fees or charges to TeleCheck increase for processing transactions through the ACH Network, TeleCheck may request to increase its fees to cover such increases. If TeleCheck makes such request and the parties are unable to agree upon corresponding changes to the terms and conditions of this Agreement within 30 days of such request, TeleCheck may terminate this Agreement upon 30 days written notice.

#### GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES

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

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

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

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

**2.0. Check Cashing Warranty Service Addendum**

defense of such Claim by representatives of its own choosing, subject to Service Provider's reasonable approval; provided, however, that Service Provider shall have the right to control and undertake such defense by representatives of its own choosing, but at Subscriber's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws.

**1.33. Notices.** Any notice or other communication required or permitted to be given hereunder shall be delivered by facsimile transmission, overnight courier or certified or registered mail (postage prepaid return receipt requested) addressed or transmitted to the party to be notified at such party's address or number as provided on the Merchant Processing Application or at such party's last known address or number. Any notice delivered hereunder shall be deemed to have been properly given (a) upon receipt if by facsimile transmission, as evidenced by the date of transmission indicated on the transmitted material, (b) upon receipt if deposited on a prepaid basis with a nationally recognized overnight courier for next business day delivery, and (c) on the date of delivery indicated on the return receipt, if mailed by certified or registered mail. TeleCheck shall also be permitted to provide notice by regular mail and such notice shall be deemed effective 10 days after mailing. The parties' addresses may be changed by written notice to the other party as provided herein.

**1.34. Force Majeure.** Neither Service Provider shall be held responsible for any delays in or failure or suspension of service caused by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), transmission link failures, communication failures, failure, delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve system, failure, delay or error by any third party or any other third party system, strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, act of God or other causes reasonably beyond the control of Service Provider.

**1.35. Compliance with Laws, Governing Law and Integration.** The parties agree to comply with all federal and state laws, regulations and rules, including NACHA Rules, relating to the services provided hereunder. **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.** Subscriber certifies that it has not been suspended by NACHA or any credit card association, or cancelled by an ODFI or Third Party Sender (as defined in the NACHA Rules). This Agreement, plus any addenda attached hereto, constitutes the entire Agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.**

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

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

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

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

If you elect to subscribe to the Check Cashing Warranty Service, the terms and conditions of this Section shall apply, and the TeleCheck Services Agreement (the "Agreement") is amended to include the Check Cashing Warranty Service for the warranty of certain personal checks that meet the warranty requirements. TeleCheck and Subscriber agree as follows:

**2.1. Amendment to Definitions.** Section 2 (Definitions) of the Agreement is amended as follows:

- a) For purposes of a Check Cashing Transaction, "Warranty Maximum" means the lower of (i) the face amount of the check; or (ii) \$100.00 for a Personal Check made payable to a Subscriber; or (iii) \$750.00 for a Company or Government Check.
- b) The following definitions shall be added to this Section: "**Check**" means a Company Check, a Government Check or a Personal Check. "**Check Cashing Consumer**" means a person who authorizes a Check Cashing Transaction for: (i) a Company Check or Government Check made payable to the Check Cashing Consumer; or (ii) a Personal Check made payable to Subscriber. "**Check Cashing Transaction**" means the contemporaneous presentment of a Company Check, Government Check or Personal Check for cash in accordance with the procedures of the Agreement and this Addendum. "**Company Check**" means a company payroll, expense reimbursement or non-medical insurance refund check. "**Convenience Check**" means a check provided by a third party (i.e., credit card issuer) to a Check Cashing Consumer on behalf of such Check Cashing Consumer, for which such check does not debit against the Check Cashing Consumer's own demand deposit account. "**Government Check**" means a U.S. federal, state, or local government payroll, expense reimbursement, tax refund or benefit/assistance (i.e., Social Security, disability, child support) check. "**PayDay Loan**" (also called a Deferred Deposit Loan, Deferred Presentment Loan, Small Loan or Short Term Loan) means a transaction for which a merchant makes a cash advance to a consumer and, for a fee, finance charge or other consideration: (i) accepts a check (sometimes post-dated) from the consumer; (ii) agrees to hold the check for a period of time prior to negotiation, deposit or presentment of the check for payment; and (iii) advances to the consumer, credits the consumer's account, or pays to another person or entity on the consumer's behalf, the amount of the check, less any fee, finance charge or other consideration. "**Payor**" means a company or governmental agency that issues a Company Check or Government Check made payable to a Check Cashing Consumer. "**Personal Check**" means a personal check made payable to the Subscriber which debits against the Check Cashing Consumer's own demand deposit account.

**2.2. Warranty Requirements and Representations for Check Cashing Transactions.** During the initial or any renewal term, Subscriber agrees that it will process through TeleCheck's authorization system all Checks presented to Subscriber for check cashing prior to acceptance thereof. TeleCheck agrees to purchase from Subscriber one check per Check Cashing Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the check. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such check subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each Check Cashing Transaction submitted to TeleCheck for processing under this Agreement that:

- a) The Check is drawn on a United States or Canadian financial institution, and is completely and properly filled out.
- b) Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code.
- c) The TeleCheck Subscriber Number, TeleCheck Approval Code, and Payor's or Check Cashing Consumer's telephone number (including area code) and identification type and number are printed, written, endorsed or franked on the Check. If a P.O. Box is used or an address is not imprinted by the check manufacturer, a physical address description of Check Cashing Consumer is written on the front of the check according to TeleCheck Operational Procedures.
- d) The amount entered into the TeleCheck system and on the Check (in words and figures) match and does not exceed the Warranty Maximum.
- e) The Personal Check is a first party check made payable to Subscriber.
- f) The Company or Government Check is payable to, and endorsed by, the Check Cashing Consumer, without any restrictions or limitations of any kind (except for time limitations), and the name and address of the Payor is imprinted or typed on the Check by the check manufacturer.
- g) The signature in the signature block on a Personal Check is not substantially different from the name imprinted on the check, and reasonably corresponds to any signature contained in the piece of identification. The physical description of the Check Cashing Consumer reasonably corresponds to the description contained in the piece of identification.
- h) The endorsement signature by the Check Cashing Consumer on the back of a Company or Government Check is not substantially different from the name of the Check Cashing

Consumer on the front side of such Check. The endorsement signature and physical description of the Check Cashing Consumer reasonably corresponds to any signature and physical description contained in the piece of identification.

- i) The Personal Check transaction represents an obligation of the Check Cashing Consumer presenting the Check for cash and does not involve any element of credit for any purpose. TeleCheck does not warrant any Payday Loans or Convenience Checks.

The date of the Personal Check accurately coincides with the date of the inquiry call to TeleCheck and the date the Check Cashing Transaction actually occurred (No Pre- or Post-dated checks).

- k) The date of the transaction is within 30 days of the date of issuance on the Company or Government Check (no post-dated Company or Government Checks). The date of the inquiry call to TeleCheck is the same date as the Check Cashing Transaction.

- l) The Check is deposited in Subscriber's Account and received by TeleCheck for purchase: (i) in the case of a Personal Check, within 30 days of the date of the Check, and (ii) in the case of a Company or Government Check, within 30 days following the date the Check was presented to Subscriber. Such Check has been sent directly to TeleCheck after being presented for payment only once (no representations shall be permitted, whether paper or electronic).

- m) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of the Payor's or Check Cashing Consumer's obligation or relieve the Check Cashing Consumer from liability.

**2.3. Limitations.** TeleCheck shall warrant a Personal Check for a Check Cashing Transaction only to subscribers using TeleCheck's Check Cashing Warranty services in SICs 5541 (convenience stores), 5411 (grocery stores), 6012 (depository financial institutions), 5933 (pawn shops), 5921 (liquor stores) and 7011 (general lodging such as hotels/motels), and such subscribers must fully comply with TeleCheck's sales management qualifications. For SIC 7011 Only: TeleCheck shall only warrant a Personal Check if the Check Cashing Consumer: (a) is a registered guest of Subscriber on the date of the Check Cashing Transaction; and (b) presents a maximum of one Check Cashing Transaction per day.

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

**Except as expressly modified by this Check Cashing Warranty Service Addendum, all provisions contained in the Agreement and applicable to the TeleCheck Paper Warranty Services shall remain in full force and effect. In the event of any conflict or any inconsistency between the Agreement and this Addendum, the provisions of this Addendum shall govern and control.**

### 3.0. Check Cashing Verification Service Addendum

If you elect to subscribe to the Check Cashing Verification Service, the terms and conditions of this Section shall apply, and the TeleCheck Services Agreement (the "Agreement") is amended to include the Check Cashing Verification Service. TeleCheck and Subscriber agree as follows:

**3.1. Description.** The TeleCheck Check Cashing Verification services provide Subscriber with coded information to assist Subscriber in deciding whether or not to accept a Check (as defined below). TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber for any loss from transactions processed through the Check Cashing Verification services. Subscriber assumes all risks that checks accepted by Subscriber may result in Return Items.

**3.2. Definitions.** The following definitions shall be applicable to Check Cashing Verification services: "Check" means a Company Check, a Government Check or a Personal Check. "Check Cashing Consumer" means a person who authorizes a Check Cashing Verification services transaction for: (i) a Company Check or Government Check made payable to the Check Cashing Consumer; or (ii) a Personal Check made payable to Subscriber. "Company Check" means a company payroll, expense reimbursement or non-medical insurance refund check. "Convenience Check" means a check provided by a third party (i.e., credit card issuer) to a Check Cashing Consumer on behalf of such Check Cashing Consumer, for which such check does not debit against the Check Cashing Consumer's own demand deposit account. "Government Check" means a U.S. federal, state, or local government payroll, expense reimbursement, tax refund or benefit/assistance (i.e., Social Security, disability, child support) check. "PayDay Loan" (also called a Deferred Deposit Loan, Deferred Presentment Loan, Small Loan or Short Term Loan) means a transaction for which a merchant makes a cash advance to a consumer and, for a fee, finance charge or other consideration: (i) accepts a check (sometimes post-dated) from the consumer; (ii) agrees to hold the check for a period of time prior to negotiation, deposit or presentment of the check for payment; and (iii) advances to the consumer, credits the consumer's account, or pays to another person or entity on the consumer's behalf, the amount of the check, less any fee, finance charge or other consideration. "Personal Check" means a personal check made payable to the Subscriber which debits against the Check Cashing Consumer's own demand deposit account.

**3.3. Eligible Checks.** The Check Cashing Verification service shall be limited to (a) Company Checks made payable to the Check Cashing Consumer, (b) Government Checks made payable to the Check Cashing Consumer, and (c) Personal Check made payable to

Subscriber. In no event may the transaction involve (i) a Convenience Check, or (ii) a PayDay Loan.

**3.4. Eligible Subscribers.** TeleCheck shall process a Personal Check in a check cashing transaction only for subscribers using services in SICs 5541 (convenience stores), 5411 (grocery stores), 6012 (depository financial institutions), 5933 (pawn shops), 5921 (liquor stores) and 7011 (general lodging such as hotels/motels), and such subscribers must fully comply with TeleCheck's sales management qualifications.

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

**Except as expressly modified by this Check Cashing Verification Service Addendum, all provisions contained in the Agreement shall remain in full force and effect. In the event of any conflict or any inconsistency between the Agreement and this Addendum, the provisions of this Addendum shall govern and control.**

### 4.0. Mail Order Warranty Service Addendum

If you elect to subscribe to the Mail Order Warranty Service, the terms and conditions of this Section shall apply, and the TeleCheck Services Agreement (the "Agreement") is amended to include the Mail Order Warranty Service for the warranty of paper checks issued in mail order transactions. TeleCheck and Subscriber agree as follows:

**4.1. Warranty Requirements.** The warranty requirements for Paper Warranty Services as set forth in Section 1.4.2 of the Agreement are modified as follows:

- a) The date of the check and the date of the inquiry call to TeleCheck are no later than the date of the deposit of the check;
- b) The goods purchased through mail order are not mailed to a P.O. Box address unless the order is mailed to a post office box located in Alaska;
- c) The date of the inquiry is written on the check; and
- d) The check is received by TeleCheck for purchase within 45 days from the date of the inquiry call. A copy of the invoice must accompany each warranty request.

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

**Except as expressly modified by this Mail Order Warranty Service Addendum, all provisions contained in the Agreement and applicable to the TeleCheck Paper Warranty Services shall remain in full force and effect. In the event of any conflict or any inconsistency between the Agreement and this Addendum, the provisions of this Addendum shall govern and control.**

### 5.0. C.O.D. Warranty Service Addendum

If you elect to subscribe to the C.O.D. Warranty Service, the terms and conditions of this Section shall apply, and the TeleCheck Services Agreement (the "Agreement") is amended to include the C.O.D. Warranty Service for the warranty of paper checks issued in a C.O.D. transaction that meet the warranty requirements. TeleCheck and Subscriber agree as follows:

**5.1. Check Approval Amount.** To obtain an authorization, Subscriber may need to estimate the amount of the check to include freight and handling charges. TeleCheck will honor the warranty on the check in accordance with the warranty requirements up to the Warranty Maximum if the amount of the check differs from the check approval amount by no more than 10%.

**5.2. Warranty Requirements.** The warranty requirements for Paper Warranty Services as set forth in Section 1.4.2 of the Agreement are modified as follows:

- a) The date of the inquiry call to TeleCheck is no later than 10 days of the date of the check;
- b) The date of inquiry call and TeleCheck Approval Code are written on the check; and
- c) The check is received by TeleCheck for purchase within 45 days from the date of the inquiry call. A copy of the invoice must accompany each warranty request.

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

**Except as expressly modified by this C.O.D. Warranty Service Addendum, all provisions contained in the Agreement and applicable to the TeleCheck Paper Warranty Services shall remain in full force and effect. In the event of any conflict or any inconsistency between the Agreement and this Addendum, the provisions of this Addendum shall govern and control.**

## PART IV: ADDITIONAL IMPORTANT INFORMATION FOR CARD PROCESSING

### 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 Bank of America, N.A. nor Banc of America Merchant Services, LLC 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 Bank of America, N.A. and Banc of America Merchant Services, LLC, to access information from the DDA 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 DDA 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 DDA, 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 and assessments and Chargeback amounts of whatever kind or nature due to Bank of America, N.A. or Banc of America Merchant Services, LLC 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 Bank of America, N.A. and Banc of America Merchant Services, LLC 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-five dollars (\$25.00) for each ACH which cannot be processed, and all subsequent funding may be suspended until Client either (i) notifies Banc of America Merchant Services, LLC 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

**Automated Clearing House (ACH).** Your funds for MasterCard, Visa and Discover Network transactions will be processed and transferred to your financial institution within two (2) Business Days from the time a batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard, Visa and Discover Network transactions will be processed via the Federal Reserve within two (2) Business Days from the time a batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

### A.3. Additional Fees, Fee Related Information and Early Termination

This Section A.3 describes certain fees set forth in the Application, in the order referenced in it, as well as additional fees that may apply to you and the Early Termination fees and includes other important information regarding equipment. Capitalized terms not defined in this Section A.3 are defined in Part I of this Program Guide or the Application.

#### Certain Fees Set forth in Application

**Note:** Application Fee descriptors may be similar but not exactly the same as those that appear on your account statement for the related fees or rates. Please contact Customer Service if you have any questions about your statement.

#### START UP FEES

**Application Fee** – Charged upon approval of your account.

**Reprogramming Fee** – Charged for any programming of equipment you did not purchase from Processor, per piece of equipment.

**Debit Set-up Fee** – Charged for PIN Debit account implementation on our and our agents' systems.

#### BILLED MONTHLY FEES

**Monthly Service Charge** – Our customer service fee.

**Minimum Processing Fee** – Charged per location and appears on the merchant statement as "Account Minimum Fee". The "Discount Fees" and "Other Payment Fees" you pay to Servicers (as set forth on the Application) count toward the Minimum Processing Fee; however, the product fees, other monthly non-processing fees, equipment fees and the Card Organization assessment fees are excluded from this calculation. If these fees are equal to, or greater than the amount set forth on the Application for the Minimum Process Fee, then no fee is charged. This fee will be calculated beginning thirty (30) days after the date Client's Application is approved.

**Wireless Access Fee** – Charged for wireless terminal telecommunication network access and appears on the merchant statement as "Monthly Access Fee."

**Premium Equipment Service Program** – If you purchase equipment from Processor you may be eligible to participate in Processor's Premium Equipment Service Program. The Premium Equipment Service Program provides a lifetime replacement of your point-of-sale terminal for as long as you participate in the program. The Premium Equipment Service Program includes (i) free comparable replacement terminal (refurbished) in the event of a defect or malfunction (terminal defects or malfunctions caused by acts of God or Client abuse are not covered by this program) and (ii) free terminal supplies (roll paper, sales slips and print ribbons) and (iii) periodic discount offers on certain equipment purchases and product entitlements. You will be charged for shipping & handling on all terminal and supply orders ordered the Premium Equipment Service Program. All limits on liability and exclusions of damages under the Agreement apply to this Premium Equipment Service Program. If you don't return your damaged equipment, you will be charged the full purchase price of the replacement equipment sent to you.

The monthly fee set forth on the Application for the optional Premium Equipment Service Program is a per location fee and covers all eligible terminals at your participating location(s). Only certain types of equipment are eligible to participate in this program. A list of eligible terminals is available from our Customer Service department. You may terminate your participation in the program at any time by calling our Customer Service department.

#### BILLED ANNUAL FEES (October)

**Compliance Service Fee** – Charged for notifying you of Card Organization mandated changes and for changing our and our agents' systems as result of those mandated changes. The payment of the Compliance Fee does not affect your compliance responsibilities and obligations associated with your Merchant Account.

#### PIN DEBIT

**Unbundled PIN Debit** – Our fee for processing your PIN Debit transactions and appears on the merchant statement as "Debit/ATM Card Transaction Fee."

#### INTERNET START UP FEES

**FDGG** – Charged per Terminal ID (TID) for access to First Data Global Gateway (FDGG) and appears on the merchant statement as "FDGG Setup Fee" or "Your Setup Fee."

#### BILLED MONTHLY FEES

**FDGG** – Maintenance fee Charged per TID for continued access to FDGG and appears on the merchant statement as FDGG Monthly Usage Fee" or "YourPay Monthly Usage Fee."

**Trans/Other Fee** – Charged for Internet transaction authorization (including Address Verification System) for the applicable Card Organizations and for (a) each Card Organization will appear on the merchant statement in the form "[Card Organization name] Internet Auth Fee" and (b) Address Verification System will appear on the merchant statement as "Internet AVS Auth Fee."

#### ENTITLEMENTS

**American Express ESA/Pass Through** – Charged per inquiry and appears on the merchant statement as "Amex Auth Fee."

**JCB** – Charged per inquiry and appears on the merchant statement as "JCB Auth Fee."

**JCB License** – Discount rate charged for settled JCB transactions and appears on the merchant statement as "JCB Sales Discount."

#### DISCOUNT FEES

Your initial Discount Rates are stated on your Application and may be adjusted from time to time, including, without limitation, to reflect:

- Any increases or decreases in the interchange and/or assessment portion of the fees;
- The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by you;
- 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 us when such costs are included in the Services or other fixed fees.

**Note:** The above are examples of reasons Discount Rates may change; please refer to Part 1, Section 18 of this Program Guide for further information about fee and rate changes.

The 2-Tier, 3-Tier Discount Rates as well as the MC/Visa Discover Network/American Express Discount Rate, as shown on the Application, 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 ("Anticipated Interchange Level").

If a transaction fails to qualify for your Anticipated Interchange Levels or Discount Rate and your pricing method is (as set forth in the Application):

- i. MC/Visa Discover Network 2-Tier, you will be billed a Non-Qualified Discount Rate set forth in the Application.
- ii. MC/Visa Discover Network 3-Tier, you will be billed the Mid-Qualified Discount Rate or Non-Qualified Discount Rate, as applicable to the transaction, set forth in the Application.
- iii. MC/Visa Discover Network/American Express Discount Rate, you will be charged that Discount Rate, which will appear separately on your merchant account statement, plus the difference between that Discount Rate and the interchange rate for which the transaction actually qualifies (the "Non-Qualified Interchange Fee," also referred to as the "Non-Qualified Interchange Rate"), according to the Non-Qualified Rate Schedule, plus the Non-Qualified Surcharge; the Non-Qualified Interchange Fee and the Non-Qualified Surcharge will appear in the form of one entry as "Billback" and may include additional information.

**Note:** For 2-Tier and 3-Tier pricing method, the MC/Visa/Discover Network Qual, Mid-Qual, and Non-Qual transaction fees are charged on sales and credits (or returns) and will appear on the merchant account statement accordingly.

If your pricing method is the MC/Visa/Discover Network IC Pass Thru Discount Rate, you will be charged that Discount Rate, which will appear separately on your merchant account statement, plus the interchange rate for the transaction, according to the Interchange Rate Schedule, which will also appear on the merchant account statement.

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.

#### BUYPASS FEES

**Datawire Micronode 960-AS Monthly Fee** – Fee charged monthly for Datawire Micronode access and will appear on the merchant account statement as "Monthly Maintenance Fee."

#### OTHER FEES

**MC Cross Border Fee** – Fee assessed on all consumer, commercial, credit and debit transactions that are processed with the country code of the merchant different from the country code of the Cardholder; all sales must be processed in U.S. dollars and will appear on the merchant account statement as "US Cross Border Fee."

**Visa International Service Fee** – Applies to international transactions where the Issuer is non-US and the merchant is located in the U.S.

**MasterCard/Visa/Discover Network/America Express Voice Auth** – The fee charged for Authorization requests made by telephone and will appear on the merchant statement in the form "[Card Organization name] Voice Auth Fee."

**EBT** – Charged per EBT authorization or decline, EBT food stamp return, and EBT balance inquiry, and will appear on the merchant account statement accordingly.

**MasterCard/Visa Network Access Fee** – Our fee for accessing MasterCard and Visa networks on your behalf, based on similar charges to us by those Card Organizations, and will appear on the merchant account statement in the case of MasterCard as "MasterCard Access Fee" and in the case of Visa as "Visa Auth/Settle Fee."

**Discover Network Access Fee** – Our fee for accessing MasterCard and Visa networks on your behalf, based on similar charges to us by that Card Organizations.

**Visa Zero Amount+AVS Fee** – Fee assessed on both account verification messages, including both approved and declined, AVS, and SMS account verification transactions. Account verification transactions must be submitted for zero dollars and are used to validate Cardholder account numbers and other elements, such as CVV2 and AVS, prior to obtaining an actual Authorization.

**Visa Zero \$ Verification** – Fee assessed on both account verification messages, including both approved and declined, and SMS account verification transactions and will appear on the merchant account statement as "Visa Zero Amt Fee." Account verification transactions must be submitted for zero dollars and are used to validate Cardholder account numbers and other elements, such as CVV2, prior to obtaining an actual Authorization.

**Visa Misuse of Authorization** – Fee assessed on each Visa transaction for which you receive an Authorization that is not followed by a matching Visa clearing transaction (or not reversed in the case of a canceled transaction).

**Visa Zero Floor Limit** – Fee assessed on each Visa clearing transaction for which you did not obtain an Authorization.

#### Equipment Rental Fee Information

An equipment rental fee will be charged each month for each piece of Rental Equipment, plus tax as applicable. Client will be charged for cost of supplies and shipping fees for equipment and supplies. Processor will cover or replace all inoperable equipment during the rental term. If you don't return Rental Equipment, you will be charged the full purchase price of the replacement equipment sent to you.

#### Early Termination Fee

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 terminating it prior to the expiration of the applicable term of the Agreement, or (b) this Agreement is terminated prior to the expiration of the applicable 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.

If Client's annualized transaction volume for the twelve months immediately prior to the date of termination is less than \$5,000,000, then the amount shall equal \$500 per Client location. If Client's annualized transaction volume for the twelve months immediately prior to the date of termination is equal to or exceeds \$5,000,000, then the per Client location amount shall be the greater of (a) \$500, or (b) \$100 per month for the number of months, including any pro rata portion of a month, then remaining prior to the date on which Client may terminate this Agreement in accordance with the terms hereof.

#### Purchased Equipment (One Year Warranty)

Purchased equipment is warranted against material defects for a one year period after the original date of purchase. This warranty does not include damage to the equipment resulting from accident or misuse or any other breach of Section 33. If the equipment should otherwise become defective within the warranty period, Processors will replace it free of charge (except that appropriate shipping charges may apply). This warranty does not apply to equipment that may become obsolete; notwithstanding this limited warranty, it may be necessary for you to upgrade your equipment or purchase new equipment from time to time, for which you will be charged.

#### Lease Equipment (Life of the Lease)

Section 1.10 of the Lease Agreement is hereby revised as follows: Leased equipment is warranted against material defects for the life of the lease. This warranty does not include damage to the equipment resulting from accident or misuse or any other breach of the Lease Agreement. If the equipment should become defective within the warranty period, Banc of America Merchant Services, LLC will replace it free of charge (except that appropriate shipping charges may apply).

#### Customer Owned Equipment

Customer-owned equipment is not covered under any warranty. If Customer Owned equipment needs to be replaced, you will be charged a replacement fee as well as the appropriate shipping fees.

If you have any additional equipment needs please contact the POS Help Desk number listed in Section A.4.

#### A.4. Addresses For Notices

##### PROCESSOR:

**Banc of America  
Merchant Services, LLC:**  
1307 Walt Whitman Road  
Melville, NY 11747  
Attn: Merchant Services

##### BANK:

**Bank of America, N.A.**  
1231 Durrett Lane  
Louisville, KY 4021  
Attention: Operations Manager.

##### Important Phone Numbers: (see also Sections 3.3 and 5.4)

**Customer Service**  
1-800-430-7161

**Authorizations**  
1-800-430-7161, Option 1

**POS Help Desk**  
1-800-430-7161, Option 2

**Supplies**  
1-800-430-7161, Option 4

If this application for business credit is denied you may obtain a written statement of the specific reasons for denial. To obtain the statement, please contact Credit Initiation, 1307 Walt Whitman Road, Melville, NY 11747, 1-800-767-2484 ext. 2900, within sixty (60) days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within thirty (30) days of receiving your request.

Please read the Program Guide in its entirety. It describes 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 TeleCheck. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. **Your Discount Rates are assessed** on transactions that qualify for certain reduced interchange rates imposed by MasterCard and Visa. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 18 of the Program Guide).
2. **We may debit your bank account** from time to time for amounts owed to us under the Agreement.
3. **There are many reasons why a Chargeback may occur.** When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks see Section 10 of the Operating Guide or see the applicable provisions of the TeleCheck Services Agreement.
4. **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 30 days of the date of a TeleCheck transaction.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 20 of the General Terms; or Sections 1.17 and 1.28 of the TeleCheck Services Agreement.
6. **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 General Terms in Section 23, Term; Events of Default and Section 24, Reserve Account, Security Interest), (see TeleCheck Services Agreement in Sections 1.1, 1.3.2, 1.3.9, 1.5.2, 1.5.7, 1.7.2, 1.7.10, 1.8.2, 1.8.8, 1.9, and 1.10), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement early, you will be responsible for the payment of an early termination fee as set forth in Part IV, A.3 under "Additional Fee Information" and Section 1.38 of the TeleCheck Services Agreement.
9. **If you lease equipment under Part II of this Agreement,** it is important that you review Section 1 in Third Party Agreements. **THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.**

#### 10. Card Organization Disclosure

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

The Bank's mailing address is 1231 Durrett Lane, Louisville, KY 40213, and its phone number is 800-430-7161.

##### Important Member Bank Responsibilities:

- (a) The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a Merchant.
- (b) The Bank must be a principal (signer) to the Merchant Agreement.
- (c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard rules with which Merchants must comply; but this information may be provided to you by Processor.
- (d) The Bank is responsible for and must provide settlement funds to the Merchant.
- (e) The Bank is responsible for all funds held in reserve that are derived from settlement.

##### Important Merchant Responsibilities:

- (a) Ensure compliance with Cardholder data security and storage requirements.
- (b) Maintain fraud and Chargebacks below Card Organization thresholds.
- (c) Review and understand the terms of the Merchant Agreement.
- (d) Comply with Card Organization Rules.

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

By its signature below, Client acknowledges that it received (1) the (Interchange Qualification Matrix (version BAMS.IQM.MVDisc.F09.2 or \_\_\_\_\_), (2) one of the following, as applicable to the Pricing Method set forth on the Application: (i) Qualification Tier Rate Schedule corresponding to the 2-Tier or 3-Tier Pricing Method, (ii) Non-Qualified Rate Schedule for the MC/Visa/Discover Network/American Express Discount Rate Pricing Method (specific to your industry), or (iii) the Interchange Rate Schedule for the MC/Visa/Discover Network IC Pass Thru Pricing Method, and (3) complete Program Guide [Version BAMS1210(ia)] consisting of 46 pages (including this confirmation).

Client further acknowledges reading and agreeing to all terms in the Program Guide, 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 PROGRAM GUIDE WILL BE ACCEPTED.**

#### Client's Business Principal:

Signature (Please sign below):

X \_\_\_\_\_

\_\_\_\_\_ Title

\_\_\_\_\_ Date

\_\_\_\_\_ Please Print Name of Signer

Please read the Program Guide in its entirety. It describes 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 TeleCheck. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. **Your Discount Rates are assessed** on transactions that qualify for certain reduced interchange rates imposed by MasterCard and Visa. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 18 of the Program Guide).
2. **We may debit your bank account** from time to time for amounts owed to us under the Agreement.
3. **There are many reasons why a Chargeback may occur.** When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks see Section 10 of the Operating Guide or see the applicable provisions of the TeleCheck Services Agreement.
4. **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 30 days of the date of a TeleCheck transaction.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 20 of the General Terms; or Sections 1.17 and 1.28 of the TeleCheck Services Agreement.
6. **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 General Terms in Section 23, Term; Events of Default and Section 24, Reserve Account; Security Interest), (see TeleCheck Services Agreement in Sections 1.1, 1.3.2, 1.3.9, 1.5.2, 1.5.7, 1.7.2, 1.7.10, 1.8.2, 1.8.8, 1.9, and 1.10), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement early, you will be responsible for the payment of an early termination fee as set forth in Part IV, A.3 under "Additional Fee Information" and Section 1.38 of the TeleCheck Services Agreement.
9. **If you lease equipment under Part II of this Agreement,** it is important that you review Section 1 in Third Party Agreements. **THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.**

#### 10. Card Organization Disclosure

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

The Bank's mailing address is 1231 Durrett Lane, Louisville, KY 40213, and its phone number is 800-430-7161.

##### Important Member Bank Responsibilities:

- (a) The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a Merchant.
- (b) The Bank must be a principal (signer) to the Merchant Agreement.
- (c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard rules with which Merchants must comply; but this information may be provided to you by Processor.
- (d) The Bank is responsible for and must provide settlement funds to the Merchant.
- (e) The Bank is responsible for all funds held in reserve that are derived from settlement.

##### Important Merchant Responsibilities:

- (a) Ensure compliance with Cardholder data security and storage requirements.
- (b) Maintain fraud and Chargebacks below Card Organization thresholds.
- (c) Review and understand the terms of the Merchant Agreement.
- (d) Comply with Card Organization Rules.

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

By its signature below, Client acknowledges that it received (1) the (Interchange Qualification Matrix (version BAMS.IQM.MVDisc.F09.2 or \_\_\_\_\_), (2) one of the following, as applicable to the Pricing Method set forth on the Application: (i) Qualification Tier Rate Schedule corresponding to the 2-Tier or 3-Tier Pricing Method, (ii) Non-Qualified Rate Schedule for the MC/Visa/Discover Network/American Express Discount Rate Pricing Method (specific to your industry), or (iii) the Interchange Rate Schedule for the MC/Visa/Discover Network IC Pass Thru Pricing Method, and (3) complete Program Guide [Version BAMS1210(ia)] consisting of 46 pages (including this confirmation).

Client further acknowledges reading and agreeing to all terms in the Program Guide, 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 PROGRAM GUIDE WILL BE ACCEPTED.**

#### Client's Business Principal:

Signature (Please sign below):

X \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Please Print Name of Signer



# REQUEST FOR PROPOSAL

## INSTRUCTIONS TO OFFEROR

### Materials Management Procurement

9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
Peoria, Arizona 85345-6560  
Phone: (623) 773-7115  
Fax: (623) 773-7118

#### 1. PREPARATION OF PROPOSAL:

- a. All proposals shall be on the forms provided in this *Request For Proposal* package. It is permissible to copy these forms if required. Telegraphic (facsimile) or mailgram proposals will not be considered.
- b. The Offer and Contract Award document (COP Form 203) shall be submitted with an original ink signature by a person authorized to sign the offer.
- c. Erasures, interlineations, or other modifications in the proposal shall be initialed in original ink by the authorized person signing the Vendor Offer.
- d. If price is a consideration and in case of error in the extension of prices in the proposal, the unit price shall govern. No proposal shall be altered, amended, or withdrawn after the specified proposal due date and time.
- e. Periods of time, stated as a number of days, shall be calendar days.
- f. It is the responsibility of all Offerors to examine the entire *Request For Proposal* package and seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a Proposal confers no right of withdrawal after proposal due date and time.

2. **INQUIRIES:** Any question related to the *Request For Proposal* shall be directed to the Buyer whose name appears on the front. The Offeror shall not contact or ask questions of the department for which the requirement is being procured. Questions should be submitted in writing when time permits. The Buyer may require any and all questions be submitted in writing at the Buyer's sole discretion. Any correspondence related to a *Request For Proposal* should refer to the appropriate *Request For Proposal* number, page, and paragraph number. However, the Offeror shall not place the *Request For Proposal* number on the outside of any envelope containing questions since such an envelope may be identified as a sealed proposal and may not be opened until after the official *Request For Proposal* due date and time.

3. **PROSPECTIVE OFFERORS CONFERENCE:** A prospective offerors conference may be held. If scheduled, the date and time of this conference will be indicated within this document. The purpose of this conference will be to clarify the contents of this *Request For Proposal* in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this *Request For Proposal* or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine if any action is necessary and may issue a written amendment to the *Request for Proposal*. Oral statements or instructions will not constitute an amendment to this *Request for Proposal*.

4. **LATE PROPOSALS:** Late Proposals will not be considered, except as provided by the **City of Peoria Procurement Code**. A vendor submitting a late proposal shall be so notified.

5. **WITHDRAWAL OF PROPOSAL:** At any time prior to the specified proposal due date and time, a Vendor (or designated representative) may withdraw the proposal. Telegraphic (facsimile) or mailgram proposal withdrawals will not be considered.

6. **AMENDMENT OF PROPOSAL:** Receipt of a Solicitation Amendment (COP Form 207) shall be acknowledged by signing and returning the document prior to the specified proposal due date and time.

7. **PAYMENT:** The City will make every effort to process payment for the purchase of goods or services within thirty (30) calendar days after receipt of goods or services and a correct notice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. Any proposal that requires payment in less than thirty (30) calendar days shall not be considered.

8. **NEW:** All items shall be new, unless otherwise stated in the specifications.

9. **DISCOUNTS:** Payment discount periods will be computed from the date of receipt of material/service or correct invoice, whichever is later, to the date Buyer's payment is mailed. Unless freight and other charges are itemized, any discount provided will be taken on full amount of invoice. Payment discounts of thirty (30) calendar days or more will be deducted from the proposal price in determining the low bid. However, the Buyer shall be entitled to take advantage of any payment discount offered by the Vendor provided payment is made within the discount period.

10. **TAXES:** The City of Peoria is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item.

11. **VENDOR REGISTRATION:** After the award of a contract, the successful Vendor shall have a completed Vendor Registration Form (COP Form 200) on file with the City of Peoria Materials Management Division.

#### 12. AWARD OF CONTRACT:

a. Unless the Offeror states otherwise, or unless provided within this *Request For Proposal*, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.

b. Notwithstanding any other provision of this *Request For Proposal*, The City expressly reserves the right to:

- (1) Waive any immaterial defect or informality; or
- (2) Reject any or all proposals, or portions thereof, or
- (3) Reissue a *Request For Proposal*.

c. A response to a *Request For Proposal* is an offer to contract with the City based upon the terms, conditions and specifications contained in the City's *Request For Proposal* and the written amendments thereto, if any. Proposals do not become contracts unless and until they are accepted by the **City Council**. A contract is formed when written notice of award(s) is provided to the successful Offeror(s). The contract has its inception in the award document, eliminating a formal signing of a separate contract. For that reason, all of the terms and conditions of the procurement contract are contained in the *Request For Proposal*; unless modified by a Solicitation Amendment (COP Form 207) or a Contract Amendment (COP Form 217).



## STANDARD TERMS AND CONDITIONS

### Materials Management Procurement

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THE FOLLOWING TERMS AND CONDITIONS ARE AN EXPLICIT PART OF THE SOLICITATION AND ANY RESULTANT CONTRACT.

1. **CERTIFICATION:** By signature in the Offer section of the Offer and Contract Award page (COP Form 203), the Vendor certifies:
  - a. The submission of the offer did not involve collusion or other anti-competitive practices.
  - b. The Vendor shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11456.
  - c. The Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the vendor may be debarred.
2. **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City with a view toward securing an order, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such order. In the event this contract is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible city government customers shall not be prohibited by this paragraph.
3. **APPLICABLE LAW:** In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Peoria including but not limited to federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this agreement.

Contractor specifically understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989. In addition, if this agreement pertains to construction, Contractor must also comply with A.R.S. § 34-301, as amended (Employment of Aliens on Public Works Prohibited) and A.R.S. § 34-302, as amended (Residence Requirements for Employees).

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter, "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this agreement and shall subject Contractor to penalties up to and including termination of this agreement at the sole discretion of the City. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any Subcontractors to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or the Subcontractor establishes that it has complied with the employment verification provisions prescribed by §§ 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

The provisions of this Paragraph must be included in any contract Contractor enters into with any Subcontractors who provide services under this agreement or any subcontract. "Services" is defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

Contractor warrants, for the term of this agreement and for six months thereafter, that it has fully complied with the requirements of the Immigration Reform and Control Act of 1986 and all related or similar legal authorities.



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This contract shall be governed by the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the City. This contract shall be governed by the laws of the State of Arizona and suit pertaining to this contract may be brought only in courts in the State of Arizona.

This contract is subject to the provisions of ARS §38-511; the City may cancel this contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City or any of its departments or agencies, is at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

4. **LEGAL REMEDIES:** All claims and controversies shall be subject to resolution according to the terms of the City of Peoria Procurement Code.
5. **CONTRACT:** The contract between the City and the Contractor shall consist of (1) the Solicitation, including instructions, all terms and conditions, specifications, scopes of work, attachments, and any amendments thereto, and (2) the offer submitted by the Vendor in response to the solicitation. In the event of a conflict in language between the Solicitation and the Offer, the provisions and requirements in the Solicitation shall govern. However, the City reserves the right to clarify, in writing, any contractual terms with the concurrence of the Contractor, and such written contract shall govern in case of conflict with the applicable requirements stated in the Solicitation or the Vendor's offer. The Solicitation shall govern in all other matters not affected by the written contract.
6. **CONTRACT AMENDMENTS:** This contract may be modified only by a written Contract Amendment (COP Form 217) signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.
7. **CONTRACT APPLICABILITY:** The Offeror shall substantially conform to the terms, conditions, specifications and other requirements found within the text of this specific Solicitation. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the City are not applicable to this Solicitation or any resultant contract.
8. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract will forthwith be physically amended to make such insertion or correction.
9. **SEVERABILITY:** The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
10. **RELATIONSHIP TO PARTIES:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.
11. **INTERPRETATION-PAROL EVIDENCE:** This contract represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this contract are hereby revoked and superseded by this contract. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this contract. This contract may not be changed, modified or rescinded except as provided for herein, absent a written agreement signed by both Parties. Any attempt at oral modification of this contract shall be void and of no effect.
12. **NO DELEGATION OR ASSIGNMENT:** Contractor shall not delegate any duty under this Contract, and no right or interest in this Contract shall be assigned by Contractor to any successor entity or third party, including but not limited to an affiliated successor or purchaser of Contractor or its assets, without prior written permission of the City. The City, at its



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option, may cancel this Contract in the event Contractor undertakes a delegation or assignment without first obtaining the City's written approval. Contractor agrees and acknowledges that it would not be unreasonable for the City to decline to approve a delegation or assignment that results in a material change to the services provided under this Contract or an increased cost to the City.

13. **SUBCONTRACTS:** No subcontract shall be entered into by the contractor with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the City. The prime contractor shall itemize all sub-contractors which shall be utilized on the project. Any substitution of sub-contractors by the prime contractor shall be approved by the City and any cost savings will be reduced from the prime contractor's bid amount. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract and if the Subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not Subcontractors are used.
14. **RIGHTS AND REMEDIES:** No provision in this document or in the vendor's offer shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of the City to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the City's acceptance of and payment for materials or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
15. **INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

16. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and services used to fulfill the Contract.
17. **FORCE MAJEURE:** Except for payment for sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force Majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God: acts of the public enemy; war; acts of terror, hate crimes affecting public order; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; events or obstacles resulting from a governmental authority's response to the foregoing; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract.

Force majeure shall not include the following occurrences:



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- a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
- b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and Condition.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed *Certified-Return Receipt* and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

18. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
19. **RIGHT TO AUDIT RECORDS:** The City may, at reasonable times and places, audit the books and records of any Contractor as related to any contract held with the City. This right to audit also empowers the City to inspect the papers of any Contractor or Subcontractor employee who works on this contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty made pursuant to Paragraph 3 above.
20. **RIGHT TO INSPECT PLANT:** The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or Subcontractor which is related to the performance of any contract as awarded or to be awarded.
21. **WARRANTIES:** Contractor warrants that all material, service or construction delivered under this contract shall conform to the specifications of this contract. Unless otherwise stated in Contractor's response, the City is responsible for selecting items, their use, and the results obtained from any other items used with the items furnished under this contract. Mere receipt of shipment of the material/service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in the solicitation.
22. **INSPECTION:** All material and/or services are subject to final inspection and acceptance by the City. Materials and/or services failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. The City may elect to do any or all:
  - a. Waive the non-conformance.
  - b. Stop the work immediately.
  - c. Bring material into compliance.This shall be accomplished by a written determination for the City.
23. **TITLE AND RISK OF LOSS:** The title and risk of loss of material and/or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.
24. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach of the Contract as a whole.
25. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment of lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.



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26. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.
27. **LIENS:** All materials, service or construction shall be free of all liens, and if the City requests, a formal release of all liens shall be delivered to the City.
28. **LICENSES:** Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.
29. **PATENTS AND COPYRIGHTS:** All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.
30. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL:** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.
31. **COST OF BID/PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
32. **PUBLIC RECORD:** All offers submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code. However, subsequent to the award of the contract, any information and documents obtained by the City during the course of an audit conducted in accordance with Paragraph 19 above for the purpose of determining compliance by Contractor or a Subcontractor with the Contractor Immigration Warranty mandated by Paragraph 3 above shall remain confidential and shall not be made available for public review or produced in response to a public records request, unless the City is ordered or otherwise directed to do so by a court of competent jurisdiction.
33. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the City.
34. **DELIVERY ORDERS:** The City shall issue a Purchase Order for the material and/or services covered by this contract. All such documents shall reference the contract number as indicated on the Offer and Contract Award (COP Form 203).
35. **FUNDING:** Any contract entered into by the City of Peoria is subject to funding availability. Fiscal years for the City of Peoria are July 1 to June 30. The City Council approves all budget requests. If a specific funding request is not approved, the contract shall be terminated.
36. **PAYMENT:** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or services and correct invoice.
37. **PROHIBITED LOBBYING ACTIVITIES:** The Offeror, his/her agent or representative shall not contact, orally or in any written form any City elected official or any City employee other than the Materials Management Division, the procuring department, City Manager, Deputy City Manager or City Attorney's office (for legal issues only) regarding the contents of this solicitation or the solicitation process commencing from receipt of a copy of this request for proposals and ending upon submission of a staff report for placement on a City Council agenda. The Materials Manager shall disqualify an Offeror's proposal for violation of this provision. This provision shall not prohibit an Offeror from petitioning an elected official after submission of a staff report for placement on a City Council agenda or engaging in any other protected first amendment activity after submission of a staff report for placement on a City Council agenda.
38. **PROHIBITED POLITICAL CONTRIBUTIONS:** Consultant during the term of this Agreement shall not make a contribution reportable under Title 16, Chapter 6, Article 1, Arizona Revised Statutes to a candidate or candidate committee for any city elective office during the term of this Agreement. The City reserves the right to terminate the Agreement without penalty for any violation of this provision.



## SPECIAL TERMS AND CONDITIONS

Solicitation Number: P11-0015

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1. **Purpose:** Pursuant to provisions of the City Procurement Code, the City of Peoria, Materials Management Division intends to establish a contract for **Banking Services**.
2. **Authority:** This Solicitation as well as any resultant contract is issued under the authority of the City. No alteration of any resultant contract may be made without the express written approval of the City Materials Manager in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the City Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.
3. **Offer Acceptance Period:** In order to allow for an adequate evaluation, the City requires an offer in response to this Solicitation to be valid and irrevocable for sixty (60) days after the opening time and date.
4. **Eligible Agencies:** Any contract resulting from this Solicitation shall be for the exclusive use of the City of Peoria.
5. **Contract Type:** Fixed Price
6. **Term of Contract:** The term of any resultant contract shall commence on the first day of the month following the date of award and shall continue for a period of five (5) years thereafter, unless terminated, cancelled or extended as otherwise provided herein.
7. **Contract Extension:** By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of thirty-six (36) months.
8. **Affirmative Action Report:** It is the policy of the City of Peoria that suppliers of goods or services to the City adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, and promote regardless of race, color, religion, gender, national origin, age or disability. The City of Peoria encourages diverse suppliers to respond to solicitations for products or services.
  - i. **Proposal Format:** Proposals shall be submitted in one (1) original and three (3) copies in the format as contained in the Request for Proposal. Proposals shall be on 8 1/2" & 11" paper with the text on one side only. All submittal information must contain data for only the local office(s) which will be performing the work.
  - ii. Proposal Content - the proposal shall address the items as described in the Scope of Work.
9. **Interview Guidelines:** During any requested interview, which would be scheduled in the future, be prepared to discuss your firm's proposal, staff assignments, project approach and other pertinent information. The presentation shall be approximately 30 minutes, allowing 15 minutes for a question and answer session. The Consultant's Project/Team Manager shall lead the presentation team and answer questions on behalf of the Consultant. If work involves a major sub-consultant, the firms Project/Team Manager's presence may also be requested (by the City) at the interview.
10. **Evaluation:** In accordance with the City of Peoria Procurement Code, awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.

### **A. GENERAL BANKING SERVICES**

- i. Understanding of City Banking Needs & Approach/Ability to Provide Required Services
- ii. Cost of Service
- iii. Bank and Staff Experience and Stability
- iv. Creditworthiness of Bank
- v. References

### **B. LOCKBOX**

- i. Understanding of City Banking Needs & Approach/Ability to Provide Required Services.
- ii. Cost of Service
- iii. References



# SPECIAL TERMS AND CONDITIONS

Solicitation Number: P11-0015

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**C. MERCHANT CREDIT CARD SERVICES**

- i. Understanding of City Banking Needs & Approach/Ability to Provide Required Services.
- ii. Cost of Service
- iii. References

**D. TRUSTEE SERVICES**

- i. Understanding of City Banking Needs & Approach/Ability to Provide Required Services.
- ii. Cost of Service
- iii. Staff Experience

The City reserves the right to consider historic information and facts, whether gained from the Offeror's proposal, questions and answer conferences, references, or other source and the views of the evaluator(s) with prior Contract or service delivery experience with any of the Offerors, while conducting the proposal evaluations.

- 39. **Discussions:** In accordance with the City of Peoria Procurement Code, after the initial receipt of proposals, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award.
- 40. **Proposal Opening:** Proposals shall be submitted at the time and place designated in the request for proposals. All information contained in the proposals shall be deemed as exempt from public disclosure based on the City's need to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall not be open for public inspection until after contract award. **PRICES SHALL NOT BE READ.** After contract award, the successful proposal and the evaluation documentation shall be open for public inspection.
- 41. **Compensation:** Compensation for services shall be based upon fees negotiated, including all approved costs and expenses incurred in connection with the project; including but not limited to, telephone and other communications, reproduction of documents, special consultants (as approved by the City) and computer costs.
- 42. **Payments:** The City shall pay the Contractor monthly, based upon work performed and completion to date, and upon submission of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.
- 43. **Insurance Requirements:** The Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of A-, or approved unlicensed in the State of Arizona with policies and forms satisfactory to the City.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the City, constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by the City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The Contractor shall be solely responsible for the deductible and/or self-insured retention and the City, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The City reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The City shall not be obligated, however, to review same or to advise



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Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Contractor's obligations under this Contract.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

#### 44. Required Insurance Coverage:

##### a. Commercial General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011207 or any replacements thereof. The coverage shall not exclude X, C, U.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20370704, and shall include coverage for Contractor's operations and products and completed operations.

Any Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

##### b. Automobile Liability

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00010306, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

##### c. Workers' Compensation

The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any work is subcontracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

##### d. Professional Liability

The Contractor retained by the City to provide the work or service required by this Contract will maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by the Contractor, or any person employed by the Contractor, with a limit of not less than \$1,000,000 each claim.



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45. **Certificates of Insurance:** Prior to commencing work or services under this Contract, Contractor shall furnish the City with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policy(ies) required by this contract is(are) written on a "Claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the City fifteen (15) days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. A \$25.00 administrative fee will be assessed for all certificates received without the appropriate bid serial number and title.

46. **Cancellation and Expiration Notice:** Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

47. **Independent Contractor:**

a. General

- i. The Contractor acknowledges that all services provided under this Agreement are being provided by him as an independent contractor, not as an employee or agent of the City Manager or the City of Peoria.
- ii. Both parties agree that this Agreement is nonexclusive and that Contractor is not prohibited from entering into other contracts nor prohibited from practicing his profession elsewhere.

b. Liability

- i. The City of Peoria shall not be liable for any acts of Contractor outside the scope of authority granted under this Agreement or as the result of Contractor's acts, errors, misconduct, negligence, omissions and intentional acts.
- ii. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

c. Other Benefits

The Contractor is an independent contractor, therefore, the City Manager will not provide the Contractor with health insurance, life insurance, workmen's compensation, sick leave, vacation leave, or any other fringe benefits. Further, Contractor acknowledges that he is exempt from coverage of the Comprehensive Benefit and Retirement Act (COBRA). Any such fringe benefits shall be the sole responsibility of Contractor.

48. **Key Personnel:** It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.



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- a. The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City.
- b. If key personnel are not available for work under this contract for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

49. **Confidential Information:**

- a. If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld, a statement advising the Materials Supervisor of this fact shall accompany the submission and the information shall be identified.
- b. The information identified by the person as confidential shall not be disclosed until the Materials Supervisor makes a written determination.
- c. The Materials Supervisor shall review the statement and information and shall determine in writing whether the information shall be withheld.
- d. If the Materials Supervisor determines to disclose the information, the Materials Supervisor shall inform the bidder in writing of such determination.

50. **Confidentiality of Records:** The contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that information contained in its records or obtained from the City or from others in carrying out its functions under the contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of contractor as needed for the performance of duties under the contract.

51. **Identity Theft Prevention:** The Contractor shall establish and maintain Identity Theft policies, procedures and controls for the purpose of assuring that "personal identifying information," as defined by A.R.S. § 13-2001(10), as amended, contained in its records or obtained from the City or from others in carrying out its responsibilities under the Contract, is protected at all times and shall not be used by or disclosed to unauthorized persons. Persons requesting such information should be referred to the City. Contractor also agrees that any "personal identifying information" shall not be disclosed other than to employees or officers of Contractor as needed for the performance of duties under the Contract. Contractor agrees to maintain reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft. Contractor is required under this contract to review the City of Peoria's Identity Theft Program and to report to the Program Administrator any Red Flags as defined within that program. At a minimum, the contractor will have the following Identity Theft procedures in place:

- a. Solicit and retain only the "personal identifying information" minimally necessary for business purposes related to performance of the Contract.
- b. Ensure that any website used in the performance of the contract is secure. If a website that is not secure is to be used, the City shall be notified in advance before any information is posted. The City reserves the right to restrict the use of any non-secure websites under this contract.
- c. Ensure complete and secure destruction of any and all paper documents and computer files at the end of the contracts retention requirements.
- d. Ensure that office computers are password protected and that computer screens lock after a set period of time.
- e. Ensure that offices and workspaces containing customer information are secure.
- f. Ensure that computer virus protection is up to date.



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52. **Ordering Process:** Upon award of a contract by the City of Peoria, Materials Management Division may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate contractor. The award of a contract shall be in accordance with the City of Peoria Procurement Code and all transactions and procedures required by the Code for public bidding have been complied with. A purchase order for the awarded material and/or service that cites the correct contract number is the only document required for the department to order and the contractor to delivery the material and/or service.

Any attempt to represent any material and/or service not specifically awarded as being under contract with the City of Peoria is a violation of the contract and the City of Peoria Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

53. **Billing:** All billing notices to the City shall identify the specific item(s) being billed and the purchase order number. Items are to be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the requesting agency shall refer to the contract number resulting from this solicitation.

54. **Licenses:** Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

55. **Cancellation:** The City reserves the right to cancel the whole or any part of this contract due to failure by the contractor to carry out any obligation, term or condition of the contract. The City will issue written notice to the contractor for acting or failing to act as in any of the following:

- a. The contractor provides material that does not meet the specifications of the contract;
- b. The contractor fails to adequately perform the services set forth in the specifications of the contract;
- c. The contractor fails to complete the work required or to furnish the materials required within the time stipulated in the contract;
- d. The contractor fails to make progress in the performance of the contract and/or gives the City reason to believe that the contractor will not or cannot perform to the requirements of the contract.

Upon receipt of the written notice of concern, the contractor shall have ten (10) days to provide a satisfactory response to the City. Failure on the part of the contractor to adequately address all issues of concern may result in the City resorting to any single or combination of the following remedies:

- a. Cancel any contract;
- b. Reserve all rights or claims to damage for breach of any covenants of the contract;
- c. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material non-compliant with the specifications, the actual expense of testing shall be borne by the contractor;
- d. In case of default, the City reserves the right to purchase materials, or to complete the required work in accordance with the City Procurement Code. The City may recover any actual excess costs from the contractor by:
  - i. Deduction from an unpaid balance;
  - ii. Any combination of the above or any other remedies as provided by law.

56. **Project Travel Reimbursable Expenses:** If travel expenses are allowed as part of the contract the reimbursable expenses will be as follows. All expenses will be billed to the City at cost without markup. Copies of bills for expenses are to be submitted with the invoice. Travel time to and from job site is excluded from this contract. There will be no allowances for parking or personal car mileage. No incidentals for travel of any kind are allowed under this contract.

The following is a list of allowable travel expenses under this contract agreement:

- a. Transportation:



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- i. Air Transportation – coach class fares, minimum 14 days advanced purchase, unless otherwise agreed upon.
- ii. Car Rental – mid size car, gas for rental car (City assumes no liability regarding additional insurance costs).
- b. Lodging and Meals:
  - i. Meals – three meals per day, at the current federal per diem rate for Maricopa County.
  - ii. Lodging – not to exceed the current federal rate for Maricopa County. Vendors are encouraged to stay in hotels located within the City of Peoria when practical. A listing of accommodations within Peoria can be found on the following website: <http://visitpeoriaaz.com/accommodations.php>



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### INTRODUCTION

The City of Peoria (City) has issued this Request for Proposals (RFP) for Banking Services to establish a five-year contract with the option to renew for three additional, one-year periods as provided for within the Special Terms and Conditions section of this solicitation. The City may award multiple contracts for these services to the most qualified and experienced financial institutions. Price adjustments during the term of any contract resulting from this solicitation will be considered as outlined in the Special Terms and Conditions (Price Adjustment). Contract extensions will be executed as outlined in the Special Terms and Conditions (Contract Extension) when the contractor has provided high quality service and demonstrated cost containment efforts.

The City of Peoria is a growing municipality with an estimated population of 161,000 and an annual budget of \$455 million, including approximately \$204 million for program operations; \$139 million for capital improvement projects; \$57 million for debt service requirements; and an additional \$54 million in reserves for various contingency requirements. The City utilizes a wide array of banking services and requires one or more financial institutions to provide these services on a timely basis. The following is a list of banking services that may be required by the City:

#### General Banking Services:

- a) Account Services
- b) Vault Services to include Acceptance of Armored Car Delivered Deposits
- c) Depository Services
- d) Controlled Disbursement (Zero-Balance) Account Services
- e) Reconciliation Services
- f) Funds Transfer Services
- g) Electronic Payments (Automated Clearing House)
- h) Internet Banking for Wires, Funds Transfers, Balance Reporting and Other Functions
- i) Daylight Overdrafts
- j) Positive Pay Check Fraud Services
- k) Check Imaging Services and Check 21 Services
- l) Web-based Services and Information
- m) Investment Settlement, Custody, and Safekeeping Services

#### Other Banking Services:

- n) Retail Lockbox Services
- o) Merchant Credit Card Services
- p) Bond Registrar/Transfer Agent/Paying Agent/Trustee Services
- q) Other Proposed Services



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**Financial institutions must include the following information in their response to this proposal. All responses shall be presented in the same order as the numbered sections of the Questionnaire. Financial institutions may elect to respond to only those sections corresponding to the services they provide. "Non-compliance" or "no answer" items should be labeled as NO BID.**

- a) For each numbered section of the attached **Questionnaire**, Proposers must (1) acknowledge that their financial institution is able to provide the service outlined, (2) briefly describe how the City's service requirements will be met, (3) identify all third party contractors (subcontractors) that will be utilized to provide the service, and (4) provide a numbered response, including "NO BID" entries, to all specific questions outlined in the Questionnaire. All responses must be clearly labeled as "Response to Questionnaire" and must be identified by appropriate section and question number within the proposal.
- b) Banking Services Fee Schedule (Attachment A)
- c) Sample copies of all agreements (including third party agreements) required to provide services
- d) List of current government or municipal client references
- e) Annual Report for most current fiscal year
- f) Sample monthly analysis statement (or equivalent monthly report)
- g) Earnings credit rate for prior 12 month period (ending June 30, 2010)
- h) Money Market Fund Prospectus
- i) Proof of license and a participant in the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF) for general banking and trustee services.
- j) Must currently meet, and maintain throughout the term of the contract, FDIC capital adequacy requirements for general banking and trustee services. The contract may be immediately terminable upon notification to the City of a failure to meet FDIC or NCUSIF capital adequacy requirements.

The City also encourages financial institutions submitting proposals to include information and attachments for any other banking service that would assist the City in its evaluation of proposal responses. Specific guidelines on RFP submittal procedures are outlined in the Special Terms and Conditions.

### TECHNICAL SPECIFICATIONS

#### 1. Account Structure and General Information

The City of Peoria (City) uses a Concentration Account, Controlled Disbursement, and Zero-Balance Account (ZBA) structure for its main bank accounts. All of the City's cash receipts are deposited to the General Account (Concentration Account). The City's Concentration Account averages \$7 million monthly in cash deposits and \$1.5 million monthly in credit card transactions, excluding ACH (Automated Clearing House) items, incoming wires, and other special transactions. Deposits are made daily primarily by armored car or through the servicing bank's lockbox facility; to a lesser extent, deposits are made by City personnel and/or through a night depository. Because personnel are required to make deposits periodically, the City requires the servicing bank to maintain a local branch within the City of Peoria for the general banking services portion of this proposal.

The City maintains one (1) controlled disbursement account for Accounts Payable; two (2) zero balance accounts for Payroll and Workmen's Compensation; and one (1) general checking account for Flex



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Spending. Amounts sufficient to cover daily clearings in the controlled disbursement and zero balance accounts are automatically transferred each day from the Concentration Account by the City's servicing bank. Monies are transferred each payroll period for the Flex Spending account. All funds not required to cover daily clearings and/or transfers must be swept overnight by the servicing bank into a *Money Market Fund* which is SEC registered and approved by the City. *Financial Institutions must include a prospectus of the money market fund to be used in their response to this proposal.*

Fees and Charges for Service: The City intends to pay for all banking services on a fee basis and not through compensating balances.

Account Executive: The City requires the servicing bank to assign an account executive to administer the City's overall banking relationship and ensure the successful delivery of services as outlined in the banking services contract. An account executive must be assigned to the City at all times during the term of the contract. The servicing bank must provide the City with written notice in the event there is a change in staff assignment for this position. The assigned account executive must provide the City with a list of designated staff contacts for key areas of responsibility within the bank and notify the City immediately of any change in staff assignments.

Availability of Funds Deposited: The City requires same day availability of cash, wire transfers, ACH credits, items drawn on servicing bank, and investment settlements, maturities, and coupon payments. Funds for items drawn on local banks must be available to the City the next day. All other items must be available to the City, at a minimum, as per the Federal Reserve availability schedule.

Delay of Funds: If the servicing bank delays funds to the City beyond the availability schedule outlined above, or due to an error on the part of the servicing bank, the bank shall pay interest to the City at the current Federal Funds rate.

Overdrafts: The City requires a one (1) day grace period to remedy any account overdrafts. All charges associated with overdraft protection must be specified where indicated on the Bank Services Fee Schedule.

Returned Checks: All returned checks are to be immediately redeposited once before being returned to the City for collection. The City currently utilizes a process where a returned check is converted into an ACH item to be redeposited a second time. The City requires that insufficient funds notices and return checks be mailed to the City.

Debit and Credit Advices: The City requires debit and credit advices for all activity on all accounts. Advices must be delivered to the City electronically or by fax within twenty-four (24) hours, or via mail within three (3) days.

Notification: Any change in the financial institution's ratings, reassignment of key banking personnel, and all business acquisitions or mergers occurring during the contract period must be reported immediately to the City of Peoria in the form of a written notice addressed to the Finance Director, City of Peoria, 8401 W. Monroe Street, Peoria, AZ, 85345.



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### 2. Zero Balance/Controlled Disbursement Account Information and ACH Capabilities

Payroll Account: The City has a bi-weekly payroll. Currently, there are approximately 1,100 part-time, full-time, and seasonal employees on the City's payroll at various times throughout the year. Approximately 90% of employees are paid through the ACH (Automated Clearing House) system and the remaining employees are paid by check. The Payroll Account, a zero balance account, clears an average of 400 checks monthly. On a bi-weekly basis, the City's direct deposit amount is approximately \$1.8 million, with a total bi-weekly payroll of approximately \$2.0 million.

Accounts Payable Account: The City of Peoria issues vendor payments weekly utilizing Peoplesoft Financial software. Vendors are paid by check, ACH (Automated Clearing House) or wire transfer. An average of 1,000 checks clear through the City's Accounts Payable Controlled Disbursement Account monthly. The City processes an average of \$13.0 million in vendor payments on a monthly basis.

Workmen's Compensation Account: The City is self-insured and utilizes a third party to administer their claims. An average of 20 checks clear through the City's Workmen's Compensation Account monthly. The third party provider processes an average of \$14,000 in claim payments on a monthly basis.

Flex Spending Account: The City utilizes a third party to administer the flex spending account for its employees. An average of 20 checks and 50 electronic funds transfers (EFT's) clear through the City's Flex Spending Account monthly. The third party provider processes an average of \$45,000 in payments on a monthly basis.

ACH Direct Debit/Credit Payments: The City currently utilizes ACH (Automated Clearing House) debit and credit transactions for customer, employee and vendor payments. An average of 7,000 ACH debits and 1,000 credits are generated monthly and transmitted to the servicing bank for processing. The number of ACH transactions is likely to increase as the City expands its electronic payment options.

### 3. City of Peoria, Housing Department Accounts

The City of Peoria uses segregated checking and savings accounts to ensure a market rate of return and to manage its housing funds in compliance with U.S. Department of Housing and Urban Development (HUD) guidelines. Securities pledged as collateral for monies held in the City's housing accounts must be held by a third party safekeeping institution and maintained in a separate pledge account in the name of the City of Peoria, Housing Department. A HUD General Depository Agreement (Form HUD-51999) must be completed between the City of Peoria and the servicing bank. All securities pledged for monies held in the City's housing accounts must comply with HUD Regulations. See Section - Collateral Requirements for additional information.

Currently, there are two (2) interest bearing savings accounts. Average monthly cash balances for the two savings accounts combined is \$400,000. Currently, housing deposits are made directly into the City's Concentration Account and then transferred monthly to the appropriate account.



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#### 4. Savings Accounts

The City currently has two (2) savings accounts which are utilized for special funds that must be maintained in segregated, interest bearing accounts. The current total combined balance for the City's two savings accounts is \$150,000.

#### 5. Monthly Analysis Reporting and Service Charge

The servicing bank's monthly statement shall provide, at a minimum, the following information on each account and on a total account basis: average daily ledger balances, average daily collected balances, daily average float, FDIC rate, earnings allowance, and detail transaction volumes and prices. **Financial Institutions must include a sample monthly analysis with their response to this proposal to be considered for general banking services.**

The City intends to pay for analysis service charges through hard dollars and not through compensating balances. The City will pay service charges through a hard dollar debit to the City's account. The servicing bank shall debit the City's Concentration Account within ten (10) days after the City's receipt of the monthly statement, unless the City notifies the servicing bank of a discrepancy or error on the statement.

#### 6. Collateral Requirements

The City of Peoria, in accordance with Arizona Revised Statutes, Chapter 35, requires that its servicing bank or financial institution maintain collateral to cover all anticipated overnight balances, in time and demand deposits, above the current Federal Depository Insurance Corporation (FDIC) insured limit. The collateral for these deposits must be held in an independent third party safekeeping institution (independent of the bank or the holding company) and marked to market at least once a month. The City requires that a minimum margin of 102% be maintained at all times. If mortgage-backed securities are pledged as collateral, the City requires that a minimum margin of 105% be maintained. It is the responsibility of the servicing bank to monitor and maintain the margin balance. Collateral must be in the form of "approved securities" as outlined in Arizona Revised Statutes, Chapter 35. In the event collateralized mortgage obligations (CMO's) are pledged as collateral, they must pass the standardized bank test. All securities pledged are subject to approval by the City of Peoria. Substitution rights will be given to the servicing bank with prior approval by the City, of which said rights shall not be unnecessarily withheld. New collateral must be received before the then current collateral is released.

A tri-party agreement between the financial institution selected for contract award, the City of Peoria, and the third party safekeeping bank must be executed as part of the City's overall banking services contract. The agreement shall indicate that the third party safekeeping bank provide the City of Peoria with original, third party safekeeping receipts which detail clearly that the security is pledged to the City of Peoria; type, description, and cusip number of security pledged; par value; market value; and maturity date. The City of Peoria requires that the third party custodian bank independently price the securities pledged and provide the City with a monthly pledge report for all City accounts and a separate monthly pledge report for the City of Peoria, Housing Department accounts. All safekeeping reports shall be sent directly from the third party custodian bank to the City of Peoria.



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Fax: (623) 773-7118

As stated in **Section 3** above, the City requires that all collateral for the City's Housing accounts be pledged and held separately in the name of the City of Peoria, Housing Department as required by U.S. Department of Housing and Urban Development (HUD) guidelines. All securities pledged for the City of Peoria, Housing Department accounts must comply with HUD Regulations, and a HUD General Depository Agreement must be executed between the servicing bank and the City of Peoria. A copy of the HUD General Depository Agreement is included as **Attachment B**.

#### 7. **Armored Car Services**

The City separately contracts for armored car services. The City currently has a contract with Dunbar Armored, Inc. to pick up deposits at various locations within the City and deliver them to the servicing bank's designated vault.

#### 8. **Investment Settlement, Custody, and Safekeeping Services**

The City of Peoria currently utilizes external investment management services to provide professional oversight for its investment portfolio. The external investment management firm works directly with the City's Treasury Division to manage cash flows and invest the City's funds. The external investment manager initiates investment transactions through a list of authorized brokers and then faxes the trade tickets to the City of Peoria Treasury Division for review and approval. Upon approval by authorized personnel at the City of Peoria, the signed trade tickets are faxed to the servicing bank's settlement area. The servicing bank settles the City's investment transactions on a "delivery vs. payment" basis for all investment accounts only after the trade tickets, with authorized signature from the City of Peoria, are received. The servicing bank will be required to provide safekeeping services for all investments held in the City's name. All investment transactions must comply with the City of Peoria Investment Policy. A copy of the City's Investment Policy and Procedures is included as **Attachment C**.

The City's current investment portfolio consists of a main custodial account and several segregated, custodial accounts for the investment of bond proceeds. The main custodial account is valued at approximately \$250 million, with \$60 million in the various custodial bond accounts, for a total investment portfolio of \$310 million. An average of 5 investment transactions, excluding coupon payments and maturities, are settled on a monthly basis for all of the investment accounts combined. An average of 60 securities, mainly Agency and/or Treasury securities, are held in the City's investment portfolio on a monthly basis.

Failure to credit the City's account on a same day basis will require interest to be paid to the City at that day's Fed Funds rate. The City requires same day credit on all coupons and maturity payments. The City will not be required to maintain any balances in the bank or place investments through the bank's brokerage service.

#### 9. **Positive Pay Check Fraud Services**

In an effort to minimize fraud, the City requires positive pay check services or reverse positive pay check services for all of its bank accounts with checks issued.



## SCOPE OF WORK

Solicitation Number: **P11-0015**

### Materials Management Procurement

9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
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#### **10. Check 21 Capabilities**

The City is currently implementing Check 21 scanning capabilities in the cashiering section of our Customer Service area. Customer checks are scanned and the images are electronically transmitted to the bank daily for processing.

#### **11. CD Imaging of Checks and Deposit Items**

The City of Peoria requires the optical imaging of its checks, both front and back, for all accounts, along with optical imaging of deposit items. The servicing bank currently provides a CD of check images to the City after month end. The servicing bank provides the software required for the City to retrieve and/or print the check images from CD's provided to the City each month.

#### **12. Online Banking Capabilities**

The City of Peoria requires the ability to obtain daily balance and transaction information, both detail and summary, for all of its accounts electronically via the Internet, as well as the ability to place stop payments, initiate wire transfers and make transfers between City accounts.

#### **13. Automated Bank Reconciliation Process**

The City currently downloads data from the servicing bank's internet website in an Excel or compatible file format to be used with the City's Peoplesoft Financial Software Reconciliation module. This process automates the reconciliation process for the City's concentration, controlled disbursement and 3 zero balance accounts.

#### **14. Automated Payment Processing (Retail Lockbox)**

The City requires lockbox service and uses a scannable remittance advice for all utility payments. Currently, the City pays for its own unique post office box at the Peoria Post Office from which the bank retrieves mail daily. The City requires daily processing and depositing, and requires payment information from the processing center by next day open of business. Documentation, daily activity reports, and supporting information must be available by 9 a.m. the following morning.

The Customer Service Division would like to have processed payment information available electronically by midnight of each day from the servicing bank, so that an automated process could be implemented to receive the lockbox file and have the City's system automatically post payments prior to 7:00 a.m. of each work day.

#### **15. Merchant Credit Card Services**

The City currently has several locations that require the ability to electronically accept VISA, MasterCard, American Express, and Novus/Discover credit card payments and debit card payments. The City requires daily automated credit card settlement into the City's Concentration Account.



## SCOPE OF WORK

Solicitation Number: **P11-0015**

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#### **16. Bond Registrar/Transfer Agent/Paying Agent/Trustee Services**

The City requires bond registrar, transfer agent, paying agent, and trustee services for any bonds issued by the City or its agencies, during the contract term and any extension, through the final maturity date of such bonds. The City might also require these services for existing bonds that are transferred from other financial institutions.

The City of Peoria generally issues bonds as required, with each bond issuance averaging \$30 – \$50 million in size. All payments to the Trustee/Paying Agent/Transfer Agent should be due on the actual due date and not one day prior.

#### **17. Other Enhancements**

The City would like to develop other banking options to enhance its customer service capabilities and improve overall cash management efficiencies. Offerors are encouraged to submit information and pricing for other services that would benefit the City.



## SCOPE OF WORK

Solicitation Number: **P11-0015**

### Materials Management Procurement

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### Proposal Questionnaire

This questionnaire will be used to determine whether your financial institution meets the mandatory and desired functionality and level of expertise required to perform the required services. With this purpose in mind, Offerors are to completely answer each of the following questions and provide relevant documentation. The Scope of Services have been broken out into 4 categories. You may bid on any one or all of the services. If your firm does not wish to be considered for a specific service, please label the item as "NO BID."

#### GENERAL BANKING

##### **1. General Banking**

- a. What is your financial institution's time schedule for mailing insufficient funds notices and return items to customers?
- b. Does your financial institution intend to discontinue offering any of the services identified in this Request for Proposal during the specified term of the contract? If yes, fully describe the circumstances including the anticipated date for elimination. What options will then be available to provide for this service?
- c. Does your financial institution have current plans to add or remove branches within the City of Peoria during the specified term of the contract? If so, which branches are involved and where would new branches be located? What level of service would be available?
- d. Has your financial institution entered into an agreement to merge with another financial institution or other business entity? If yes, please provide planned dates of merger, identify counterparties involved, and indicate which entity will be merged or absorbed. What effect will this merger have on the level of services provided to the City of Peoria? Will there be any change in location for services provided? Where will the headquarters be located?
- e. What is your institution's basis for charging for cash deposited?
- f. Does your financial institution provide other payment capabilities besides those listed in this proposal? If so, please describe the processes and all costs associated with this service.
- g. Please describe the controls your institution has in place to protect data integrity and to ensure that data is not lost or duplicated, i.e., audit and control procedures.
- h. How often in the last 12 months has the bank's wire transfer system had unscheduled downtime for a total of more than 30 minutes in a single day? What are the most common causes of unscheduled downtime?
- i. Please describe how your institution measures and evaluates quality of service. Describe how your institution intends to provide consistent high quality service to the City and what measures will be taken if service levels fall below acceptable levels.



## SCOPE OF WORK

Solicitation Number: **P11-0015**

### Materials Management Procurement

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- j. Please describe how inquiries requiring research and adjustments are handled by your institution. Are there established turn around times for research and adjustment items? If so, please explain.
- k. Does your institution have a formal disaster recovery plan in place in the event of a systems failure or other disaster at the bank's primary processing site? If so, please describe the plan and indicate when it was last updated and tested? Have disaster recovery procedures ever been implemented for a real disaster? Does your institution compensate in the event of loss?

### **2. Zero Balance/Controlled Disbursement Account Information and ACH Capabilities**

- a. What is your institution's availability of presentment policy for customer checks?
- b. Please describe your institution's methods for processing ACH transactions and identify the deadlines for processing these transactions. What media types and transmission methods are available? Are one and two day file effective date capabilities available?
- c. What is the process for ACH stop payments and/or corrections once the ACH file has been sent to your institution?
- d. Does your institution have a backup plan in place in order for the City to meet ACH file transmission deadlines in the event of a system problem or failure? Has the backup plan been tested and used?

### **3. City of Peoria, Housing Department Accounts**

- a. What will the interest rate for these accounts be based on? Can these funds be swept into a money market fund?

### **4. Savings Accounts**

- a. What will the interest rate for these accounts be based on? Can these funds be swept into a money market fund?

### **5. Monthly Analysis Reporting and Service Charge**

- a. When are your institution's account analysis statements available?
- b. Is any interest-bearing account interest charged against the account analysis?

### **6. Collateral Requirements**

- a. Who serves as your institution's third party custodian?
- b. What is the process to release or substitute securities pledged?
- c. Are the required monthly pledge reports available to the City electronically? If so, please provide a brief description of the process and all costs associated with this service.



## SCOPE OF WORK

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### Materials Management Procurement

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#### 7. Armored Car Services

- a. Does your designated vault have specific requirements for deposits delivered by a third party? If so, what are those requirements?

#### 8. Investment Settlement, Custody, and Safekeeping Services

- a. Please describe your institution's trade settlement process, including trade settlement deadlines (in Arizona Time) and the procedures in place to ensure compliance with the City's Investment Policies and Procedures.
- b. Would one designated contact person be assigned to handle the City's investment activity and all concerns, inquiries, and settlement issues? If so, please indicate the name, phone number, and availability of that person and a back up point of contact.
- c. If no designated contact person would be assigned to handle the City's investment activity, how will concerns, inquiries, and settlement issues be handled by your institution?
- d. What are your institution's provisions for sweeping of accounts overnight into an authorized Money Market Fund which is SEC registered? As the City must approve the Money Market Fund to be used, please include a money market fund prospectus.

#### 9. Positive Pay Check Fraud Services

- a. Does your institution provide check fraud prevention options such as Positive Pay? If so, describe the process and capabilities including information transfer and deadline requirements. Describe how the information will be transferred, applied, maintained, and reported.
- b. Does your institution provide the ability to match check number, check amount, and payee name in the Positive Pay system?
- c. How will mismatches or exceptions to positive pay files be communicated?
- d. How are "on-demand" checks processed?
- e. Please explain the City's liability if a fraudulent item is processed despite preventative positive pay services.

#### 10. CD Imaging of Checks and Deposit Items

- a. Please describe the optical imaging process, including detailed information on imaging checks, and the frequency and availability of the data to the City of Peoria.
- b. When is the CD of imaged items available to the City after month end?
- c. What software is required in order to view the CD images or is this service provided via the internet? What search capabilities are available for viewing imaged items?



## SCOPE OF WORK

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- d. Does your institution have a warehousing capability to store the City's cancelled checks? If so, please describe the process including document availability and retention rates.
- e. Does your institution provide electronic imaging of deposit items? If so, describe the process, and the frequency and availability of the data to the City of Peoria as well as all costs associated with this service.

### **11. Online Banking Capabilities**

- a. Describe your financial institution's electronic reporting capabilities. Is this provided through the Internet? Describe its capabilities, system requirements, and provide sample reports.
- b. When is the information available to the City? Is one and two day float information available?
- c. Describe all services and information types available on-line such as stop payments and initiating wire transfers. Include all limitations, security provisions, and downtime information.
- d. Does your institution provide a USB token device or Password Generating Token that can be utilized with the on-line banking system to provide user authentication?

### **12. Automated Bank Reconciliation Process**

- a. Does your institution provide a method of automated reconciliation? If so, please describe the process and all system requirements, including file format and file conversion requirements.

### **13. Other Enhancements**

- a. Describe any other enhancements or additional services, technological or otherwise, that the City should consider to improve operational or cash management efficiencies.

## **LOCKBOX**

### **1. Automated Payment Processing (Retail Lockbox)**

- a. Describe and detail your lockbox capability including location of facilities, quality controls, and bank experience. Discuss mail, lockbox, and check processing as well as data transmission. Where are the facilities located? Do you have a unique bank post office box and where is it located? Is your facility's post office box included in the first sorting pass? How often is the post office box emptied? Is mail processed on all shifts? What are the hours of operation for the processing facility? How many deposits are made daily? Is this facility separate from the bank, and is so, can they deposit directly? Does it include 1 and 2 day float? How long is archived information available?
- b. **Attached is the City's current remittance document (Attachment D)** Can your facility's equipment handle this document in its current form? If not, what changes are necessary? What changes do you suggest for efficiency? How are remittance documents returned to the City?



## SCOPE OF WORK

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- c. How would your institution provide processed payment information and in what format? When would the information be available to the City of Peoria? Attach samples.
- d. Can your institution accommodate the City's desire to receive the processed payment file by midnight of each workday so that an automated posting process could be implemented at the City?
- e. Is there a dual control on cash received in customer envelopes?
- f. Does your facility allow for the receipt and processing of electronic files from third party vendors such as CheckFree?
- g. In case of system failures, what backup arrangements do you have in place for the lockbox operation?
- h. Please describe how your institution measures and evaluates quality of service. Describe how your institution intends to provide consistent high quality service to the City and what measures will be taken if service levels fall below acceptable levels.
- i. When would detailed activity reports, supporting documentation and deposit information be available to the City and how would the information be provided? Include sample copies of all reports with your response. Can this information be retrieved or transmitted electronically? If so, please describe the process and all costs associated with this service.
- j. Please describe how exception items, including customer correspondence, are handled in your lockbox process.
- k. Would one designated contact person be assigned to handle the City's lockbox account and all concerns, inquiries, and research requests? If so, please indicate the name, phone number, and availability of that person and a backup point of contact.
- l. If no designated contact person would be assigned to the City's lockbox account, how would disputes, research requests, and corrections be handled by your institution?
- m. Does your institution's lockbox operation provide for the optical imaging of remittance advices and activity reports? If so, please provide a description of the process and all costs associated with this service.
- n. Does your institution have a warehousing capability to store the City's remittance advices and activity reports? And if so, please describe the process including document availability, retention rates, and all costs associated with this service.
- o. What is the maximum allowable error rate for operators in your institution's lockbox operation?
- p. For how many customers do you currently provide lockbox services? Have you lost any lockbox accounts in the past twelve (12) months, and if so, please explain. Please provide three (3) comparable lockbox account references.



## SCOPE OF WORK

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### MERCHANT CREDIT CARD SERVICES

#### 1. Merchant Credit Card Services

- a. Does your institution allow for settlement discounts with the additional requirement of the CVN number or billing zip code being provided with customer credit card transactions?
- b. Please describe your institution's automated settlement process.
- c. Does your institution accept debit card payments as part of its merchant credit card services?
- d. Would one designated contact person be assigned to handle the City's merchant credit card services and all concerns, inquiries, and research requests? If so, please indicate the name, phone number, and availability of that person and a back up point of contact.
- e. How are customer declines, vendor disputes, and research inquiries handled by your institution?
- f. Does your institution's merchant services processing area have the ability to accept transactions from all financial institutions such as credit unions and savings and loan organizations? If no, please describe any limitations.
- g. Does your institution provide online inquiry/reporting capabilities? If so, please provide a brief description of the process and all costs associated with this service.
- h. Does your institution have a formal disaster recovery plan in place in the event of a systems failure or other disaster? If so, please describe the plan and indicate when it was last updated and tested? Have disaster recovery procedures ever been implemented for a real disaster? Does your institution compensate in the event of loss?

### TRUSTEE SERVICES

#### 1. Bond Registrar/Transfer Agent/Paying Agent/Trustee Services

- a. Does your institution provide online inquiry/reporting capabilities? If so, please provide a brief description of the process and all costs associated with this service.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/14/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. 100 North Tryon Street, Suite 3200 Charlotte, NC 28202		<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #:		FAX (A/C, No):	
055943-A.-II.-10-11		RFP	AZ	RFP	CAS
<b>INSURED</b> Bank of America Corporation and any and all subsidiaries NC1-002-10-28 Bank of America Plaza 101 South Tryon Street Charlotte, NC 28255-0001		<b>INSURER(S) AFFORDING COVERAGE</b>			<b>NAIC #</b>
		<b>INSURER A:</b> N/A			N/A
		<b>INSURER B:</b> Old Republic Insurance Co			24147
		<b>INSURER C:</b> (See Page 2)			
		<b>INSURER D:</b>			
		<b>INSURER E:</b>			
		<b>INSURER F:</b>			

**COVERAGES**      **CERTIFICATE NUMBER:** ATL-002311179-01      **REVISION NUMBER:** 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		MWZY58886	08/01/2010	08/01/2011	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ Excluded MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 2,000,000* GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000* \$
	* This coverage applies only if required by written contract.					
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		MWTB21027	08/01/2010	08/01/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	Policy # see page 2	08/01/2010	08/01/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 RE: P11-0015 - City of Peoria, AZ Notice for Request for Proposal for Banking Services  
 City of Peoria, AZ, its agents, representatives, officers, directors, officials, and employees are additional insured under General Liability as their interest may appear, if required by written contract with the named insured.

<b>CERTIFICATE HOLDER</b> City of Peoria, AZ Materials Mgmt Procurement 9875 North 85th Avenue, 2nd Fl Peoria, AZ 85345-6560	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Letitia I. Sobota
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/14/2010

**PRODUCER**  
Marsh USA, Inc.  
1166 Avenue of the Americas  
New York, NY 10036

083466-BOA-EO-10-11

**INSURED**  
BANK OF AMERICA CORPORATION  
AND ANY AND ALL SUBSIDIARIES  
MAIL CODE NCI 007-07-07  
100 N. TYRON STREET  
CHARLOTTE, NC 28255

THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Chartis Specialty Ins. Co.	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

## COVERAGES

2

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS								
		<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GENERAL AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES(Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$								
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$								
		<b>EXCESS / UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$								
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE Y / N OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATU-TORY LIMITS	OTH-ER													
E.L. EACH ACCIDENT	\$													
E.L. DISEASE - EA EMPLOYEE	\$													
E.L. DISEASE - POLICY LIMIT	\$													
A		<b>OTHER</b> Professional Liability/ Errors & Omission	02-142-17-97	06/30/2010	06/30/2011	\$15,000,000								

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
 P11-0015 - City of Peoria, AZ Notice for Request for Proposal for Banking Services

**CERTIFICATE HOLDER** NYC-004703935-02

City of Peoria, AZ  
 Materials Management Procurement  
 9875 N. 85th Ave., 2nd FL  
 Peoria, AZ 85345-6560

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE of Marsh USA Inc.  
 Meredith Frick

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

City of Peoria  
 Request for Proposals for Banking Services  
 BANK SERVICES FEE SCHEDULE

Banking Services

Merchant Credit Card Services

*Acceptance of Visa, Mastercard, Novus/Discover, American Express  
 Acceptance of Debit Cards  
 Daily Automated Settle to City's Concentration Account*

	Volume	Unit of Measure	Per Unit Cost	Estimated Monthly Cost	Estimated Annual Cost
1. Qualified Discount Rate Charge Visa/Mastercard* (**)	\$1,500,000	Monthly	2.15%	\$32,250	\$387,000
2. Qualified Discount Rate Charge Discover Card***	\$100,000	Monthly	2.15%	\$2,150	\$25,800
3. Qualified Discount Rate Charge Visa/Mastercard/Discover-Signature Debit*		Monthly	1.70%		
4. Per Item Fee for Visa/Mastercard/Discover/American Express****		Monthly	\$0.11	\$80.96	\$971.52
5. Discount Rate Charge American Express**	\$70,000	Monthly	\$0.11	\$80.96	\$971.52
6. Transaction Charge Debit Card***	\$1,800	Monthly	\$0.20	\$30	\$360
7. Monthly Access Charge for Online Reporting Per User if Applicable	10	Monthly	\$0.00	\$0.00	\$0.00
8. ACH Reject Fee		Monthly	\$25		
9. Chargeback Fee Visa/MasterCard/Discover		Monthly	\$15.00		
10. Visa/Mastercard Network Access Fee*****		Monthly	\$0.0269	\$19.79	\$237.58
11. Discover Ntwk Access Fee*****		Monthly	\$0.0075	\$1.12	\$13.50
12. Voice Authorization Fee		Monthly	\$0.65		
13. MC Cross Border Fee USD		Monthly	0.40%		
14. US Cross Border Fee Non-USD		Monthly	0.80%		
15. Visa Zero Amt + AVS Fee		Monthly	\$0.025		
16. Visa Zero Amt		Monthly	\$0.025		
17. Visa Misuse of Auth Fee		Monthly	\$0.045		
18. Visa Zero Floor Limit		Monthly	\$0.10		
19. Visa Partial Auth NP Trans Fee		Monthly	\$0.01		
20. Visa International Service Fee		Monthly	0.50%		
21. Discover International Processing Fee		Monthly	0.30%		
22. Discover International Service Fee		Monthly	0.45%		

\* Non-Qualified transactions will be assessed incremental interchange rates

\*\*Average ticket used \$95; 736 monthly transactions  
\*\*\*Average ticket used \$12; 150 monthly transactions  
\*\*\*\*Average ticket used \$95; 736 monthly transactions  
\*\*\*\*\*Average ticket used \$95; 736 monthly transactions  
\*\*\*\*\*Average ticket used \$95; 736 monthly transactions  
\*\*\*\*\*Average ticket used \$12; 150 monthly transactions