

Program Guide



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1. OVERVIEW OF AGREEMENT

- 1.1 This Program Guide Contains Important Information and Affects Your Legal Rights.** Please read this Merchant Services Program Guide (“**Program Guide**”) carefully. It contains important information and affects your legal rights. Capitalized terms are defined in Section 41 or elsewhere in this Program Guide.
- 1.2 Our Agreement.** Our agreement with you for the Services consists of: (a) your Application, excluding any services to be provided by TeleCheck Services, Inc. (“**TeleCheck**”); (b) this Program Guide, excluding any services provided by or agreements with TeleCheck; (c) any Schedules; and (d) any addenda, amendments, supplements, or Schedules to the foregoing (excluding TeleCheck services and documents), as each is modified and supplemented from time to time (each a “**Contract Document**” and collectively the “**Agreement**”). The Agreement governs your use of the Services. By signing the Application, you acknowledge and agree that you have read, and that you are bound by, the Agreement. No alterations to the Agreement will be accepted and, if made, any such alterations shall not apply.
- 1.3 Cards and Payment Networks.** Cards present risks of loss and non-payment that are different than those with other payment systems, including risks related to Chargebacks and other Cardholder disputes. In deciding to accept Cards, you should be aware that you are also accepting these risks and that you are agreeing to comply with the rules and requirements of Visa®, Mastercard®, Discover®, American Express®, and other Payment Networks. With respect to Chargebacks – we do not decide which transactions are charged back and we do not control the ultimate resolution of Chargebacks. While we can attempt to reverse a Chargeback to the Issuer, we can only do so only if the Issuer agrees to accept it or the Payment Network requires the Issuer to do so after a formal appeal process. Sometimes, your customer may be able to successfully chargeback a Card transaction even though you have provided your goods or services and otherwise are legally entitled to payment from your customer. While you still may be able to pursue claims directly against that customer, neither we nor the Issuer will be responsible for such transactions. You are responsible for all Chargebacks and adjustments associated with the transactions that you submit for processing.
- 1.4 Card Types.** Your Application indicates the types of Cards and payments you have elected to accept. Depending on the equipment you are using to accept Card transactions, you may not be able to accept Debit Cards through use of a PIN.

2. SERVICES, NON-BANK SERVICES, AND THIRD PARTY SERVICES

- 2.1 The Services.** The term “**Services**” means the activities we undertake to authorize, process, and settle Card transactions undertaken by Cardholders at your Locations, and all other equipment, products, and services we provide under the Agreement, subject in all cases to all rights, obligations, and other terms in the Agreement. Subject to Payment Network Rules, Services may be performed by us, our Affiliates, our agents, or our service providers. All of the Services described in the Agreement may not be available to you; your Application and any Schedules indicate the Services you receive. You may use the Services only for your own proper business purposes and only in accordance with the Agreement. You may not use the Services for personal, household, or non-commercial purposes. Any services provided by TeleCheck are not considered part of the Services; rather, they are a Third Party Service.
- 2.2 Exclusivity.** During the term of the Agreement, you shall use us as your exclusive provider of all Services.
- 2.3 Right of First Offer and Right of First Refusal.**
- (a) **Right of First Offer.** From time to time, you may desire additional equipment, products, or services, comparable or related to the Services, that we, or an Affiliate of ours, are capable of providing to you (collectively, “**Additional Solutions**”). In the spirit of our business relationship, we agree to consult with one another regarding Additional Solutions. You will provide us a written description of any Additional Solutions that you desire to receive. For the sixty (60) days after you provide the written description, you will negotiate exclusively with us or our Affiliates for the Additional Solutions. If we do not reach agreement on material business terms for the Additional Solutions during such period, you may negotiate and enter into an agreement for the Additional Solutions with any Third Party.
- (b) **Right of First Refusal.** If, at any time after expiration of the Initial Term, you receive a written proposal from a Third Party to provide services similar to the Services provided by us hereunder (a “**Competitive Proposal**”), we will have the right of first refusal to provide such services at the rates contemplated in the Competitive Proposal. Notwithstanding the foregoing, you agree: (i) the issuer of the Competitive Proposal must be a recognized and respected provider of the services you require; (ii) that the rate comparisons will be based on the total scope of services you require; and (iii) that if the Competitive Proposal is based on a term longer than the remainder of the term of the Agreement, then we will be entitled to provide the services to you at the same rates and for the same term contemplated in the Competitive Proposal. We will notify you within thirty (30) days of our receipt of the Competitive Proposal whether we are able or willing to meet the terms of the Competitive Proposal. If we decline to meet the terms of the Competitive Proposal, you may terminate the Services provided under the Competitive Proposal, without penalty, upon thirty (30) days written notice to us.
- 2.4 Restrictions on Your Use of the Services.** You shall not, and you shall not permit any Third Party to, do or attempt to do any of the following:
- (a) Sell, distribute, lease, license, sublicense, assign, or otherwise transfer or disseminate any part of the Services, Software, or Intellectual Property, or otherwise permit any Third Party to access or use the Services, Software, or Intellectual Property.
- (b) Copy, modify, enhance, translate, supplement, derive source code or create derivative works from, reverse engineer, decompile, disassemble, or otherwise reduce to human-readable form or attempt to reconstruct the Services, Software, or Intellectual Property (or any portion thereof or underlying ideas thereof).
- (c) Use altered versions of the Services, Software, Intellectual Property, or any portion thereof; or use, operate, or combine any Services, Software, or Intellectual Property with other products, materials, or services in a manner inconsistent with the Agreement.
- (d) Use the Services, Software, or Intellectual Property, or any portion thereof, as a standalone or non-integrated program or in any other manner not contemplated by the Agreement.
- (e) Perform or attempt to perform any actions that would interfere with the proper working of the Services, prevent access to or use of the Services by other users, or, in our reasonable judgment, impose an unreasonably large or disproportional load on any platform or infrastructure that is used in connection with providing the Services.
- (f) Remove, modify, or relocate any copyright notice or other legend(s) denoting our or any Third Party’s proprietary interests in the Services, Software, documentation, or any other Intellectual Property.
- (g) Access or attempt to access Services, Software, or other Intellectual Property (or any portion thereof) that we do not make available for your use pursuant to the Agreement.
- (h) In connection with your use of the Services, award any prizes or offer any incentives that would invoke state or federal regulations governing online gambling, online lottery, lottery, sweepstakes, or contests of chance.

- 2.5 Service Interruptions.** We are not responsible or liable for any downtime, interruptions, delays, errors, or bugs that arise from the performance of maintenance on Services or from Services or software provided to you in beta testing phase. We may contact you regarding, and you agree to cooperate with our efforts to identify and fix, any such downtime, interruptions, delays, errors, and bugs.
- 2.6 You Are Responsible for Your Merchant Account and Merchant Systems.** You are exclusively responsible for: (a) all activity and transactions (including bona fide, unauthorized, and fraudulent activity and transactions) that occur in connection with your Merchant Account or through your Merchant Systems, regardless of whether such activity and transactions are undertaken by authorized personnel, unauthorized personnel, Merchant Providers, or other Third Parties; (b) all Bank Fees, Third Party Based Fees, Chargebacks, and other amounts related to all such activity and transactions; (c) ensuring that the Merchant Account and Merchant Systems, including any point-of-sale equipment, terminals, and gateways, are used in accordance with the Agreement and are secure; and (d) implementing appropriate controls to prevent your authorized personnel, your unauthorized personnel, and Third Parties from submitting credits, voids, and other transactions that are not bona fide transactions.
- 2.7 Group Members.** If you are a Group Member then, in addition to the other rights and obligations in the Agreement, the following terms apply:
- (a) **Group Owner Benefits.** We may provide you the Group Owner Benefits. Without prior notice to you, we may stop providing you the Group Owner Benefits if you cease being a Group Member, if the Group Owner Agreement is not in effect, or at the Group Owner's request.
 - (b) **Providing Information about You to the Group Owner and Third Parties.** Subject to Payment Network Rules, Applicable Law, and AML/Sanctions Laws, we may: (i) provide the Group Owner information we obtain about you, including information related to your business, owners, management, Card transactions (including Transaction Data), MID(s), and Merchant Account or related to the Services; and (ii) provide any such information to any Third Party at the Group Owner's request. You consent to our providing all such information to the Group Owner and to Third Parties, all of which may use such information for any lawful purpose.
 - (c) **New Group Owner Benefits.** From time to time, the Group Owner and we may modify the Group Owner Agreement and the Group Owner Benefits in order to provide Group Members, including you, with new products or services ("**New Group Owner Benefits**") as part of the Group Owner program. You authorize us to modify the Services provided to you under the Agreement, and related fees and Agreement terms, upon notice to you, to the extent necessary to provide you any New Group Owner Benefits, and any such modifications shall not give rise to any termination right under Section 6.2 or under Section 40.6
 - (d) **Following Group Owner's Instructions.** From time to time, the Group Owner may ask or instruct us to provide the Services in a certain manner, in connection with certain communications, as part of a certain program, or as the Group Owner otherwise specifies ("**Group Owner Instructions**"). For example, Group Owner Instructions may ask us to follow certain Debit Card routing instructions or instruct us to set up Services in a certain manner. You consent to our providing you the Services in accordance with the Group Owner Instructions and you waive all Claims you may have against us, and related Losses, arising from our following the Group Owner Instructions.
 - (e) **Remitting Fees to Group Owner.** Depending on our and your relationship with the Group Owner, certain fees that are assessed and collected pursuant to the Agreement may be assessed and collected on behalf of the Group Owner and remitted to the Group Owner. You authorize us to assess, collect, and remit to the Group Owner such fees.
 - (f) **Waiver of Liability.** We are not responsible for determining whether you are a Group Member. We shall not have any liability to you in connection with any of our acts and omissions under this Section 2.7, regardless of whether you are or are not a Group Member. You waive all claims, suits, and causes of action against us, and all related Losses, related to our acts and omissions under this Section 2.7.
- 2.8 Conveyed Transactions and Non-Bank Services.**
- (a) **Conveyed Transactions.** The following terms apply to Conveyed Transactions: (a) Bank will provide an Authorization response to Authorization requests; (b) Bank does not have any responsibility or liability for funding, sponsoring, or settling Conveyed Transactions; (c) you must enter into, and comply with the terms of, a separate agreement with the Payment Network or Issuer that settles Conveyed Transactions ("**Issuer Agreement**"), and must pursue directly with such Payment Network or Issuer all related claims and disputes; (d) the Payment Network or Issuer that settles Conveyed Transactions may charge additional fees and amounts, for which you are exclusively responsible and liable; and (e) if the Issuer Agreement has been terminated, suspended, or is not in effect, Bank does not have any obligation to provide any Services for Conveyed Transactions.
 - (b) **Non-Bank Services.** Non-Bank Services are subject to all terms and provisions of the Agreement, including Sections 1 – 22 (inclusive) of this Program Guide. To the extent terms specific to a Non-Bank Service directly conflict with another provision of the Agreement, the terms specific to the Non-Bank Service will govern and control with respect to such Non-Bank Service.
 - (c) **Fees.** You shall pay us the fees for Conveyed Transactions and other Non-Bank Services as set forth on your Application, as set forth on your applicable Schedule(s), or as we otherwise disclose to you. Fees for Non-Bank Services are incremental fees; they are in addition to the applicable processing fees and other fees for the Services. Fees for Non-Bank Services may be charged and collected in any manner that other Bank Fees, Third Party Based Fees, and other amounts may be charged and collected under the Agreement.
- 2.9 Third Party Services.** Third Party Services are not governed by the Agreement. We are not responsible for Third Party Services or for any provider of Third Party Services, even if we recommended them to you. With respect to Third Party Services, you are solely and exclusively responsible for: (a) determining whether Third Party Services can meet your needs and requirements; (b) reviewing, understanding, and complying with all terms and conditions for Third Party Services; (c) all fees, charges, and other amounts arising from Third Party Services, including any amounts you owe to Third Parties and any amounts that Third Parties owe to us or Payment Networks; (d) the integration and interaction between Third Party Services and our Services; (e) all acts and omissions of providers of Third Party Services; and (f) all other obligations and risks related to Third Party Services. If you download, access, or obtain any content through Third Party Services, you do so at your own risk. Providers of Third Party Services may have their own websites; we have no liability for such websites and any privacy policy we may have is not in effect when you visit such websites.
- 2.10 Integration of Third Party Services.** You are solely responsible for obtaining any programming, technical support, and services needed for your systems to function with our systems, and for all related agreements, fees, and costs. This may include obtaining hardware, software, and internet data access from a Third Party. If a Service relies on online connectivity, you assume all risk, responsibility, and liability associated with transactions that you conduct while the Service is offline.

3. PAYMENT NETWORK RULES, APPLICABLE LAW, AML/SANCTIONS LAWS, ADA REQUIREMENTS, SANCTIONS COVENANTS, AND CONFLICTS

- 3.1 Payment Network Rules.** You must comply with the Payment Network Rules, including the Payment Card Industry Data Security Standard ("**PCI DSS**"), applicable to the Card types you accept. You are responsible for staying up to date with all changes to Payment Network Rules and maintaining compliance with Payment Network Rules. Payment Network Rules may be available on websites such as <https://usa.visa.com/support/merchant/library.html>, <https://www.mastercard.us/en-us/business/overview/support/rules.html>, <https://www.discoverglobalnetwork.com/solutions/enable-payments/accept-discover-network/>, and www.americanexpress.com/merchantsguide, as links and their content may change from time to time.

- 3.2 Applicable Law and AML/Sanctions Laws.** Each party is responsible for determining all Applicable Law and AML/Sanctions Laws that are applicable to it and for complying with all such Applicable Law and AML/Sanctions Laws in connection with the Agreement.
- 3.3 ADA Requirements.** You agree to locate, position, maintain, and operate all Merchant Equipment in compliance with the Agreement as it may be amended from time to time, and Applicable Law. You further agree to provide any description of how you accept Card transactions for payment of goods and/or services provided by you as may be necessary to your customers in compliance with the Agreement, as it may be amended from time to time, and Applicable Law.
- 3.4 Sanctions Covenant.** You agree that you will not use or permit any other Person to use the Merchant Services in any capacity to transact or engage in any dealings with, or to lend, contribute, or otherwise make available funds or economic resources of any kind to, or for the benefit of, any Person, or to fund any activities of or business with, related to, or for the benefit of, any Person (i) located, organized, or ordinarily resident in any Sanctioned Country; (ii) designated on any applicable Sanctions list, including, but not limited to, the List of Specially Designated Nationals and Blocked Persons and Sectoral Sanctions Identifications List maintained by the US Treasury Department's Office of Foreign Assets Control, the United Kingdom's Consolidated List and UK Sanctions List, and the European Union's Consolidated List; (iii) acting or purporting to act, directly or indirectly, on behalf of, or a party owned or controlled by, any of the parties listed in (i)-(ii); or (iv) in any other manner that will result in a violation by any Person of Sanctions. You also covenant that you will not engage in any actions intended to evade or to circumvent Sanctions.
- 3.5 Conflicts.** For the avoidance of doubt, your use of the Services, the transactions you process, and all of your acts and omissions must comply with the Agreement, Applicable Law (including any AML/Sanctions Laws), and Payment Network Rules (including PCI DSS). If there is a conflict between Applicable Law, Payment Network Rules, and the Agreement, the conflict shall be governed in the following order of precedence: (1) Applicable Law (including any AML/Sanctions Laws); (2) Payment Network Rules; and (3) the Agreement.

4. DATA SECURITY

THE FOLLOWING IS IMPORTANT INFORMATION REGARDING THE PROTECTION OF CARDHOLDER DATA. PLEASE REVIEW CAREFULLY. YOUR OBLIGATIONS IN THIS SECTION 4 INCLUDE RESPONSIBILITY FOR POTENTIALLY SIGNIFICANT FEES, FINES, AND ASSESSMENTS.

- 4.1 You Must Comply with PCI DSS.** As part of your obligation to comply with Payment Network Rules, you are required to comply with PCI DSS. PCI DSS compliance is focused on Merchant Systems where Cardholder data can be accessed, processed, stored, or transmitted, including external connections into your network, connections to and from the authorization and settlement environment (e.g., connections for employee access or for devices such as firewalls and routers), and data repositories outside of the authorization and settlement environment. Information about PCI DSS can be found at www.pcisecuritystandards.org. You also are solely responsible for ensuring that all Merchant Providers, Merchant Systems, Third Parties, Third Party Services, equipment, and software that you use in connection with Card transactions comply with Payment Network Rules, including PCI DSS.
- 4.2 Your Security Policies and Procedures.** You are responsible for establishing and maintaining security policies and procedures that prevent unauthorized access to, disclosure of, and use of Cardholder data. As part of this obligation you must implement: (a) all steps required to comply with PCI DSS, including ensuring all Merchant Providers, Merchant Systems, Third Parties, Third Party Services, equipment, and software you use in connection with your payment processing comply with PCI DSS; (b) appropriate controls to limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers, Card imprints, and other Cardholder data; and (c) firewalls, passwords, and other appropriate physical, administrative, and technical safeguards to protect against unauthorized access to your Merchant Systems, the Services, Software, and Cardholder data by your employees, contractors, Merchant Providers, customers, and other Third Parties (including instituting appropriate controls to prevent submission of sales and credits / returns that are not bona fide transactions).
- 4.3 Merchant Providers.** Before you engage any Merchant Provider, you must provide to us in writing the Merchant Provider's legal name, contact information, and intended function. You cannot use or allow the use of any Merchant Provider, or provide any Merchant Provider access to any Cardholder Data, our systems, or Services, until you receive our approval and, if required, confirmation of our registration of that Merchant Provider with applicable Payment Networks. You must ensure that Merchant Providers comply with Payment Network registration processes, all other applicable Payment Network Rules (including PCI DSS), and Applicable Law (including any AML/Sanctions Laws). You may allow Merchant Providers access to Cardholder Data only for purposes authorized under and in conformance with Payment Network Rules and Applicable Law (including any AML/Sanctions Laws). You are responsible for all our costs and expenses associated with our review, approval, certification, recertification, and registration of Merchant Providers. In addition, if you are a Group Member and the Group Owner has access to Cardholder data, whether directly or indirectly, you are required to notify us. You are responsible to us for your Merchant Providers' acts and omissions related to the Agreement. Additionally, PCI Level 4 merchants are required to use PCI-certified Qualified Integrators and Reseller (QIR) professionals for POS application and terminal service. A QIR is an organization certified by PCI Security Standards Council to make, change and support POS applications, terminal installation, integration and service.
- 4.4 Passwords and Login Information.** You are responsible for: (a) keeping safe and confidential your passwords, Merchant Account information (including account numbers), security questions and answers, login details, and other information that could enable access to your Merchant Account or the Services; and (b) restricting access to such information, and to the Services and your Merchant Account, to authorized personnel. You will immediately notify us of any unauthorized disclosure or use of any password, login details, or other account access information.
- 4.5 Providing Us Information; Scans.** You must provide us information (including responses to any questionnaire provided to you) that we or any Payment Network requests regarding your compliance with Payment Network Rules, including PCI DSS, Applicable Law or AML/Sanctions Laws. As part of this obligation, you must provide us any information that we or any Payment Network requests concerning any Data Security Event or suspicious transactions. We may share any such information with Payment Networks, our Affiliates, our service providers, and government agencies. In addition, in the event of a Data Security Event or if requested by any Payment Network, we, our representatives, or any forensic examiner approved by the PCI Security Standards Council, LLC ("**PCI SSC**") may conduct remote electronic scans of Merchant Systems, including scans of IP addresses associated with your Merchant Account. You must promptly cooperate to facilitate such scans and you are responsible for all related costs, expenses, and other amounts.
- 4.6 Data Security Events.** If you become aware of any Data Security Event, you must at your expense: (a) contact us (and, as required under Payment Network Rules, each Payment Network) immediately and in no event more than twenty four (24) hours after becoming aware of the Data Security Event; (b) not alter or destroy any related records, and must maintain complete and accurate documentation regarding any modifications made to any records; (c) perform or cause to be performed an independent investigation of the Data Security Event, including a forensics analysis performed by a certified forensic vendor acceptable to us and the Payment Networks, and provide a copy of the certified forensic vendor's final report to us and the Payment Networks; (d) take (or cause to be taken) any acts that we or any Payment Network recommends or requires; (e) cooperate with us in the investigation and resolution of the Data Security Event and share with us any information related to the Data Security Event, including any information related to your or any Payment Network's investigation of the Data Security Event; and (f) not, without our prior written consent, take any action, or fail to take any action, which prejudices our rights under the Agreement (if you do so, it will be at your own risk, liability, and expense). In addition, at any time we and any Payment Network may engage at your expense a forensic vendor to investigate the Data Security Event; to examine the Merchant Systems and your and each Merchant Provider's procedures and records; and to issue a written report of its findings. We may collect any amounts arising under this Section 4.6 in any manner we otherwise are authorized to collect other amounts from you under the Agreement.

- 4.7 Data Security Events and Merchant Providers.** If a Merchant Provider experiences or is connected with a Data Security Event, you must require such Merchant Provider to comply with Section 4.6. If such Merchant Provider fails to promptly comply with Section 4.6, we or the Payment Networks may at your expense: (a) retain a certified forensic vendor acceptable to us and the Payment Networks to perform an independent investigation, including a forensics analysis performed in accordance with Payment Network Rules; (b) provide a copy of the certified forensic vendor's final report regarding the Data Security Event and any related information to the Payment Networks; and (c) perform or cause to be performed, including on your behalf and any Merchant Provider's behalf, any actions recommended by any such investigation. We may collect any amounts arising under this Section 4.7 in any manner we otherwise are authorized to collect other amounts from you under the Agreement.
- 4.8 Your Liability Following a Data Security Event.** In the event of any Data Security Event, and regardless of your belief that you have complied with the Payment Network Rules, PCI DSS, or any other security precautions and are not responsible for the Data Security Event: (a) we and/or the Payment Networks may prohibit you from accepting Cards; (b) on or before the date we specify, you must pay us all Data Compromise Losses; (c) you must promptly pay us for all expenses and claims made by Issuers against us alleging your responsibility for the Data Security Event, apart from any claim procedures administered by the Payment Networks; and (d) in our sole discretion we may suspend or terminate the Services.
- 4.9 Data Security Event Appeals.** If Payment Network Rules permit us to appeal an amount assessed by a Payment Network against us, or any claim of an Issuer, which you are obligated to pay, you will be given the opportunity to advise whether you want us to appeal the assessment on your behalf. If you ask us to appeal, you must comply with all Payment Network Rules and other requirements, you must prepare the appeal for us to submit on your behalf, and you must pay all related costs. Any amount returned to us as a result of the appeal will be refunded to you.
- 4.10 Other Data Security Measures; Fraud.** Security features such as CAPTCHA, velocity filters, the Address Verification Service, and requiring a Card Verification Code for Card Not Present Transactions can help combat fraud. Using the Address Verification Service when submitting Authorization requests for Card Not Present Transactions can help you identify potentially fraudulent transactions and can help lower Payment Network interchange rates, but it does not guarantee a transaction is valid and the AVS response does not impact whether an Authorization request is approved or denied. We may charge you an AVS fee for any AVS request you submit, even if we are not able to provide a response to the request. You are responsible for all Chargebacks, Third Party Based Fees, Bank Fees, and other amounts arising from fraudulent activity processed through your Merchant Systems and/or your Merchant Account (regardless of any AVS response that you receive).
- 4.11 U.S. Consumer Privacy Notice.** Our U.S. Consumer Privacy Notice is available at Bank of America Privacy Notices and Choices (<https://www.bankofamerica.com/security-center/privacy-overview>), and explains how Bank of America may collect, share, and protect your personal information and how you can limit the sharing of such information.

5. SETTLEMENT OF CARD TRANSACTIONS

- 5.1 Settling Your Card Transactions Generally.** We will settle with you for each Sales Draft that we acquire and accept under the Agreement after we receive payment for that Sales Draft from the related Payment Network, subject to the terms of the Agreement. Settlements to you for Sales Drafts will occur on Business Days and will be based upon gross sales, minus Third Party Based Fees (which include Data Compromise Losses) Credit Drafts, adjustments (which include our collection of amounts erroneously credited to you), Chargebacks, Bank Fees, and other amounts owed pursuant to the Agreement. For avoidance of doubt, we may collect any amounts due from you in connection with the Agreement via net settlement or offset. Alternatively, we may collect any amounts due from you in connection with the Agreement by initiating a debit entry to your Settlement Account, withdrawing funds from the Reserve Account, or withdrawing funds from any other account you maintain with us (or our respective Affiliates) or to which you have granted us access. We will settle only Card transactions made using Cards of Payment Networks that we support for full acquiring services and that we have approved for your Merchant Account. We do not have any control over or liability for the time frame in which your financial institution credits to your Settlement Account payments that we initiate.
- 5.2 Payments are Provisional.** All credits to your Settlement Account and all other amounts paid or owed to you are provisional and subject to: (a) our final audit and confirmation; (b) fees and fines imposed upon us by any Payment Network or Issuer as a result of your actions or omissions; and (c) any other amounts and obligations you owe to us.
- 5.3 Debiting and Crediting Your Settlement Account.**
- (a) **Settlement Account Designation and Information.** You will designate in writing, and maintain at a financial institution acceptable to us, a Settlement Account for the purposes of settling transactions under the Agreement. In order to allow us to debit and credit the Settlement Account, you must provide us with a letter from your financial institution and take any other steps required by your financial institution. Credits to and debits from the Settlement Account will be based on the account number and routing number you provide.
 - (b) **Authorization to Debit and Credit the Settlement Account.** You authorize us to initiate credit and debit entries and adjustments to your Settlement Account through the ACH network and/or through direct instructions to the financial institution where your Settlement Account is maintained to: (i) collect all amounts due under the Agreement, and under any agreements with us or our respective Affiliates for any related services, including Bank Fees, Third Party Based Fees (including Data Compromise Losses), Credit Drafts, and Chargebacks; (ii) correct any erroneous credit entries to the Settlement Account; (iii) establish, fund, or increase the amount of any Reserve Account; (iv) collect any other amounts owing to us pursuant to the Agreement or any other agreement between us and you; and (v) receive payment for all costs and expenses we incur related to the amounts referenced in this subsection. Alternatively, we may elect to invoice you for any such amounts, due thirty (30) days after the invoice date or such other date that we may specify.
 - (c) **Termination of Authorization to Debit and Credit the Settlement Account.** Our authorization to initiate credit and debit entries and adjustments to your Settlement Account will remain in effect until you have provided us at least thirty (30) days' prior written notice in accordance with Section 40.2 that you are terminating the authorization and either (i) all amounts due from you under the Agreement (including any Bank Fees, Third Party Based Fees, and Data Compromise Losses that may arise or be assessed after termination of the Agreement and all unmatured and contingent liabilities) and under any other agreements with us and our respective Affiliates have been paid in full, or (ii) you have provided us an authorization to debit via ACH a replacement Settlement Account that is satisfactory to us.
 - (d) **Insufficient Funds in Settlement Account.** If the Settlement Account has insufficient funds, we may without advance notice: (i) charge you an ACH reject fee as set forth on your MPA or elsewhere in the Agreement; (ii) withdraw the amount you owe us from the Reserve Account, or any other account you maintain with us (or our respective Affiliates) or to which you have granted us access; (iii) suspend all subsequent credits to your Settlement Account until the issue has been resolved to our satisfaction; and (iv) cease processing Card transactions until the amounts due are paid.
- 5.4 Settlement Errors.** You must provide us with accurate information regarding your Settlement Account, immediately notify us of changes to your Settlement Account, and immediately notify us if you do not receive settlement funding. Transfer of settlement funds may be delayed or misdirected if you provide inaccurate information about, or fail to notify us of changes to, the Settlement Account. We are not liable for settlement funding delays or for errors in credits or debits to the Settlement Account that are caused by you, the Settlement Account information you provide, or any Third Party (including any delays or errors of any Payment Network or financial institution).

- 5.5 More than One Settlement Account.** Notwithstanding any information on the Application or elsewhere in the Agreement to the contrary, if you have designated more than one account as a Settlement Account: (a) we may credit and debit each Settlement Account for any amounts related to the Agreement; and (b) with respect to each Settlement Account, we may exercise any of our rights related to the Agreement. At any time, we may require you to have a single Settlement Account for all debits and credits.
- 5.6 Rejecting Transactions.** In addition to our other rights and remedies, we may reject any transaction you submit to us if we know, suspect, or have reason to suspect that such transaction is fraudulent, illegal, invalid, not authorized by the Cardholder, likely to be charged back by the Cardholder, in violation of the Agreement, in violation of Applicable Law (including any AML/Sanctions Laws) or Payment Network Rules, or could increase our risk.
- 5.7 Our Set-Off Rights.** In addition to our net settlement rights and other rights in this Section 5 and elsewhere in the Agreement, at any time we may deduct from and set off against your settlement funds or any other amounts owed to you: (a) any Chargebacks, Bank Fees, Third Party Based Fees, and other amounts due or owing in connection with the Agreement (including amounts credited to you or your Settlement Account in error); (b) any amounts for funding or increasing the amount of any Reserve Account; and (c) any amounts owed to any of our respective Affiliates, whether or not arising in connection with the Agreement.
- 5.8 Extending Financial Accommodations.** The Agreement is a contract whereby we are extending financial accommodations to you within the meaning of Section 365(c) of the Bankruptcy Code. Your right to receive any amounts due or to become due from us is expressly subject and subordinate to our Chargeback, recoupment, setoff, lien, and security interest rights, and our right to withhold settlement funds under the Agreement, without regard to whether such Chargeback, recoupment, setoff, lien, and security interest rights, and our right to withhold settlement funds, are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

6. FEES; ADJUSTMENTS; COLLECTION OF AMOUNTS DUE

- 6.1 Your Payment of Fees and Other Amounts.** The MPA, the Schedules, and the other Contract Documents describe fees and amounts you owe, all of which you must pay to us pursuant to the terms of the Agreement.
- 6.2 Changes to Bank Fees; Termination Right.** We may increase Bank Fees and add new Bank Fees (each, a “**Bank Fee Change**”) at any time for any reason, including due to changes in your annual volume, average transaction size, or method of doing business, on at least twenty (20) days’ advance written notice. You may reject a Bank Fee Change by terminating the Agreement before the Bank Fee Change takes effect; provided that you must provide us advance written notice of termination. Your use of Services or maintenance of your Merchant Account after the effective date of a Bank Fee Change constitutes your acceptance of the Bank Fee Change and your waiver of your termination right under this Section 6.2 with respect to such Bank Fee Change.
- 6.3 You Are Responsible for Payment Network Fees and All Other Third Party Based Fees.** For avoidance of doubt, you are responsible for – and we may pass through to you – all fees, fines, penalties, assessments, and other amounts imposed on us by any Payment Network as a result of any action or inaction by you, as well as any other Third Party Based Fees.
- 6.4 Changes to Third Party Based Fees.** Fees may be adjusted to reflect new or increased fees imposed by Payment Networks, including interchange, assessments, and other Payment Network fees, and to pass through any other new or increased Third Party Based Fees. You must pay all such fees, adjustments, and amounts effective upon the date they are implemented. You do not have any right to terminate the Agreement as a result of any changes to Third Party Based Fees.
- 6.5 Excessive Chargeback Fees.** If your Chargeback percentage for any line of business exceeds the estimated industry Chargeback percentage (such percentages may change from time to time), you shall, in addition to any Chargeback fees and fines, pay us an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business. Your Chargeback percentage will be calculated as the greater of (a) the total Visa, Mastercard, and Discover Chargeback items in any line of business in any calendar month divided by the number of your Visa, Mastercard, and Discover transactions in that line of business submitted that month, and (b) the total dollar amount of Visa, Mastercard, and Discover Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, Mastercard, and Discover transactions in that line of business submitted in that month.
- 6.6 Reviewing Your Statements and Requesting Adjustments.** You are responsible for promptly and carefully tracking activity within your Merchant Account and for reviewing online, emailed, and other statements and reports, including Electronic Communications, related to your Merchant Account, your Settlement Account, and the Agreement. If you believe any adjustments should be made to your Merchant Account or Settlement Account, you must notify us in writing within 60 days after the debit or credit should have occurred. If you notify us after 60 days, we will not be liable for, we will not make, and you waive your right to any adjustments. If we help you investigate a potential billing error after such 60 day period, we are not obligated to continue assisting or to make any adjustments.
- 6.7 Collections Fees.** If your Merchant Account has a negative balance for failure to pay amounts due to us or our Affiliates, we may attempt to collect amounts due and charge you a collection fee. The collection fee will be \$50.00 if we are able to collect all amounts due through our automated process and \$100.00 if we are not able to collect all amounts due through our automated process (“**Collection Fees**”). Collection Fees are in addition to any ACH reject fees, other collections fees due under any agreement with us or our Affiliates, and any Third Party Based Fees.
- 6.8 Taxes.** You agree to pay any and all Taxes imposed on the Services, on the transactions contemplated by the Agreement, and on the ownership, possession, and use of Merchant Equipment. You authorize us, or our respective assigns, to increase the amount of your preauthorized payment to reflect increases in all applicable Taxes and you waive any requirement for notice of such increase.

7. CHARGEBACKS; COMMERCE CONTROL CENTER, AND DISPUTE MANAGER

- 7.1 Reimbursing Us for Chargebacks and Related Amounts.** You are responsible for, and must reimburse us for, all transactions you submit that are charged back and all related amounts, including: (a) all Chargebacks; (b) all fees, fines, penalties, assessments, and other amounts related to disputing or arbitrating a Chargeback or failing to produce records within applicable time limits; and (c) all Chargeback Fees set forth on the Application, any Schedule, or elsewhere in the Agreement, regardless of whether a Chargeback is settled in your favor or the Cardholder’s favor.
- 7.2 Disputing Chargebacks.** You may dispute a Chargeback as provided in the Payment Network Rules, including any requirements for timely submission. Our obligation to you respecting Chargeback disputes is limited to presenting your dispute to the appropriate Payment Network, to the limited extent required by Payment Network Rules. We will not engage in direct collection efforts against Cardholders on your behalf.
- 7.3 EMV Liability Shift.** As a result of the EMV liability shifts for Mastercard, Visa, Discover, and American Express, you will be liable to us for Chargebacks for counterfeit Card fraud transactions (including any resulting from lost, stolen, or never received Cards by the Cardholder) resulting from your acceptance of any Chip Cards based on Magnetic Stripes (or otherwise not based on the Chips) for those Chip Cards.
- 7.4 Commerce Control Center and Dispute Manager.** Once your Application is approved, please enroll in the Commerce Control Center portal for access to the Commerce Control Center and Dispute Manager. Together, these tools provide online access to merchant statements, allow you to manage disputes and respond to Chargebacks, and provide you other functionality and information. Within Commerce Control Center, we recommend you enroll to receive three types of email alerts: (1) Daily Account Summary; (2) Dispute Activity; and (3) Monthly Statement Availability. If you do not set up your Commerce Control Center account and enroll in Dispute Manager, you will not be able to challenge Chargebacks or address other disputes (other than via mail, if you elected that option for your Merchant Account).

8. CONFIDENTIALITY

- 8.1 Cardholder Data and Transaction Data.** You must not use, disclose, store, sell, or disseminate any Cardholder data except: (a) to authorize, complete, and settle Card transactions; (b) to resolve Chargebacks; (c) to respond to requests for documentation related to Card transactions (such as a copy of a Sales Draft or other transaction source documents); or (d) as both required by valid court order, government agency order, or subpoena and compliant with Payment Network Rules. You acknowledge that you do not have and will not obtain ownership rights in any Cardholder data or Transaction Data.
- 8.2 Confidential Information of Bank.** Bank's confidential information (also referred to as "our confidential information") extends to all information of Bank, our Affiliates, and our or their Third Party service providers that is not publicly available, including any of their strategic business information and capabilities; financial information; business plans and marketing strategies; pricing of Services; documentation and portals related to Services; information related to information technology systems and processes; technical specifications; designs; processes and procedures; reports; source code; databases; information used in connection with logging onto, accessing, or using Services; customer information (not including Cardholder data); the terms of the Agreement; and information that must be maintained as confidential by Applicable Law or AML/Sanctions Laws, and whether in oral, written, graphic, electronic, or other form, including all copies and derivatives thereof.
- 8.3 Protecting Bank's Confidential Information.** You shall: (a) safeguard all of our confidential information using at least a reasonable degree of care; (b) limit access to our confidential information to your employees and service providers who have an obligation of confidentiality to you that is similar to your confidentiality obligations to us under this Section 8, and who have a need to know our confidential information; (c) disable access to our confidential information when an employee or service provider no longer has a need to know; (d) not use our confidential information, except to the limited extent necessary to exercise your rights and perform your obligations under the Agreement; (e) not disclose our confidential information to any Third Party, except as we agree in advance and in writing; (f) notify us immediately if you know of or have reason to suspect any breach of this Section 8; and (g) at our request, return to us or destroy all of our confidential information in your possession or control.
- 8.4 Use and Disclosure Exceptions.** The obligations set forth in Section 8.3 do not apply to information that: (a) enters the public domain through no fault of Client or any Third Party used by Client; (b) was received from a Third Party free of any obligation of confidence and which Third Party, to Client's knowledge, was not under an obligation to keep the information confidential; (c) was already in Client's possession prior to receipt from us; (d) 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 (e) is independently developed by Client without use of or reference to our confidential information. For the avoidance of doubt, nothing herein prohibits any individual from communicating or disclosing information regarding suspected violations of laws, rules, or regulations to a governmental, regulatory, or self-regulatory authority without any notification to any person.
- 8.5 Injunctive Relief.** Client acknowledges that breach of the restrictions on use or disclosure of our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any such breach.
- 8.6 Confidential Information of Client.** We will safeguard your confidential information that we obtain in connection with the Agreement using a reasonable degree of care. We may use your confidential information in connection with providing the Services, exercising our rights, or enforcing your obligations. During the term of the Agreement and after its termination, we may disclose your confidential information and any of your other information: (a) to Third Parties as we reasonably deem appropriate to provide, analyze, support, modify, or improve the Services; (b) in connection with any customer service and support, whether provided by us or Third Parties, related to your Merchant Account; (c) to our auditors, attorneys (internal and external), and regulators; (d) as permitted under Section 2.7, Section 4.5, Section 9.6, Section 20.4, or elsewhere in the Agreement; (e) as required or permitted by law, regulation, or court order; (f) to any Affiliates of Bank; and (g) to any Payment Networks, which may use and share such information in any lawful manner and for any lawful purpose. Notwithstanding any contrary provisions in documents for any other accounts you have with Bank, you consent to Bank sharing and exchanging with us, our Affiliates, and our agents information about you and such other accounts (including relationship, credit, and confidential information) in connection with the Services and for any other lawful reason.

9. INTELLECTUAL PROPERTY

- 9.1 Bank's Ownership.** As among Bank and Client, Bank exclusively owns all right, title, and interest (under federal, state, local, and international laws and under the laws of any other country, territory, or jurisdiction) in and to the: (a) Intellectual Property; (b) Technology; (c) Services; (d) Software; and (e) Documentation. You shall not take any action that is inconsistent with, or that challenges, the rights, title, and ownership set forth in, this Section 9.1.
- 9.2 Your Limited License.** We grant you a non-transferable, non-assignable, non-exclusive, limited, royalty-free, revocable license to access and use the Services, Software, and Documentation solely within the United States (excluding U.S. territories and possessions), solely for their intended purpose(s), solely for your business purpose(s) (not for any household or other non-commercial use), solely on systems that you own or license, and solely in accordance with the terms of the Agreement ("**Limited License**"). For the avoidance of doubt: (a) other than the Limited License, nothing in this Section 9.2 or the Agreement assigns, transfers, or creates any right, title, or interest for you (whether express or implied, or by estoppel or otherwise) in or to the Intellectual Property, Technology, Services, Software, or Documentation; and (b) all right, license, title and interests that are not expressly granted pursuant to the Limited License are expressly withheld. You obtain no rights (license or otherwise) to any Marks, brand names, or logos associated with any Services, or associated with us or our service providers. The Limited License shall immediately terminate on the earlier of (y) termination of the Agreement, and (z) termination of the Services related to such Limited License.
- 9.3 Documentation and Software.** If Documentation is provided for a Service: (a) you must access and use such Service in accordance with such Documentation; and (b) you may use such Documentation only in connection with your access to and use of such Service. Software can only be used with certain computer operating systems and it is your responsibility to ensure that you have the appropriate hardware and software to use the Software. You are bound by all Software and other Intellectual Property terms and conditions of use and other license terms, whether provided by a Third Party (such as an Equipment manufacturer or Software owner) or by us.
- 9.4 Marks.** You must comply with all Payment Network Rules, guidelines, and standards regarding Marks owned by any Payment Network, including those regarding use, display, and reproduction of Marks. Your use and display of any Payment Network Marks will terminate upon the earlier of: (a) termination of the Agreement; or (b) notice to you that the Payment Network has requested or required such termination. You may not use our Marks (or those of our Affiliates or Third Party service providers) in any manner, including in any advertisements, displays, or press releases, without our prior written consent. You shall not: (y) indicate that we or any Payment Network endorses your goods or services; or (z) use our Marks or the Marks of any Payment Network in any way that injures or diminishes the goodwill associated with the Marks.
- 9.5 Updates.** At any time we may release updates to Software or Services ("**Updates**"), which you must install and integrate with your systems within 30 days of receipt. Failure to install Updates timely may impair the Software or Services. We have no liability for your failure to properly install the most current version of Software or any Update, and we have no obligation to provide support or services for outdated versions.

- 9.6 Transaction Data.** You authorize us, our service providers, and our preferred Third Party providers of payments products and services that are complementary to our services to use and disclose, within and outside of the United States, Transaction Data in connection with: (a) improving products and services; (b) making products and services (including analytics products and services) available to you, our other clients, and other merchants and Third Parties; and (c) for any other lawful reason. As part of our rights under this Section 9.6, we may in certain instances collect, aggregate, and use de-identified and aggregated Transaction Data. In addition, in the course of providing Services we may collect information related to activities on your network and Merchant Systems, including network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horse information. You permit us to use such information, or aggregations of it, for any lawful purpose.

10. YOUR CONTENT AND RECORDS

- 10.1 Your Content.** You may submit to us or Third Parties comments, suggestions, feedback, or other ideas, content, material, or information related to us, our business, or our Services (“**Your Content**”). You retain all rights in Your Content; provided, however, that you hereby grant us a worldwide, non-exclusive, royalty-free, fully-paid, transferable and assignable, irrevocable, perpetual, and sub-licensable license to use, reproduce, incorporate into the Services, modify, disclose, publish, display, prepare derivative works of, and distribute Your Content throughout the world, in any media, and for any reason. You hereby release us from all liability and obligations that may arise from our receipt, review, use, modification, distribution, and disclosure of Your Content.
- 10.2 Your Records.** You are solely responsible for creating and maintaining complete back-up records of all information relating to your Merchant Account, including records of all transactions, Transaction Data, orders, inquiries, and other communications related to the Services. Except as required by Applicable Law or Payment Network Rules, we are not responsible for maintaining or creating any such records.

11. COMMUNICATIONS

- 11.1 Electronic Communications.** With respect to any billing statements, reports, agreements, disclosures, notices, and other communications that you receive from us electronically, including via email or the internet (“**Electronic Communications**”), you are responsible for: (a) configuring Merchant Systems so that you can receive, access, and view Electronic Communications, including disabling spam filters and whitelisting domain names and email addresses; (b) the accuracy of, and all activity and communications under, your email addresses and accounts; (c) regularly monitoring and checking Electronic Communications; and (d) regularly monitoring and checking Commerce Control Center, Dispute Manager, and any other websites, tools, and databases that contain information related to your Merchant Account. You are solely responsible for any disclosure, interception, or viewing of any Electronic Communication once the Electronic Communication has been transmitted from our server.
- 11.2 Communications from You.** You are solely responsible for the accuracy of all communications, information, and data that is provided by, or on behalf of, you, your Merchant Providers, or your contractors to us in connection with the Agreement. We are not responsible for any Losses or other liability arising from any inaccuracies in such communications, information, or data.
- 11.3 Notifying Us of Disputes and Proceedings.** You must provide us prompt written notice of any threat or dispute involving you regarding, or the filing of any action, lawsuit, or proceeding against you regarding, any Services or Intellectual Property.
- 11.4 Text Messages and Automated Technology.** You understand and agree that by providing your cell phone number on the Application or through other interactions with us, our service providers, American Express, and other Payment Networks may contact you at that number, including through the use of automatic technology or text, in connection with your Merchant Account. Your phone plan charges may apply.

12. REPRESENTATIONS AND WARRANTIES

- 12.1 Your Representations and Warranties.** Without limiting any other provision of the Agreement, you represent and warrant to us, and with the submission of each Sales Draft reaffirm, the following:
- (a) Each transaction that you submit: (i) is genuine, is not illegal, and arises from a good or service that you directly sold or provided (the submission of Authorization requests and/or Card transactions by you for Card sales or cash advances transacted by another business is considered laundering or factoring and is prohibited); (ii) represents the correct amount of the goods or services purchased or returned by the Cardholder; (iii) is not subject to any dispute, set-off, or counterclaim; (iv) to your actual and constructive knowledge, is not the result of fraud and has been authorized by the Cardholder; and (v) complies with the Agreement, Applicable Law or AML/Sanctions Laws, or any Payment Network Rules.
 - (b) You validly exist, are in good standing, and are free to enter into the Agreement.
 - (c) All information on the Application and all other information provided to us in support of the Agreement is true and correct.
 - (d) You are not doing business under a name or style that you have not previously disclosed to us.
 - (e) You have not changed the nature of your business, Card acceptance practices, or types of products or services sold requiring a different merchant category code (“**MCC**”) under Payment Network Rules, in a way not previously disclosed to us.
 - (f) You operate a bona fide commercial business, all Card transactions you submit under the Agreement are for such commercial business (not for any personal or non-commercial purpose), and you will not resell, directly or indirectly, any part of the Services to any Third Party.
 - (g) You have not filed a bankruptcy petition not previously disclosed to us.
 - (h) You own and control the Settlement Account; no Third Party security interest or lien of any type exists regarding the Settlement Account or any Card transaction; and the Settlement Account is not a personal, family, or household account.
 - (i) Until after the Agreement has terminated and all amounts due in connection with the Agreement have been paid in full, you will not grant or pledge any security interest or lien in the Reserve Account, Settlement Account, or transaction proceeds to any Third Party, and you will not enter into any agreement that would permit or require us to, and will not ask us to, deposit transaction proceeds into any account that is for the benefit of or under the custody or control of any Third Party.
- 12.2 Our Representations and Warranties.** We represent and warrant to you the following: (a) we validly exist and are in good standing; and (b) we have all necessary power and authority to enter into the Agreement.

13. INDEMNIFICATION

- 13.1 Indemnification by Client.** You agree to defend, indemnify, and hold harmless Bank, and Bank’s Affiliates, employees, directors, and officers, from and against all Claims brought against such parties, and all related Losses, to the extent such Claims arise from: (a) your actual or alleged breach of the Agreement; (b) any misrepresentation by you under the Agreement; (c) your, and your employees’, agents’, and contractors’, negligence, gross negligence, and willful misconduct; (d) your violation of any right of any Third Party, including your actual or alleged infringement of any patent, copyright, trademark, trade secret, or other proprietary or intellectual property right of any Third Party; (e) your provision of goods and services to Cardholders; (f) your receipt, installation, ownership, and use of Equipment, including loading software onto Equipment and using such software; (g) any Third Party’s or unauthorized person’s access and/or use of Services with your username, password, login or access information, or other security details; and (h) any Third Party indemnifications we are obligated to make as a result of your acts or omissions (including indemnification of any Payment Network or Issuer).

13.2 Indemnification by Bank. Subject to the limitations set forth in Section 14 and Section 15 and any other limitations on liability set forth elsewhere in the Agreement, we agree to defend, indemnify, and hold you harmless from and against all Claims brought against you, and all related Losses, to the extent such Claims result directly from: (a) our actual breach of the Agreement; or (b) our or our employees' gross negligence or willful misconduct in connection with the Agreement; provided that the obligations under this Section 13.2 shall not apply to Bank with respect to Non-Bank Services. For the avoidance of doubt, to the extent of a conflict between this Section 13.2, on one hand, and any provision of Section 14 or Section 15, on the other hand, the provisions of Section 14 and Section 15 shall govern and control.

14. DISCLAIMER OF WARRANTIES

14.1 SERVICE AGREEMENT; PROVIDED "AS IS". THE AGREEMENT IS A SERVICE AGREEMENT. USE OF THE SERVICES, SOFTWARE, AND EQUIPMENT (WHETHER PROVIDED BY US OR A THIRD PARTY) INVOLVES INHERENT RISKS, INCLUDING SYSTEM PERFORMANCE, AVAILABILITY, AND DATA CORRUPTION; YOU USE THEM AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES, SOFTWARE, AND EQUIPMENT ARE PROVIDED "AS IS".

14.2 REPRESENTATIONS AND WARRANTIES ARE DISCLAIMED. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 12.2, THE REPLACEMENT WARRANTY DESCRIBED IN SECTION 24.12, THE TRANSARMOR LIMITED WARRANTY DESCRIBED IN SECTION 25.4, WE DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATIONS AND WARRANTIES: (A) REGARDING NON-INFRINGEMENT, MERCHANTABILITY, SUITABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE; (B) THAT THE SERVICES, SOFTWARE, EQUIPMENT, OR DATA TRANSMITTED USING ANY OF THEM (I) ARE OR WILL OPERATE UNINTERRUPTED OR ERROR FREE, (II) ARE SECURE, OR ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR (III) ARE ACCURATE, COMPLETE, OR WILL MEET YOUR NEEDS; AND (C) THAT ANY DEFECTS, ERRORS, OR VULNERABILITIES WILL BE DETECTED OR CORRECTED.

14.3 NO GUARANTEE AGAINST DATA BREACH OR OF COMPLIANCE. NOTWITHSTANDING YOUR USE OF THE SERVICES TO HELP YOU MANAGE YOUR BUSINESS OR TO HELP YOU SATISFY CERTAIN OBLIGATIONS, USE OF THE SERVICES: (A) DOES NOT GUARANTEE THE SECURITY OF YOUR OR YOUR MERCHANT PROVIDERS' SYSTEMS OR IP ADDRESSES; (B) DOES NOT ELIMINATE THE RISK OF, AND DOES NOT GUARANTEE AGAINST, A DATA SECURITY EVENT OR ANY OTHER UNAUTHORIZED BREACH OR DATA COMPROMISE; (C) DOES NOT GUARANTEE YOUR COMPLIANCE WITH PAYMENT NETWORK RULES (INCLUDING PCI DSS) OR APPLICABLE LAW; AND (D) DOES NOT ELIMINATE YOUR PCI DSS AND OTHER DATA SECURITY COMPLIANCE OBLIGATIONS AND LIABILITIES.

15. EXCLUSION OF CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY

15.1 NO LOST PROFITS OR OTHER CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL WE, 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 TO THE AGREEMENT OR ANY THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE AVOIDANCE OF DOUBT, BANK FEES, THIRD PARTY BASED FEES, CHARGEBACKS, AND DATA COMPROMISE LOSSES ARE NOT EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

15.2 LIMITATION ON BANK'S LIABILITY. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, BANK'S CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE OF ANY INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT, WHETHER SUCH CLAIMS ARE RELATED OR UNRELATED TO ONE ANOTHER) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, AND DAMAGES FOR ANY CAUSE(S) WHATSOEVER (INCLUDING THOSE ARISING OUT OF OR RELATED TO THE AGREEMENT), AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, WILL NOT EXCEED THE LESSER OF: (A) \$50,000; OR (B) THE AMOUNT OF FEES RECEIVED BY US FOR OUR SERVICES (WHICH AMOUNT EXCLUDES THIRD PARTY BASED FEES) PURSUANT TO THE AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH YOUR FIRST CLAIM UNDER THE AGREEMENT AROSE. FOR THE AVOIDANCE OF DOUBT, THIS LIMITATION ON LIABILITY APPLIES IN THE AGGREGATE TO SERVICES PROVIDED BY BANK.

15.3 LIMITED LIABILITY FOR FUNDING DELAYS. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, IF OUR BREACH OF THE AGREEMENT CAUSES A DELAY IN FUNDING YOUR TRANSACTIONS, OUR LIABILITY WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT WE WOULD HAVE FUNDED THE TRANSACTION HAD OUR BREACH NOT CAUSED SUCH DELAY UNTIL THE DATE THAT WE ACTUALLY FUND THE TRANSACTION, AT THE FEDERAL FUNDS RATE SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK, FROM TIME TO TIME, LESS 1%; PROVIDED, HOWEVER, THAT IN NO EVENT WILL OUR LIABILITY UNDER THIS SECTION 15.3 EXCEED THE LIMIT OF LIABILITY SET FORTH IN SECTION 15.2 OR GIVE RISE TO ANY AMOUNTS EXCLUDED PURSUANT TO SECTION 15.1.

16. ASSIGNMENT

16.1 Assignment by Client. Each of the following, whether occurring by operation of law or otherwise, is voidable at our sole discretion and is an Event of Default: (a) any transfer or assignment of the Agreement (or any portion of it) by you without our prior written consent; and (b) any attempt to sublicense or otherwise transfer any rights licensed to you under the Agreement without our prior written consent. You are liable to us for all Chargebacks, Bank Fees, Third Party Based Fees, and other liabilities arising in connection with any Card transactions submitted to us for processing by any assignee or transferee of the Agreement (or any part of the Agreement) not previously approved as such by us.

16.2 Client's Change of Control or Asset Sale. You will provide us as much advance written notice as practicable of any Change of Control or Asset Sale, and in any event as soon as possible (but not to exceed five (5) Business Days) following such Change of Control or Asset Sale. You must obtain our written consent to such Change of Control or Asset Sale.

16.3 Assignment by Bank. We may assign or transfer the Agreement and its rights and obligations under the Agreement, and may delegate its duties under the Agreement, in whole or in part, to any Third Party; provided, however, that we agree to provide Client with notice of such assignment as soon as practicable following such assignment.

16.4 Successors and Assigns. Except as set forth elsewhere in Section 16 (including the following sentence), the Agreement shall be binding upon, 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 Third Party charged with taking custody of a party's assets or business, shall have any right to continue, assume, or assign the Agreement.

17. TERM; TERMINATION; EVENTS OF DEFAULT

17.1 When the Agreement Takes Effect. The Agreement shall become effective on the date you execute it ("**Effective Date**"); provided, however, that: (a) we are not required to provide you any Services unless and until we approve your Application; (b) subject to Applicable Law or AML/Sanctions Laws, we may approve or deny your Application for any reason; and (c) if we do not approve your Application for any reason, the Agreement shall immediately and automatically become null and void, without any further action required by us or Client.

- 17.2 Term of the Agreement.** Subject to the other terms of the Agreement (including termination rights and provisions rendering the Agreement null and void), the Agreement will: (a) remain effective through the initial term of three (3) years from the Effective Date (“**Initial Term**”); and (b) upon expiration of the Initial Term, automatically renew for successive one (1) year terms (each, a “**Renewal Term**”) until terminated by any party hereto upon sixty (60) days’ notice prior to the end of the then existing term.
- 17.3 Termination for Convenience by Bank.** We may terminate any of the Services or the Agreement in whole or in part, at any time and for any reason, by providing you at least thirty (30) days’ advance notice of termination.
- 17.4 Termination or Suspension by Bank for Event of Default.** We may terminate the Agreement or suspend any or all of the Services, in whole or in part, immediately and without penalty or notice in the following circumstances (each, an “**Event of Default**”).
- (a) A material adverse change in your business, financial condition, business procedures, products, or services.
 - (b) Any assignment of the Agreement or other transfer by you without our written consent as set forth in Section 16.1
 - (c) Any Change of Control or Asset Sale without our written consent in violation of Section 16.2.
 - (d) Irregular Card sales by you, excessive Chargebacks, or any other circumstance which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial, reputational, or security risk to us.
 - (e) You breach any representation, warranty, or covenant under the Agreement; you materially breach any other provision of the Agreement; or you materially breach any agreement with any Affiliate of ours.
 - (f) Non-payment of any Data Compromise Losses within three (3) Business Days after notification from us.
 - (g) You violate any Applicable Law (including any AML/Sanctions Laws) or Payment Network Rule, or any circumstance occurs that creates harm or loss of goodwill to any Payment Network.
- 17.5 Termination or Suspension by Bank for Other Reasons.** We may terminate the Agreement or suspend any or all of the Services, in whole or in part, immediately and without penalty in the following circumstances:
- (a) If you have not sent us transactions for processing, or your Merchant Account has been inactive, for 13 consecutive calendar months.
 - (b) If necessary, in our sole discretion, for us to comply with any Applicable Law or AML/Sanctions Laws, or any Payment Network Rule.
 - (c) If obtaining or maintaining any governmental license, permit, or other authorization related to the Services is not reasonable or practical.
 - (d) If any agreement, arrangement, or relationship, between us (or any of our Affiliates or service providers) and any Third Party involved with providing Services, including any Payment Network, is fully or partially suspended or terminated.
 - (e) If any Service generally is discontinued.
 - (f) If any Data Security Event occurs.
 - (g) If requested or required by any Payment Network.

We may exercise our suspension and termination rights pursuant to Section 17.5(a) without providing you any notice. With respect to any suspension or termination pursuant to Section 17.5(b) through 17.5(g), we will provide notice to you either in advance or as soon as commercially practicable following such suspension or termination.

- 17.6 Effect of Termination Generally.** If any Service or the Agreement is terminated for any reason: (a) your Limited License and any other license related to the terminated Service(s) immediately terminate and, within 5 days after termination, you must return to us or destroy all related Software and Documentation and, upon our request, certify the same to us in writing; (b) all amounts you owe under the Agreement will be immediately due and payable in full without demand or notice of any kind, which you expressly waive; (c) you are and will remain responsible for all transactions submitted by you or by any assignee or transferee of the Agreement not previously approved by us, and for all activity under your Merchant Account, until all Bank Fees, Third Party Based Fees, Chargebacks, and other amounts have been paid in full (regardless of whether such transactions were submitted and such activity occurred before or after termination); and (d) we may be required to report you, the names and other identification of your principals, and information regarding Merchant Providers to the Payment Networks. You waive and hold us harmless from and against any and all claims which you may have as a result of such reporting, and all related Losses.
- 17.7 Effect of Termination on Rental Equipment.** Termination of the Agreement does not terminate or affect your obligations for Rental Equipment (see Section 24).

18. SUSPENSION OF SERVICES AND CREDITS; BANKRUPTCY FILINGS; REMEDIAL ACTIONS

- 18.1 Suspension of Services and Credits; Changes to Processing and Payment Terms.** We may suspend the Services in whole or in part, suspend settlement and other payments to you, and change processing and payment terms (including the timing of when we initiate credits to your Settlement Account): (a) if any Event of Default occurs; (b) if we identify, or have reason to suspect, fraudulent or suspicious activity or transactions related to your Merchant Account or your use of Services; (c) if you have failed to provide us information we have requested pursuant to the Agreement; and (d) to protect us, or any of our Affiliates or Third Party service providers, from legal liability. These suspensions, changes, and other actions may remain in effect until the circumstances giving rise to them have been investigated and resolved to our reasonable satisfaction. We will provide you notice of actions under this Section 18.1 either in advance or as soon as commercially practicable following such actions.
- 18.2 Bankruptcy Filings.** If you file for protection under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors, or similar laws, and you continue to use our Services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of pre-existing obligations. In that event, you will be responsible for submitting an accounting supporting any adjustments you may claim.
- 18.3 Other Remedial Action.** You must promptly take corrective action acceptable to us, regulatory agencies, and Payment Networks (as applicable) to rectify: (a) any failure to comply with the Agreement; (b) any problem identified in any report, examination, or audit that we reasonably believe could have an adverse impact on us, Issuers, Payment Networks, or Cardholders; and (c) any control deficiencies identified in any such report, examination, or audit. If corrective action is not promptly taken, and the corrective action relates to a Merchant Provider, we may require you to stop using such Merchant Provider in connection with the Agreement until corrective action has been taken in accordance with this Section 18.3.

19. RESERVE ACCOUNT; SECURITY INTEREST

- 19.1 Reserve Account Generally.** You authorize us to establish a deposit account to be held in our name pursuant to this Section 19 (a “**Reserve Account**”). We will provide you with at least three (3) days’ advance notice regarding the establishment of (or any adjustment to the amount of) any Reserve Account; provided, however, that we may fund (pursuant to Section 19.2(a) or (b)) the Reserve Account immediately and without prior notice (a) in the case of fraud pertaining to you or material fraudulent Card transactions, (b) in the case of an Event of Default, or (c) upon notice of termination of the Agreement by either you or us. The amount of any Reserve Account will be set by us, and may be adjusted by us from time to time, in our sole discretion, based upon your processing history and any potential risk of loss to us.

- 19.2 Funding and Holding the Reserve Account.** The Reserve Account may be funded by all or any combination of the following, as elected by us: (a) one or more deductions, recoupments, or off sets to or against any payments otherwise due to Client, whether due from us or any Affiliate of ours; (b) one or more debits to Client's Settlement Account or any other account of Client held by us or any of our Affiliates; (c) Client's delivery to us of a letter of credit in a form satisfactory to us and issued by a financial institution acceptable to us; and/or (d) cash delivered by Client to us. If we have elected for the Reserve Account to be funded via a letter of credit or cash, you must fund the Reserve Account in the manner and within the timeframes we specify. Any Reserve Account will be held by us until all current and contingent liabilities and other obligations of Client under the Agreement, including for Card transactions under Payment Network Rules and including for Data Compromise Losses, have been satisfied. Funds held in a Reserve Account established pursuant to the Agreement may be held in a commingled reserve account together with reserve funds of our other customers.
- 19.3 Withdrawing Reserve Funds Additional Funding of Reserve Account.** At any time, we may withdraw and apply funds from the Reserve Account to any Bank Fees, Third Party Based Fees (including Data Compromise Losses), Chargebacks, or other amounts owed to us in connection with the Agreement. If funds in the Reserve Account at any time are not sufficient to cover Bank Fees, Third Party Based Fees (including Data Compromise Losses), Chargebacks, and other amounts that may be prospectively owed by Client to us, Client agrees to immediately pay us such sums upon request or, at our election, we may fund the Reserve Account with such amounts in any manner set forth in Section 19.2.
- 19.4 Failure to Establish or Maintain Reserve Account.** Client acknowledges and agrees that its failure to establish or maintain funds in the Reserve Account as required by us hereunder will be an Event of Default pursuant to Section 17.4(e).
- 19.5 Security Interests; Rights of Recoupment.** To secure Client's performance of its obligations arising under or otherwise related to the Agreement, or related to any other agreement for the provision of related services or equipment, Client hereby grants Bank, as collateral agent for the benefit of itself, security interests and right of recoupment in and to: (a) each transaction and its proceeds; (b) any funds due to Client from Bank; (c) any and all amounts held in any Reserve Account; (d) all of Client's now owned and hereafter acquired rights, title, and interests in and to any Reserve Account; and (e) any of Client's property held by Bank or any Affiliate of Bank. We may enforce these security interests and rights of recoupment without notice or demand to the fullest extent permitted by Applicable Law. The security interests and rights of recoupment granted under the Agreement will survive the termination of the Agreement until all of Client's obligations arising under or related to the Agreement are paid and performed in full. Client agrees and acknowledges that we shall have the exclusive right to withdraw funds from, direct the disposition of, and close each Reserve Account.

20. FINANCIAL AND OTHER INFORMATION; OBTAINING AND SHARING CREDIT REPORTS

- 20.1 Providing Us Financial Information.** Upon our request and at your cost and expense, you will provide us: (a) quarterly financial statements within 45 days after the end of each fiscal quarter; (b) annual audited financial statements within 90 days after the end of each fiscal year; and (c) other financial information, including information about your Settlement Account, that we reasonably request. All financial statements that you provide must be prepared in accordance with generally accepted accounting principles.
- 20.2 Providing Us Other Information about Your Business.** In addition to providing us information under Section 20.1, upon our request and at your cost and expense, you will provide us any other information that we reasonably request concerning your business, the owner(s) and management of your business, Merchant Systems, Merchant Providers, or any other matter related to the Agreement. In connection with this obligation, you shall (and you shall ensure your Merchant Providers): (a) provide the Payment Networks, us, and our Affiliates, regulators, and forensic examiners (as well as the Payment Networks' forensic examiners) reasonable access to your (and your Merchant Providers') systems, facilities, books, and records, which any of the foregoing parties may inspect and copy; and (b) provide information we request to facilitate our compliance with Payment Network Rules, Applicable Law and AML/Sanctions Laws. In addition, you agree that we may obtain relevant information from any telecommunications provider related to your compliance with the Agreement.
- 20.3 Providing Us Notice of Changes to Your Business.** You will provide us as much advance written notice as practicable of your intent to: (a) transfer (by lease, management or operation agreement, assignment, sale, or otherwise) more than 33% in value of your properties and/or assets to a Third Party or group of affiliated Third Parties; or (b) substantially change the basic nature of your business (or if advance written notice is not practicable, written notice as soon as possible following any such event (but not to exceed 5 Business Days thereafter)). You also will notify us in writing of any judgment, writ, warrant of attachment, execution, or levy against any substantial part (25% or more in value) of your total properties and/or assets not later than 3 days after you obtain knowledge. You also will notify us at least 10 Business Days in advance of any change to your legal name, d/b/a/ name, address, telephone/facsimile number, Settlement Account, or other merchant profile information.
- 20.4 Authorization to Share Credit Reports, Financial Information, and Other Information.** In connection with (a) our determination of whether to accept the Agreement, (b) any maintenance, updating, review, or extension of the Agreement or any other agreement between us and/or our Affiliates and you, (c) our and our service providers' evaluation of the credit and financial status of you and individuals associated with your business, and (d) any other lawful reason, you authorize us, our service providers, and our Affiliates to (y) obtain credit reports, credit information, and financial information related to you and individuals associated with your business, all of which we may obtain from consumer reporting agencies, our Affiliates, and other Third Parties, and (z) review, use, and share with our Affiliates, Payment Networks, governmental agencies, and other Third Parties any individual and business credit reports, credit information, and financial information that we obtain in connection with the Application or the Agreement (and those Affiliates, Payment Networks, governmental agencies, and other Third Parties may use such information).

21. DEBIT CARD TRANSACTIONS

- 21.1 Debit Card Transactions Generally.** Debit Card transactions are subject to the terms of the Agreement, Payment Network Rules (including Debit Networks), and Applicable Law. To the extent the terms of this Section 21 directly conflict with the terms in a different Section, the terms of this Section 21 will control with respect to Debit Network Transactions.
- 21.2 Accepting Debit Cards.** When a Debit Card is presented you must read the account number electronically from the Magnetic Stripe or Chip for Debit Network Transactions made via use of a PIN, and if the Magnetic Stripe or Chip is unreadable you must request a different form of payment.
- 21.3 Routing Debit Network Transactions.** The Debit Network used to process your Debit Network Transactions will depend upon a variety of factors, including the availability of Debit Networks at the time of a transaction and whether a particular Debit Card is enabled for a particular Debit Network. Subject to Applicable Law, we may choose any available Debit Network, including a Debit Network affiliated with us or our Affiliates, when routing your Debit Network Transactions.
- 21.4 Debit Card Returns.** You must not prompt Cardholders to enter a PIN for Debit Card return transactions. If you allow refunds or returns on Debit Network Transactions, you must refund amounts to Cardholders in cash.
- 21.5 Adjustments.** An adjustment is a transaction that is initiated to correct a Debit Network Transaction that was processed in error. You are responsible for all adjustments, adjustment fees, and other Third Party Based Fees charged by a Debit Network. Adjustments and related time frames are regulated by Debit Network Payment Network Rules and Applicable Law (such as the Electronic Funds Transfer Act, or Regulation E).

22. EBT TRANSACTIONS

- 22.1 EBT Transactions Generally.** We provide electronic interfaces to EBT networks for processing, settling, and switching transactions initiated through the use of state-issued EBT cards (“**EBT Card**”), for the provision of EBT Benefits. Transactions made using EBT Cards for the provision of EBT Benefits (“**EBT Transactions**”) are subject to, and must comply with, the terms of the Agreement, the Quest Operating Rules, and Applicable Law. To the extent the terms of this Section 22 directly conflict with the terms in a different Section, the terms of this Section 22 will control with respect to EBT Transactions.
- 22.2 Marks.** The terms of Section 9.4 apply to the Marks of EBT service providers. Do not use the Marks of any EBT service provider without such EBT service provider’s prior written consent, in any way that does not comply with the EBT service provider’s rules and requirements, or in any way that diminishes or injures the goodwill associated with such Marks; and do not suggest any EBT service provider endorses your goods or services.
- 22.3 Other Terms.** (a) Do not accept EBT Cards for any purpose other than providing EBT Benefits (you must reimburse the state and us for any EBT Benefits unlawfully received by you or an EBT recipient); (b) do not provide cash for EBT Benefits; and (c) notify us in writing promptly if you plan to stop accepting EBT Cards and providing EBT Benefits or if you are unable to comply with any Applicable Law, Payment Network Rule, or other requirement related to EBT. In addition, you are exclusively responsible for complying with all rules and requirements related to, and you exclusively assume all liability related to, accepting, clearing, and otherwise handling manual vouchers and manual EBT Transactions.

23. AMERICAN EXPRESS, DNP CARD TYPES, WEX, VOYAGER, AND FLEET

- 23.1 American Express Transactions.** If you have been approved to accept American Express transactions (a) we will settle your American Express transactions if you qualify for the American Express OptBlue Service, as described in Section 27, and (b) American Express will settle your American Express transactions if you do not qualify for the American Express OptBlue Service. We do not have any responsibility or liability for funding any transactions that American Express settles. American Express will charge additional fees for its services.
- 23.2 DNP Card Types.** If you accept DNP Card Types, transactions made using Cards of DNP Payment Networks will be processed under and subject to Discover Payment Network Rules and the terms of the Agreement applicable to Discover, including applicable fees, rates, and interchange programs. You must comply with all Discover rules and requirements, including: (a) Discover’s standards governing the formatting, transmission, and encryption of data, referred to as the “designated protocol”; and (b) referring to Discover at your Locations, and on your web site and advertising and promotional materials, in the manner and with the frequency that you refer to any other payment card that you accept.
- 23.3 WEX Card and Voyager Transactions; Fleet Cards.**
- (a) **General Requirements for WEX Cards and Voyager Transactions.** If you accept Wright Express (“**WEX**”) Cards or Voyager transactions: (i) you must provide, at your own expense, all equipment and telecommunications links, and related Third Party Services, needed to accept WEX Cards and Voyager transactions; (ii) you must comply with all rules and requirements of WEX and Voyager; and (iii) you must comply with the terms of any agreement that you have entered into with WEX and Voyager.
 - (b) **Chargebacks; Rejected WEX Transactions.** WEX may chargeback any WEX Card transactions that a WEX Cardholder disputes. Also, WEX Card transactions that you do not submit within 120 days from the date of the transaction, or within any shorter timer period set by us or WEX, may be rejected or result in a Chargeback. You are responsible for all Chargebacks related to WEX Card transactions.
 - (c) **Your Remedies Related to WEX Card Transactions are Limited.** You acknowledge and agree that, if we settle your WEX Card transactions as part of full service acquiring for WEX Card transactions, your sole remedies shall be against us and not WEX, except to the extent that WEX knows of any fraud related to WEX Cards and fails to notify us promptly of such fraud, or WEX commits fraud in connection with our WEX-related Services.
 - (d) **Time Limit for Submitting Voyager Transactions.** Each Voyager transaction must be submitted within seven (7) days of completion of the transaction. Any transaction that you submit to us more than seven (7) days after the transaction occurred may be rejected. Any transaction that you submit to us more than ninety (90) days after it occurred will be rejected.
 - (e) **Voyager Limitation on Liability.** NOTWITHSTANDING SECTION 15.2 OR ANYTHING ELSE IN THE AGREEMENT TO THE CONTRARY, OUR CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE OF ANY INDEMNIFICATION OBLIGATION UNDER THE AGREEMENT, WHETHER SUCH CLAIMS ARE RELATED OR UNRELATED TO ONE ANOTHER) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, AND DAMAGES FOR ANY CAUSE(S) WHATSOEVER IN CONNECTION WITH VOYAGER TRANSACTIONS, AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, WILL NOT EXCEED THE LESSER OF: (A) \$10,000; OR (B) THE AMOUNT OF VOYAGER TRANSACTION FEES RECEIVED BY US FOR OUR SERVICES (WHICH AMOUNT EXCLUDES THIRD PARTY BASED FEES) PURSUANT TO THE AGREEMENT DURING THE TWO (2) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH YOUR FIRST CLAIM WITH RESPECT TO VOYAGER TRANSACTIONS UNDER THE AGREEMENT AROSE. THESE LIMITS ARE PART OF THE LIMITATION ON LIABILITY SET FORTH IN SECTION 15.2, NOT AN ADDITIONAL LIMITATION ON LIABILITY.
 - (f) **Termination of Fleet Cards.** Notwithstanding anything in the Agreement to the contrary, our obligation to provide you services for any Fleet Card will terminate automatically without penalty to us or the related Payment Network upon the earlier of: (i) termination or expiration of our agreement with such Payment Network; (ii) at least twenty (20) days’ prior written notice by us to you, or shorter notice as requested by any Payment Network; or (iii) your failure to comply with material terms relating to Fleet Card transactions.

24. EQUIPMENT

- 24.1 Equipment Generally.** This Section 24 governs any Devices (defined in Section 26.1) and other equipment (individually and collectively, “**Equipment**”) that you rent or buy from us under the Application, any Schedule, subsequent purchase or rental agreements, and/or other documentation provided in connection with the purchase or rental of Equipment (individually and collectively, “**Equipment Documents**”), except to the extent provided otherwise in the Equipment Documents. THE EQUIPMENT IS SOLD OR RENTED TO YOU FOR YOUR BUSINESS USE; THE EQUIPMENT IS NOT PERMITTED TO BE USED FOR HOUSEHOLD OR PERSONAL PURPOSES.
- 24.2 Purchased Equipment.** Throughout the term of the Agreement, we will sell to you, and you will buy from us, the Equipment identified in the Equipment Documents (“**Purchased Equipment**”), free and clear of all liens and encumbrances, except that any Software provided or made available in connection with the Equipment will be governed by the other terms of the Agreement, including Section 9.
- 24.3 Rental Equipment.** Throughout the term of the Agreement, we will rent to you the Equipment identified in the Equipment Documents as being rented to you (“**Rental Equipment**”). With respect to Rental Equipment: (a) the minimum rental term is six (6) months (“**Minimum Rental Term**”); (b) you must pay rental fees through the last day of the billing cycle during which we receive returned Rental Equipment; (c) rental fees never are prorated based on when you receive or return Rental Equipment, or for any other reason; and (d) **REGARDLESS OF WHEN WE RECEIVE RETURNED RENTAL EQUIPMENT, YOU MUST PAY RENTAL FEES FOR THE SIX (6) MONTH MINIMUM RENTAL TERM.**
- 24.4 Supplies.** We will sell you supplies, such as wires, paper rolls, wall mounts, and other items to be used with Equipment (“**Supplies**”), as requested by you and as agreed to by us from time to time. Additional charges apply for Supplies. Unless expressly stated otherwise in the Equipment Documents, Supplies are not provided or included with the purchase or rental of Equipment.

24.5 Payment; Additional Amounts. You must pay the purchase price for Purchased Equipment, the monthly rental fee for Rental Equipment, and all amounts charged for Supplies. You must pay the monthly rental charge for Rental Equipment on or before the first day of each billing cycle of the rental period. In addition to the foregoing, you must pay all: (a) Taxes, however levied, designated, or based on amounts charged or on Equipment, Supplies, or use thereof; (b) shipping and handling costs and charges for Equipment and Supplies; (c) charges for services, including installation and de-installation, programming and re-programming, base loads, injections, app loads, and TransArmor loads; and (d) other costs described in the Agreement. We may require you to pay in full before we ship Equipment and Supplies to you, or we may permit you to pay after we ship. We may require you to pay with a credit card, by setting off against your settlement funds, by debiting your Settlement Account, by debiting your Reserve Account, via ACH transfer, or in any other manner we are permitted to collect any other amounts under the Agreement.

24.6 Delivery and Acceptance; Installation; Risk of Loss; Title; Changes to Equipment. After the Equipment has been prepared for shipment to you, we will deliver it to the address identified in the Equipment Documents or to an alternative address mutually agreed upon by you and us. You are deemed to have accepted each unit of Equipment on the earlier of: (a) the seventh day after we deliver the Equipment to the shipper for shipment to you or your representative; (b) the day after the Equipment is delivered to you or your representative; and (c) for Equipment that we install for you, the date of installation (“**Acceptance**”). Equipment ships F.O.B. origin; risk of loss or damage to Equipment passes to you when Equipment is delivered to the shipper for shipment to you or your representative. Title to Purchased Equipment passes to you after you pay in full for the Purchased Equipment. Title to Rental Equipment never passes to you. If installing Equipment, you and your representatives must do so in accordance with our, and the Equipment manufacturer’s, requirements and specifications. At any time for any reason we may change Equipment model numbers or names, issue new Equipment models, discontinue Equipment, or otherwise change Equipment.

24.7 Use, Maintenance, and Return of Equipment.

- (a) Your use of the Equipment must comply with any operating or other instructions applicable to the Equipment, the Agreement, Applicable Law, and Payment Network Rules. You are responsible for obtaining permits for the Equipment.
- (b) You are responsible for maintaining Equipment. You are responsible for safeguarding the Equipment from, and for insuring it via comprehensive insurance coverage against, loss, damage, unauthorized use, misuse, and theft. You must notify us immediately if any of the foregoing occurs. Loss of, destruction of, theft of, or damage to the Rental Equipment does not relieve you from your obligation to pay the full purchase price or rent payable hereunder. You are responsible for any expenses related to altering the location where Equipment is located, and other facilities and property, in connection with use of the Equipment.
- (c) You may not make or permit any physical alteration or modification of Equipment, change where Equipment is installed, or move Equipment without our prior written consent. On commercially reasonable advance notice, we or our representatives may enter your premises to examine or repair Equipment for legal or regulatory (including Payment Network) compliance.
- (d) If Equipment or other communications equipment appears defective, you must call our Customer Service team immediately. You must pay to replace any defective Equipment not promptly returned to us and must pay all legal and/or collection costs incurred by us or the Equipment owner in connection with recovering Equipment.
- (e) Except for Purchased Equipment that has been paid for in full, the Equipment will remain our personal property or the personal property of our Affiliates; it never will be considered a fixture affixed to your property.
- (f) You may not pledge, create, or permit any security interest, lien, or encumbrance on Rental Equipment, nor may you part with possession of or sublease Rental Equipment, without our prior written consent. Any such pledge, security interest, lien, encumbrance, or sublease is null and void without our prior written consent.
- (g) Your right to return Equipment is limited to the Replacement Warranty set forth below in Section 24.12.

24.8 Return of Rental Equipment. To return Rental Equipment you must call our Customer Service. You will be provided return instructions at that time. You are responsible for shipping and handling costs and you must deliver the Rental Equipment to us in the same operating order, condition, and appearance that the Rental Equipment had when it was delivered to you, reasonable wear and tear excepted. For any Equipment you return to us, but not in such operating order, condition, and appearance, you may be charged a Client Abuse Fee as set forth in Section 24.13 (the Client Abuse Fee also may be set forth on your Application).

24.9 Software. The terms and provisions concerning Software set forth in the Agreement, including in Section 2.3 and Section 9, apply to Software provided or made available with Equipment. In addition, from time to time we may “push” Updates to Devices and other Equipment remotely and automatically. Such “pushed” Updates are not sold to you outright but instead are licensed to you as provided under Section 9.

24.10 Disclaimer of Warranties and of Compatibility with Other Payment Processors. Pursuant to Section 14, we do not provide and we expressly disclaim all representations and warranties related to Equipment, except as provided in Section 24.12. Except as provided in Section 24.12, any warranties for Equipment or related software originate from the applicable Third Party provider or manufacturer and, if provided, will be contained within the packaging shipped from such Third Party. Equipment and software you obtain from us may not be compatible with another payment processor’s systems. We do not have any obligation to make such software and equipment compatible with any other processing system. If you use a payment processor other than us, you may not be able to use the equipment and software purchased under the Agreement.

24.11 Limitation of Liability. NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, OUR LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE EQUIPMENT OR RELATED SOFTWARE SHALL NOT EXCEED: (A) FOR PURCHASED EQUIPMENT, THE PURCHASE PRICE PAID TO US FOR THE PARTICULAR EQUIPMENT INVOLVED; AND (B) FOR RENTAL EQUIPMENT, THE RENT PAID TO US FOR THE RENTAL EQUIPMENT INVOLVED DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH YOUR FIRST CLAIM RELATED TO RENTAL EQUIPMENT AROSE UNDER THE AGREEMENT. THESE LIMITS ARE PART OF THE LIMITATION ON LIABILITY SET FORTH IN SECTION 15.2, NOT AN ADDITIONAL LIMITATION ON LIABILITY.

24.12 Limited One-Year Replacement Warranty on Certain Equipment. Certain Purchased Equipment, including certain Clover Equipment and certain “FD”-branded Equipment, but excluding the Clover Go Reader, is warranted against material defects for the one year period commencing on the date such Purchased Equipment is shipped to you (“**Replacement Warranty**”). Except as set forth below, if such Purchased Equipment becomes materially defective within the warranty period, we will replace it free of charge with refurbished Equipment of the same type, provided that you must pay shipping and handling charges. The Replacement Warranty: (i) does not include damage to Purchased Equipment resulting from accident, misuse, negligence, or abuse, or from breach of the Agreement; (ii) does not apply to Purchased Equipment that has become obsolete; and (iii) does not apply to defects that are not material. The Replacement Warranty is non-transferable and terminates on the one year anniversary of the date the Purchased Equipment is shipped to you. Upon expiration of the Replacement Warranty, you must pay the full price to replace any Purchased Equipment. In addition, notwithstanding the Replacement Warranty, it may be necessary for you to upgrade your Purchased Equipment or purchase new Equipment from time to time, for which you will be charged. If you make a claim under the Replacement Warranty requesting replacement Equipment, you must return to us the Purchased Equipment that you claim is materially defective. We will examine and test the Purchased Equipment that you return. You may be charged a Client Abuse Fee as set forth in Section 24.13 (the Client Abuse Fee also may be set forth on your Application).

You will be charged the full price of replacement Equipment if we do not receive the allegedly defective Purchased Equipment from you within ninety (90) days of the date replacement Equipment is shipped to you. We may collect shipping and handling charges, any Client Abuse Fees, and any other amounts arising under this Section 24.12 in any manner that we may collect any other fees and amounts arising under the Agreement. For more information on making a claim under the Replacement Warranty, please contact our Customer Service.

24.13 Client Abuse Fee. IF YOU RETURN RENTAL EQUIPMENT TO US OR IF YOU RETURN PURCHASED EQUIPMENT TO US PURSUANT TO THE REPLACEMENT WARRANTY, AND WE REASONABLY DETERMINE BASED ON OUR EXAMINATION AND TESTING THAT THE EQUIPMENT YOU HAVE RETURNED HAS BEEN DAMAGED OR IS NOT FUNCTIONING PROPERLY DUE TO ACCIDENT, MISUSE, NEGLIGENCE, ABUSE, OR BREACH OF THE AGREEMENT, OR THAT ANY EQUIPMENT DEFECTS ARE NOT MATERIAL, YOU WILL BE CHARGED A FEE EQUAL TO THE GREATER OF: (A) \$250.00; OR (B) THE FAIR MARKET VALUE OF THE EQUIPMENT IF IT HAD BEEN RETURNED IN NEW CONDITION, REASONABLE WEAR AND TEAR EXCEPTED (“**CLIENT ABUSE FEE**”), AS WELL AS ALL LEGAL AND COLLECTION COSTS WE OR THE EQUIPMENT OWNER INCUR IN CONNECTION WITH OBTAINING REPLACEMENT EQUIPMENT.

24.14 Help Desk Support. We or Third Parties designated by us will provide help desk support only for Purchased Equipment and Rental Equipment; we will not provide any such support or related services for any other products or equipment. Help desk support for Clover Equipment may be obtained by contacting the dedicated Clover support center.

25. TRANSARMOR® DATA PROTECTION SERVICE

25.1 Definitions. As used in this Section 25 or otherwise in connection with the Data Protection Services or components thereof (including in Section 26, Section 28, Section 35, and Section 38), the following capitalized terms have the following meanings:

- (a) **Approved Person:** A Merchant Provider acting for or in connection with your use of the Data Protection Services that, in addition to any other approvals required for such Merchant Provider, is separately approved by us for your use in connection with the Data Protection Services.
- (b) **Data Protection Services:** See the meaning set forth in Section 25.2.
- (c) **Encryption:** The encryption of (1) Track 1 or Track 2 data from the Magnetic Stripe or otherwise from the physical Card or (2) PAN.
- (d) **Get PAN:** The deconversion of a Token and return of the PAN associated with such Token back to you or an Approved Person (as defined for the particular Service involved) based on your (or such Approved Person’s) requests received on a per transaction basis, subject to our prior approval.
- (e) **Get Token or Token Registration:** A process by which you may obtain a Token or a Multi-Pay Token without requesting an Authorization, which results in a non-financial Card transaction that permits you to store a Token for a single future financial Card transaction, or to store a Multi-Pay Token for future financial Card transactions, involving your related customer.
- (f) **Legacy Data:** See the meaning set forth in Section 25.2(b).
- (g) **Legacy Data Conversion or LDC:** Tokenization of PANs that are received on a bulk file basis, from you or an Approved Person during implementation of or in connection with your use of the Data Protection Services.
- (h) **Legacy Data Deconversion or LDD:** The deconversion of Tokens and return of the PANs associated with such Tokens back to you or an Approved Person, on a bulk file basis, during the term of, or following termination of, the Data Protection Services, as requested by you and approved by us.
- (i) **Multi-Pay Token:** A Token that provides the option to support businesses that need to submit Card Not Present Transactions that are sales or on a recurring basis. These Tokens are unique to each merchant that uses them and are stored in place of the PAN. With these Tokens, merchants can initiate new or recurring payments within their own environment instead of using the PAN for the related Card. A Multi-Pay Token can be obtained following a request for Authorization or a Token Registration or through Legacy Data Conversion and can be placed within the Merchant System, including a merchant’s payment page or “e-wallet,” for use with future or recurring payments. It is common for ecommerce merchants to ask their customers to register by providing profile information, such as name, address, and phone number, to the merchant website before or upon checkout.
- (j) **PAN:** The primary account number associated with a Card.
- (k) **PAN Truncation:** A procedure that results in only the last four digits of a Cardholder’s account number appearing on the copy of a Sales Draft or Credit Draft that the Client provides to the Cardholder.
- (l) **PIM:** TransArmor P2PE Implementation Manual.
- (m) **Token:** A random numeric or other code that is assigned to replace a PAN as described herein.
- (n) **Token Only:** A request for Authorization, without Encryption, for which a Token or Multi-Pay Token is returned. Token Only is available only for Card Not Present Transactions that are sales.
- (o) **Token Registration:** See the meaning of Get Token.
- (p) **Tokenization:** A form of data substitution that replaces a PAN with a Token.
- (q) **TransArmor P2PE:** TransArmor Point-to-Point Encryption solution.

25.2 Data Protection Services. The “**Data Protection Services**” consist of Encryption and Tokenization; Token Only; Get Token; Get PAN; Legacy Data Conversion; Legacy Data Deconversion; and TransArmor P2PE as elected by Client. We will provide the Data Protection Services elected by you, subject to the terms of this Section 25 and any required approvals by us. The Data Protection Services are available only for your internal business purposes and for Card transactions you send to us for Authorization, or Authorization and settlement, pursuant to the Agreement, whether each such financial transaction occurs at the time of the related Authorization request or at a later time after Token Registration for the related PAN. The Data Protection Services are not available for electronic check transactions, closed-loop gift card transactions, WEX transactions, Voyager transactions, private label Card transactions, or other Card transaction types that we determine are not capable of Tokenization. Below are additional terms regarding certain aspects of the Data Protection Services.

- (a) **Encryption; Tokenization and Token Only.** If you elect Encryption and Tokenization, we shall provide Encryption at the time PAN or Magnetic Stripe, as applicable, is first read by, or entered into, your device for an Authorization or a Token Registration request; provided, however, that depending on your point of sale solution and whether you use a Merchant Provider, the point at which Encryption occurs may vary. After we receive your Authorization or Token Registration request, whether you elect Encryption and Tokenization or Token Only, we will return a Token to you, in lieu of the PAN, with the Authorization response or in response to a Token Registration request.
- (b) **Legacy Data Deconversion.** If you use Legacy Data Deconversion, then we shall provide the PANs for deconverted Tokens (collectively, “**Legacy Data**”) to you or, at your written request and upon our written approval, to an Approved Person, as part of Legacy Data Deconversion. Legacy Data constitutes Cardholder data under the Agreement. You are responsible for your, and, if applicable, the Approved Person’s,

compliance with Applicable Law (including any AML/Sanctions Laws) and Payment Network Rules (including PCI DSS) with respect to use, storage, transmission, and handling of Legacy Data that we provide to you or such Approved Person. We shall not be responsible for any claims, losses, or liabilities arising from your, or the Approved Person's, use, transmission, storage, or handling of Legacy Data that we provide. You agree that our provision of Legacy Data to the Approved Person is not a breach of the confidentiality provisions of the Agreement, provided, however we shall not be required to provide the Legacy Data to any Third Party that is not authorized to use, transmit, store, or handle Legacy Data pursuant to Applicable Law (including any AML/Sanctions Laws) or Payment Network Rules, even if an Approved Person for other purposes.

- (c) **Shared Tokens; Shared Merchant System.** If you are a Group Member or Group Owner, then, subject to our approval, you may utilize Shared Tokens through a Shared Merchant System, and subject to the terms of this Section 25, we agree to perform for you the Data Protection Services and our other obligations hereunder, and you agree to perform your obligations to us hereunder, to the same extent as with respect to Tokens and Merchant Systems. **"Shared Merchant System"** means the Merchant Systems and/or similar systems used by the Group Owner and Group Members for processing Card transactions with Shared Tokens, whether such Merchant Systems are owned or operated, entirely or in combination, by the Group Owner, one or more Group Member(s), or a Third Party acting for the Group Owner. **"Shared Token"** means any Multi-Pay Token that can be utilized by Group Member merchants, as requested by Group Owner and agreed to by us. This type of Multi-Pay Token is not unique to each Group Member but is unique to any non-Group Member merchants. In connection with the Shared Tokens, you authorize us to use your Transaction Data and disclose Tokens generated for you (and related PANS, if applicable) within the Shared Merchant System. If you cease to be a Group Member or Group Owner, then in either case, we shall no longer be obligated to provide Shared Tokens to you and may cease doing so without prior notice to you.
- (d) **Transferred Tokens.** **"Transferred Token"** means a Multi-Pay Token originally generated by a Third Party providing you services similar to the Data Protection Services (**"Non-Bank Acquirer"**), which Multi-Pay Token such Non-Bank Acquirer transitions to the Data Protection Services at your request and upon agreement between us and such Non-Bank Acquirer. Upon your use of a Transferred Token in connection with the Data Protection Services, such Transferred Token will constitute a Token for purposes of this Section 25.
- (e) **TransArmor P2PE.** As an option to assist Client with PCI DSS scope reduction, Client may elect to subscribe to TransArmor P2PE. TransArmor P2PE requires use of Tokenization. When integrated into the Client's point of sale system, TransArmor P2PE encrypts the Card data at Client's point of sale, transmits such encrypted Card data to our processing system where it is decrypted and processed and a corresponding Token is provided to the Client in the Authorization response returned to the Client by our system. Client's use of TransArmor P2PE must comply with (a) our requirements outlined in the PIM and (b) PCI Security Standards Council requirements in Client's use of TransArmor P2PE for Client's systems to be TransArmor P2PE validated and in order for Client to maintain such TransArmor P2PE validation, including, but not limited to, (i) Client's use of our approved validated key injection facilities; (ii) Client being responsible for keeping track of all Client systems for the following states: (1) in secure storage awaiting deployment, (2) deployed/in service, (3) disabled/out for repair, (4) decommissioned and returned for secure destruction and (5) in transit; and (iii) regularly managing Client systems inventory a minimum of once per year.

25.3 Your Responsibilities. You shall implement the Data Protection Services according to the operating instructions, including: (a) implementing the Data Protection Services throughout the Merchant Systems (and, if applicable, Shared Merchant System) involved in the Services; and (b) replacing existing PANs within Merchant Systems involved in the Services with Tokens (and, if applicable, the Shared Merchant System). You shall implement any upgrades to the Data Protection Services within a commercially reasonable period of time after receiving the updates. You shall not retain PANs following implementation of the Data Protection Services and shall use Tokens or account truncation (as applicable) in lieu of PANs for all activities related to the Services subsequent to receipt of a Token associated with a Card transaction, including settlement, retrieval, chargeback and adjustment processing and transaction reviews. You shall only use Merchant Systems, gateways, or VARs that are certified for use with the Data Protection Services. If you submit Card transactions as batch files for processing, you shall use batch file processing services, truncated report viewing, and data extract creation tools provided by us in connection with the Data Protection Services.

25.4 TransArmor Limited Warranty.

- (a) **Scope and Eligibility.** We warrant that the Token or Shared Token, as applicable, returned to you as a result of using the Data Protection Services cannot be used to initiate a financial sale Card transaction by an unauthorized Third Party: (i) outside the Merchant Systems (if not part of the Shared Merchant System), or (ii) outside the Shared Merchant System (the **"TransArmor Limited Warranty"**). The TransArmor Limited Warranty applies only to Authorization responses for which we return a Token to you and the subsequent use of such Token to initiate a financial sale Card transaction as described in the TransArmor Limited Warranty. To be eligible for the TransArmor Limited Warranty, you must obtain Authorization only or Authorization and settlement processing services from us and you must be in compliance with this Section 25 and the material terms of the Agreement.
- (b) **Shared Tokens.** If you use Shared Tokens, you acknowledge and agree that Shared Tokens may be utilized within the Shared Merchant System, which may occur outside one or more Merchant Systems that are part of the Shared Merchant System. We shall not be responsible for, and the TransArmor Limited Warranty does not apply to, any unauthorized use of any Shared Token within the Shared Merchant System, whether such use occurs within or outside any of the Merchant Systems that are part of that Shared Merchant System.
- (c) **Limited Indemnification; Voiding the TransArmor Limited Warranty.** We shall indemnify and hold harmless you from and against any and all direct damages, including Third Party claims, resulting from our breach of the TransArmor Limited Warranty; subject to the exclusion of consequential damages and limitations of liability set forth in the Agreement, including the terms of Section 15. The TransArmor Limited Warranty is void if you: (i) fail to comply with the operating instructions we may provide for Tokenization, the terms of this Section 25, or the Agreement; or (ii) are grossly negligent or engage in willful misconduct with respect to Tokenization or use of a Token. If an Approved Person has been approved separately by us to receive or use PAN for authentication, authorization, settlement, or other approved activities by us, the TransArmor Limited Warranty is not void due to such receipt or use of PAN.

26. CLOVER® SERVICE

26.1 Definitions. As used in this Section 26 or otherwise in connection with the Clover Service, the following capitalized terms have the following meanings:

- (a) **Clover:** Clover Network, Inc.
- (b) **Clover API:** An application programming interface linking the Clover Service and the Third Party Services, including any Third Party POS System App. Each provider of a Third Party Service is responsible for ensuring that such Third Party Service will function properly with the Clover API.
- (c) **Clover App Market:** The Clover-supported application marketplace, and that portion of the Clover Service website, through which Third Party Services apps and/or Service Plans may be subscribed to or purchased.
- (d) **Clover Integrated Service:** The combination of (i) the Clover Service for Card transaction processing services only, which we will provide for you, and (ii) a Third Party Service, including a Third Party POS System App, which Third Party Service may be accessible from the Clover App Market or through the Clover API.

- (e) **Clover Marks:** The trademarks or service marks used in connection with the Clover Service. Clover Marks are considered “Marks” as defined in Section 41.
- (f) **Clover Service:** (i) The website associated with the Clover Service, if any, but not any website associated with an application marketplace accessible via the Clover Service; (ii) the object code version of the software applications resident on a Device at the time we provide you with the Device or “pushed” to your Device by us, but excluding any such software applications developed by the Bank; (iii) the object code version of the software that enables such applications listed in (ii) above; (iv) Encryption and Tokenization; (v) Bank-provided internet-based services; and (vi) any related updates (including software maintenance or bug fixes), materials, documentation, and derivative works released by us from time to time, all of which are designed to assist with the management of your business and facilitate the provision of certain Services (e.g., payment processing) under the Agreement. For the avoidance of doubt, the term software in the preceding sentence does not include any software that may be obtained by you separately from the Clover Service (e.g., any applications downloaded by you through an application marketplace) or any Third Party POS System App software. The Clover Service is deemed part of the “Services,” as defined in and provided under the Agreement.
- (g) **Customer:** An individual or business that purchases goods or services from you, the transaction for which utilizes the Clover Service.
- (h) **Customer Information:** Information about your Customers (e.g., name, mailing address, e-mail address, telephone number) obtained in connection with your use of the Clover Service.
- (i) **Device:** The Clover Station, Clover Mini, Clover Flex, or any other form factor identified by us from time to time as compatible with and capable of supporting the Clover Service. For avoidance of doubt, Devices are deemed “Equipment” as defined in Section 24.
- (j) **Service Plan:** A limited, full, or expanded version of the Clover Service available on the Clover App Market for a Device.
- (k) **Third Party POS System App:** A Third Party Service application for a point of sale system which does not include Card transaction processing services.

26.2 Clover Service Limitations and Requirements.

- (a) The Clover Service does not function with every mobile device. We may alter which Devices are approved as compatible with the Clover Service in our discretion from time-to-time.
- (b) You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Clover Service that are posted on the Clover website or otherwise provided or made available to you.
- (c) You are solely responsible for verifying that all information and data loaded onto a Device (e.g., menus) by us, our vendors, or our service providers at your request are accurate prior to your business use of such Device. We, our vendors, and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.
- (d) With respect to each Customer who requests the delivery of transaction receipts via text message or email, such Customer must enter his phone number or email address in the appropriate space displayed on the Device himself; you are NOT permitted to add or modify any Customer Information (including phone number and email address) on behalf of a Customer.
- (e) With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent check box displayed on the Device himself; you are NOT permitted to add or modify a Customer’s consent indication on his behalf.
- (f) You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer’s provided phone number, street address, and/or email address if the Customer has specifically consented by checking (himself) the applicable box displayed on the Device.
- (g) NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE CUSTOMER INFORMATION AND TO ALLOW YOUR CUSTOMERS TO ELECT TO RECEIVE MARKETING MATERIALS, SOME STATES MAY LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT: (I) YOUR USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS; (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS; AND (III) YOU WILL AT ALL TIMES STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

26.3 Clover Service Plans.

- (a) **Service Plan Requirement.** A Service Plan is required to activate and to use each Device. The same Service Plan is required for each Device associated with your Merchant Account. Certain Devices may not be compatible with all Service Plans. Each Service Plan is available from the Clover App Market and includes the applications listed for that Service Plan on the Clover App Market.
- (b) **Authorized Sublicensor;** We are an Authorized Sublicensor of all Service Plans, as referenced in the Clover End User License Agreement (“**Clover EULA**”). Fees for Service Plans will be disclosed on the Clover App Market and will be charged by Clover on our behalf. The Service Plans, including their names, may change from time to time, and the then-available Service Plans will be reflected in the Clover App Market or in other documentation provided to you.
- (c) **Authorized Sublicensor Terms.** Devices sold or rented to you by us require activation via the Clover App Market. For each Service Plan, notwithstanding the terms of the Clover EULA or information on the Clover App Market that may be to the contrary: (i) we, and not Clover, will be deemed to have sold and/or licensed to you, and you will be deemed to have subscribed to from us, and not Clover, that Service Plan; (ii) we, and not Clover, are responsible to you for providing that Service Plan, and that Service Plan will not be a Third Party Service; (iii) this Section 26, and not the Clover EULA, will govern the use of all Service Plans; (iv) if a monthly fee for that Service Plan is indicated on the Clover App Market, then you will be obligated to pay us that fee as further described in the Agreement; provided, however, that Clover will, on our behalf, collect that fee from you; and (v) your authorization for us to deduct and set off against your settlement funds and debit your Settlement Account for amounts due under the Agreement will apply to any amounts deducted, set off, debited, or collected by Clover for Service Plans.
- (d) **Effect of Service Plans for New Station Models on Service Plans for Other Devices.** If after February 26, 2020, you purchase or a Clover Station Pro or any later Device model (each a “**New Station Model**”) for your Merchant Account, the pricing and manner of billing and charging for Service Plans for other Devices associated with that Merchant Account in effect prior to February 26, 2020 (including for any earlier Clover Station models) will change to the selected Service Plan and pricing and manner of billing and charging for the New Station Model.

- 26.4 Encryption and Tokenization.** The Clover Service includes the Encryption and Tokenization functionality of the Data Protection Services, as described in Section 25.2, which functionality we will provide to you on Devices to encrypt and tokenize Customers' PANs only in response to Authorization requests, all as defined and further described in, and subject to the terms of, Section 25.
- 26.5 Fees.** Upon termination of the Clover Service or the Agreement for any reason, you remain responsible for the full amount of the Clover Service License Fees through the end of the calendar month in which such termination is effective.
- 26.6 Account Registration.** We may require you to register and create a "Member" or "Merchant" account to use the Clover Service. When prompted by our registration process, you agree to provide true, accurate, current, and complete information about yourself and your business; and you agree to maintain and update this information to keep it true, accurate, current, and complete. If any information provided is untrue, inaccurate, not current, or incomplete, we have the right to terminate your Clover Service account ("**Account**") and to stop providing you the Clover Service.
- 26.7 Privacy and Data Use.**
- (a) All data that you provide or that is collected from you in connection with your use of the Clover Service (collectively, "**Account Data**") is collected by Clover, not Bank; therefore, the use and sharing of such Account Data is controlled by the Clover Network, Inc. Privacy Policy (available at https://www.clover.com/privacy_policy). You acknowledge and agree that we may access such Account Data upon our request to Clover, and our use of your Account Data is governed by the terms set forth in the Agreement. You are responsible for all electronic communications sent to us or to any Third Party (including Clover Network, Inc.) containing Account Data. When we receive any communication containing Account Data, we assume you sent it to us.
 - (b) If you elect Clover Integrated Service, then, in addition to the above and other rights we have to share information, you authorize us and Clover to share any information regarding your use of the Clover Service, including transaction information and Account Data, with the Third Party POS System App provider and any other Third Parties to the extent necessary for you to receive Clover Integrated Service.
 - (c) In addition to your other obligations with respect to Cardholder data, Transaction Data, and other information (including your obligations under Section 4 and Section 8), you must prevent unauthorized access to and use of Account Data and you must immediately notify us if you become aware of any loss, theft, or unauthorized use of any Account Data. We may deny you access to the Clover Service, in whole or in part, if we believe that any loss, theft, or unauthorized use of any Account Data or access to information has occurred.
- 26.8 Indemnification.** In addition to your indemnification, defense, and hold harmless obligations in Section 13 and elsewhere in the Agreement, you agree to defend, indemnify, and hold harmless Bank, and its Affiliates, employees, directors, and officers, from and against all Claims brought against such parties, and all related Losses, to the extent such Claims arise from: (a) your use, sharing, or disclosure of any Customer Information obtained in connection with your use of the Clover Service; or (b) the content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of the Clover Service.
- 26.9 Support.** For all Clover Service support (including questions related to a Device), please contact the dedicated Clover support center at 1-800-430-7161 or at cloversupport@firstdata.com.

27. AMERICAN EXPRESS OPTBLUE PROGRAM SERVICE

- 27.1 Definitions.** As used in this Section 27 or otherwise in connection with the American Express OptBlue Service, the following capitalized terms have the following meanings:
- (a) **American Express Card or Card:** (i) Any card, account access device, or payment device or service bearing American Express or American Express Affiliates' Marks and issued by an Issuer or (ii) a Card Number. The term "Card", as used and defined in this Section 27, shall also mean "Card" and "Credit Card", as referenced elsewhere in the Agreement, for purposes of the American Express OptBlue Service and American Express Card Transactions only.
 - (b) **American Express:** American Express Travel Related Services Company, Inc., a New York corporation.
 - (c) **Card Member:** 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. The term "Cardholder" may be used to mean a Card Member in this Section 27 and in other parts of the Agreement with respect to American Express Card Transactions and the American Express OptBlue Service.
 - (d) **Charge:** A payment or purchase made on the Card.
 - (e) **Establishments:** Any or all of your or your Affiliates' Locations, including those opened or used in the future. References to "Locations" elsewhere in the Agreement shall be deemed to include Establishments for purposes of American Express Card Transactions and the American Express OptBlue Service.
 - (f) **Merchant Operating Guide:** The American Express Merchant Operating Guide, the provisions of which constitute Payment Network Rules, as made available and from time to time updated by American Express at www.americanexpress.com/merchantopguide, which link and website may change from time to time. The Merchant Operating Guide applies only to American Express Card Transactions and the American Express OptBlue Service.
 - (g) **Other Payment Products:** Any charge, credit, debit, stored value, prepaid, or smart cards, account access devices, or other payment cards, services, or products other than the Card (e.g., Cards branded with the Marks of Visa, Mastercard, or Discover or with the Marks of one or more Debit Networks).
 - (h) **Transaction:** A Charge or Credit completed by the means of a Card.
- 27.2 American Express OptBlue Service and Merchant Qualification Criteria.** If you are qualified and continue to qualify for the American Express OptBlue Service as set forth in this Section 27 and under Payment Network Rules, including the Merchant Operating Guide, we will provide full acquiring services (including Authorization, processing, and settlement) to you for your American Express Card Transactions (collectively, the "**American Express OptBlue Service**"). Unless you are deemed exempt under the Payment Network Rules, in order to qualify, you must meet the following criteria: (a) your total annual American Express volume is less than \$1,000,000; (b) your business is not of a merchant category type prohibited by American Express; and (c) you are not a franchisee of any franchise excluded from eligibility for the OptBlue Program by American Express. In addition, you must continue to qualify to receive the American Express OptBlue Service as further described in Section 27.6. You authorize us to submit American Express Card Transactions to, and receive settlement from, American Express on your behalf. You may elect to accept Other Payment Products without also accepting American Express Cards.
- 27.3 American Express Transaction Data.** The transaction data you collect to facilitate the Charge must be or have been provided directly to you by the Cardholder. You must not accept or have accepted transaction data from, nor shall you provide or have provided transaction data to, any Third Parties other than your Covered Parties (as defined in the Merchant Operating Guide). If you fail to comply with this requirement, in addition to other rights and remedies regarding "monitoring" that may be exercised against you: (a) your Merchant Account may be assessed fees, penalties, assessments, or other amounts, which amounts are set by American Express and which you must pay; (b) we may suspend Card acceptance

privileges at your Establishments; and (c) we may terminate the American Express OptBlue Service and the Agreement. When Cardholders pay you using a payment “app” or “e-wallet” account (which a Cardholder may have created by providing Cardholder information when the account was established), the transaction data collected to facilitate the Card Not Present Transaction has already been provided directly by the Cardholder, and you are not required to have the Cardholder re-enter the transaction data.

- 27.4 Disclosure and Use of Data Collected Under Agreement.** We may disclose to American Express data and information that you provide and that we collect as part of performing American Express payment processing services or transaction related services, including information about you. American Express may use the information that you provide at the time of setup to screen and/or monitor you in connection with Card marketing and administrative purposes. American Express also may use such information to perform its responsibilities in connection with American Express Card acceptance, to promote the American Express network, to perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes, and for important transactional or relationship communications from American Express. American Express may otherwise use and share your information for business purposes and as permitted by Applicable Law. American Express uses reasonable administrative, technical, and physical security measures to protect your information consistent with the sensitivity of the information. The rights set forth in this Section 27.4 are in addition to all other rights under the Agreement to disclose and use information related to you, your business, individuals associated with your business, your Affiliates, the Services we provide you, and your Transaction Data, including the rights set forth in Section 8.6, Section 9.6, Section 10.1, and Section 20.
- 27.5 Consent for American Express to Contact You by Phone, eMail, Text, or Facsimile.** You agree that, when providing your contact information to us, you consent to receiving commercial marketing messages from American Express, including important information about American Express products, services, and resources available to you. These messages may be sent to the mailing address, phone numbers, email addresses, and fax numbers that you provide. If you provide a wireless phone number, you consent that (a) you may be contacted at that number and (b) the communications sent may include autodialed short messages service (SMS or “text”) messages, and automated and prerecorded calls. If you provide a fax number, you agree that you may be sent fax communications.
- Opt-Out:** You may opt-out of receiving American Express commercial marketing communications about products and services by calling our Customer Service team. You may continue to receive marketing communications from American Express while American Express updates its records to reflect your opt-out choice. If you have opted-out, you may continue to receive important transactional or relationship communications from American Express.
- 27.6 Continuing Qualification Criteria.** After you have been qualified to receive the American Express OptBlue Service, you must continue to meet American Express’ criteria in order to continue to use the American Express OptBlue Service. Currently such criteria are (each, a “**Continuing Qualification Threshold**”): (a) the total volume of American Express Card Transactions in any rolling twelve (12) month period for all your locations is not more than \$1,000,000 and (b) the total monthly volume of American Express Card Transactions for all your locations for any three (3) consecutive months does not exceed \$100,000 per month.
- 27.7 Conversion to an American Express Direct Relationship.** If you fail to continue to meet any Continuing Qualification Threshold, we may stop providing you Services, change the Bank Fees for American Express Transactions, and change the contract terms applicable to American Express Transactions. In addition, we may convert you to a direct American Express Card acceptance relationship with American Express (“**American Express Direct Conversion**”). You agree that upon American Express Direct Conversion: (a) you will not receive the American Express OptBlue Service; (b) you will be bound by American Express’ then-current Card Acceptance Agreement with respect to American Express Transactions; (c) we will provide an Authorization response for your American Express Transactions, and may charge Bank Fees and other amounts (including changed fees and amounts) for our Services; (d) American Express will settle and fund your American Express Transactions and will provide you its own agreement, including fees, governing those transactions; (e) we are not responsible for and assume no liability for the funding or settlement of your American Express Transactions or any related disputes; (f) the Bank will not provide any services in connection with your American Express Transactions; and (g) the Agreement will remain in full force and effect, both with respect to your American Express Transactions (excluding terms related to our settlement of such transactions) and with respect to all other Cards and Services.
- 27.8 No Assignment of Payments.** You are not permitted to assign to any Third Party any payments due to you under the Agreement as the result of American Express Transactions, and all indebtedness arising from American Express Card charges will be for bona fide sales of goods and services (or both) at your establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that you may sell and assign future American Express Card Transaction receivables to us, our Affiliates, and/or any other cash advance funding source that partners with us or our Affiliates.
- 27.9 Third Party Beneficiary Rights.** American Express is a direct and intended third party beneficiary of the Agreement with third party beneficiary rights, but not obligations, to the Agreement and the terms of this Section 27 that will fully provide American Express with the ability to enforce any terms of the Agreement that apply to American Express, including American Express Card acceptance and transaction processing, against you.
- 27.10 Your Right to Opt Out of American Express Card Acceptance.** You may opt out of accepting American Express Cards at any time without directly or indirectly affecting your rights to accept any Other Payment Products.
- 27.11 Collections.** You may not bill for or collect from any American Express Cardholder any purchase or payment on the American Express Card unless Chargeback has been exercised, you have fully paid for such Charge, and you otherwise have the right to do so.
- 27.12 Excessive Disputes.** You may be subject to various fees, penalties, assessments, and other amounts, which amounts are set by American Express and which you must pay, including amounts for excessive disputes. Some fees and assessments are for special products or services, while others may be applied based upon non-compliance with American Express policies and procedures. Many non-compliance fees and assessments can be avoided by correcting the actions that are causing such non-compliance.
- 27.13 Refund Policy.** Your refund policy for purchases on American Express Cards must be at least as favorable as your refund policy for purchases on Other Payment Products, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Applicable Law.

28. CLOVER GO SERVICE

- 28.1 Clover Go Service.** Your mobile payments service (“**Clover Go Service**”) enables you to accept card-based payments using: (a) a smart phone or other supported mobile device that you provide (“**Your Device**”); (b) an approved card reader you obtain from us (“**Clover Go Reader**”) and which constitutes “Equipment” under Section 24; and (c) a non-modifiable (object code) version of the Clover Go software application (“**Clover Go App**”) that you download from the Apple App Store or Google Play and activate with us. The Clover Go Service does not support offline point of sale activities and requires internet connectivity for proper functioning. We may update the Clover Go Service from time to time.
- 28.2 Mobile Device Compatibility.** Only Apple iOS and Google Android operating systems are compatible with the Clover Go Service, and only certain types of mobile devices using Apple iOS and Google Android are supported for the Clover Go App and Clover Go Service. Please contact us for information on whether a particular mobile device is supported for the Clover Go App and Clover Go Service.

- 28.3 Clover Go Terms.** The Clover Go Terms of Service (“**Clover Go Terms**”) also apply to the Clover Go Service; supplement, and are a part of, the terms of the Agreement; and will be presented to you electronically, as part of the activation process for the Clover Go App, on an “in-application” basis. You will be required to “click to agree” to the Clover Go Terms before being permitted to use the Clover Go App. If we update the Clover Go Terms you will be required to “click to agree” to the updated Terms in order to use the Clover Go App again.
- 28.4 Encryption and Tokenization.** The Clover Go Service includes the Encryption and Tokenization functionality of the Data Protection Services, as described in the Clover Go Terms, which we will provide to you through the Clover Go Reader to encrypt and tokenize your customers' PANs only in response to Authorization requests, all as further described in and subject to the Clover Go Terms.
- 28.5 Clover Go on Demand.** If the only Equipment you purchase from us is a Clover Go Reader then, based on the pricing and other terms offered to you, the Clover Go Service that you receive is “Clover Go On Demand.” As a result, you may not be eligible for certain promotions and discounts otherwise available to Bank customers.

29. WIRELESS SERVICES

- 29.1 Wireless Services.** We will provide you wireless data communication services (“**Wireless Services**”) offered by certain cellular telephone and data networks (“**Wireless Networks**”) that allow you to: (a) use Equipment that we have enabled and approved for use with Wireless Services (for purposes of this Section 29, “**Wireless Equipment**”) in order to process, in accordance with the terms of the Agreement, Card transactions that you submit to us through wireless vendors we have selected (“**Wireless Vendors**”); or (b) transmit to us certain other wireless communications.
- 29.2 Wireless Software.** Software that you or your designee download from our systems onto Wireless Equipment in connection with your purchase and use of Wireless Services (“**Wireless Software**”) is considered Software under, and is subject to all terms and provisions of, the Agreement, including Section 2 and Section 9. Notwithstanding the foregoing, and for the avoidance of doubt, your license to Wireless Software and Wireless Services is limited to your operation of Wireless Equipment under the Agreement.
- 29.3 Changes, Interruptions, and Suspensions.** We, the Wireless Vendors, and the Wireless Networks reserve the right, at any time and from time to time, to: (a) change any and all aspects of the Wireless Services, Wireless Networks, Wireless Equipment, and Wireless Software, including accessibility and functionality; (b) interrupt the Wireless Services and your access to the Wireless Networks for maintenance activities; and (c) suspend the Wireless Services and your access to the Wireless Networks for any lawful reason, including to protect any network’s integrity, to comply with Applicable Law, to comply with Payment Network Rules, and to protect us and Wireless Networks from potential liability or harm. We will give you commercially reasonable notice of any suspension of access to Wireless Services and Wireless Networks.
- 29.4 Licenses.** In connection with your obligations under Section 3.1 and Section 3.2, you must obtain all licenses, permits, and other authorizations required by the Federal Communications Commission or any other regulatory authority for the lawful operation of Wireless Equipment.
- 29.5 Limitations of the Wireless Services.** You acknowledge and agree that: (a) because Wireless Services use radio transmissions, Wireless Services can’t be provided unless your Wireless Equipment is in the range of an available Wireless Network that has sufficient network capacity to handle your communication; and (b) weather, topography, buildings, your Wireless Equipment (including its location), and other conditions that we and Wireless Vendors don’t control may result in failed transmissions or other problems.

30. GIFT CARD SERVICES

- 30.1 Definitions.** As used in this Section 30 or otherwise in connection with Gift Card Services, the following capitalized terms have the following meanings:

- (a) **Affiliated Issuer(s):** Any Client Affiliate, licensee, or franchisee based in the United States that the parties authorize to issue Gift Cards pursuant to the Program.
- (b) **Consumer:** Any person that purchases a Gift Card from Client pursuant to the Program. A Consumer may be the same person as a Gift Card Cardholder, or the Consumer may be a Third Party that gives a Gift Card to the ultimate Gift Card Cardholder.
- (c) **Database:** The information repository systems and software owned and operated by us or our suppliers.
- (d) **Designated Location:** Any place (including a store, direct marketing program, or website) where Client, a Client Affiliate, a Participating Franchisee of Client (if any), or a Third Party aggregator or distributor designated by the parties sells Gift Cards to Consumers, or accepts Transactions from Gift Card Cardholders redeeming Gift Cards, or authorizes others to sell or redeem Gift Cards.
- (e) **Gift Card:** Either a Client-issued stored value card or other form factor with a magnetic stripe or bar code or contactless chip which accesses Gift Card Data or a Client-issued virtual account that similarly accesses Gift Card Data.
- (f) **Gift Card Authorization Equipment:** All point of sale devices, telecommunications facilities, Interfaces, and other equipment required to electronically transmit Transaction data from Designated Locations to us.
- (g) **Gift Card Cardholder:** Any person possessing or using a Gift Card or Gift Card number.
- (h) **Gift Card Data:** The Transaction record and current value of each Gift Card recorded in the Database.
- (i) **Gift Card Number:** The identifying number of a Gift Card.
- (j) **Gift Card Production Company:** A company selected and retained by us to produce Gift Cards for the Program.
- (k) **Gift Card Services:** The services provided by us in connection with the Program as further described in this Section 30.
- (l) **Interfaces:** Any POS Terminal, internet, and report and file exchange messaging or data layout interfaces.
- (m) **POS Terminal:** A stand-alone or integrated point of sale terminal (including its operating software), device, or system certified to our specifications in order to be able to process Transactions with Gift Cards under the Program
- (n) **Program:** The stored value card program established and administered by Client, supported by the Services provided by us pursuant to the terms and conditions specified in the Agreement.
- (o) **Specifications:** The specifications of Bank’s proprietary closed loop gift card platform and transaction processing system, including any settings, Interfaces, or software related thereto.
- (p) **System:** The proprietary closed loop gift card platform(s) and transaction processing system, including any Interfaces and related software, that is used by us to provide the Gift Card Services.
- (q) **Terms and Conditions:** Client’s terms and conditions governing Gift Card Cardholders’ use of Gift Cards and other required disclosures.
- (r) **Transaction:** Any transaction (including activations, authorizations, balance inquiries, and redemptions) transmitted to the Database through Client’s account, including any transaction transmitted via any of the following methods: (i) a POS located at a Designated Location; (ii) digitally through a mobile application, website, or gateway designated by Client; (iii) an electronic batch file transmission to us; (iv) our help desk or other back office tools; (v) the IVR or a call center; (vi) a Third Party aggregator or other Third Party designated by Client; (vii) ad hoc transaction requests submitted by Client, including bulk file requests; and (viii) any other source designated by Client.

30.2 Responsibilities of Bank. We will provide the following Gift Card Services in connection with the Program:

- (a) **Gift Card Production.** We will arrange for the production of Gift Cards for the Program in accordance with the specifications and fees set forth on the Gift Card order form (which may be titled “**Gift Card Set Up Form**” or may have a different title, and which may be in paper form or electronic) (the “Gift Card Set Up Form”), which is incorporated by reference herein.
- (b) **Database; Gift Card Data.** We will maintain a Database of Gift Card Data to support the Program. Gift Card Data will be retained on the Database for twenty four (24) months following the date the Gift Card balance reaches zero. At the end of such period, we may remove the Gift Card Data and all transactional history corresponding to such Gift Card Data from the Database and archive such data in any manner reasonably determined by us. We and our Affiliates may use and disclose any compilation or aggregation of any Gift Card Data so long as such compiled or aggregated Gift Card Data do not specifically relate to and are not identifiable with Client or any specific Transaction.
- (c) **Authorizations and Other Transactions.** We will respond to Authorization requests from Gift Card Authorization Equipment and process Authorization requests received at our data processing center in our designated format. Authorization responses will be based on the available Gift Card balance recorded in the Database. In the event that the amount of the Authorization is less than the transaction price, Client will be responsible for obtaining that difference from the Gift Card Cardholder via another payment method. AUTHORIZATION BY US ONLY INDICATES THE AVAILABILITY OF SUFFICIENT VALUE ON A GIFT CARD ACCOUNT AT THE TIME OF AUTHORIZATION AND DOES NOT WARRANT OR INDICATE THAT THE PERSON PRESENTING THE GIFT CARD OR GIFT CARD NUMBER IS AUTHORIZED TO USE SUCH GIFT CARD OR GIFT CARD NUMBER.
- (d) **IVR; Call Center.** We shall provide an automated interactive voice response system (“**IVR**”) accessible from the United States through a toll free telephone number through which Client and Gift Card Cardholders may obtain Gift Card balances.
- (e) **Help Desk.** We will provide a help desk through which Client may process selected non-financial transactions under the Program.
- (f) **Enhancements.** From time to time, we may make available product, service, and System developments, enhancements, improvements, and modifications (“**Enhancements**”). If you would like to utilize an Enhancement, you will be responsible for making any necessary modifications to the Gift Card Authorization Equipment, including upgrading the equipment to the most recent version of our Specifications and installing Updates in accordance with Section 9.5. You acknowledge and agree that Enhancements shall remain our sole and exclusive property and shall be protected as our confidential information.
- (g) **Settlement and Funds Movement.** At Client’s election, we will provide Client with the settlement and funds movement services in the United States through the ACH network.

30.3 Responsibilities of Client. The responsibilities of Client with respect to Gift Cards are set forth below and elsewhere in this Section 30.

- (a) **Distribution.** Client will actively promote the Program to prospective customers and/or distributors.
- (b) **Gift Card Authorization Equipment.** Client will: (i) provide and maintain all Gift Card Authorization Equipment that is required for Client to electronically transmit Transaction data from Designated Locations to the System; and (ii) perform any development, programming, or other modifications to the Gift Card Authorization Equipment and associated software that is necessary for Client to access the System and use the Gift Card Services. The Gift Card Authorization Equipment must be certified by us for functionality with our System prior to Program launch. Client is responsible for ensuring that any future changes to Gift Card Authorization Equipment remain compatible with the Specifications and resolving any related technical issues. Client will be responsible for and will hold us harmless from any Losses arising from any delays caused by the incompatibility of Gift Card Authorization Equipment with the Specifications.
- (c) **Issuance of Gift Cards.** Client will be the issuer of all Gift Cards issued under the Program, with respect to all Gift Cards that are sold at Designated Locations. Client will inform Gift Card Cardholders in writing of the Terms and Conditions containing information as required by Applicable Law, including any fees or charges associated with Gift Card transactions or inactivity, procedures to report lost or stolen Gift Cards (if any), minimum or maximum Gift Card transaction amounts, Client’s policy concerning whether lost or stolen Gift Cards will be replaced, whether the Gift Card is redeemable for cash, and any expiration period for the Gift Card. Client will provide the Terms and Conditions to Gift Card Cardholders at Designated Locations, or in such manner as required by Applicable Law.
- (d) **Program Procedures.** Client will be solely responsible for: (i) defining and implementing the Program Procedures; (ii) assuring that the Program Procedures comply with the Specifications and Applicable Law; and (iii) training Client employees and Participating Franchisees regarding, and supervising their compliance with, Program Procedures. Client will coordinate with us in implementing the Program and in performing the Gift Card Services. Client is liable for any disputes related to the content of its Program Procedures or the manner in which its Program Procedures are executed by Client or, alternatively, by us in accordance with Client’s instructions. Client is responsible for taking measures to prevent or reduce fraud in connection with its Program.
- (e) **Participating Franchisees.** Client will be responsible for gathering and providing to us settlement banking information (if applicable) and location details, including POS information, for any Participating Franchisees that Client permits to join the Program pursuant to the Program Procedures.
- (f) **Daily Reconciliation; Settlement.** Client will reconcile our daily reports to its own records and make necessary adjustments to Gift Card accounts. Client will be responsible for settlement of funds among Designated Locations (as applicable to Program setup). We will have no liability for errors resulting from Client’s actions in performing such reconciliations and settlements.
- (g) **Risk of Loss.** For Gift Cards, Gift Card carriers, and any other tangible items ordered through us (including Gift Cards and other items produced by any Gift Card Production Company), Client assumes the risk of loss for Gift Cards upon their delivery to Client (except that Client has all risk of loss, before and after delivery, for any improper or unauthorized use of pre-activated Gift Cards). Client will be responsible for all risk of loss to any tangible item that Client orders from any other Third Party.

30.4 Compliance with Applicable Law and AML/Sanctions Laws. As part of its obligation to comply with Applicable Law and AML/Sanctions Laws, Client acknowledges and agrees that:

- (a) **General.** Client is solely responsible for: (i) monitoring, interpreting, and complying with Applicable Law and AML/Sanctions Laws that apply to issuance and sale of Gift Cards under the Program and Program Procedures; and (ii) determining the particular disclosures, formulas, calculations, procedures, and actions required to comply with Applicable Law and AML/Sanctions Laws, the terms and conditions of Gift Card Cardholder accounts, and any other business requirements of Client; including if applicable, screening Client’s Gift Card Cardholders and their transactions against applicable Sanctions lists, monitoring for dealings involving Sanctioned Countries, and otherwise taking measures reasonably designed to ensure compliance with AML/Sanctions Laws.
- (b) **FinCEN and Other.** Client will not allow Gift Cards to be loaded with: (i) a balance that exceeds \$2,000 at any time; or (ii) more than \$2,000 in the aggregate during any calendar day. Client acknowledges and agrees that among all the participants in its prepaid program, Client is the party with principal oversight and control and that in addition to acting as the “seller of prepaid access”, if Client’s prepaid program fails to meet

the applicable exemptions under the 2011 FinCEN Prepaid Access Final Rule, Client will serve as the “provider of prepaid access” and comply with all requirements of law applicable to providers of prepaid access, including maintaining registration with The Financial Crimes Enforcement Network as a money service business; maintaining compliant AML policies, procedures, and internal controls; monitoring and reporting suspicious activity; collecting and verifying identification information from each person obtaining prepaid access; maintaining historical transaction records; and maintaining policies, procedures, and internal controls designed to ensure compliance with Sanctions.

- 30.5 Transition Services.** In our sole discretion following a request from Client, we may elect to continue to provide Gift Card Services for unexpired Gift Cards that were activated prior to the effective date of termination of this Section 30, for up to twelve (12) months following the date this Section 30 was to have terminated (“**Transition Period**”). Gift Card Services provided during the Transition Period are subject to all terms of this Section 30 and the Agreement, including your obligation to pay fees for Gift Card Services, except that we may require advance payment. Upon the effective date of termination, unless otherwise agreed in writing by us and Client, we will have no further obligation to establish new Gift Cards on the Database, except when a replacement Gift Card is issued to replace a lost or stolen Gift Card.
- 30.6 Reporting.** During the term of this Section 30 (including during any Transition Period), we will provide Client with Gift Card Data reports to the extent that: (a) Gift Card Data is available within the Database; and (b) such reports are in our standard format. We will use reasonable efforts to provide such standard reports within ninety (90) days of Client’s request. In our sole discretion, we may provide additional or custom reports or report formats, as may be requested by Client, at a fee and within a timeframe determined by us.
- 30.7 Survival.** All terms of this Section 30 shall survive during any Transition Period. In addition, the provisions of Section 30.1, 30.4, 30.7, 30.8, and 30.9 shall survive the termination of the Gift Card Services and the expiration or termination of any Transition Period.
- 30.8 Indemnification.** In addition to your indemnification, defense, and hold harmless obligations in Section 13 and elsewhere in the Agreement, you agree to defend, indemnify, and hold harmless Bank, and its Affiliates, employees, directors, and officers, from and against all Claims brought against such parties, and all related Losses, to the extent such Claims arise from: (a) any dispute between any Affiliated Issuer and Gift Card Cardholder, or between you and any Affiliated Issuer and/or Gift Card Cardholder; (b) any instructions or procedures that you provide us in connection with the Program, or our compliance therewith; (c) 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; or (d) the acts and omissions of Affiliated Issuers, Third Party aggregators, Third Party distributors, and other Third Parties that you use in connection with the Gift Card Services.
- 30.9 Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, OUR CUMULATIVE AGGREGATE LIABILITY FOR ANY LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES ARISING OUT OF RELATED TO THIS SECTION 30 FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL NOT EXCEED THE LESSER OF (A) TWENTY THOUSAND DOLLARS (\$20,000), OR (B) THE AMOUNT OF FEES RECEIVED BY US FOR THE GIFT CARD SERVICES (WHICH AMOUNT EXCLUDES THIRD PARTY BASED FEES) PURSUANT TO THE AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH YOUR FIRST CLAIM UNDER THIS SECTION 30 AROSE. THESE LIMITS ARE PART OF THE LIMITATION ON LIABILITY SET FORTH IN SECTION 15.2, NOT AN ADDITIONAL LIMITATION ON LIABILITY.

31. MASTERCARD INSTALLMENT PAYMENT PROGRAM AND VISA TOKENIZATION PROCESS FOR BROWSERS

- 31.1** You acknowledge that Mastercard operates an installment repayment program which permits you to accept Credit Card transactions that enable Cardholders to pay Issuers in installments pursuant to an installment repayment agreement entered into between such Cardholder and the relevant Issuer (the “**Mastercard Installment Payment Program**”). There are no enrollment, registration or technical work requirements applicable to you, and you are not required to undertake any additional action to accept such Credit Card transactions. Any payment made by way of installments by a Cardholder to the relevant Issuer will not affect the amount we settle to you pursuant to Section 5, and shall be subject to any Bank Fees, Third Party Based Fees and all other amounts due to us. You may opt out of the Mastercard Installment Payment Program by notifying us using our customer service platform, and we shall inform Mastercard of your election. If you elect not to participate in the Mastercard Installment Payment Program, you acknowledge that you have the ability to opt in to the Mastercard Installment Payment Program at any time thereafter.
- 31.2 Visa Tokenization Process for Browsers.** You acknowledge that Visa permits commercial internet browsing applications to replace each Cardholder’s Card number with a Visa Card Network token where such Cardholders automatically populate their details while carrying out a Credit Card transaction on your website (the “**Visa Tokenization Process for Browsers**”). Visa Card Network tokens that are provided by commercial internet browsing applications pursuant to the foregoing can be accepted and processed similarly to Card numbers and may provide increased security for payment credentials, increased Authorization approvals, and the ability to participate in incentives that may be offered by Visa for transactions conducted with such Visa Card Network tokens. You acknowledge that you have the ability to opt out of the Visa Tokenization Process for Browsers by notifying us in accordance with this Agreement. Opting out of the Visa Tokenization Process for Browsers will not affect the capability of commercial internet browsing applications to automatically populate the relevant form with a Cardholder’s Card number where such Cardholder carries out a Credit Card transaction on your website.

32. RESERVED

33. ECOMMERCE PAYMENT PLATFORM

33.1 eCommerce Payment Platform.

- (a) **Description of the eCommerce Payment Platform.** The e-commerce payment processing gateway services and related software include: (i) Card transaction data submission, authorization, and data settlement related to the Services we provide under the Agreement; (ii) fraud management, Cardholder authentication, and customer information management tools for Card transactions and your customer registrations and updates; (iii) Card account number tokenization; (iv) electronic invoicing and data import tools; (v) the account updater and PayPal acceptance services (if selected by you via separate addendum); and (vi) additional services that may become available in the future (collectively, “**eCommerce Payment Platform**” or “**ePP**”). The eCommerce Payment Platform also includes any features described in the Documentation for the eCommerce Payment Platform.
- (b) **ID and Password Required.** You must select and enable an ID and password to access the eCommerce Payment Platform. Your use of, and responsibility and liability related to, such ID and password are subject to the other terms of the Agreement.
- (c) **Role of CyberSource Parties and Subcontractors.**
- (i) The eCommerce Payment Platform services may be performed by one or more of our subcontractors, including CyberSource Corporation (“**CyberSource**”) or any of CyberSource’s affiliates or successors in interest (together with CyberSource, the “**CyberSource Parties**”), whether such subcontractors are located within or outside the United States (such subcontractors, including the CyberSource Parties, are referred to individually as a “**eCommerce Payment Platform Subcontractor**” and collectively as the “**eCommerce Payment Platform Subcontractors**”).
- (ii) Except as otherwise provided by Applicable Law, the eCommerce Payment Platform Subcontractors have no liability to you in connection with the eCommerce Payment Platform.

- (iii) Each eCommerce Payment Platform Subcontractor is a third party beneficiary of this Section 33.1 and, with respect to the eCommerce Payment Platform services, of Section 3.1, Section 3.2, Section 9.3, Section 14, and Section 33.2; with the same rights that we have to enforce those Sections, but only with respect to the eCommerce Payment Platform services.
- (iv) We and each eCommerce Payment Platform Subcontractor may: (A) in order to provide the eCommerce Payment Platform services to you, disclose to Third Parties, access, process, and store Your eCommerce Payment Platform Information within and outside the United States; and (B) use and analyze Your eCommerce Payment Platform Information to make enhancements, improvements, and other modifications to services (including enhancements, improvements, and modifications that may benefit Third Parties). As used herein, “Your eCommerce Payment Platform Information” means any information received or processed in connection with providing the eCommerce Payment Platform to you, including data identifiable or relating to you or your customers (whether natural persons or legal entities).

33.2 Disclaimers Applicable to the eCommerce Payment Platform.

- (a) WE HAVE NO OBLIGATION TO ATTEMPT TO MONITOR OR REGULATE THE CONTENT OR PROVISION OF YOUR PRODUCTS OR SERVICES. WE AND eCOMMERCE PAYMENT PLATFORM SUBCONTRACTORS SHALL HAVE NO LIABILITY IN CONNECTION WITH YOUR OFFERING OR SALE OF YOUR PRODUCTS AND SERVICES.
- (b) WE DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY LOSS (HOWEVER OCCURRING, INCLUDING NEGLIGENCE) ARISING FROM OR RELATED TO: (I) YOUR FAILURE TO PROPERLY ACTIVATE, INTEGRATE, OR SECURE YOUR eCOMMERCE PAYMENT PLATFORM ACCOUNT(S); OR (II) FRAUDULENT TRANSACTIONS PROCESSED THROUGH YOUR USE OF THE eCOMMERCE PAYMENT PLATFORM.

34. RESERVED

35. CLOVER SECURITY PLUS

35.1 Definitions. As used in this Section 35 or otherwise in connection with Clover Security Plus, the following capitalized terms have the following meanings.

- (a) **Cardholder Information:** The data contained on a Card, or otherwise provided to you by a Cardholder, that is required by the Payment Network or us in order to process, approve, and/or settle a Card transaction.
- (b) **Cardholder Information Incident:** The actual or suspected unauthorized access to or use of Cardholder Information that arises from your possession of, or access to, such Cardholder Information, which has been reported (i) to a Payment Network by you or us or (ii) to you or us by a Payment Network. All Security Event Expenses and Post Event Services Expenses that result from the same, continuous, related, or repeated event, or which arise from the same, related, or common nexus of facts, will be deemed to arise out of one Cardholder Information Incident.
- (c) **Payment Network Assessment:** A monetary assessment, fee, fine, or penalty levied by a Payment Network against you and/or us as the result of (i) a Cardholder Information Incident or (ii) a security assessment conducted as the result of a Cardholder Information Incident. As used herein, Payment Network Assessments will not exceed the maximum monetary assessment, fee, fine or penalty permitted under the applicable Payment Network Rules or terms of the Agreement that are in effect upon the occurrence of a Cardholder Information Incident.
- (d) **Card Replacement Expenses:** The costs that a Payment Network requires us or you to pay to replace compromised Cards as the result of (i) a Cardholder Information Incident or (ii) a security assessment conducted as the result of a Cardholder Information Incident.
- (e) **Data Protection:** The Clover Security Plus component functionality described in Section 35.3.
- (f) **EMV Upgrade Costs:** The costs to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled Cards in a manner that complies with PCI DSS requirements.
- (g) **Forensic Audit Expenses:** The costs of a security assessment conducted by a qualified security assessor approved by the applicable Payment Network or the PCI SSC to determine the cause and extent of a Cardholder Information Incident.
- (h) **Liability Waiver:** The Clover Security Plus component functionality described in Section 35.5.
- (i) **PCI Rapid Comply:** The Clover Security Plus component functionality described in Section 35.4(b).
- (j) **POS Software Monitor:** The Clover Security Plus component functionality described in Section 35.4(c).
- (k) **Post Event Services Expenses:** Reasonable fees and expenses incurred by us or you (with our prior written consent), for any service (e.g., credit file monitoring or identity theft education and assistance) specifically approved by us in writing, the purpose of which is to mitigate the effects of a Cardholder Information Incident. Such services must be provided to a Cardholder whose Cardholder Information is the subject of a Cardholder Information Incident within 1 year following discovery of the Cardholder Information Incident.
- (l) **Program Year:** The period from January 1 through December 31 of each year.
- (m) **Security Event Expenses:** Collectively, Payment Network Assessments, Forensic Audit Expenses, and Card Replacement Expenses; as well as, any EMV Upgrade Costs that you agree to incur in lieu of a Payment Network Assessment.
- (n) **Security Score:** means the Clover Security Plus component functionality described in Section 35.4(a).

35.2 Clover Security Plus and its Components. Clover Security Plus is available to Level 3 Merchants and Level 4 Merchants only. Clover Security Plus is not available to you if you are, and we may stop providing it to you if you qualify as, a Level 1 Merchant or Level 2 Merchant. Clover Security Plus consists of (a) Data Protection, (b) various components available via the Clover Security Plus portal, including POS Software Monitor, and PCI Rapid Comply®, and other tools that you can use to help you meet your PCI DSS compliance requirements, and (c) the Liability Waiver (together, “Clover Security Plus”). Each of these component services is described in more detail in Sections 35.3, 35.4, and 35.5.

35.3 Data Protection. Clover Security Plus Data Protection (“Data Protection”) is a component of Clover Security Plus. Data Protection consists of the following, as defined and further described in, and subject to the terms of, Section 25: (a) Encryption and Tokenization; (b) Token Only; (c) Get Token; and (d) Get PAN.

35.4 Clover Security Plus Online Portal. The components of Clover Security Plus described in this Section 35.4 are accessible through the Clover Security Plus online portal, and each such component is made available to you from a Third Party through us.

- (a) **Security Score.** Security Score will provide you with access to functionality that generates a scaled numerical value score associated with your security risks based on our evaluation of data security elements such as your industry type, PCI DSS classification level, PCI DSS requirements, PCI DSS requirements compliance fulfillment status, and scanning results.
- (b) **PCI Rapid Comply®.** PCI Rapid Comply will provide you with access to on-line PCI DSS self-assessment questionnaires that you can use to validate how well you meet PCI DSS requirements; including, if applicable, access to internet based scanning services.

- (i) **Access to PCI Rapid Comply.** Although you will generally have access to PCI Rapid Comply functionality 24 hours per day, 7 days per week (except to the extent of any Force Majeure Event), access to your accounts and certain other services may not be available on a continuous basis, and PCI Rapid Comply will be subject to periodic downtime to permit, among other things, hardware and/or software maintenance to take place, including as described in Section 2.5.
 - (ii) **Data Disposal.** From time-to-time, your account data or information, which is over 180 days old, may be deleted from PCI Rapid Comply. In addition, only a limited amount of your account data or information may be available online. Therefore, you are advised to print and download your PCI Rapid Comply account data and information on a periodic basis for record keeping purposes. You specifically agree that we are authorized to delete or dispose of the data or information gathered in connection with your use of PCI Rapid Comply from time-to-time and we shall not be responsible for the deletion or disposal of your data or information from PCI Rapid Comply. You assume full responsibility to backup and/or otherwise protect your PCI Rapid Comply data against loss, damage, or destruction prior to and during all phases of your use of PCI Rapid Comply, and to take appropriate measures to respond to any potential adverse impact to the Merchant System or disruption of services involved with PCI Rapid Comply.
- (c) **POS Software Monitor.** POS Software Monitor is a software application that you can download from the Clover Security Plus portal and install on your compatible computers. Currently, POS Software Monitor is compatible with many, but not all, operating systems. For each of your compatible computers onto which you install the POS Software Monitor (each, a “**Client Computer**”), we shall provide you with the following functionality: (i) file integrity monitoring designed to detect malicious software tampering with your files on the Client Computer; (ii) anti-virus software designed to defend the Client Computer against malicious software; (iii) PAN scanning designed to detect PANs stored insecurely on the Client Computer; (iv) point of sale system scanning designed to identify which software (including version) you are using to make PCI DSS compliance validation easier; (v) if the Client Computer is connected to a local area network, unauthorized device monitoring which monitors the Client Computer on that local area network and alerts you to devices that are unrecognized or that you have not previously approved for that local area network; (vi) security configuration monitoring which is designed to check the Client Computer security settings to assist you in configuring them to meet PCI DSS requirements; and (vii) a security health check, which is designed to check whether the Client Computer is running essential security functions. The following additional terms apply with respect to your use of the POS Software Monitor component of Clover Security Plus:
- (i) **Software as a Service.** Subject to the payment of applicable fees and the terms of this Section 35, we shall provide you with the POS Software Monitor software application, including all updates, upgrades, new versions, and other enhancements or improvements thereto (the “**POS Monitor Software**”). You hereby authorize us and our vendors to begin scanning the Merchant System immediately upon your installation and/or deployment of the POS Monitor Software. You are responsible for ensuring that the Merchant System has an operating system that will allow you to install and/or deploy the POS Monitor Software and use the POS Monitor Software functionality.
 - (ii) **IP Address, Data Retrieval and Transmission; Scanning Indemnification.** You hereby grant us and our vendors, for the intended purpose of the POS Monitor Software, the right to retrieve, transmit, and monitor any dynamic or static IP address and other data (including policy and system settings, point of sale system type, version, security event logs, or other related information) from any of the Client Computers on which you load, deploy, or otherwise install the POS Monitor Software within the Merchant System. You will not, in any event or in any manner, impede our or our vendors’ retrieval or transmission of such IP addresses or other data when using POS Monitor Software. You are fully responsible for all Losses that we or our vendors may incur arising from your impeding the retrieval and transmission of the IP addresses and other data described in the preceding sentence. You agree to defend, indemnify, and hold harmless us and our vendors from any Claims and related Losses that arise from you impeding such processes.
 - (iii) **IP Address Scanning and Log Monitoring.** You acknowledge and understand that loading, deploying, or otherwise installing the POS Monitor Software on the Client Computers will enable static or dynamic IP addresses associated with Client Computers to be scanned. You further acknowledge that such IP addresses may be for external network devices which protect the host system on which POS Monitor Software is loaded, deployed, or otherwise installed. You hereby grant us and our vendors: (A) the right to access and scan the IP addresses associated with the Client Computers on which you load, deploy, or otherwise install the POS Monitor Software, whether they are dynamic or static IP addresses (the “**Authorized IP Addresses**”); (B) the right and authority to gather and transmit system data, including point of sale system information, to us or our vendors; and (C) the right and authority to collect, transmit, and review security event logs from the Client Computers on which the POS Monitor Software is deployed. You further agree to provide us or our vendors reasonable assistance to enable such access and scanning. You understand that your failure to comply with the foregoing requirements may significantly impair the POS Monitor Software’s functionality.
 - (iv) **Updates; Indemnification.** You acknowledge and understand that the POS Monitor Software will allow us or our vendors, in our sole discretion, to automatically install, download, and/or deploy updated and/or new components (“**Update Process**”) in connection with the POS Monitor Software, which may include a new version of the POS Monitor Software itself. You shall not, in any event or in any manner, impede the Update Process. You are fully liable for all Losses that we or our vendors may incur arising from your impeding the Update Process. You agree to defend, indemnify, and hold harmless us and our vendors from and against any Claims and related Losses that arise from you impeding the Update Process.
- (d) **Authorized Disclosure.** You acknowledge that, in conjunction with providing Clover Security Plus, certain "pass" or "fail" determinations will be made regarding your online security and the electronic vulnerability of your IP addresses. You hereby authorize us and our vendors to share with the Payment Networks, the PCI SSC, or any Payment Network sponsor bank these "pass/fail" results, point of sale data, and other information collected during the scans conducted using Clover Security Plus.
- (e) **Scanning Authority and Obligations.** You represent and warrant that you have full right, power, and authority to provide us and our vendors with consent for Clover Security Plus to scan for vulnerabilities the IP address, URL, and/or domain names identified to us by you for scanning, whether electronically or by any other means; and whether during initial enrollment or thereafter. As applicable, you shall obtain all consents and authorizations from any third parties that are necessary for us or our vendors to perform Clover Security Plus, including consents and authorizations from Third Party datacenters, co-locations and hosts; and we shall not be required to execute agreements with any such third parties. You agree to defend, indemnify, and hold harmless us and our vendors from and against any Claim that such access was not authorized, and all related Losses. You shall use Clover Security Plus and accompanying portals only to scan IP addresses, URLs, and domain names owned by and registered to you. You understand that your failure to provide a complete list of and complete access to your IP addresses will significantly impair the scanning provided by Clover Security Plus and may result in incomplete or inaccurate results. Clover Security Plus, including its component services, functionality, and contents, constitute our confidential information under the Agreement; your access to and use of Clover Security Plus are subject to Section 8 and all other confidentiality terms in the Agreement.

- (f) **Scanning Risks.** Accessing, retrieving, transmitting, and scanning IP addresses and other data involves inherent risks; including risks related to system or network performance and availability, and data corruption. You assume full responsibility to: (a) backup and protect your data on the Merchant System against loss, damage, or destruction; and (b) proactively plan for and respond to any adverse impacts to the Merchant System or disruption of service that may occur due to Clover Security Plus' scanning activities.
- (g) **eCommerce Seal.** If you have an on-line business, an eCommerce seal ("Seal") from our Third Party vendor can be displayed on your website to reassure your customers that you are committed to protecting their Card data by complying with PCI DSS. If you utilize the Seal as part of Clover Security Plus: (i) you shall only download and display a single, unaltered copy of the Seal as specifically provided in its HTML code for the purpose of identifying you and your website as associated with it; (ii) you shall not block, alter, or otherwise manipulate the Seal's code or HTML links associated with the Seal to prevent or modify communication with the systems or servers associated with the Seal; (iii) you shall not use the Seal on any websites, URLs, or Merchant Systems (or the Shared Merchant System) that are not specifically associated with and linked to your use of Clover Security Plus; and (iv) you authorize us, and our vendors, to place certain information within your Seal that you provide to us during registration for Clover Security Plus (including capturing, using, or disclosing IP addresses of visitors to your website) for purposes of preparing reports about use of the Seal, improving the utility of the Seal, creating new services, or complying with a court order, law, or requirement of any government agency or Payment Network.

35.5 Liability Waiver. Liability Waiver is a component of Clover Security Plus that helps reduce some of the financial burden you may experience from if a Cardholder Information Incident occurs when you are using Clover Security Plus. Subject to the terms of this Section 35 and the Agreement, Liability Waiver provides relief for some of the liabilities and/or costs associated with forensic investigations, Payment Network fines, or EMV Upgrade Costs required by the Payment Networks that you may incur or be liable for due to a Cardholder Information Incident. The following additional terms shall apply to the Liability Waiver component of Clover Security Plus.

- (a) **Cardholder Information Incident Expenses.** Subject to the limitations, terms, and conditions of this Section 35 and the Agreement, we agree to waive a portion of the monetary liability (the "**Liability Waiver**") that you have to us and/or the Payment Networks under the Agreement for Security Event Expenses and Post Event Services Expenses resulting from a Cardholder Information Incident that is first discovered by you, us, or the Payment Networks once you have elected to receive and we have agreed to provide you Clover Security Plus, as memorialized on your Application or on a Schedule (for purposes of this Section 35, the "**CSP Effective Date**"). Except for the portion of the monetary liability you have to us and/or the Payment Networks under the Agreement that is waived as described in this Section 35: (i) you remain responsible for your performance of all of the data security obligations described in the Agreement; and (ii) we do not otherwise waive any of the obligations, liabilities, rights, or remedies set forth in the Agreement or this Section 35 that are associated with a Cardholder Information Incident (including our right to terminate the Agreement or Clover Security Plus Services).
- (b) **Maximum Amounts Waived.** Below are the maximum amounts we will waive in connection with the Liability Waiver. The limits for EMV Upgrade Costs constitute part of (they are not in addition to) the limits for Security Event Expenses and Post Event Services Expenses. The limitations below apply during each Program Year regardless of the number of Cardholder Information Incidents you experience.
 - (i) **Security Event Expenses and Post Event Services Expenses Limit.** The maximum amount we will waive in connection with your financial liability to us or the Payment Networks for all Security Event Expenses and Post Event Services Expenses that arise from Cardholder Information Incidents first discovered during a Program Year is:
 - (A) \$100,000.00 maximum for each MID you have with us; and
 - (B) \$500,000.00 aggregate maximum for all of your MIDs with us.
 - (ii) **EMV Upgrade Costs Limit.** The maximum amount of your financial liability during any Program Year that we will waive under this Section 35 for EMV Upgrade Costs is:
 - (A) \$10,000.00 maximum for each MID you have with us; and
 - (B) \$25,000.00 aggregate maximum for all of your MIDs with us.
- (c) **Duties Related to a Cardholder Information Incident.** The terms of Section 4 apply to any Cardholder Information Incident or other Data Security Event related to Clover Security Plus. In addition, in the event of a Cardholder Information Incident you shall not admit any liability, assume any financial obligation, pay any money, or incur any expense in connection with the Cardholder Information Incident, unless due under the Agreement, without our prior written consent; and, if you do so, it will be at your own expense.
- (d) **Liability Waiver Exclusions.** The Liability Waiver described in this Section 35.5 does not apply to:
 - (i) Any Security Event Expenses or Post Event Services Expenses arising out of or resulting, directly or indirectly, from (A) any dishonest, fraudulent, criminal, or malicious act, error, or omission, (B) any intentional misconduct, recklessness, or gross negligence, or (C) any intentional or knowing violation of Applicable Law, in the case of any of the preceding clauses (A-C) committed by you or your employees, officers, agents, or directors.
 - (ii) Any Security Event Expenses or Post Event Services Expenses arising out of or resulting from a claim, suit, action, or proceeding against you that is brought by or on behalf of any federal, state, or local government agency.
 - (iii) Any Cardholder Information Incident that you experience following a prior Cardholder Information Incident, unless you were certified as compliant with PCI DSS requirements by a Qualified Security Assessor ("**QSA**") following the earlier Cardholder Information Incident and prior to the next Cardholder Information Incident.
 - (iv) Any Cardholder Information Incident arising out of you allowing a Third Party (other than your employees, us, or our vendors) to hold or access Cardholder Information other than as allowed under the Agreement or this Section 35.
 - (v) Any Cardholder Information Incident if (A) you are categorized by any Payment Network as a Level 1 Merchant or Level 2 Merchant at the time such Cardholder Information Incident occurred, or (B) you processed more than 6,000,000 Card transactions during the 12-month period prior to the CSP Effective Date.
 - (vi) Any expenses, other than Security Event Expenses or Post Event Services Expenses, arising out of or resulting, directly or indirectly, from a Cardholder Information Incident, including expenses incurred to bring you into compliance with PCI DSS requirements or any similar security standard.
 - (vii) Any Security Event Expenses or Post Event Services Expenses arising out of or resulting, directly or indirectly, from physical injury, sickness, disease, disability, shock, or mental anguish sustained by any Person, including required care, loss of services, or death at any time resulting therefrom.
 - (viii) Your failure to comply with this Section 35 or the Agreement in connection with a Cardholder Information Incident.
 - (ix) Any Cardholder Information Incident occurring before the date you start using Clover Security Plus or that is reported to us after the date you cease using Clover Security Plus.
 - (x) Any expenses incurred for, or as a result of, regularly scheduled, recurring, or routine security assessments, regulatory examinations, inquiries, or compliance activities.

- (xi) Any fines or assessments levied against you that are not the direct result of a Cardholder Information Incident.
 - (xii) Any Cardholder Information Incident arising from any software that is not within your control; provided, however, this exclusion will not apply to a Cardholder Information Incident arising out of a virus, Trojan horse, or other software used by a Third Party to obtain fraudulent access to data on the Merchant System or to collect data in transit to or from the Merchant System.
 - (xiii) Any Cardholder Information Incident arising out of a breach in a computer system in which you and other merchants, with no legal relationship to one another, have hosted accounts or share a common database, operating system, or software applications.
- (e) **Relationship to the Other Terms of the Agreement.** Except as specifically provided in this Section 35.5 with respect to the Liability Waiver:
- (i) THE DISCLAIMERS OF WARRANTIES, LIMITATIONS ON LIABILITY, EXCLUSION OF CONSEQUENTIAL DAMAGES, AND ALL OTHER TERMS OF SECTION 14 AND SECTION 15 APPLY TO CLOVER SECURITY PLUS AND THIS SECTION 35.
 - (ii) YOU ARE RESPONSIBLE FOR ALL BANK FEES, THIRD PARTY BASED FEES, DATA COMPROMISE LOSSES, AND OTHER AMOUNTS IMPOSED BY US, ANY PAYMENT NETWORK, ANY ISSUER, ANY GOVERNMENTAL AGENCY, OR ANY OTHER THIRD PARTY IN CONNECTION WITH THE AGREEMENT, LESS ONLY THE RELIEF (IF ANY) TO WHICH YOU ARE ENTITLED UNDER THE LIABILITY WAIVER PROVISIONS OF SECTION 35.5.

35.6 Disclaimer of Liability. You acknowledge and agree that we are not responsible or liable for: (a) your failed attempts to access, or to complete transactions using, Clover Security Plus; (b) any failure to transmit, obtain, or collect data; (c) any failure due to human, machine, or software errors, or due to faulty or erroneous data input by you; or (d) any delays in using Clover Security Plus and related Losses.

35.7 Notice of Violation. You shall notify us immediately if you know, suspect, or have reason to know that you or anyone you have granted access to Clover Security Plus violated any provision of this Section 35.

36. DYNAMIC CURRENCY CONVERSION

36.1 Definitions. As used in this Section 36 or otherwise in connection with the Dynamic Currency Conversion Service, the following capitalized terms have the following meanings.

- (a) **Applicable Percentage:** the percentage used to calculate the Foreign Currency Fees, which is currently 1.00% and which we may change upon notice to you.
- (b) **Contracted Margin:** the margin (expressed in a percentage) that we add to a Wholesale Rate to create the DCC Transaction Rate, which is currently 3.5%, and which we may change upon notice to you.
- (c) **DCC Service:** the service performed to authorize, process, and settle a DCC Transaction.
- (d) **DCC Service Provider:** our affiliates and service providers that assist us from time to time in providing the DCC Service to you.
- (e) **DCC Transaction:** a Foreign Currency Transaction in which the Cardholder authorizes (i) the Transaction Price to be converted to the Foreign Currency Equivalent, and (ii) the Cardholder's account to be charged in the amount of the Foreign Currency Equivalent.
- (f) **Foreign Card:** a Card that is denominated in a Foreign Currency.
- (g) **Foreign Currency:** a currency other than the Local Currency.
- (h) **Foreign Currency Equivalent:** the Foreign Currency equivalent of the Transaction Price, which we calculate using the Transaction Rate.
- (i) **Foreign Currency Fees:** the fees we pay you (either directly or through a DCC Service Provider) in connection with a DCC Transaction that we process.
- (j) **Foreign Currency Transaction:** a Card transaction between you and a Cardholder who uses a Foreign Card as a payment method with you to complete the Card transaction at one of your Local Locations.
- (k) **Foreign Exchange Services:** the exchange of one fiat currency into another fiat currency.
- (l) **IP Rights:** all forms of Intellectual Property rights and protections (whether or not registered) that have arisen or may arise in the future, anywhere in the world, including (without limitation) all rights, title, and interests arising in: (1) patent applications, (2) issued patents and any divisions, re-issues, re-examinations, substitutes, continuations, continuations-in-part, or extensions of patents, (3) trade secrets and trade secret rights, (4) copyrights (including print versions, electronic versions and derivative works) and other literary property or authors' rights, whether or not protected by copyright or as a mask work, and (5) proprietary trademarks, trade names, symbols, logos, tag-lines, domain names, or brand names, including goodwill.
- (m) **Licensed Technology:** any materials, and all IP Rights in and to any materials, that we give or make available to you in connection with the DCC Service, including the object code (non-modifiable) version of any software (including any updates), specifications, training materials, online training, online guides, and user guides.
- (n) **Local Currency:** the default fiat currency assigned to your merchant identification number with the applicable Payment Network.
- (o) **Local Currency Equivalent:** the equivalent in Local Currency of the amount of a Foreign Currency Transaction that will be processed as a DCC Transaction. We use the applicable Transaction Rate to calculate the Local Currency Equivalent.
- (p) **Local Currency Transaction:** a Card transaction between you and a Cardholder in the Local Currency that is submitted to us for processing in the Local Currency.
- (q) **Local Currency Turnover:** the total Local Currency Equivalent of all DCC Transactions you submit to us, and that we process, each month.
- (r) **Local Locations:** your locations in the United States (excluding United States territories).
- (s) **Margin Amount:** the amount equal to the Contracted Margin multiplied by the Local Currency amount of the applicable Local Currency Transaction.
- (t) **Rate-ID:** the unique identifier accompanying a Card transaction that entails a Transaction Currency Conversion that identifies the Transaction Rate associated with that Card transaction.
- (u) **Transaction Currency Conversion:** the process in respect of a Card transaction entailing the use of the DCC Service that converts one currency into another by applying the Transaction Rate.
- (v) **Transaction Price:** the original price in Local Currency of a Foreign Currency Transaction.
- (w) **Transaction Rate:** the Wholesale Rate plus the Contracted Margin, which you use to convert the Transaction Price into the Local Currency Equivalent.
- (x) **Wholesale Rate:** the market wholesale exchange rate published by the Payment Networks which is then used by the DCC Service to derive the Transaction Rate.

- 36.2 DCC Service.** The DCC Service allows you to process Foreign Currency Transactions in a currency other than United States dollars/the Local Currency.
- 36.3 Your Acknowledgment and Responsibilities.** You acknowledge and agree that upon entering into the Agreement the DCC Service shall be automatically enabled. You may opt-out of the DCC Service through the established opt out process that we notify you of from time to time. Other than the performance of the DCC Services (which we are responsible for), you are solely responsible, except as otherwise provided in the merchant processing agreement, for all aspects of a DCC Transaction. You must comply with all applicable Payment Network Rules and Applicable Laws that apply to the DCC Transactions that you submit to us. You will only use the Transaction Rate solely in connection with your receipt of the FX Services. We do not provide Foreign Exchange Services, which are provided solely by the Payment Networks.
- 36.4 Card-Present Transactions.** The DCC Service may be used to undertake DCC Transactions on a point of sale device as part of a Card-present transaction.
- 36.5 Settlement of DCC Transactions.** Settlement of DCC Transactions will be made in the Local Currency Equivalent, based on the Transaction Price. Settlement funds will be converted by the appropriate Payment Network, and not by us.
- 36.6 Information Provided.** We will provide the following information: (i) the Foreign Currency Equivalent amount of the Card transaction, (ii) the Transaction Rate applied, (iii) the Contracted Margin used in calculating the Transaction Rate, and (iv) any other information required by Applicable Laws. You must clearly and conspicuously disclose relevant portions of such information to the Cardholder in accordance with all Payment Network Rules and Applicable laws when required to do so. The Foreign Currency Equivalent will then be the amount we use to authorize the Card transaction with the applicable Payment Network. You are solely responsible for obtaining the Cardholder's consent to a Card transaction that entails a Transaction Currency Conversion, including obtaining the Cardholder's agreement for any DCC Transaction. You are solely responsible for clearly and conspicuously disclosing all terms of any DCC Transaction to the Cardholder (including on the transaction receipt or credit voucher).
- 36.7 Available Card Brands.** The DCC Service is available only for Card transactions that entail the use of a Visa or Mastercard branded Card.
- 36.8 Foreign Currencies.** The DCC Service supports only certain Foreign Currencies and certain types of Foreign Currency Transactions. We have the right to change which Foreign Currencies and which Foreign Currency Transactions the DCC Service will support. We will use commercially reasonable efforts to give you reasonable advance written notice if we cease supporting any existing Foreign Currency or Foreign Currency Transaction. If, however, there is a sudden and extreme fluctuation in the value of a Foreign Currency, we have the right to stop supporting the Foreign Currency immediately with notice to you. A "sudden and extreme fluctuation" in a Foreign Currency's value means a movement (up or down) of at least 6% in the exchange rate of such Foreign Currency over a period of two consecutive business days.
- 36.9 Chargebacks.** Settlement of Chargebacks of DCC Transactions will occur in the Local Currency, using the Transaction Rate that was applied on the date of the original DCC Transaction, not the Transaction Rate in effect on the date of the Chargeback. Any Margin Amount credited to you on the original Card transaction will be deducted from the Foreign Currency Fee credited to you.
- 36.10 Rate ID.** You shall retain and store the Rate ID for each DCC Transaction that you submit to us and provide such Rate ID to us immediately upon our request.
- 36.11 Refunds, Credits, and Returns:**
- (a) Refunds, credits, and returns (but not Chargebacks) will each be treated as separate DCC Transactions. For DCC, the Transaction Rate used for refunds, credits, and returns shall be the then-current Transaction Rate at the time of the refund, credit, or return transaction. Foreign Currency risk in connection with refunds, credits, or returns on DCC Transactions is allocated to the Cardholder and will be the Cardholder's responsibility. As between you and us, Foreign Currency risk for Chargebacks of DCC Transactions and is allocated to us and is our responsibility.
 - (b) If you seek to process a refund in respect of a Card transaction that entailed a Transaction Currency Conversion, you shall provide us with the Rate ID associated with the original Card transaction.
 - (c) If you provide the Rate ID, we shall determine the Foreign Currency Equivalent based on the Transaction Price of the refund using the Transaction Rate from the date of the original Card transaction. We shall then process the submitted refund with the Payment Network as a Foreign Currency Transaction. Any Margin Amount credited to you on the original Card transaction will be deducted from the Foreign Currency Fee credited to you (described below).
 - (d) If you fail to provide the Rate ID, we shall determine the Foreign Currency Equivalent based on the Transaction Price of the refund using the then-prevailing Transaction Rate as at the time and date that we submit the Refund as a Foreign Currency Transaction to the Payment Networks. We shall then process the submitted Refund with the Payment Network as a Foreign Currency Transaction. The calculated Margin Amount on the Refund will be deducted from the Foreign Currency Fee credited to you. Any foreign exchange risk that may arise from a change in the Transaction Rate used in connection with a refund in respect of a Card transaction that entailed a Transaction Currency Conversion where you fail to provide the Rate ID from the Transaction Rate used in respect of the original Card transaction will be allocated to the Cardholder and will be the Cardholder's responsibility. You are solely responsible for disclosing any such risk to a Cardholder in accordance with the Payment Network Rules and any Applicable Laws.
- 36.12 Wholesale Rate.** You acknowledge and agree that we have the right to add, delete or substitute the source of the Wholesale Rate so long as any substituted Wholesale Rate is a recognized market wholesale exchange rate.
- 36.13 DCC Service Fees:**
- (a) The fees that apply to Card transactions generally also apply to the Card transactions that use the DCC Service. You will pay us the same fees and charges for processing these Card transactions that you pay us for processing other Card transactions, including all assessment fees.
 - (b) Your payment of fees in connection with Card transactions that use the DCC Service will occur at the same time and in the same manner as the fees for your other Card transactions.
 - (c) Where applicable, the Contracted Margin amount will be deducted from Settlement to you and retained by us.
 - (d) Each month, we will credit you a Foreign Currency Fee in an amount equal to the Applicable Percentage multiplied by the Local Currency Turnover.
 - (e) In addition to your other obligations to indemnify us contained the Agreement, you agree to indemnify and hold us, our Affiliates, agents, and third-party service providers harmless from and against all losses, liabilities, damages, and expenses arising from your failure to provide, or delay in providing, a Rate ID in respect of a refund.

36.14 License.

- (a) In addition to the provisions of Section 9, until such time as you have effectively opted out of the DCC Service, we grant you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to further sublicense or assign in any way, to use (in the United States only) the Licensed Technology solely to: (1) receive the DCC Service, and (2) make DCC Transactions available to Cardholders at your Local Locations, all in compliance with the provisions of this Section 36 and the Agreement. The DCC Service is for your internal business use only. "United States" does not include United States territories.
- (b) You must limit use of the Licensed Technology to only your employees who need it in order to perform their job duties.
- (c) All IP Rights in or related to the Licensed Technology or the DCC Service are, and will remain, our sole and exclusive property or the sole and exclusive property of our vendors or our licensors (including the DCC Service Providers). We reserve and withhold all rights, title, and interests associated with the Licensed Technology or the DCC Service that are not expressly licensed by us in this Section 36.

36.15 We may revoke the above license without notice if: (i) you fail to comply with the terms and conditions set out in this Section 36 or the Agreement, or (ii) you misuse the Licensed Technology or the Services. Any license we provide to the Licensed Technology or the DCC Service will automatically terminate upon your effective opt-out of the DCC Service or the termination of the Agreement (whichever occurs earlier).

36.16 License Restrictions:

- (a) In addition to the In addition to the restrictions set out under Section 9, you are not permitted to, and you must not permit any Third Party to, do any of the following:
 - (i) attempt to access any part of the Licensed Technology that is not intended to be available to you;
 - (ii) attempt to avoid or defeat any security or authentication measure in the Licensed Technology;
 - (iii) attempt to decompile, disassemble, reverse engineer, reconstruct, or discover any source code, underlying ideas, or algorithms of the Licensed Technology;
 - (iv) modify, translate, or alter the Licensed Technology in any way;
 - (v) create derivative works of or based on the Licensed Technology;
 - (vi) directly or indirectly copy the Licensed Technology except for backup purposes and except as strictly necessary to execute any part of the Licensed Technology or the DCC Service;
 - (vii) re-publish, upload, post, transmit, disclose, or distribute the Licensed Technology (in any format);
 - (viii) access or use (in any format) the Licensed Technology through any time-sharing service, service bureau, network, consortium, or other means;
 - (ix) rent, lease, sell, sublicense, assign, or otherwise transfer the above license to any Third Party, whether by operation of law or otherwise;
 - (x) without first obtaining our written consent: (1) use, ship, or transship the Licensed Technology outside of the United States, or (2) access the Licensed Technology from outside the United States;
 - (xi) remove, relocate, or otherwise alter any proprietary rights notices from the Licensed Technology;
 - (xii) attempt to perform any action that is reasonably likely to: (1) interfere with the proper working of the Licensed Technology or the DCC Service, or (2) prevent access to or use of the Licensed Technology or the DCC Service by other users;
 - (xiii) incorporate into or combine with the Licensed Technology any other software or documentation that: (1) would require the Licensed Technology to be disclosed or distributed in source code form, licensed for the purpose of making derivative works, or redistributable at no charge, or (2) otherwise through use of the other software or documentation result in the Licensed Technology's being disclosed or distributed in source code form, licensed for the purpose of making derivative works, or redistributable at no charge; or
 - (xiv) use the Licensed Technology except as permitted by this Section 36 and the Agreement.
- (b) You must not: (i) take any action inconsistent with the ownership described in Section 9.1 and/or this Section 36, or (ii) file any action, in any forum, that challenges the ownership of the Licensed Technology or the DCC Service.

36.17 Third Party Beneficiaries. Notwithstanding Section 40.7 our affiliates, and DCC Service Providers are intended third party beneficiaries of this Section 36 (including any part of the Agreement that relates to your obligations under this Section 36 or your transactions processed in connection with the DCC Service), and each of them may enforce its provisions. Except as described in the preceding sentence, nothing in this Section 36 is intended to confer on any individual or entity any rights or remedies with respect to these DCC Service, the provisions of this Section 36 or the Agreement, and neither we nor you intend for any individual or entity to be third party beneficiaries of the provisions of this Section 36.

37. GLOBAL EPRICING SERVICES

37.1 Definitions. As used in this Section 37 or otherwise in connection with the GeP Services, the following capitalized terms have the following meanings.

- (a) **Foreign Currency:** A currency other than the Local Currency.
- (b) **GeP Sales Transaction:** A Card Not Present Transaction between you and a Cardholder in which you present the Transaction Price in a card not present environment and the Cardholder authorizes (i) the Transaction Price to be submitted to a Payment Network for settlement, and (ii) that the Cardholder's account will be charged for the Transaction Price.
- (c) **GeP Services or Global ePricing Services:** The activities undertaken by us, Bank, GeP Sponsor Banks, and/or GeP Service Providers to authorize, process, and settle GeP Sales Transactions initiated by Cardholders.
- (d) **Local Currency:** The currency associated with your domicile utilizing the GeP Services and approved by us.
- (e) **Transaction Price:** The price of a product or service that you quote to a Cardholder in a Foreign Currency, based on rate information you obtain from a Third Party, and subsequently sell to the Cardholder in the Foreign Currency in a card not present environment.
- (f) **Transaction Rate:** The then-current Foreign Currency exchange rate used by the Payment Networks or their designees from time to time to convert the net funding amount into the Local Currency.

- 37.2 GeP Services.** We will provide you GeP Services for GeP Sales Transactions pursuant to this Section 37. We will notify you of the types of GeP Sales Transactions, Foreign Currencies, and Card types that we support for GeP Services; provided that we may modify any of the foregoing, including the GeP Services, from time to time in our sole discretion. You acknowledge that Dynamic Currency Conversion, as defined by Payment Network Rules, is not permitted nor provided under GeP Services.
- 37.3 GeP Sponsor Bank and GeP Service Provider.** In connection with processing your GeP Sales Transactions, we may delegate sponsorship rights and obligations for GeP Sales Transactions to one or more banks other than the Bank (each such alternate sponsor bank, a “**Sponsor Bank**”) and we may use the services of one or more Third Parties, including our Affiliates and processing entities, to provide GeP Services (each, a “**GeP Service Provider**”). We may change GeP Sponsor Banks and GeP Service Providers from time to time in our sole discretion.
- 37.4 Settlement; Responsibilities and Risk.**
- (a) **Settlement.** Settlement between us and you of GeP Sales Transactions shall be made in the Local Currency on the basis of the Transaction Price of the GeP Sales Transaction under the process defined by the Payment Networks. Refunds, Credits, returns, and Chargebacks associated with GeP Sales Transactions shall be considered and treated as independent GeP Sales Transactions. The Transaction Rate used for refund, Credit, return, and Chargeback transactions shall be determined by the applicable Payment Networks.
 - (b) **Your Responsibilities and Risk.** You are solely responsible for all aspects of GeP Sales Transactions (other than the performance of GeP Services), including obtaining Foreign Currency rate information for pricing your goods and services, obtaining the Cardholder’s agreement to GeP Sales Transactions, and complying with all Payment Network Rules applicable to merchants with respect to GeP Sales Transactions. You assume all risk of and are subject to all Foreign Currency exchange rate exposure in connection with all GeP Sales Transactions. We are not responsible to you for risks of loss arising in connection with foreign exchange rate fluctuations that impact GeP Sales Transactions or the GeP Services.

38. PCI COMPLIANCE SUPPORT PACKAGE AND FINANCIAL FORGIVENESS™ PROGRAM

- 38.1 PCS Service.** The services described in this Section 38 (collectively, the “**PCS Service**”) are available to you if you are a Level 4 Merchant. The PCS Service is not available to Level 1 Merchants, Level 2 Merchants, or Level 3 Merchants. If you cease being a Level 4 Merchant, we may stop providing you the PCS Service. The PCS Service will provide you access to PCI Rapid Comply®, an online portal. PCI Rapid Comply will provide you with access to on-line PCI DSS self-assessment questionnaires (“**SAQs**”) that you can use to validate how well you meet PCI DSS requirements; including, if applicable, access to internet-based scanning services.
- 38.2 Data Disposal.** From time-to-time, your account data or information which is over 180 days old may be deleted from the PCS Service. In addition, only a limited amount of your account data or information may be available online. Therefore, you should print and download your PCS Service account data and information on a periodic basis. You specifically agree that we are authorized to delete or dispose of the data or information gathered in connection with your use of the PCS Service from time-to-time. We are not responsible for the deletion or disposal of your data or information from the PCS Service. You assume full responsibility to: (a) backup and protect your PCS Service-related data against loss, damage, or destruction; and (b) proactively plan for and respond to any adverse impacts on the PCS Service, including impacts related to loss of data.
- 38.3 Authorized Disclosure.** In conjunction with the PCS Service, certain “pass” or “fail” determinations will be made regarding your online security and the electronic vulnerability of your IP addresses. We and our service providers may share these “pass/fail” results, point of sale data, and other information collected via scans with Payment Networks, the PCI SSC, and Payment Network sponsor banks.
- 38.4 Access and Scanning.**
- (a) **Consent to Access and Scan.** You grant us and our service providers the right to access and perform scans of the IP addresses, URLs, and/or domain names identified within your profile or otherwise identified to us for scanning, whether electronically or by any other means and whether during or after initial enrollment. You represent and warrant to us that you are authorized to grant such rights. You are responsible for, and hereby authorize payment for, any such scans.
 - (b) **Consents and Authorizations from Third Parties.** You will obtain all Third Party consents and authorizations, including from data centers, co-locations, and hosts, needed for us or our service providers to provide the PS Service. We and our service providers will not be required to execute agreements with any such Third Parties.
 - (c) **Limitations.** You may use the PCS Service only to scan IP addresses, URLs, and domain names owned by and registered to you. Your failure to provide a complete list of and complete access to your IP addresses will significantly impair the scanning provided by the PCS Service and may produce incomplete or inaccurate results. You acknowledge that accessing, retrieving, transmitting, and scanning IP addresses and other data involves inherent risks, including risks related to system or network performance and availability and data corruption; by our providing the PCS Service, you assume all such risks and any related Losses.
 - (d) **Indemnification.** You agree to defend, indemnify, and hold us and our service providers harmless from any all Claims and related Losses that arise from our access, scans, or other activities related to the PCS Service not being authorized.
- 38.5 Disclaimer of Liability; No Guarantee of Compliance.** You acknowledge and agree that we are not responsible or liable for: (a) your failed attempts to access, or to complete transactions using, the PCS Service; (b) any failure to transmit, obtain, or collect data; or (c) any delays in using the PCS Service and related Losses. Your use of the PCS Service does not guarantee your compliance with Payment Network Rules, including PCI DSS; does not eliminate your PCI DSS and other data security compliance obligations; and does not impact your liability for Data Compromise Losses and other Third Party Based Fees, for which you are fully liable.
- 38.6 Clover Security Plus Portal.** The terms and conditions for the PCS Service set forth in this Section 38 shall govern and supersede the Terms of Use presented on the Clover Security website (including any click-through agreements contained therein and any terms accessed via any links to such Terms of Use) for the PCS Service.
- 38.7 Financial Forgiveness Program.**
- (a) **Amount of Financial Relief Available.** As part of the PCS Service, we also provide a program (“**Financial Forgiveness Program**”) that helps reduce some of the financial burden related to a data breach. The amount of available financial relief available is:
 - (i) Up to \$15,000 once you have registered in the PCS Service portal.
 - (ii) Up to \$50,000 once you have registered in the PCS Service portal and you have validated your PCI DSS compliance.
 - (iii) Up to \$100,000 once you have registered in the PCS Service portal, you have validated your PCI DSS Compliance, and you have begun utilizing a TransArmor Tokenization and Encryption solution.
 - (b) **Data Breaches.** The Financial Forgiveness Program covers data breaches caused by employee dishonesty or physical theft of data, as well as computer hacking. It also includes the following reimbursable expenses up to the amounts set forth above in Section 38.7(a):
 - (i) Payment Network mandated forensic audit when a data breach is suspected.
 - (ii) Card replacement costs and related expenses.
 - (iii) Assessments and fines levied by Payment Networks for data breaches

- (c) **Exclusions.** The following situations are not included in any way as part of the Financial Forgiveness Program:
- (i) Any Data Security Event that occurs before you register in the PCS Service portal, after the PCS Service is terminated, or after you are notified that you are not eligible for the Financial Forgiveness Program.
 - (ii) Any Data Security Event that occurs in any computer network used by multiple merchants with no legal relationship to one another (such as a gateway or Third Party provider) to process, store, or transmit their respective transaction data.
 - (iii) Any Data Security Event arising from any security failure you knew of, or should have known of, prior to registering in the PCS Service portal.
 - (iv) Any Data Security Event based on actions of your employees or personnel if those actions are known to or directed by (A) an officer, director, consultant, Merchant Provider, or contractor of Client, or (B) a Payment Network, Issuer, or other Third Party involved with your Card acceptance.
 - (v) Any amounts assessed by any Payment Network or other Third Party based on your failure to comply with PCI DSS.
 - (vi) Any amounts associated with government investigations or litigation brought by government entities.
 - (vii) Any Data Security Event resulting from any Force Majeure Event.
 - (viii) Any Data Security Event resulting from the use of software that is not in your control unless you have an enforceable end user agreement with the software licensor.
 - (ix) Any Data Security Event without formal written notice and demand for payment from a Payment Network.
 - (x) Second or subsequent Data Security Events prior to a new PCI DSS compliance level certification.

39. CHOICE OF LAW; VENUE; WAIVER OF JURY TRIAL

- 39.1 Choice of Law.** The 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).
- 39.2 Venue.** The exclusive venue for any actions or claims arising under or related to the 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. You irrevocably and unconditionally agree and submit to the jurisdiction of such North Carolina courts and waive any objection to the venue of such courts whether based on inconvenience of forum or other grounds.
- 39.3 Waiver of Jury Trial.** ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING RELATING TO OR ARISING UNDER THE AGREEMENT.

40. OTHER TERMS

- 40.1 Force Majeure.** No party shall be liable for any failure to perform its obligations under the Agreement if and to the extent such non-performance is caused, directly or indirectly, by: (a) fire, flood, earthquake, elements of nature, or other acts of God; (b) any terrorist attacks or outbreak or escalation of hostilities, war, riots, or civil disorders in any country; (c) any act or omission of the other party or any government authority; (d) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); (e) nonperformance by a Third Party; or (f) any cause beyond the reasonable control of the party seeking to have its performance or obligations excused, including failures or fluctuations in telecommunications, the internet, any common carrier, any communication network, any Payment Network, any government authority, the ACH network or Federal Reserve System, or any other Third Party or equipment (each of the foregoing, a "**Force Majeure Event**"). A party whose performance of its obligations under the Agreement is prevented, restricted, or delayed as a result of a Force Majeure Event will be excused from performing the affected obligation(s) to the extent of the prevention, restriction, delay, or interference for as long as: (y) the Force Majeure Event persists; and (z) the affected party continues to use commercially reasonable efforts to resume performance as soon as practicable.
- 40.2 Notices; Returned Mail**
- (a) Except as otherwise specifically provided, all notices and other communications required or permitted under the Agreement (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing. We will send notices to you to your address appearing in the Application. Notices to Bank must be sent to Bank of America, P.O. Box 25118, Tampa, Florida 33622-5118
 - (b) Notices shall be deemed to have been given (i) if sent by mail, upon the earlier of five (5) days after mailing or when actually received, (ii) if sent by courier, when delivered, and (iii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner is effective when received. Notices sent to your last known address or email address, as indicated in our records, shall constitute effective notice to you under the Agreement.
 - (c) From time to time, we may receive from the United States Postal Service letters, notices (including notices of changes in terms pursuant to Section 40.6), communications, statements, correspondence, and other documents that we had placed in the mail for delivery to you, but that were returned to us and could not be delivered ("**Returned Mail**"). You acknowledge and agree that: (i) if we receive Returned Mail that indicates an updated address, we may include that updated address in our system as your address for all letters, notices (including notices of changes in terms pursuant to Section 40.6), communications, statements, and other documents sent to you; and (ii) if we receive Returned Mail without an updated address, we may, with or without notice to you, change processing or payment terms, suspend the Services, and/or terminate the Agreement. You hereby waive and release us from, and agree to indemnify and hold us harmless from and against, all Claims and related Losses arising out of our acts and omissions in connection with this Section 40.2(c).
- 40.3 Headings; Rules of Interpretation.** Headings are for convenience and reference only, and will not in any way affect the meaning or construction of any provision of the Agreement. Each definition used in the Agreement includes the singular and the plural. Use of either the masculine or feminine pronoun includes the other, and reference to the neuter gender includes the masculine and feminine where appropriate. Except as otherwise stated, reference to "Section" or "Sections" in this Program Guide means the section(s) of this Program Guide. The word "including" means "including but not limited to," and the word "includes" means "includes but is not limited to." References to "days" mean calendar days unless otherwise indicated through the use of the phrase "Business Day." The words "will" and "shall" are used interchangeably and have the same meaning. Text enclosed in parentheses has the same effect as text that is not enclosed in parentheses.
- 40.4 Severability.** The parties intend every provision of the Agreement to be severable. If any part of the Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.
- 40.5 Entire Agreement; Waiver.** The Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes any previous agreements and understandings. A party's waiver of a breach of any term or condition of the Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition. No waiver will be effective unless made in writing by the party against whom it is being enforced.

- 40.6 Amendment.** We may modify the Agreement by providing written notice to you of a change, including through a click wrap or other electronic notice which you may be required to agree to in order to continue using the Services. You may choose not to accept a change by terminating the Agreement within twenty (20) days of receiving notice of the change. Your use of Services after the effective date of a change, or your failure to terminate the Agreement in accordance with this Section 40.6, constitutes your acceptance of the change and your waiver of your termination right under this Section 40.6 with respect to such change. This Section 40.6 does not apply to fee changes, which are governed by Section 6.2 and Section 6.4.
- 40.7 No Third Party Beneficiaries.** Except as expressly provided in Section 27.9, Section 33.1(c)(iii) and Section 36.17, nothing in the Agreement is intended to confer upon any Third Party any rights or remedies and the parties do not intend any Third Party to be a third-party beneficiary of the Agreement.
- 40.8 Payment Network Rules.** You acknowledge that Payment Network Rules give Visa, Mastercard, Discover, and other Payment Networks certain rights to (a) investigate you, and (b) require termination or modification of the Agreement with respect to transactions involving Visa, Mastercard, and Discover Cards, and the Cards of other Payment Networks. You also acknowledge that Issuers of other Cards, for which we perform services on your behalf, may have similar rights under their Payment Network Rules with respect to transactions involving such other Cards.
- 40.9 Non-Disparagement.** In no event will any party publicly disparage another party by any media (e.g., voice, print, electronic, social network, or blog). You cannot record conversations with any of our employees or agents without our prior written consent. For the avoidance of doubt, nothing herein prohibits any individual from communicating or disclosing information regarding suspected violations of laws, rules, or regulations to a governmental, regulatory, or self-regulatory authority without notification to any person.
- 40.10 Export Control.** You understand and acknowledge that certain Services are subject to regulation by agencies of the U.S. government which prohibits export or diversion of certain products and technology to certain countries, persons, or other entities. Our obligations to provide such Services are subject to all applicable export laws. Similarly, your use of such Services shall comply with all applicable export laws, including any prohibitions against exporting or re-exporting such Services into, or to nationals or residents of, certain countries, including countries to which the United States has embargoed goods and to persons on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Person's List.
- 40.11 IRS Reporting Information; Backup Withholding.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities (like Bank) and Third Party settlement organizations are required to file an information return reflecting all payment card transactions and Third Party network transactions occurring in a calendar year. In addition, the Internal Revenue Code may require us to undertake backup withholding if you do not provide Bank with the correct name and TIN that you use when filing your income tax return that includes the transactions for your business. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.
- 40.12 Survival.** The terms and provisions of the following Sections shall survive termination of the Agreement: Sections 2.4, 2.6, 2.8, 2.9, 3 through 10 (inclusive), 11.2, 11.3, 13 through 16 (inclusive), 19, 21.4, 39, 40.2, 40.3, 40.4, 40.5, 40.7, 40.9, 40.11, and 40.12.

41. DEFINITIONS

As used in the Agreement, the following terms have the following meanings:

Address Verification Service (AVS): A service for verifying a Cardholder's address, primarily for Card Not Present Transactions.

Affiliate: A Third Party who, directly or indirectly, (a) owns or Controls a party to the Agreement, (b) is owned or Controlled by a party to the Agreement, or (c) is under common ownership or Control with a party to the Agreement.

Agreement: See the meaning set forth in Section 1.2.

American Express: American Express Company.

AML/Sanctions Laws: All Applicable Law in force from time to time in any jurisdiction relating to money laundering, terrorist financing, proliferation financing or the avoidance or prevention of any such activities, Sanctions, or any other similar matter.

Anticipated Interchange Levels: The interchange program(s) for Visa, Mastercard, and Discover and the American Express Program Pricing, shown on your Application or your Non-Qualified Interchange Rate Schedule (as applicable), which represent the respective interchange rates at which we anticipate the majority of your transactions will likely qualify. Interchange and Program Pricing, including your Anticipated Interchange Levels, depend on multiple factors including your industry, your Card acceptance environment, your Merchant systems, your Card volume, your average ticket amount, whether and the extent to which you accept Card Not Present Transactions, and other information that you submitted to us on your Application or that otherwise relates to your business. The Anticipated Interchange Levels represent transactions that are considered Qualified for applicable pricing types. See your applicable Schedule for additional details as Payment Network requirements for specific interchange programs may change over time.

Applicable Law: all federal, state and local statutes, ordinances, laws, regulations and executive, administrative and judicial orders applicable to the Agreement, the transactions or other matters contemplated under the Agreement, and all amendments thereto.

Application: The Merchant Processing Application and Agreement that you completed and submitted to us and all additions, supplements, addenda, and modifications thereto, including any Additional Outlet Forms, Additional Location Forms, Service Modification Forms, and addenda for equipment, products, or Services.

Asset Sale: Client's sale, transfer, or other disposal of all or substantially all of its assets.

Authorization: Approval by, or on behalf of, the Issuer to validate a Card transaction; or in the case of EBT Transactions, the issuing state or related EBT service provider to validate an EBT Transaction. Authorization, including an Authorization approval code, indicates only the availability of credit, funds, or EBT Benefits at the time the Authorization is requested; it does not indicate that the person presenting the Card is the rightful Cardholder and it does not promise, indicate, or suggest that you will not be subject to a Chargeback, an adjustment, or other Bank Fees and Third Party Based Fees.

Bank: Bank of America, N.A. or its successors or assigns.

Bank Fees: Fees that Bank imposes, establishes, or sets, including Discount Rates, Transaction Fees, Equipment-related fees, shipping and handling charges (if applicable), and any other amounts that Bank imposes, establishes, or sets.

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

Business Day: Monday through Friday, excluding Bank holidays.

Card: A valid device (including a mobile phone or other electronic payment device) issued with or without a PIN and bearing the Marks of Visa, Mastercard, Discover, American Express, and/or one or more Debit Networks (or, to the extent the Application or Schedules so provide, the Marks of any other Payment Network).

Cardholder: The individual or entity whose name is embossed on a Card and any authorized user of such Card, including an individual or entity that has entered into an agreement establishing a Card account with an Issuer.

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

Card Verification Codes: A three-digit value printed in the signature panel of most Cards and a four-digit value printed on the front of an American Express Card. Visa's Card Verification Code is known as CVV2; Mastercard's Card Verification Code is known as CVC2; and Discover's Card Verification Code is known as a CID (and can also be referred to as a security code).

Change of Control: The acquisition or disposal, whether by way of merger, consolidation, amalgamation, purchase, or otherwise, of Control of Client or any direct or indirect parent entity of Client, by or to any Third Party or group of affiliated Third Parties.

Chargeback: A Card transaction (or disputed portion) that is returned to us by the Issuer.

Chip: An integrated microchip embedded on a Card containing Cardholder account information.

Chip Card: A Card with an embedded EMV-compliant chip containing memory and interactive capabilities used to identify and store additional data about a Cardholder's Card account.

Claim: Any Third Party claim, demand, suit, action, cause of action, or proceeding of any form, kind, or nature (including contract claims and negligence and other tort claims).

Client: The party identified as "Client" on, or identified similarly within, the Application. "Subscriber", "you", "your", and "Merchant" mean "Client".

Clover: See the meaning set forth in Section 26.1.

Clover API: See the meaning set forth in Section 26.1.

Clover Go Reader: See the meaning set forth in Section 28.1.

Clover Service: See the meaning set forth in Section 26.1.

Control: To directly or indirectly own, have ownership of, or have voting or investment power over more than fifty percent (50%) of the shares, units, capital, voting, or other ownership interest in an entity.

Conveyed Transactions: Transactions that Bank authorizes, but that Bank does not sponsor and settle.

Credit: A refund or price adjustment given for a previous purchase transaction, including for the return of merchandise by a Cardholder.

Credit Card: A Card authorizing the Cardholder to buy goods or services on credit.

Credit Draft: A document, whether paper, electronic, or some other form, evidencing a Credit by you to a Cardholder; such document must conform to Payment Network Rules and Applicable Law.

Data Compromise Losses: All expenses, claims, assessments, fines, losses, costs, penalties, and Issuer reimbursements imposed by any Payment Networks, regulators, attorneys general, or other Third Parties against us arising in connection with any Data Security Event. Data Compromise Losses are a type of Third Party Based Fee; each time the term "Third Party Based Fees" is used in the Agreement, the term "Third Party Based Fees" includes any and all Data Compromise Losses.

Data Security Event: Any one or more of the following: (1) any actual or suspected unauthorized or fraudulent access to, or actual or suspected misuse, disclosure, loss, theft, or alteration of, Transaction Data or Cardholder data; (2) any actual or suspected breach of Merchant Systems or any Merchant Provider's systems, whether consisting of a single event, a continuous course of events, or a series of related events; and (3) any determination by any Payment Network, regardless of any forensic analysis or report, that Client or a Merchant Provider (or other Third Party used by Client) is the likely source of any loss, disclosure, theft, or compromise of Cardholder data or Transaction Data or has caused Cardholder data or Transaction Data to be put at risk.

Debit Card: A Card that is tied to, and that authorizes the Cardholder to purchase goods and services using funds from, the Cardholder's bank account or prepaid account. A transaction made using a Debit Card is considered either a Debit Network Transaction or a Non-Debit Network Transaction.

Debit Network: The telecommunications and processing system of a shared electronic funds transfer network (such as Interlink[®], NYCE[®], or Star[®]) for processing and settling Debit Network Transactions.

Debit Network Transaction: A transaction made with a Debit Card that is routed through a Debit Network. A Debit Network Transaction made with use of a PIN may be referred to as a "Debit Network PIN Transaction" or as "PIN Debit". A Debit Network Transaction made without use of a PIN, as permitted under the rules and requirements of the applicable Debit Network, may be referred to as a "Debit Network PINless Transaction" or as "PINless Debit."

Discount Rate: The percentage rates and/or amounts we charge you, and you are required to pay, for processing certain Card transactions, as such amounts are set forth on the Application, Schedules, or elsewhere in the Agreement and amended from time to time.

Discover: DFS Services LLC, its subsidiaries and affiliates, and each of its and their respective successors or assigns.

DNP Card Type: Cards branded by Discover, Diners Club International, JCB, Union Pay, BCard, Dinacard, or any other Payment Network designated by Discover (each, a "DNP Payment Network").

Documentation: The operational documents, technical integration requirements and documentation, user manuals, help files, and other implementation overviews, integration guidelines, sandbox guidelines, and other documentation that we provide or make available, in written or electronic form, in connection with any Software or Service, as modified by us from time to time.

Electronic Benefit Transfer (EBT): An electronic benefits transfer system used to deliver certain government provided benefits (such benefits, "EBT Benefits") to customers, including cash benefits and benefits offered by the United States Department of Agriculture, Food and Nutrition Service; the Supplemental Nutrition Assistance Program; and the Special Supplemental Nutrition Program for Women, Infants, and Children.

EMV: The global standard for Chip Card based payments developed by Europay, Mastercard, and Visa.

Gross: When referred to in connection with transaction amounts or fees, including Discount Rates and Card volumes, the term "Gross" refers to the total amount of Card sales without set-off for any refunds or credits.

Group Member: A franchisee, licensee, association member, or other member associated with the Group Owner.

Group Owner: A franchisor, licensor, association, or other group level entity that has a relationship with us for the benefit of the Group Owner and the Group Members designated by or associated with the Group Owner.

Group Owner Agreement: The agreement that we have with the Group Owner to provide Group Owner Benefits to Group Members and/or the Group Owner.

Group Owner Benefits: The products and services, pricing, or other benefits provided to Group Members and/or the Group Owner pursuant to the Group Owner Agreement.

Intellectual Property: The Marks, Software, copyrights, patents, trademarks, service marks, trade dress, materials, web screens, layouts, processing techniques, computer programs, Documentation, procedures, processes, algorithms, methods, specifications, know-how, and other intellectual property that we, our Affiliates, or any of our or their licensors, vendors, service providers, or contractors own, develop, or license prior to, during the term of, or after termination of the Agreement, or that we use in connection with the Services, and all updates to, alterations to, and derivative works from any such intellectual property.

Issuer: The financial institution, Payment Network or other entity which has issued a Card to an individual or entity.

Level 1 Merchant: A merchant defined as a Level 1 Merchant under Payment Network Rules, which may include merchants that process more than 6 million Card transactions annually.

Level 2 Merchant: A merchant defined as a Level 2 Merchant under Payment Network Rules, which may include merchants that process 1 million to 6 million Card transactions annually.

Level 3 Merchant: A merchant defined as a Level 3 Merchant under Payment Network Rules, which may include merchants that process less than 1 million Card transactions annually, at least 20,000 of which are eCommerce Card transactions.

Level 4 Merchant: A merchant defined as a Level 4 Merchant under Payment Network Rules, which may include merchants that process either less than 1 million Card transactions annually or, if a merchant processes eCommerce Card transactions, less than 20,000 eCommerce Card transactions annually.

Location: A physical location, internet address, division, outlet, processing method, or business activity for which we have assigned a unique Merchant Account Number.

Losses: Any liability, obligation, loss, damage, judgment, settlement, cost, or expense of any kind or nature (including attorneys' fees, expert witness fees, and collection costs), regardless of whether suit is brought, and any assessment, fee, or fine imposed by any Payment Network.

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

Marks: Names, logos, emblems, brands, service marks, trademarks, trade names, tag lines, or other proprietary designations, including those that are the property of Bank, our Affiliates, our service providers, and Payment Networks.

Mastercard: Mastercard International Incorporated, its subsidiaries and affiliates, and each of its and their respective successors or assigns.

Merchant Account: An account we establish for each of your Locations for accounting and billing purposes in connection with the Services.

Merchant Account Number (MID): A number that numerically identifies each Merchant Account.

Merchant Provider: Any Third Party you engage to provide you services involving or relating to (a) access to Cardholder data, Transaction Data, or information related to either Cardholder data or Transaction Data, or (b) PIN encryption, including Encryption Service Organizations (ESOs). "Merchant Provider" also includes any franchisor or other Third Party that provides or controls a centralized or hosted network environment, irrespective of whether Cardholder data is stored, transmitted, or processed through it.

Merchant Systems: Any and all equipment, systems, telecommunication lines, wireless connections, software, computers, networks, point-of-sale terminals, card readers, merchandise, card scanners, printers, PIN pad devices, and other hardware, systems, and equipment (whether owned or licensed by you, any of your Affiliates, any Merchant Provider, or another Third Party) used in connection with your accepting, processing, clearing, settling, transmitting, and otherwise handling Card transactions, or otherwise used by you in connection with the Agreement.

MPA: See the meaning of Application; MPA and Application have the same meaning.

Non-Bank Services: Products and Services provided pursuant to the Agreement, but not provided by Bank, including Conveyed Transactions and the products and services described in Sections 23-38. Non-Bank Services are considered Services and are subject to Sections 1-22 (inclusive). Each of the individual Non-Bank Services may be referred to as a "Non-Bank Service".

Non-Debit Network: A Payment Network through which a Non-Debit Network Transaction is processed.

Non-Debit Network Transaction: A transaction made with a Debit Card that is not routed through a Debit Network and that is processed and settled as a Credit Card transaction, against the Cardholder's bank account or prepaid account, as permitted by applicable Payment Network Rules.

Non-Qualified Interchange Fee (Non-Qualified Interchange Rate): For certain pricing methods only, the percentage rate or amount, as further described in Section A.3 of Part IV, which will be charged for transactions that do not qualify for the Anticipated Interchange Levels.

Non-Qualified Surcharge: For certain pricing methods only, a surcharge, which is a percentage rate or amount, applied to any transaction that fails to qualify for Anticipated Interchange Levels, as further described in Section A.3 of Part IV. The Non-Qualified Surcharge (the amount of which is set forth on the MPA) is in addition to the Non-Qualified Interchange Fee.

Payment Network: Any entity formed to administer and promote Cards, including Visa, Mastercard, Discover, American Express, Debit Networks, and any applicable EBT network or EBT service provider.

Payment Network Rules: The rules, regulations, releases, interpretations, technical specifications, and other requirements (whether contractual or otherwise) imposed or adopted by any Payment Network and related authorities, including those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association, and including the Quest Operating Rules for EBT Transactions; as any of the foregoing change from time to time. For the avoidance of doubt, PCI DSS is included as part of the Payment Network Rules.

PIN: A personal identification number entered by a Cardholder, including to complete certain Debit Network Transactions and other Card transactions.

Reserve Account: A deposit account established and funded at our request or on your behalf, and held in our name, pursuant to the terms and conditions set forth in Section 19.

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), whether in paper, electronic, or some other valid form.

Sanctions: Any trade, economic or financial sanctions or embargoes imposed, administered or enforced by the United States government (including the US Department of the Treasury's Office of Foreign Assets Control, US Department of Commerce, and US State Department), the United Nations Security Council, the European Union or its member states, the United Kingdom (including HM Treasury's Office of Financial Sanctions Implementation, the Foreign, Commonwealth & Development Office or Department for International Trade), or any other relevant authority.

Sanctioned Country: Any jurisdiction or territory that is the subject of comprehensive Sanctions (currently, Cuba, Iran, North Korea, Syria, and the Crimea, Luhansk, and Donetsk regions of Ukraine).

Schedules: The schedules, fee schedules, rate schedules, exhibits, attachments, appendices, enclosures, addenda, and other documents, including revisions thereto, that are incorporated into or made part of the Agreement at any time.

Settlement Account: An account or accounts at a financial institution designated by Client as the account(s) to be debited and credited by Bank for Card transactions, Bank Fees, Third Party Based Fees, Chargebacks and other amounts due under the Agreement or in connection with the Agreement. If you have designated more than one Settlement Account, references to Settlement Account in the Agreement mean each of your Settlement Accounts.

Software: Any and all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, whether equipment, PC, server or Internet based, or otherwise provided in connection with the Services.

Taxes: Any and all sales, use, excise, personal property, stamp, documentary, and ad-valorem taxes; license and registration fees; tariffs, levies, and assessments; fines and penalties; and similar charges, in each case however levied, designated, based, charged, or imposed. Taxes exclude taxes imposed on Bank based on Bank's net income.

Technology: The technology used in connection with the provision of Services to Client, including software, firmware, portals, processing systems, processing platforms, networks (in each instance, whether in object or source code font), reports, templates, documentation, and all derivative works of and modifications to such technology.

Terminal ID or TID: A unique number used to identify a specific point of sale terminal.

Third Party (Third Parties): Any third party individual(s) or entity(ies) other than Client, or Bank.

Third Party Based Fees: Fees, fines, assessments, penalties, obligations, liabilities, adjustments, and other charges and amounts a Payment Network, Issuer, or other Third Party imposes, establishes, or sets, and all related costs and expenses. Whenever used, the term "Third Party Based Fees" includes all Data Compromise Losses and all Chargebacks.

Third Party Services: Services, goods, equipment, products, promotions, software, applications, systems, materials, and other items provided by any Merchant Provider or other Third Party, including an application available through the Clover App Market (defined in Section 26), the leasing of Equipment, and any services provided by TeleCheck.

Transaction Data: Data collected as part of performing the Services, including Cardholder information, dates, amounts, and other transaction details.

Transaction Fees: Fees charged on a per transaction basis.

Us, We, and Our (us, we and our): These words refer to Bank.

Visa: Visa Inc., its subsidiaries and affiliates, and each of its and their respective successors or assigns.

You, Your (you, your): See the meaning of Client; You, Your, you, and your have the same meaning as Client.

PART III: TELECHECK SOLUTIONS AGREEMENT

1. Services. This TeleCheck Solutions Agreement (**Agreement**) is entered into by and between TeleCheck Services, Inc. (**TeleCheck**) and Client (**Client**) as indicated on the Merchant Processing Agreement executed by Client (**the Application**). Pursuant to the terms set forth in this Agreement, TeleCheck will provide Client with the services indicated in the Application, which may include: (i) coded information that it may use when deciding whether to accept a check or electronic funds transfer item (each an **Item**, and together, **Items**) when provided by its consumers as payment, (ii) settlement processing services and (iii) warranty or verification services; all as described in this Agreement (together, **Services**). TeleCheck will be Company's exclusive provider of the Services during the Term (defined below) of this Agreement. Client agrees to the terms of this Agreement by signing the Application; clicking "Accept" or "Install" when presented via an App (as applicable and described below); or using any of the Services. Client acknowledges that the Specialty Items (Settlement Only) service does include receiving coded information, warranty or verification services.

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

1.2. Submitting Items. Client will designate the types of Items it accepts and that it will submit to TeleCheck for processing under this Agreement as indicated on the Application. Client must submit the Item to TeleCheck through the appropriate service. For example, checks presented in person by consumers at Client's point of sale can only be submitted through the In-Person Warranty (or Verification) service, checks sent through the mail to Client can only be submitted through the By Mail/Drop Box service. Client will submit all of its designated Items to TeleCheck for processing under this Agreement. Except for Items processed through the By Mail/Drop Box service, TeleCheck will analyze each Item that Client submits for processing and, in its discretion, provide Client with an approval or decline code with respect to each Item. TeleCheck will give Client operating guidelines and specifications, as applicable, to assist Client with properly accepting and submitting its Items for processing (operating guidelines and specifications may be provided to Client electronically or made available via the Internet).

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

1.4. Warranty Requirements. Client represents and warrants that each Item it submits to TeleCheck for processing and coverage under the Information Warranty meets the following requirements:

A. General Requirements: The following apply to all Items unless otherwise specified:

- (1) the Item was submitted to TeleCheck for processing according to TeleCheck's operating guidelines and specifications, and Client obtained a single approval code for it;
- (2) the Item is drawn on the consumer's deposit account at a United States or Canadian financial institution (for example, and without limitation, money orders, cashier's checks, travelers checks, insurance checks, credit card checks, or non-first party Items are Ineligible Items);
- (3) the Item, or a clear image of the Item (if submitted using a mobile or other optical imaging device), shows the consumer's name, address, check number, and routing and account numbers in the MICR line (not applicable if the payment is online);
- (4) the Item is a properly completed first party Item that is dated, payable to Client, made out for the amount due to Client for its goods or services, and signed by the consumer (not applicable if the payment is online);
- (5) the consumer authorized debiting its account by electronic funds transfer or remotely created check for the amount of the Item (an **Authorization**) in accordance with TeleCheck's operating guidelines and specifications and the rules of the National Automated Clearinghouse Association (**NACHA Rules**), as applicable, for the services utilized;
- (6) the Item represents the consumer's payment obligation to Client for its goods or services, and has not been used in another transaction;
- (7) the amount of the Item (a) is for the price of Client's goods or services, (b) matches the amount submitted to TeleCheck for processing, and (c) does not exceed the Warranty Maximum;
- (8) the Item was not submitted as a split sale or in other ways to avoid these warranty requirements or the Warranty Maximum;
- (9) the Item is not for credit, cash, or payment on an account, debt, or Item already due to Client;
- (10) the Item does not pre-date or post-date the date of the transaction and corresponding inquiry to TeleCheck by more than 1 calendar day;
- (11) the transaction and corresponding Item are not subject to any stop payment, dispute or setoff right;
- (12) Client is not aware of anything that invalidates the Item, prevents its collection, or relieves the consumer from liability for it; and
- (13) Client provided the notices required by applicable Law (defined in **Section 21.1** below), authorizing TeleCheck to process the Item as an electronic funds transfer or remotely created check and imposing (and authorizing such processing of) a fee for Return Items.

B. Requirements For In Person Payments: If a consumer presents a paper check in-person at Client's point of purchase location, in addition to those in Section 1.4 A. above the following requirements apply and must be followed in accordance with TeleCheck's operating guidelines and specifications: (a) the consumer signed an authorization to debit consumer's account and consumer's signature on the authorization reasonably matches the name imprinted on the Item; (b) the authorization must be clearly and conspicuously posted and a copy of the authorization must be provided to the consumer and (c) the Item must be voided and returned to the consumer after submission to TeleCheck for processing. If such in-person payment is approved as a paper check that cannot be settled as an electronic funds transfer, the additional requirements in Section 1.4 F below apply.

C. Requirements For Online Payments: If a consumer makes an online payment, the following requirements apply in addition to those in **Section 1.4 A** above: (a) the consumer electronically authorized the transaction in accordance with TeleCheck operating guidelines and specifications and (b) the payment website site authenticates the consumer's identity and uses appropriate site security and internet session security standards in accordance with the NACHA Rules.

- D. Requirements for Mail/Drop Box Checks:** If the consumer provides a paper check which was mailed in or submitted in a drop box to Client, the requirements in **Section 1.4A above** apply except (a) the check must be for payment that is not more than 60 days past due; (b) the check must not be post-dated or dated earlier than 20 days from the date of inquiry to TeleCheck; and (d) Client must securely store the check for at least 60 days following the corresponding payment transaction at which time it must be destroyed. Additionally, the consumer must not have notified Client that the check was not to be converted into an electronic funds transfer. If such mail/drop box check is approved as a paper check that cannot be settled as an electronic funds transfer, the additional requirements in **Section 1.4 F** below apply.
- E. Requirements for Mobile Checks or any Checks Approved as Paper Only.** If TeleCheck approves an Item as a paper check that could not be settled as an electronic funds transfer (i.e. check is to be deposited by Client) or the check is submitted to TeleCheck as an image through a mobile device (either, a **Paper Settlement Item**), the following requirements apply in addition to those in **Section 1.4 A** above: (a) the check must include the consumer's name (imprinted by the manufacturer), physical address (imprinted by the manufacturer or written on the check according to TeleCheck's operating guidelines – P.O. Boxes will not be accepted), phone number (with area code), identification type and number (imprinted or written on check), Client's TeleCheck Number and TeleCheck's approval code; (b) the consumer's signature must reasonably match the name imprinted on the check and (c) Client must send Paper Settlement Items that were presented in-person at Client's point of purchase and that become Return Items directly from its financial institution to TeleCheck within 30 days of the date on the check. If the Paper Settlement Item was mailed in or submitted in a drop box by the consumer to Client, or if the Item was presented by the consumer to Client and submitted through a mobile device by Client to TeleCheck, and subsequent to the transaction TeleCheck instructs Client to deposit the check (due to image quality issues (a **Redeposit Check Item**), Client must deposit the Redeposit Check Item within 2 days of TeleCheck's instruction to do so and TeleCheck must receive it for purchase within 45 days of the date on the check. Paper Settlement Items and Redeposit Check Items may only be presented once for payment (TeleCheck will not accept Paper Settlement Items or Redeposit Check Items that Client or its financial institution presented for payment more than once). In addition, Client must securely store the physical check for at least 60 days following the corresponding payment transaction.

1.5. Electronic Images. If the Item is submitted to TeleCheck by Client as an image using a mobile device or other image reader, the ability to settle imaged Eligible Items to the banking system depends on (a) the quality of the image and (b) the banking system's ability to accept the image for settlement processing. Client will use a third party provider to capture images of Items using a mobile device (this third party, an **Image Vendor**) and submit those images to TeleCheck. Client acknowledges that its Image Vendor will require some of Client's account information (including, without limitation, merchant account number, contact name, email address and device identifier) to submit Item images to TeleCheck; and authorizes TeleCheck to provide the Image Vendor with the information necessary to allow it to submit Item images to TeleCheck on behalf of Client. TeleCheck is not responsible for the image quality of Items submitted through Client's Image Vendor, or submission of the images by Client's Image Vendor to TeleCheck. Client will destroy the physical checks that were submitted as electronic images after storing them securely for at least 60 days.

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

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

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

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

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

1.11. Chargeback. TeleCheck may chargeback any Eligible Item that it purchased from Client for coverage under the Information Warranty if:

- (1) the consumer returned the goods or services (in whole or in part) that were paid for with the Item;
- (2) Client has not delivered the goods or services that were paid for using the Item;
- (3) the Item is subject to any stop payment, dispute, or setoff;
- (4) the consumer makes full or partial payment to Client for the Item, or provides any form of security to ensure its payment;
- (5) the goods or services were initially delivered on credit or under a lease;
- (6) the purchase transaction, the payment represented by the Item, or transferring the Item to TeleCheck (by assignment or otherwise) is void or invalid for any reason other than the consumer's bankruptcy;
- (7) Client breaches the applicable warranty requirements for Eligible Items;
- (8) Client submits multiple Items or duplicate Items related to the same transaction for processing (e.g., deposits a paper Item previously submitted for processing as an electronic Item without TeleCheck's direction to do so);
- (9) Client does not submit its Items to TeleCheck for processing within 1 calendar day of the transaction date (for batch processing, Items must be submitted to TeleCheck for processing within 7 calendar days of the transaction date);
- (10) the consumer disputes authorizing the Item, its validity, or the amount debited for it (except in the case of third party fraud committed with a consumer's check);
- (11) the consumer's Authorization is incomplete or invalid;
- (12) Client fails to provide TeleCheck with a legible copy of an Authorization within 7 days of a request for it; or
- (13) Client breaches this Agreement, alters an Item or approval code, or submits an Item with Knowledge it is likely to become a Return Item. **Knowledge** means facts or circumstances which, if known, would cause a merchant, using commercially reasonable judgment, to independently refuse to accept an Item (including, without limitation, splitting single transactions into smaller components or resubmitting Items that were previously denied).

Client will immediately notify TeleCheck if it has Knowledge that any of the above circumstances occur. Client will continue to be responsible for its chargebacks after termination of this Agreement. TeleCheck may chargeback any amounts that exceed the Warranty Maximum for an Eligible Item.

2. Non-Warranty Services.

2.1. No Liability for Non-Warranty Services. If any of the verification services or the Specialty Items (Settlement Only) services are selected by Client in the Application (**Non-Warranty Services**), TeleCheck will have no liability for any Item that is processed using the Non-Warranty Services that is subsequently returned, dishonored, reversed or otherwise unpaid, and does not warranty the checks processed using the Non-Warranty Services. There will be no payment to Client for any loss from transactions processed through the Non-Warranty Services. Client assumes all risks that Items accepted by Client may result in Return Items. Client will be fully responsible and liable to TeleCheck for all Return Items, regardless of the reason or timing. TeleCheck will deduct or offset all Return Items against any amounts to be paid to Client for Items to be settled under this Agreement or, alternatively, TeleCheck may initiate debits to Client's Settlement Account (defined in Section 3.1 of the Operating Procedures) for all such Return Items.

2.2. Representations and Warranties. Client represents and warrants that each Item submitted under any of the Non-Warranty Services complies with the following, (a) the Item was submitted to TeleCheck in accordance with the TeleCheck's operating guidelines and specifications, (b) the consumer authorized debiting its account by electronic funds transfer or remotely created check for the amount of the Item in accordance with in accordance with the TeleCheck's operating guidelines and specifications and NACHA Rules including, without limitation, providing any necessary notices to consumer (not applicable to the Specialty Items (Settlement Only) services) and (c) the requirements in **Sections 1.4.1 B., C. and D** (as applicable to the type of Item presented) have been complied with.

3. Settlement.

3.1. Client will identify one or more bank accounts held in its name (each, a **Settlement Account**) that TeleCheck will use in connection with the Services. Client authorizes TeleCheck to (a) initiate credits to the Settlement Account for proceeds that correspond to Client's transactions; (b) initiate debits to the Settlement Account for any amounts that may be owed or are required to be paid under this Agreement; (c) initiate the transaction to a consumer's deposit account on Client's behalf for Items that are owed to it; and (d) initiate adjustments related to the foregoing (including, without limitation, adjustments for chargebacks or partial adjustments). TeleCheck may initiate any transfer by Automated Clearing House (**ACH**) entry.

3.2. TeleCheck reserves the right to decline processing any Item. TeleCheck will initiate a funds transfer for Client's transactions that were processed under this Agreement; less any amounts due from Client for fees, refunds, adjustments or its other obligations. TeleCheck will typically credit Client's settlement funds to its Settlement Account within 2 banking days once the transactions are finally submitted to TeleCheck for settlement processing.

3.3. TeleCheck may recover amounts associated with any adjustments for an Item that are made to the Settlement Account at Client's request or due to its error. TeleCheck may also recover amounts associated with any fees that a consumer paid to its financial institution because of these adjustments.

3.4. Client must promptly notify TeleCheck if it fails to receive any settlement funds or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if Client provides inaccurate information about, or fails to notify TeleCheck of changes to, the Settlement Account. TeleCheck is not responsible for settlement errors that arise if Client provides inaccurate information about, or fails to notify TeleCheck of changes to, the Settlement Account.

4. Financial Information. Client will promptly provide any financial or other information reasonably requested by TeleCheck to perform credit risk, security, qualification, and other reviews related to providing the Services, transactions submitted, fulfillment of obligations to TeleCheck, or the financial condition of Client. Client authorizes TeleCheck to obtain information from third parties when performing credit risk, security, qualification, and other reviews.

5. Notice of Material Changes. Client will provide TeleCheck with reasonable advance notice of any material change in the nature of Client's business (including, without limitation, any change to Client's operations that would materially affect its products sold, services provided, or the procedures it follows for payments acceptance). The failure to provide TeleCheck with this notice constitutes a material breach of this Agreement.

6. Client's Payment Obligations.

6.1. Fees. Client will pay TeleCheck for: (a) all fees and charges for the Services that are set forth in the Application or Agreement; (b) all Items that are charged back; (c) all adjustments required in connection with Client's transactions; and (d) all costs, liabilities, or other obligations imposed on TeleCheck by third parties as a result of transactions submitted by Client, its actions, or inactions.

6.2. Other Fees. Client will also pay TeleCheck for the following fees and charges for the Services (as applicable): (a) **Customer Requested Operator Call Fee** (also called **CROC** or **Voice Authorization Fee**), which is an additional \$2.50 fee per operator or Interactive Voice Response (IVR)-assisted call that Client initiates, but TeleCheck does not request; (b) **December Risk Surcharge**, which is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in the month of December; (c) **Funding Report Fee**, which is a \$10.00 monthly fee to receive daily funding or weekly funding reports (the Funding Report Fee does not apply if TeleCheck provides the funding report monthly); (d) **Inquiry Rate**, which is the percentage rate that applies to the face amount of each Item (up to the Warranty Maximum) that Client submits to TeleCheck for authorization (whether or not TeleCheck issues an approval code for the Item); (e) **Monthly Minimum Fee**, which is the minimum aggregate amount of the Inquiry Rate fees that Client must pay on a monthly basis (if the total Inquiry Rate fees for Client's Items submitted during any month is less than the Monthly Minimum Fee, then the Monthly Minimum Fee will apply); (f) **Monthly Processing Fee** is a monthly fee for handling Client's account; (g) **Special Handling Fee**, which is a \$5.00 fee applied when the following occur: (1) a chargeback of an Eligible Item, (2) an Item processed for payment must be corrected due to Client's error or at Client's request, or (3) TeleCheck elects (in its discretion) to process an Item that fails to meet the applicable warranty requirements, or that is a Return Item, as a "Goodwill" Item; (h) **Transaction Fee**, which is the additional per transaction charge for each Item that Client submits to TeleCheck for authorization or processing (whether or not TeleCheck issues an approval code for the Item); and (i) **Unauthorized Return Fee** is a fee applicable to any Item that is dishonored, returned, reversed, or otherwise not paid by the Consumer's financial institution for the reason that such Item is unauthorized by the Consumer.

7. Reserve.

7.1. TeleCheck may require Client to fund a cash reserve (**Reserve**) in an amount that reflects TeleCheck's assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of TeleCheck, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that Client may have to TeleCheck. The Reserve is not a segregated fund that Client may claim to own. TeleCheck is obligated to pay to Client any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to Client's payment transactions have expired.

7.2. The obligations due to Client from the Reserve will not accrue interest unless required by applicable Laws.

7.3. TeleCheck will notify Client if a Reserve is established (including its amount) or if the amount of the Reserve is modified.

7.4. TeleCheck may set off any obligations that Client owes to TeleCheck from the Reserve.

7.5. Although Client acknowledges that the Reserve is a general obligation of TeleCheck, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of Client that is held by TeleCheck, Client grants and acknowledges that TeleCheck have a security interest in the Reserve and, at TeleCheck request, will provide documentation to reflect this security interest.

8. Setoff and Priority. All funds that TeleCheck owes to Client under this Agreement are subject to Client's payment obligations under this Agreement. TeleCheck may setoff or recoup amounts Client owes to TeleCheck against any funds that TeleCheck owes to Client.

9. Statements, Reporting. TeleCheck will provide Client with statements or electronic reporting (together, **Statements**) reflecting the fees, settlement amounts, and other information related to the Services. Client must review the Statements and inform TeleCheck of any errors within 60 days following the date that the error was, or should have been, reported; provided, Client must report settlement or funding errors to TeleCheck within 30 days (reporting errors will enable TeleCheck to recover amounts or prevent them from continuing). TeleCheck will have no obligation to provide refunds for errors that Client reports more than 60 days or 30 days (as applicable) after the errors were, or should have been, reported. Client and TeleCheck will work together to resolve issues or disputes that arise in connection with the Statements, or the funds credited or debited to the Settlement Account.

10. Term. This Agreement begins on the earlier of the dates when Client signs its Application, submits its first Item for processing under this Agreement, or when Client downloads the App (this date, the **Effective Date**). The length of this Agreement's initial term is 12 months from the Effective Date (**Initial Term**); provided, however, that Client may terminate this Agreement if Client gives and TeleCheck receives written notice of termination within 30 days of the Effective Date. This Agreement will automatically renew for successive one-year periods (each, a **Renewal Term**), unless TeleCheck or Client provides the other with at least 30 days' written notice of non-renewal at the end of the Initial Term. The Initial Term together with any Renewal Term(s) is the **Term** of this Agreement.

11. Termination; Modification; Suspension.

11.1. General Termination. Either Client or TeleCheck may terminate this Agreement by giving 30 days' advance notice if the other materially breaches this Agreement and fails to remedy the breach within 30 days of receiving notice of it. TeleCheck may terminate this Agreement upon written notice to Client for any reason (with or without cause) during its Term. If the Services are delivered through TeleCheck's App, Client may terminate this Agreement for any reason (with or without cause) during its Term by uninstalling the App.

11.2. Modification. TeleCheck may modify this Agreement's terms (including, without limitation, its fees) upon 30 days' notice to Client, during which notice period Client may terminate this Agreement by providing written notice of termination to TeleCheck. Client's continued use of the Services after the 30 day period contained in a notice of modification from TeleCheck will constitute Client's acceptance of the new terms.

11.3. Suspension. TeleCheck may suspend its Services or settlement of any funds under this Agreement if it determines that questionable activity occurs with respect to Client's payment transactions (including, without limitation, if there are excessive Return Items associated with Client's Items, Client breaches the NACHA Rules, or if required by applicable law. TeleCheck may also suspend or terminate its Services if requested by its Originating Financial Depository Institution.

12. Confidential Information.

12.1. Confidentiality. Neither party will disclose non-public information about the other party's business (including, without limitation, the terms of this Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

12.2. Disclosure. The recipient may disclose the other party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors or vendors) that need to know it in connection with the recipient's performance under this Agreement, and are bound by confidentiality obligations materially similar to those required under this Agreement; and (2) in response to a subpoena, court order, or as required under applicable Laws or NACHA Rules.

13. Data Use; Security.

13.1. Data Use. TeleCheck owns all right, title and interest in the data it obtains from providing the Services to Client.

13.2. Data Security. Client will implement commercially reasonable practices, including administrative, physical and technical safeguards, that are designed to: (a) maintain the security and confidentiality of Consumer Information, (b) protect against reasonably anticipated threats to the security or integrity of Consumer Information, and (c) protect against unauthorized access to or use of Consumer Information that could result in substantial harm or inconvenience to the consumer. **Consumer Information** is customer information Client receives in connection with any transaction contemplated by this Agreement.

14. License to Marks. TeleCheck grants Client a limited, non-exclusive, non-transferrable, non-sublicensable, royalty-free license to use the trademarks, service marks and logos (together, **Marks**) that TeleCheck provides to Client during the Term of this Agreement. Client (a) may use the Marks only in the United States; (b) may use the Marks only in connection with its use of the Services; (c) will follow the branding guidelines that TeleCheck provides or makes available from time-to-time; and (d) will not use materials containing the Marks without TeleCheck's prior written permission. Client will not otherwise distribute, lease, sublicense, sell, modify, copy or create derivative works from the Marks. TeleCheck reserves to itself all right, title, interest or license (express or implied) to the Marks that are not specifically granted to Client under this Agreement; and may suspend or terminate this license upon written notice to Client.

15. Indemnification. Client will indemnify, defend, and hold TeleCheck harmless for all losses, damages, costs, or expenses (including reasonable attorney's fees) claimed against it by third parties, which arise from Client's gross negligence, willful misconduct, or breach under this Agreement.

16. Exclusion of Damages. Neither party will be liable to the other for lost profits, revenues or business opportunities, nor any exemplary, punitive, special, indirect, incidental, or consequential damages (whether any are direct or indirect); regardless of whether these damages were foreseeable or either party was advised they were possible.

17. Limitation of Liability. TeleCheck' aggregate liability to Client for losses arising from any cause (regardless of the form of action or legal theory) in connection with this Agreement will be limited to \$75,000.00.

18. Notices. Written notices (other than normal operations) required under this Agreement will be sent by certified mail or national courier (with tracking and delivery confirmation). TeleCheck may also provide written notices required under this Agreement by regular mail. Notices will be effective upon receipt. Notices to Client will be sent to the address it provides on the Application. Notices to TeleCheck will be sent to: TeleCheck Services, Inc., Attn: TeleCheck Merchant Services, Mail Stop A-12, 7301 Pacific Street, Omaha, NE 68114; with copies to TeleCheck Services, Inc., Attn: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065 and legalpapers@firstdata.com.

19. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement other than TeleCheck' subsidiaries and affiliates involved in providing the Services to Client. Each party is responsible for the performance of any third parties it uses in connection with the Services, and their compliance with the terms of this Agreement. TeleCheck is not responsible or liable to Client for any errors or breaches of this Agreement that occur because of Client's third party providers (e.g., without limitation, issues that arise from ACH network participants, or if Client uses third party providers or applications to capture electronic images of Items to submit to TeleCheck). TeleCheck may audit Client's compliance with this Agreement upon reasonable notice, during normal business hours, and at TeleCheck's expense; and as required by the NACHA Rules. TeleCheck's Originating Depository Financial Institution may also audit Client's compliance with this Agreement and the NACHA Rules.

20. **Waivers.** A party's delay or failure to exercise any of its rights under this Agreement will not be a waiver of those rights.

21. **Compliance with Law, Choice of Law, Waiver of Jury Trial.**

21.1. **Compliance with Law.** The parties will comply with all laws, regulations, and rules (including ACH's network rules, requirements, and standards; the **NACHA Rules**) (together **Laws**) that are applicable to their respective performance obligations under this Agreement. Client acknowledges that it is the Originator under the NACHA Rules with respect to its transactions and agrees to comply with its obligations as an Originator. Client certifies that it has a legitimate business need for the information that TeleCheck provides through its Services, will use the information in connection with submitting payment transactions to TeleCheck for processing and for no other purpose, and will use the information only for permissible purposes under the Fair Credit Reporting Act (Client will not use TeleCheck's information for employment related purposes).

21.2. **Choice of Law; Waiver of Jury Trial.** This Agreement will be governed by New York law (without regard to its choice of law provisions). The courts of New York, New York will be the proper venue for legal proceedings brought in connection with this Agreement. **TeleCheck and Client each waive their right to a jury trial for claims arising in connection with this Agreement.**

22. **Entire Agreement, Amendment, Counterparts.** The defined term **Agreement** includes its schedules, addenda, and any amendments (capitalized terms used in the schedules, addenda, or amendments without definition will have the meanings given to them in this Agreement). This Agreement is the entire agreement between the parties and replaces any prior agreements or understandings (written or oral) with respect to its subject matter. Except as set forth in Section 11.2, modifications to this Agreement must be in writing, executed by the parties. This Agreement and any amendments may be executed electronically and in counterparts, each of which constitutes one agreement when taken together. Electronic and other copies of the executed Agreement are valid.

23. **Assignment.** Client may not assign this Agreement without TeleCheck's written consent. TeleCheck may assign this Agreement upon notice to Client. This Agreement will be enforceable against a party's permitted successors or assigns. This Agreement may not be continued, assumed, or assigned in the event of a bankruptcy or other insolvency event without consent from the non-bankrupt or insolvent parties.

PART IV: ADDITIONAL INFORMATION REGARDING FEES; ADDRESSES AND CUSTOMER SERVICE

This Part IV of this Program Guide contains information regarding fees and certain contact information. In this Part IV, references to "**you**" and "**your**" mean Client and references to "**our**," "**us**" and "**we**" mean Bank.

A.1. and A.2 Reserved

A.3. Additional Information Regarding Fees; Liquidated Damages

Note: Fee descriptions on the MPA may be similar to but not exactly the same as those that appear on your Merchant Account statement for the related fees or rates. Please contact Customer Service if you have any questions about your Merchant Account statement.

START UP FEES

Account Setup Fee – Charged upon approval of your MPA to set up your Merchant Account.

Reprogramming Fee – Charged for any programming of equipment you did not purchase from us, per piece of equipment.

Debit Network Set-up Fee – Charged for implementation to allow you to accept Debit Network Transactions for your Merchant Account on our and our agents' systems.

Wireless Fee (Terminal Download) – Fee charged to download customer owned wireless terminal with a new SIM card.

BILLED MONTHLY FEES

Monthly Service Charge – Our customer service fee.

Minimum Processing Fee – Charged per Location and appears on the Merchant Account statement as "Account Minimum Fee." The "Discount Fees" you pay to us (as set forth on the MPA) count toward the Minimum Processing Fee; however, the product fees, other monthly non-processing fees, equipment fees, and the Payment Network fees are excluded from this calculation. If these fees are equal to, or greater than, the amount set forth on the MPA for the Minimum Processing Fee, then no fee is charged. This fee will be calculated either beginning thirty (30) days after the date the Client's MPA is approved or beginning on the deferred billing month indicated on the MPA.

Monthly Wireless Fee – Charged for wireless terminal telecommunication network access per TID and appears on the Merchant Account statement as "MONTHLY ACCESS".

Vending Gateway Service Fee Wireless – Charged per vending device or vending unit per month and appears on the Merchant Account statement as "GPRS VEND NON MOBIL MNTH FEE".

Commerce Control Center (OnLine Reporting) – Charged for access to online reporting through Commerce Control Center and appears on the Merchant Account statement as "MONTHLY COMMERCE CONTROL CENTER FEE".

Paper Statement Fee – Charged for the printing and mailing of a paper Merchant Account statement and appears on the Merchant Account statement as "MONTHLY STATEMENT FEE".

Monthly PCI Support Package Fee – Charged for notifying you of Payment Network mandated changes and for changing our and our agents' systems as result of those mandated changes. The payment of the monthly PCI Support Package Fee does not affect your compliance responsibilities and obligations associated with your Merchant Account(s).

Clover Go Monthly Fee – Monthly maintenance fee charged per MID for continued access to the Clover Go product on our and our agents' systems and appears on the Merchant Account statement as "MOBILE PAYMENTS MONTHLY FEE".

Perka – Fee charged monthly for access to the Perka App on our and our agents' systems. Please note: on your Merchant Account statement and in other communications, Perka may be referred to as "PERKA SOLUTION" or "CLOVER REWARDS".

INTERNET START-UP FEES

eCommerce Payment Platform – Charged per MID for implementation of the eCommerce Payment Platform on our and our agents' systems and appears on the Merchant Account statement as "INTERNET SET-UP FEE".

Internet Set-up Fee – Charged per TID for implementation of third party Internet services on our and our agents' systems.

INTERNET BILLED MONTHLY FEES

Gateway Authorization Fees – Charged for Internet Authorization requests processed through the Gateway and appears on the Merchant Account statement as "GATEWAY AUTHORIZATION FEE".

Gateway Fee – Maintenance fee charged per MID for continued access to Gateway on our and our agents' systems and appears on the Merchant Account statement as "GATEWAY FEE".

eCommerce Payment Platform – Maintenance fee charged per MID for continued access to the eCommerce Payment Platform on our and our agents' systems and appears on the Merchant Account statement as "GATEWAY/SOFTWARE FEE".

Internet Service Fee – Maintenance fee charged per TID for continued access to third party internet services on our and our agents' systems.

Internet Authorizations/Other Fees – Charged for each Internet Authorization request for the applicable Payment Networks, including for such Authorizations via eCommerce Payment Platform and for each Payment Network will appear on the Merchant Account statement in the form "[Payment Network name] INTERNET AUTH FEE".

TRANSARMOR FEES

Clover Security Plus Monthly Fee (formerly known as TransArmor Solution) – Fee charged monthly for access to Clover Security Plus on our and our agents' systems, as further described in Section 35.

TransArmor Monthly Fee – Monthly maintenance fee charged for continued access to the TransArmor product on our and our agents' systems.

TransArmor Per Device – One-time fee applicable to each unit of your equipment that is (1) enabled for TransArmor Encryption, as part of the TransArmor Data Protection service or Clover Security Plus, (2) connected to a merchant point of sale network and (3) either a non-Verifone device, using the TransArmor Verifone Edition encryption method, or a Verifone device.

DISCOUNT RATES, TRANSACTION FEES, AND RELATED FEES

Your Discount Rates are set forth in the MPA and may be adjusted from time to time, as further described in Section 6. Below is a summary of important information about certain pricing methods associated with your Merchant Account(s) and the MPA and Schedules you receive from us, as applicable. Please refer to the MPA for more information about fees applicable to the Services and any pricing methods not described below. Discount Rates are assessed on Gross sales volume and apply to all Credit Card transactions, to Non-Debit Network Transactions, and, depending on the pricing method indicated on your MPA, to Debit Network Transactions. Transaction Fees are charged per Authorization attempt on sales, or Sales Drafts, and per Authorization attempt on returns, or Credit Drafts (if return authorization capabilities are supported), and per transaction on returns, or Credit Drafts. Except to the extent expressly provided in the below description of the Mastercard/Visa/Discover/American Express OptBlue Interchange Plus pricing method, no fees (including the Discount Rates, related interchange, Payment Network fees, and other Third Party Based Fees) charged for the original sales transactions, and their related Credits, reversals or Chargebacks, will be refunded. The titles of the Schedules and pricing methods referenced below may change over time.

Non-Qualified Rate Schedule. This Schedule, if included as part of the Agreement, is associated with the Mastercard/Visa/Discover/ American Express OptBlue Discount Rate pricing method. This pricing method involves a Discount Rate applied to all transactions. In addition, a Non-Qualified Interchange Fee will apply to non-qualified transactions. Your MPA or your Non-Qualified Rate Schedule identifies your Anticipated Interchange Levels; the Non-Qualified Rate Schedule includes interchange rates or American Express OptBlue Program pricing, as applicable, associated with your Anticipated Interchange Levels and other interchange programs that may actually apply to your transactions. We refer to the difference between these two rates as "billback," "Non-Qualified Interchange Fee," or "Non-Qualified Interchange Rate". If the Non-Qualified Rate Schedule applies to you, for qualified and non-qualified transactions, you will be charged the Discount Rate, the amounts of which will appear on your Merchant Account statement(s). For non-qualified transactions, in addition to the Discount Rate, you will be charged the Non-Qualified Interchange Fee and (if included as a fee on your MPA) the Non-Qualified Surcharge reflected on your MPA (if the Non-Qualified Interchange Fee is calculated to be a negative value, you will not be charged or credited for it). The Non-Qualified Interchange Fees and (if included as a fee on your MPA) Non-Qualified Surcharge Fees for each type of non-qualified transaction will be added together and appear on your Merchant Account statement(s) as one entry with the identifier "BB" or "Billback".

Interchange Rate Schedules (for the Payment Networks applicable to you) **and Program Rate Schedule for American Express OptBlue.** This Schedule is associated with the Mastercard/Visa/Discover/American Express OptBlue Interchange Plus pricing method. This Schedule provides the most common interchange programs and rates and American Express OptBlue Program pricing applicable to your transactions. For each qualified or non-qualified transaction, you will be charged the Discount Rate, the interchange rate and other Payment Network fees applicable to that transaction.

Qualification Tier Schedule (for the Tier type applicable to you). This Schedule is associated with the Mastercard/Visa/Discover/American Express OptBlue 2-Tier and Mastercard/Visa/Discover/American Express OptBlue 3-Tier pricing methods. The Tier pricing methods involve different Discount Rates for Qualified, Mid-Qualified, and Non-Qualified tiers. This Schedule provides the qualification criteria used to determine the applicable Tier for each transaction.

Swiped/Non-Swiped – Discount Rates and Transaction Fees. The Swiped/Non-Swiped Discount Rates and Transaction Fees, if included on your Application, consist of the following: (1) a Swiped Discount Rate, which will be charged for transactions where both the customer and Card are present, and the Card information is not manually keyed into a device; (2) a Non-Swiped Discount Rate, which will be charged for transactions where the Card is manually keyed into a device or where either the customer or the Card is not present for the transaction, such as online, internet, phone, and mail order transactions ("Non-Swiped Transactions"); and (3) a Transaction Fee for Non-Swiped Transactions.

DEBIT NETWORK RATES

Debit Network Transaction Fee – Our fee for processing your Debit Network Transactions and appears on the Merchant Account statement as "DEBIT/ATM CARD TRANSACTION FEE" for approved transactions or "ONLINE DEBIT DENIAL" for declined transactions. In addition to the fees set forth on the MPA, you shall be responsible for the amount of any pass-through fees imposed upon a transaction by the applicable Debit Network.

PROCESSING FEES

Chargeback Fee – Fee charged per Chargeback.

Mastercard/Visa/Discover/American Express Voice Authorization and Voice Address Verification Fees – Our fee charged for Authorization requests made by telephone and will appear on the Merchant Account statement in the form "[Payment Network name] AUTH FEE", "[Payment Network name] VOICE ADDR VERIF" or "[Payment Network name] VOICE ADDR VER/AUTH".

Mastercard/Visa/Discover/American Express Address Verification, ECR Address Verification, Auto Address Verification, Address Verification 950 Call Authorization, Address Verification Regional Authorization, Address Verification WATS Authorization, and Address Verification Local Authorization Fees – Our fee charged per Address Verification Service (AVS) inquiry and will appear on the Merchant Account statement as "AVS LOCAL AUTHORIZATION FEE", "AVS WATS AUTHORIZATION FEE", "AVS REGIONAL AUTHORIZATION FEE", or "AVS 950 CALL AUTHORIZATION FEE" or in the form of "[Payment Network name] AUTO ADDRESS VERIF" or "[Payment Network name] ECR ADDRESS VERIF".

Internet AVS Auth Fee – Charged for each Internet Authorization request that includes Address Verification Service.

American Express Direct Auth Fee – Charged per Authorization request and appears on the Merchant Account statement as "AMEX AUTH FEE".

ACH Deposit Fee – Fee charged per ACH deposit to your Settlement Account and appears on the Merchant Account statement as “ACH FEE”.

ACH Reject Fee – Fee charged per ACH reject.

Batch Settlement Fee – Fee charged for each Credit Card transaction and Non-Debit Network Transaction batch and each Debit Network Transaction batch transmitted. We process your transactions according to the following groups: (1) Credit Card transactions and Non-Debit Network Transactions and (2) Debit Network Transactions, and these two groups of transactions will be counted as separate Batches and charged a separate Batch Settlement Fee, even if both groups are in the same Batch that you have transmitted to us.

EBT Return Fee, EBT Balance Inquiry, EBT Authorization Fee, and EBT Decline Fee – Charged per EBT Authorization request, EBT food stamp return, EBT decline, and EBT balance inquiry, and will appear on the Merchant Account statement accordingly.

Mastercard Global ePricing Service – Fee charged on the Mastercard dollar volume of Sales Drafts and Credit Drafts (return transactions) processed through the Global ePricing product.

Visa Global ePricing Service – Fee charged on the Visa dollar volume of Sales Drafts and Credit Drafts (return transactions) processed through the Global ePricing product.

Monthly Funding Advantage – Fee assessed on the monthly Mastercard, Visa, and Debit Network Transaction gross Sales Drafts volume, not the number of transactions. Applicable only if Merchant Account is setup for monthly billing of fees.

American Express Sales Discount – Fee assessed on monthly American Express gross Sales Drafts volume, not the number of transactions. Applicable only if Merchant Account is setup for monthly billing of fees.

Discover Sales Discount – Fee assessed on monthly Discover gross sales volume, not the number of transactions. Applicable only if Merchant Account is setup for monthly billing of fees.

Mastercard/Visa/Discover Transaction Fee – Fee assessed on Mastercard, Visa, and Discover Sales Drafts and Credit Drafts (return/refund) transactions. Fee appears on your Merchant Account statement as “[Payment Network name] SALES TRANS FEE” for Sales Drafts and as “[Payment Network name] CREDIT TRANS FEE” for Credit Drafts.

American Express OptBlue Transaction Fee – Fee assessed on American Express OptBlue Sales Drafts and Credit Drafts (return/refund) transactions. Fee appears on your Merchant Account statement as “AMEX SALES TRANS FEE” for Sales Drafts and as “AMEX CREDIT TRANS FEE” for Credit Drafts.

PAYMENT NETWORK FEES

For each Visa, Mastercard, Discover, and American Express OptBlue Card transaction you will be charged the applicable Payment Network fees set by Visa, Mastercard, Discover, or American Express (depending on the Card type used) as noted on your Interchange Rate Schedule or American Express OptBlue Program Rate Schedule. These fees are in addition to any other fees, including any fees referenced on your Acquiring Fee Schedule. Mastercard Cross Border Fee Non-USD.

WEX FULL ACQUIRING FEES

WEX Auth Fee – Fee charged for each WEX Card Authorization request.

WEX Sales Discount – Fee charged on the Gross sales volume of WEX Card transactions and appears on Merchant Account statement as "WRIGHT EXPRESS (P/L) SALES DSC".

WEX Refund Discount – Fee charged on Credits or refund sales volume for WEX Card transactions and appears on Merchant Account statement as "WRIGHT EXPRESS (P/L) RETURNS D".

WEX Chargeback Discount – Fee charged on the dollar amount of WEX Chargebacks.

WEX Chargeback Reversal Disc't – Fee charged on the dollar amount of WEX Chargeback reversals and appears on the Merchant Account statement as "WEX CHRGBK REVERSAL DISCOUNT".

WEX Retrieval Fee – Fee charged per WEX Retrieval.

BUYPASS FEES

Datawire Micronode Monthly Fee – Fee charged monthly for Datawire Micronode access and will appear on the Merchant Account statement as “MONTHLY MAINTENANCE FEE”.

Voyager Authorization Fee – Fee charged for each Voyager Card Authorization request.

WEX (Non-Full Svc) Authorization Fee – Fee charged for each WEX Card Authorization request (through the WEX Non Full Acquiring Program).

Voyager Sales Disc't Rate – Fee charged on the Gross sales volume of Voyager Card transactions.

Voyager Credit Disc't Rate – Fee charged on Credits or refund sales volume for Voyager Card transactions.

FLEET FEES

Fleet One Auth Fee – Fee charged on each Fleet One Authorization request.

FleetCor® Auth Fee – Fee charged on each FleetCor® Authorization request.

AUTHORIZATION FEES, CAPTURE FEES, AND TRANSACTION FEES

Authorization Fees are charged for each transaction (including purchases and returns) that you attempt to Authorize or otherwise request, regardless of the response to the Authorization request (approved, declined, etc.). Capture Fees are charged for each transaction that you transmit to us for settlement. Transaction Fees are charged for each transaction that you submit to us for processing. If your Agreement includes a combined fee for both the Authorization and capture of a transaction, the Authorization and capture must be submitted as a single transaction, otherwise you will be charged a separate Authorization Fee and Capture Fee. You are responsible for utilizing software or services that will correctly submit these transactions to achieve the combined billing.

A.4. Addresses for Notices; Customer Service

Bank: Bank of America, P.O. Box 25118, Tampa, Florida 33622-5118

Phone Numbers: Customer Service – 1-800-430-7161

Authorizations – 1-800-430-7161

POS Help Desk – 1-800-430-7161

Supplies – 1-800-430-7161

PART V: CONFIRMATION PAGE

Please read this Program Guide in its entirety. It describes the terms under which we will provide the Services to you. Below we have summarized portions of this Program Guide, to assist you with understanding certain key provisions and to provide answers to some common questions.

1. **Bank and TeleCheck may debit your bank account(s)** (referred to as your Settlement Account(s)) from time to time for amounts owed to them, respectively, under their agreements with you.
2. **There are many reasons why a Chargeback may occur.** When a Chargeback occurs, we (or TeleCheck, when a chargeback or reassignment occurs) will debit your settlement funds or Settlement Account. For a more detailed discussion regarding (a) Chargebacks, see Section 7, and (b) chargebacks or reassignment for TeleCheck, see sections 1.11, 3.1, and 6.1(g) of the TeleCheck Agreement.
3. **If you dispute any charge or funding,** you must notify (a) us within 60 days of the date of the statement where the charge or funding appears for Card processing, as further described in Section 6.6, and (b) TeleCheck, within 30 or 60 days of the date of a TeleCheck transaction, depending on the dispute, as further described in section 9 of the TeleCheck Agreement.
4. **The Agreement and the TeleCheck Agreement limit liability to you.** For more information regarding the limitations of liability, see Section 15, and sections 16 and 17 of the TeleCheck Agreement.
5. **Bank and TeleCheck have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, each of them may take certain actions to mitigate their risk, including terminating the related agreement, and/or holding monies otherwise payable to you. See Sections 17, 18, and 19, and sections 7 and 11 of the TeleCheck Agreement.
6. **By executing the MPA,** you are authorizing Bank of America, N.A., First Data Merchant Services LLC, and TeleCheck Services, Inc., as applicable, to obtain financial and credit information regarding your business and the signer(s) and guarantor(s) of the applicable agreements until all your obligations to the providers under those agreements are satisfied.

Print Client's Business Legal Name: _____

By its signature below, Client acknowledges that it has received all of the following:

- (1) One of the following, as applicable to the Pricing Method set forth on the Application: (a) Qualification Tier Schedule corresponding to the 2-Tier or 3-Tier Pricing Method; (b) Non-Qualified Rate Schedule for the Visa/MC/Discover/American Express Discount Rate Pricing Method (specific to your Merchant Account(s)); or (c) the Interchange Rate Schedule for the Visa/MC/Discover Interchange Plus Pricing Method and American Express Program Pricing.
- (2) The Debit Network Fees Schedule.
- (3) The complete Merchant Services Program Guide (**Version BANA0525**).

By its signature below, Client further acknowledges reading and agreeing to all terms in the Program Guide and the Application.

NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM GUIDE WILL BE ACCEPTED.

Client's Business Principal:

Signature (Please sign below)

X _____ Title _____ Date _____

Print Name of Signer

PART V: DUPLICATE CONFIRMATION PAGE

Please read this Program Guide in its entirety. It describes the terms under which we will provide the Services to you. Below we have summarized portions of this Program Guide, to assist you with understanding certain key provisions and to provide answers to some common questions.

1. **Bank and TeleCheck may debit your bank account(s)** (referred to as your Settlement Account(s)) from time to time for amounts owed to them, respectively, under their agreements with you.
2. **There are many reasons why a Chargeback may occur.** When a Chargeback occurs, we (or TeleCheck, when a chargeback or reassignment occurs) will debit your settlement funds or Settlement Account. For a more detailed discussion regarding (a) Chargebacks, see Section 7, and (b) chargebacks or reassignment for TeleCheck, see sections 1.11, 3.1, and 6.1(g) of the TeleCheck Agreement.
3. **If you dispute any charge or funding**, you must notify (a) us within 60 days of the date of the statement where the charge or funding appears for Card processing, as further described in Section 6.6, and (b) TeleCheck, within 30 or 60 days of the date of a TeleCheck transaction, depending on the dispute, as further described in section 9 of the TeleCheck Agreement.
4. **The Agreement and the TeleCheck Agreement limit liability to you.** For more information regarding the limitations of liability, see Section 15, and sections 16 and 17 of the TeleCheck Agreement.
5. **Bank and TeleCheck have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, each of them may take certain actions to mitigate their risk, including terminating the related agreement, and/or holding monies otherwise payable to you. See Sections 17, 18, and 19, and sections 7 and 11 of the TeleCheck Agreement.
6. **By executing the MPA**, you are authorizing Bank of America, N.A., First Data Merchant Services LLC, and TeleCheck Services, Inc., as applicable, to obtain financial and credit information regarding your business and the signer(s) and guarantor(s) of the applicable agreements until all your obligations to the providers under those agreements are satisfied.

Print Client's Business Legal Name: _____

By its signature below, Client acknowledges that it has received all of the following:

- (1) One of the following, as applicable to the Pricing Method set forth on the Application: (a) Qualification Tier Schedule corresponding to the 2-Tier or 3-Tier Pricing Method; (b) Non-Qualified Rate Schedule for the Visa/MC/Discover/American Express Discount Rate Pricing Method (specific to your Merchant Account(s)); or (c) the Interchange Rate Schedule for the Visa/MC/Discover Interchange Plus Pricing Method and American Express Program Pricing.
- (2) The Debit Network Fees Schedule.
- (3) The complete Merchant Services Program Guide (**Version BANA0525**).

By its signature below, Client further acknowledges reading and agreeing to all terms in the Program Guide and the Application.

NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM GUIDE WILL BE ACCEPTED.

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

X _____ Title _____ Date _____

Print Name of Signer