CITY OF GREENSBURG
REGULAR CITY COUNCIL MEETING
300 SOUTH MAIN GREENSBURG, KANSAS
MONDAY, JUNE 6, 2016
6:00 PM

A) CALL TO ORDER

B) PLEDGE OF ALLEGIANCE AND INVOCATION

C) ROLL CALL & APPROVAL OF THE AGENDA

D) CITIZEN COMMENTS
   All comments are limited to a maximum of three minutes for each speaker. In accordance with the Open Meetings Act, City Council members may not discuss or take action on any item that is not on the Agenda.

E) CONSENT AGENDA
   These items are routine and enacted by one motion. There will be no separate discussion of these items unless a Council member so requests. Any consent agenda item can be removed and placed on the agenda as an item of business.
   1. Approval of Minutes
      a. Regular Meeting – May 16, 2016
   2. Appropriation Ordinance
      a. Ordinance #1077
   3. Firework Permit
      a. Youth For Christ South Central Kansas

F) ITEMS OF BUSINESS
   1. Credit Card and Debit Payments
   2. Stair Replacement Request
   3. Incubator Rent Proposal

G) CITY ATTORNEY’S REPORT

H) CITY ADMINISTRATOR’S REPORT

I) GOVERNING BODY COMMENTS

J) ADJOURNMENT

NOTICE: SUBJECT TO REVISIONS

It is possible that sometime between 5:30 and 6:00 pm immediately prior to this meeting, during breaks, and directly after the meeting, a majority of the Governing Body may be present in the council chambers or lobby of City Hall. No one is excluded from these areas during those times.

To be placed on future agendas please contact City Administrator Kyler Ludwig at administrator@greensburgks.org or call City Offices at 620-723-2751.
Greensburg City Council  
May 16, 2016  
City Hall

A) CALL TO ORDER  
Mayor Robert Dixson called the meeting to order at 6:00 pm on May 16, 2016.

B) PLEDGE OF ALLEGIANCE AND INVOCATION  
The Pledge of Allegiance was said. The invocation was given by Pastor Jeff Blackburn.

C) ROLL CALL & APPROVAL OF THE AGENDA  
Council present: Matt Christenson, Mark Trummel, Sandy Jungemann, Rick Schaffer, and Haley Kern.  
Trummel made a motion to approve the agenda with amended Appropriation Ordinance 1076.  
Jungemann seconded the motion and it passed 5-0.

D) CITIZEN COMMENTS  
Dixson welcomed those in attendance and opened the floor for comments or questions. There were no comments or questions from the audience.

E) CONSENT AGENDA  
Kern made a motion, seconded by Christenson, to approve the Consent Agenda with Amended Appropriation Ordinance 1076. The motion passed 5-0.

F) ITEMS OF BUSINESS  
1. Greensburg PowerUp Funding Request – 4th of July Fireworks  
City Administrator Kyler Ludwig introduced Mike McBeath, Greensburg PowerUp, to request funding for the July 4th celebration. Ludwig reminded Council of their 2015 contribution of $1,200. McBeath requested use of the lot directly west of City Hall. The celebration will take place at the Big Well Park and fireworks would be launched from the lot across from City Hall. McBeath also requested a financial contribution of $1,200. Kern and Christenson recused themselves as they are participants in PowerUp. Trummel made a motion to approve a $1,200 financial contribution and use of City property across from City Hall. Jungemann seconded the motion. The motion passed 3-0.

2. Tornado Siren Maintenance  
The City maintains four tornado sirens within city limits. The manufacturer recommends changing batteries every three years. The batteries currently being used were installed in April 2012. Blue Valley Public Safety (BVPS), the original installer, has previously done the maintenance and upkeep on the sirens. Ludwig presented a bid for $3,741 for 16 batteries. Also presented was a maintenance contract that Council could enter into once the batteries are replaced. The contract covers parts, future battery replacement, mileage, and yearly inspection. Over the past 3 years, the city has spent approximately $3,000 on inspections and mileage alone. The contract would cost $234/month or $2,808 annually.

Christian computed that the cost over the last three years has been approximately $140/mo with no major events or battery purchases. Trummel confirmed that the encoding equipment mentioned in the contract was the radio activation portion of the system and that the contract would be on an annual renewal. City Attorney Gordon Stull recommended the contract be amended to state that it would be governed by Kansas law, not Missouri law, and that Staff confirm that BVPS provides general liability insurance. Council discussed that a maintenance contract would be a form of insurance policy on the sirens.
Christenson made a motion, seconded by Trummel, to approve BVPS to replace 16 siren batteries at a cost of $3,721.00. The motion passed 5-0. Trummel made a motion, seconded by Jungemann, to approve a maintenance agreement between the City and BVPS, conditional on the changes recommended by Stull being made. The motion passed 5-0.

3. Incubator Rate Discussion
Council has indicated to Staff that the success of the Sunchips Business Incubator is a priority in 2016. Staff has discussed various data on the Incubator with Council four times this year, and is now seeking direction on how to proceed with a rent increase or policy change on contract renewals. Ludwig stated that, since opening in 2009, inflation has affected the Incubator CPI by more than 10%; however, Incubator lease rates have remained unchanged. Funds available to upkeep the Incubator are depleting. Staff requested Council consider two aspects 1) current rent rates 2) a system to bring rent for extended tenants to market value.

Dixson asked for information on the rent rate for Kiowa County Untied facilities. That information was not readily available. In reviewing previously disclosed revenue and expense reports on the Incubator, Christenson calculated that to cover costs by only raising rent, rates would have to be increased by 50%. Council discussed that the original intent of the building was to encourage new start-up businesses and then to see them move on to larger, permanent facilities. There are several tenants that have been in the building for an extended period of time, with the same rate that was implemented when the building was opened. Council discussed ways to reduce expenses such as moving personnel costs to another fund in 2017. Also discussed was the possibility of charging long term tenants market level rates. A grace period for implementation was suggested, along with an increase in rent for new tenants and at annual renewals. Council should anticipate a considerable increase in taxes owed on the facility as the Neighborhood Revitalization for the facility comes to an end. Ludwig confirmed that utilities charged to the Incubator’s budget are set at retail cost.

The consensus of the Council was to have Staff investigate a base rent increase and an increase after the 3 year incubation period. Christenson recommended implementing the change slowly, with long term tenants being brought to market rate. Stull advised that Council could put a property tax adjustment in the lease that would take effect once the revitalization ends. If there is a waiting list of tenants, a long term tenant may be asked to incubate out. Kern voiced concern over having to ask tenants to give up their spaces; potentially with no location to move to and potentially causing a business that was healthy in the Incubator to fail.

4. Review of Budget Survey
As part of the approved 2017 budget process, Ludwig will be gathering public input on where funding should be allocated. A draft survey was presented. The survey reviews programs and services paid for out of the general fund. Residents will be asked to rate their satisfaction of each service and then rate how important they feel the service is. They will also be asked to determine if funding of the program should increase, decrease, or stay the same. Ludwig would like to see at least one Council member present when he does a presentation to the Senior Center and other civic organizations. The presentation should take approximately 15 minutes. Ludwig will also be discussing the topic at Power-Up later this week. Christenson voiced interest in attending a presentation.

G) CITY ATTORNEY’S REPORT
There was no report from the City Attorney.
H) CITY ADMINISTRATOR’S REPORT
Ludwig provided a prepared City Administrator’s Report to Council. The following topics were discussed in the report:

  **City Pool:** The pool was filled last week, and Staff had 8 individuals attend training in Coldwater this past weekend. Staff anticipates the pool to be open Memorial Day.
  **Mowing Notices:** The City began sending weed notices this week. Reminders about mowing are included in the Kiowa County Signal and in utility bills. Weeds over 12 inches are presumed to be blighting.
  **Kansas Gas Service:** Work on the gas line through the Business Park has been completed. Kansas Gas will be fixing a few segments of sidewalk that their equipment broke.
  **Best Small Town in Kansas:** Council was asked to encourage friends and neighbors to vote for Greensburg in Kansas Magazine’s “Best Small Town in Kansas” competition. Voting goes until the end of the month.
  **Street Update:** The crack-filling machine’s nozzle was damaged in shipping, and staff is waiting for a new part before the machine can be used.
  **Water Certification:** A member of Haviland’s City Council expressed interest in having one of our licensed operators cover the certification requirements at their new treatment plant. Rather than requiring our operators to take on this risk through the City, Ludwig has informed them of this opportunity, and they can pursue the opportunity privately.
  **Memorial Day Events:** A list of all the Memorial Day events was attached to the Administrator’s report. The City’s Twitter and Facebook will be used to keep citizens up to date on any changes in events.

I) GOVERNING BODY COMMENTS
There were no additional comments from the Council.

J) ADJOURNMENT
Dixson declared the meeting adjourned at 6:52 pm.

___________________________________   ______________________________
Robert A. Dixson, Mayor     Christy Pyatt, City Clerk
# APPROPRIATION ORD. 1077

## 06.06.16

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**** PAID TOTAL *****

|  |  |  | 39,606.33 |

***** REPORT TOTAL *****

|  |  | 39,606.33 |
APPLICATION FOR BUSINESS LICENSE

License Number __________________
(if new applicant, leave blank)

Individual/Corporate Name: YOUTH FOR CHRIST SOUTH CENTRAL KANSA

DBA Name ____________________

Mailing Address: 211 E. GARFIELD GREENSBORO KS 67054
Street ________________________
City __________________________
State _________________________
Zip ____________________________

Physical Address: 211 E. GARFIELD GREENSBORO KS 67054
Street ________________________
City __________________________
State _________________________
Zip ____________________________

Business Phone Number (620) 223-2727 Business Fax Number ( ) -

FEIN 218175796 Sales Tax # 004-218175796F-01

Describe Type of Business: FIRE WORKS STAND

Retail __________ Wholesale __________

Original Application Renewal __________

OWNERSHIP: Individual Partnership LLP LLC Corporation

NAME, ADDRESS AND TITLE OF OWNERSHIP

_________________________ __________________________

TO BE SIGNED BY SOLE OWNER, PARTNER, OR OFFICE OF THE CORPORATION ONLY.

Signature: Winter Roden

Title: Mentor Coach

Date: 5-27-16
TO: Mayor and City Council
SUBJECT: Credit and Debit Payments
INITIATED BY: City Administrator, Kyler Ludwig

Background:
The City of Greensburg currently only takes cash or check payments for utility bills. Staff was asked by a councilmember to look into the possibility of adding online card processing and a point of sale system (POS).

The City currently uses FirstData for payments at the Big Well. The system was set up through The Peoples Bank; the city also has capabilities for card payments through Square at the pool, but we have not opted to use those capabilities yet.

Analysis:
The cost associated with running card payments has prevented the City from moving toward a card payment system. For residential customers the average monthly utility payment is approximately $200, and about $500 for commercial accounts. If an average residential customer paid with a credit card each month the cost to the City would be approximately $60 and $150 for the average commercial account (based on a 2.5% card fee). Municipalities have the ability to pass card fees on through a “convenience” fee. The convenience fee is set thorough the average utility payment, and would be set by ordinance.

The following is a summary of the information collected from the credit card payment providers.

**Forte**
-2.5% fee with a minimum fee of $1.95.
-Echeck payments with a flat $1.50 fee.
-Free and secure online portal
-POS terminal/printer $249.
-No monthly or annual fees.
-Can link the POS and online billing systems with our utility billing software - DataTech (about $1,000 each for set up, and an annual $70 customer service fee).

**FirstData**
-2% fee plus $0.20 fee for each transactions with the card present.
-2.75% fee plus $0.20 fee for each transactions without a card present.
-$0.50 fee for debit transactions.
-No provided online portal for payments.
-POS terminal $500.00 (chip compliant), can rent at $24.95/month
-Other fees - $50 set up fee, $10 monthly billing fee, $119.95 annual fee for Visa and Mastercard payments.
-First Data is not compatible with DataTech billing software and requires manual entry.
**Financial:**
Card fees can be passed to the customer, but the set up and annual fees are paid by the City. The City will be responsible to make up the difference between the average fee and the actual fees.

**Recommendations/Actions:** It is recommended the City Council:
Direct staff to enter into an agreement with Forte and/or FirstData for Credit Card processing
Direct staff to create an ordinance allowing for the City to charge a convenience fee.

**Attachments:**
Exhibit A: First Data Credit Card Forms, Exhibit B: Forte Information sheets
## ABOUT MERCHANT'S BUSINESS

Bank Code: _____________________  Merchant ID: _____________________  DBA Name: _____________________

### CHECKLIST INFORMATION

- **MCC:** _____________________  Merchant Type: _____________________  □ Linkback # _____________________  Sales Support ID: _____________________
- **Sales Rep. Name:** _____________________  Card Rep. #: _____________________  Sales Lead Tracking #: _____________________
- **Pricing Type:** _____________________  Hierarchy: _____________________  Bank: _____________________  Agent: _____________________
- **Corp.:** _____________________  Chain: _____________________

### CLIENT VISITATION

- □ Visit not required (Lic. Professional)
- 1. Zone: ______________________________________ [ ] Business District  [ ] Industrial  [ ] Residential
- 2. How many employees: _____________________
- 3. Location: __________________________________ [ ] Mall  [ ] Shopping Area  [ ] Isolated  [ ] Office  [ ] Apartment
- [ ] Home  [ ] Other: _____________________
- 4. Seasonal: __________________________________ [ ] No  [ ] Yes, Mos. in Operation: _____________________
- Mos. Open Between _____________________ to _____________________

Comments to Credit Officer/Other Depository/Primary Savings Account Number and Additional Information (40 Characters):

## MAIL/TELEPHONE ORDER / BUSINESS TO BUSINESS / INTERNET INFORMATION

(All Questions Must Be Answered)

1. What % of total sales represent business to business (vs. business to consumer)?
   Business to Business ______%  +  Business to Consumer ______% = 100% (total sales)

2. What % of bankcard sales represent business to business (vs. business to consumer)?
   Business to Business ______%  +  Business to Consumer ______% = 100% (bankcard sales)

3. MasterCard/Visa/Discover/V Network/American Express®
   sales are deposited (check one):  □ Date of order  □ Date of delivery  □ Other (specify): _____________________

4. Does any of your cardholder billing involve automatic renewals or recurring transactions (i.e., cardholder authorizes initial sale only)? [ ] Yes  [ ] No

Comments: _____________________

## CARD STATEMENTS / NOTIFICATIONS DELIVERY METHOD

- Statement Recap Information: (check one)  □ 01 Outlet/DBA  □ 02 Outlet/Bill To  □ 08 Recap Only/Bill To  □ 09 Recap & Outlet/Bill To
- Statement Delivery Method: (check one)  □ Electronic (Default)  □ Print and Mail  Statement Type: (check one)  □ Detail  □ Summary

Statement: E-Mail Address: (required)

### BUSINESS ACCOUNT CHECKING STATEMENT ROLLUP (check one):

- □ 0 = Each Transfer  □ 1 = Debit/Credit Grouped (By Category)  □ 2 = Net Transfer Amount Only  □ 3 = Net Transfer EOM Fee Combined

## CARD PROCESSING INFORMATION

EMPSSan1805

1. Processing mode:
   □ EDC  □ Paper Voice  □ Tape  □ ECR  □ Paper Terminal

2. Funding will be processed DAILY via:  □ ACH  □ Bankwire

3. # of Plates: ______ Long  ______ Short
   □ No Welcome Packet & Supplies  □ No Welcome Packet

### Network:

- □ (206) CARDnet®  □ (4000) Nashville  □ (4006) BuyPass  □ Other  Specify Security Code: ( )

7. Installation/Training: □ MAG/MIG to Train  □ Sales Rep. to Train  □ No Merchant Training  □ Installer/In-House

### Terminal Features:

- (Check all that apply to ensure timely terminal programming)
  - □ Auto Settle Time ______/_____/______ (military)
  - □ Bar Tab
  - □ Clerk / Server Entry
  - □ Debit Cash Back
  - □ Delayed Ship Date: ______/_____/______
  - □ Dial Prefix: ______/_____/______  □ Dial Suffix: ______/_____/______
  - □ E-Commerce
  - □ IP: _____________________ (List Current Provider)

Delayed Time: ______/_____/______  □ Verify Amount Prompt ______  □ # ______

- □ Retail With Tip
  - □ PINPad:
    - □ TDES Encryption
    - □ DUKWPT
    - □ Access Code

- □ Key Disable or Password Protect

### Comments:

(Note: Completing the Comments field will result in a 48 hour terminal programming delay)
MERCHANT PROCESSING APPLICATION AND AGREEMENT

EMPSSan2B1905(a)

COMPLETE SECTIONS (1-9)

EMPSSan2B1905(a)

Merchant #: ____________________________

Loc. ______ of ______

(1) TELL US ABOUT YOUR BUSINESS

Legal Name: ____________________________

Store #: ________________________________

DBA/Outlet Name: _______________________

First/Last/Contact Name: ________________

Address: (No P.O. Box) ___________________

Suite #: __________________ City: ________

State: __________ Zip: __________

Business Phone: ________________________

Customer Service Phone: ______________________

Fax Phone: ____________________________

Cell Phone: __________________________

E-Mail Address: _______________________

Website URL Address: __________________

TIN Type: □ EIN (Fed Tax ID #) □ SSN

Retrieval Requests: □ (02) Dedicated 24 hour fax □ (03) No fax; mail □ (05) Dispute Mgr.

NOTE: Failure to provide accurate information may require us to withhold income tax from your funding per IRS regulations.

Name (as it appears on your income tax return) ____________________________

□ Federal Tax ID# (as it appears on your income tax return) _______________________

□ I certify that I am a foreign entity/nonresident alien. (If checked, please attach IRS Form W-8.)

Product/Services you sell: ____________________________

Time frame from transaction to delivery: % of orders delivered in: 0-7 days __% + 8-14 days __% + 15-30 days __% + over 30 days __% = 100%

Who performs product/service fulfillment? Direct __________ Vendor ____________ If Vendor, add name, address, phone. □ Other: (specify)

Do you use any third party to store, process or transmit cardholder data? □ Yes □ No

(Examples include, but not limited to: web hosting companies, electronic data capture and loyalty programs.)

If yes, give name/address:

Please identify any software used for storing, transmitting, or processing card transactions or authorization requests.

(2) OWNERSHIP

State Organized: __________ Mo/Yr Started: ____________ □ Sole Ownership □ Partnership □ Non Profit/Tax Exempt □ Public Corp. □ Private Corp. □ LLC □ Gov't.

Owner/Partner/Officer Name: ____________________________

D.O.B.: _____________________ Social Security #: _______________________

Home Phone: ________________________ Ownership %: _______________________

Home Address: __________________________

City: ________ State: __________ Zip: __________ Country: __________

Owner/Partner/Officer Name: ____________________________

D.O.B.: _____________________ Social Security #: _______________________

Home Phone: ________________________ Ownership %: _______________________

Home Address: __________________________

City: ________ State: __________ Zip: __________ Country: __________

(3) BUSINESS FINANCIAL DATA

Total Annual Volume This Location All Locations

$________ $________

Average Card Sale Amount $________

Card Present __________ % Swiped __________ %

Discover/PayPal $________ $________

Highest Sale Amount $________

Internet __________ % Keyed __________ %

American Express $________ 
OptBlue® $________

Mail Order / Direct Marketing __________ %

Voyager $________

Total 100 %

WEX $________

Phone Order __________ %

(4) BANKING AND FUNDING INFORMATION

ABA #: ________________________

DDA #: _________________________

☐ ATTACH A COPY OF FUNDING CHECK OR BANK LETTERHEAD/LOGO SIGNED BY A BANK OFFICER WITH TYPED ABA/DDA. MUST INCLUDE BANK NAME AND ADDRESS.

Deduct Fees: □ Daily (excluding Flat Rate) or □ Monthly (fee will apply)

Bank Will Fund: □ Outlet □ Head Office

(5) ENTITLEMENTS

☐ American Express OptBlue® □ Debit Package ____________________________ ☐ EBT SNAP / FNS #: __________________________

☐ Voyager Fleet (Participation in Voyager Tax Exempt Program): □ Yes □ No (If yes, additional request form required) ☐ WEX Full Acquiring □ WEX (Non-Full Svc) □ MC Fleet

☐ American Express Pass Through SE (existing): ____________________________ Pass Through: □ Split Dial □ EDC
## MERCHANT PROCESSING APPLICATION AND AGREEMENT

### (6) EQUIPMENT DETAILS

<table>
<thead>
<tr>
<th>Rental / Purchase</th>
<th>OQT</th>
<th>IP</th>
<th>Equipment Type</th>
<th>Industry Type</th>
<th>Model Code and Name</th>
<th>Unit Price w/o Tax and S&amp;H</th>
<th>For Customer-Owned Equipment Track / Version / Serial #</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Customer-Owned</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>P C L</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>P C L</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

Shipping and Handling: Standard $ __________ Overnight $ __________ [ ] Enable EMV

*See Equipment Lease Agreement for the Terms and Conditions governing your Leased equipment.

### (7) FEE SCHEDULE

#### Product Subscriptions (Monthly)

<table>
<thead>
<tr>
<th>Product Description</th>
<th>Code</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clover Services (Per Station)</td>
<td>2CS</td>
<td>$___</td>
</tr>
<tr>
<td>Insights Solution</td>
<td>49M</td>
<td>$___</td>
</tr>
<tr>
<td>Perka Solution</td>
<td>2D6</td>
<td>$___</td>
</tr>
<tr>
<td>TransArmor Solution</td>
<td>3CM</td>
<td>$___</td>
</tr>
</tbody>
</table>

#### Compliance Fees

<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly Compliance Fee</td>
<td>38A</td>
<td>$___</td>
</tr>
<tr>
<td>Annual Compliance Fee</td>
<td>42F</td>
<td>$___</td>
</tr>
</tbody>
</table>

#### Mobile Payments Solution (Clover Go)

<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile Payments Setup Fee</td>
<td>62S</td>
<td>$___</td>
</tr>
<tr>
<td>Mobile Payments Monthly Fee (Per Terminal ID)</td>
<td>32Y</td>
<td>$___</td>
</tr>
</tbody>
</table>

#### eCommerce/Wireless Solutions

<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payeyez Setup Fee</td>
<td>40B2</td>
<td>$___</td>
</tr>
<tr>
<td>Payeyez Monthly Fee</td>
<td>40A</td>
<td>$___</td>
</tr>
<tr>
<td>Payeyez Webstore Solution</td>
<td>2D6</td>
<td>$___</td>
</tr>
<tr>
<td>Global ePricing MC/Visa Service Fee</td>
<td>897, 898</td>
<td>$___</td>
</tr>
<tr>
<td>Internet Set-Up Fee</td>
<td>30R</td>
<td>$___</td>
</tr>
<tr>
<td>Internet Authorization Fee</td>
<td>03R, 04R, 06L, 07I, 043, 0FC</td>
<td>$___</td>
</tr>
<tr>
<td>Internet Service Fee</td>
<td>394</td>
<td>$___</td>
</tr>
<tr>
<td>Wireless Access Fee (Per User)</td>
<td>60J</td>
<td>$___</td>
</tr>
<tr>
<td>Other:</td>
<td></td>
<td>$___</td>
</tr>
</tbody>
</table>

#### Petroleum Services

<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Datawire Micronode</td>
<td></td>
<td>$___</td>
</tr>
<tr>
<td>Voyager Authorization Fee</td>
<td>0D0, 0D1, 0DV</td>
<td>$___</td>
</tr>
<tr>
<td>Sales/Credit Discount</td>
<td>766, 767</td>
<td>$___</td>
</tr>
<tr>
<td>WEX Full Service Authorization Fee</td>
<td>0D4</td>
<td>$___</td>
</tr>
<tr>
<td>Sales/Credit Discount</td>
<td>840, 841, 842, 843</td>
<td>$___</td>
</tr>
<tr>
<td>Chargeback Fee</td>
<td>29H</td>
<td>$___</td>
</tr>
<tr>
<td>Retrieval Fee</td>
<td>290</td>
<td>$___</td>
</tr>
<tr>
<td>Non-Full Service Authorization Fee</td>
<td>0B0, 0B1, 0BV</td>
<td>$___</td>
</tr>
</tbody>
</table>

#### Start-Up Fees

<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Fee (Non-Refundable)</td>
<td>32I</td>
<td>$___</td>
</tr>
<tr>
<td>Reprogramming Fee</td>
<td>31A</td>
<td>$___</td>
</tr>
<tr>
<td>Debit Set-Up Fee</td>
<td>31B</td>
<td>$___</td>
</tr>
<tr>
<td>Miscellaneous Fee</td>
<td>31J</td>
<td>$___</td>
</tr>
<tr>
<td>*Equipment Purchase</td>
<td>ACH</td>
<td>$___</td>
</tr>
<tr>
<td>Other:</td>
<td></td>
<td>$___</td>
</tr>
<tr>
<td>Total Amount</td>
<td></td>
<td>$___</td>
</tr>
</tbody>
</table>

#### Debit Fees

<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bundled Debit (120, 124, 125)</td>
<td></td>
<td>$___</td>
</tr>
<tr>
<td>Discount Rate</td>
<td></td>
<td>%___</td>
</tr>
<tr>
<td>Sales/Return Trans Fee</td>
<td></td>
<td>$___</td>
</tr>
<tr>
<td>Unbundled Debit (018, Key 0-590, Key 0-593) Transaction Fee</td>
<td>(Applications to PIN Debit Only)</td>
<td>$___</td>
</tr>
<tr>
<td>+Plus applicable PIN Debit Network fees.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Miscellaneous Fees* (If Applicable)

<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>TransArmor Data Protection Service (Tokenization &amp; Encryption) (12E, 12G)</td>
<td></td>
<td>$___</td>
</tr>
<tr>
<td>Non-Receipt of PCI Validation</td>
<td>42G</td>
<td>$___</td>
</tr>
<tr>
<td>Business Advantage Pkg</td>
<td>40F</td>
<td>$___</td>
</tr>
<tr>
<td>Minimum Processing Fee</td>
<td>954</td>
<td>$___</td>
</tr>
<tr>
<td>Paper Statement Fee</td>
<td>240</td>
<td>$___</td>
</tr>
<tr>
<td>Chargeback Fee</td>
<td>205, 725, 20L</td>
<td>$___</td>
</tr>
<tr>
<td>ACH Reject Fee</td>
<td>401</td>
<td>$___</td>
</tr>
<tr>
<td>Batch Settlement Fee</td>
<td>227</td>
<td>$___</td>
</tr>
<tr>
<td>Monthly Funding Advantage</td>
<td>158</td>
<td>$___</td>
</tr>
<tr>
<td>AVS (405, 406, 407, 408, 07A, 07B, 07C, 069, 079)</td>
<td></td>
<td>$___</td>
</tr>
<tr>
<td>Voice Authorization</td>
<td>10B, 10E, 10K, 10Q</td>
<td>$___</td>
</tr>
<tr>
<td>MC/V/Discover Network Access Fee</td>
<td>505, 504, 525</td>
<td>$___</td>
</tr>
<tr>
<td>MC License Volume Fee</td>
<td>818</td>
<td>$___</td>
</tr>
<tr>
<td>MC Cross Border Fee USD</td>
<td>605, 606</td>
<td>$___</td>
</tr>
<tr>
<td>Visa Int'l Service Fee USD (22A)</td>
<td></td>
<td>%___</td>
</tr>
<tr>
<td>American Express Pass Through</td>
<td>10P</td>
<td>$___</td>
</tr>
<tr>
<td>EBT (18E, 18I, 02X, 18H)</td>
<td></td>
<td>$___</td>
</tr>
<tr>
<td>Other:</td>
<td></td>
<td>$___</td>
</tr>
</tbody>
</table>

*You may be charged, if applicable, additional Card/Payments Organization pass through fees and costs for your transactions as described in the Interchange Qualification Matrix and American Express OptBlue Guide available at www.businesstrack.com.
(7) Fee Schedule (cont'd)

<table>
<thead>
<tr>
<th>Pricing Method: (Please select only one)</th>
<th>MC/Visa/Discover Ntwk/PayPal 2-Tier</th>
<th>MC/Visa/Discover Ntwk/PayPal 3-Tier</th>
<th>MC/Visa/Discover Ntwk/PayPal American Express OptBlue Discount Rate</th>
<th>IC Plus A</th>
</tr>
</thead>
<tbody>
<tr>
<td>MC/Visa/Discover Ntwk/PayPal Credit</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Credit Discount Rate (600, 604, 170)</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>MC/Visa/Discover Ntwk/Pinless POS</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>&quot;Non-PIN Debit Discount Rate (850, 854, 964, 279)</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>American Express OptBlue*</td>
<td>(164, 165)</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
</tbody>
</table>

Mid-Qualified Discount Rates (Does not apply to MC/Visa/DiscoverPayPal 2 Tier)

<table>
<thead>
<tr>
<th>Pricing Method: (Please select only one)</th>
<th>MC/Visa/Discover Ntwk/PayPal 2-Tier</th>
<th>MC/Visa/Discover Ntwk/PayPal 3-Tier</th>
<th>MC/Visa/Discover Ntwk/PayPal American Express OptBlue Discount Rate</th>
<th>IC Plus A</th>
</tr>
</thead>
<tbody>
<tr>
<td>MC/Visa/Discover Ntwk/PayPal Credit</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Credit Discount Rate (810, 814, 990)</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>MC/Visa/Discover Ntwk/Pinless POS</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>&quot;Non-PIN Debit Discount Rate (760, 674, 968)</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
</tbody>
</table>

Non-Qualified Discount Rates

<table>
<thead>
<tr>
<th>Pricing Method: (Please select only one)</th>
<th>MC/Visa/Discover Ntwk/PayPal 2-Tier</th>
<th>MC/Visa/Discover Ntwk/PayPal 3-Tier</th>
<th>MC/Visa/Discover Ntwk/PayPal American Express OptBlue Discount Rate</th>
<th>IC Plus A</th>
</tr>
</thead>
<tbody>
<tr>
<td>MC/Visa/Discover Ntwk/PayPal Credit</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Credit Discount Rate (820, 824, 994)</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>MC/Visa/Discover Ntwk/Pinless POS</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>&quot;Non-PIN Debit Discount Rate (880, 864, 978)</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
</tbody>
</table>

*Fees do not apply if Bundled Debit is chosen

MC/Visa/Discover Ntwk/Pinless POS Authorization & Return Transaction Fee (10A, 10D, 10E, 110, 116, 117, 118, 119) (10A, 10D, 110, 116, 117, 118, 119) 100% of the amount charged

Non-Qual Surcharge Fee (excluding Card/Payments Organization pass-through fees, and any interchange rate different)

A interchange rates are variable and are determined by how your transactions clear. Please see the Interchange Rate Schedule for interchange rates and assessments, and the Interchange Qualification Matrix and American Express OptBlue® Guide for qualification criteria. The interchange rates and assessments are subject to change. American Express has program pricing which is not subject to change and which is subject to change.

(8) Agreement Approval

On behalf of myself as an individual, and the entity on whose behalf I am signing, (A) I authorize [Services], the applicable Card Organizations, and its Affiliates, to provide [Services] to me; (B) I authorize [Services], the applicable Card Organizations, and its Affiliates, to provide [Services] to me; (C) to all and any personal and business credit financial information from all references, including banks and consumer reporting agencies, which are hereby released to provide that information; and (B) I certify that: (i) the federal taxpayer identification number and corresponding filing name provided herein are correct; (ii) the statements made and agreed to in this MPA, to which I have not made any alterations or stricken out any language, are true, complete and accurate, and may be relied upon as current unless changed or updated per the Notice provisions of Agreement; (ii) I can read and understand the English language; (iv) I have received and read a copy of the (a) MPA (consisting of Sections 1-5), (b) General Terms and Conditions, (c) Confirmation Page (version EMPSSanZB1905(a)), and (d) Interchange rate Schedule. I understand that the Interchange Qualification Matrix and American Express OptBlue® Guide and Your Payments Acceptance Guide are available at www.businessstrack.com and the signature below is for the entire contents of the listed documents; v) I have authority to bind the entity on whose behalf I am signing below; I further acknowledge and agree that I will not use my merchant account and/or the services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 3161 et seq, as may be amended from time to time or for processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 501 et seq, and other laws enforced by the Office of Foreign Assets Control (OFAC).

Merchant Business Principal: (Please sign below)

X Signature

Print Name: [Print Name]

Title: [President, Vice President, Member L.L.C., Owner, Partner, Other]

Date: [Date]

(Processor): Express Merchant Processing Solutions, (a division of First Data Merchant Services L.L.C.), and Santander Bank

X Signature

Print Name: [Print Name]

Title: [President, Vice President, Member L.L.C., Owner, Partner, Other]

Date: [Date]

(9) Personal Guaranty

In exchange for Express Merchant Processing Solutions, (a division of First Data Merchant Services L.L.C.), and Santander Bank, (the Guaranteed Parties) acceptance of the MPA and the General Terms and Conditions, the undersigned ("Guarantor"): (A) Unconditionally and irrevocably guarantees the full payment and performance of Merchant's obligations; (B) agrees to this MPA; (C) shall indemnify the Guaranteed Parties for any and all amounts due from Merchant; (D) agrees to the full performance of the Guaranteed Parties' obligations; (E) acknowledges that (i) the Guaranteed Parties may proceed in law directly against Guarantor and not Merchant, and (ii) this is a continuing personal guaranty and shall not be discharged or affected for any reason.

Signature (Please sign below):

X ______________________, an individual

Signature (Please sign below):

X ______________________, an individual
MERCHANT PROCESSING AGREEMENT  MULTIPLE LOCATIONS

Card Merchant #: ______________________ Statement to: □ Outlet □ Other: ______________________

Pricing Type: _______ MCC: _______ Merchant Type: _______ (if different from original) Store #: _______ (if different from original)

Please attach Fee Schedule(s) and/or Addendum as appropriate.

ABA #: __________________________________________ DDA #: __________________________

☑ ATTACH A COPY OF FUNDING CHECK OR BANK LETTERHEAD/LOGO SIGNED BY A BANK OFFICER WITH TYPED ABA/DDA. MUST INCLUDE BANK NAME AND ADDRESS.

Deduct Fees: □ Daily (excluding Flat Rate) or □ Monthly (Fee will apply)

TELL US ABOUT YOUR BUSINESS

Legal Name: __________________________ Store #: __________________________

First/Last
Contact Name: __________________________________________

Address: (No P.O. Box) __________________ Suite #: __________ City: __________ State: __________ Zip: __________

Business Phone: __________________________ Customer Service Phone: __________________________

Fax Phone: __________________________

E-Mail Address: __________________________ Website URL Address: __________________________

Retrieval Requests: □ (02) Dedicated 24 hour fax □ (03) No fax; mail □ (05) Dispute Mgr.

TIN Type: □ EIN (Fed Tax ID #) □ SSN

NOTE: Failure to provide accurate information may require us to withhold income tax from your funding per IRS regulations.

Name (as it appears on your income tax return) __________________________________________

☐ Federal Tax ID# (as it appears on your income tax return) __________________________

☐ I certify that I am a foreign entity/nonresident alien.

(If checked, please attach IRS Form W-8.) __________________________________________

Product/Services you sell:

Time frame from transaction to delivery: % of orders delivered in: 0-7 days __________ % + 8-14 days __________ % + 15-30 days __________ % + over 30 days __________ % = 100%

Who performs product/service fulfillment? Direct __________ Vendor __________ If Vendor, add name, address, phone. □ Other: (specify) __________________________________________

Do you use any third party to store, process or transmit cardholder data?

☐ Yes □ No (Examples include, but not limited to: web hosting companies, electronic data capture and loyalty programs.)

If yes, give name/address: __________________________________________

Please identify any Software used for storing, transmitting, or processing card transactions or authorization requests.

BUSINESS FINANCIAL DATA

Total Annual Volume This Location All Locations Average Card Sale Amount $__________

MasterCard/Visa $__________ $__________

Discover/PayPal $__________ $__________

American Express OptBlue* $__________ $__________

Voyager $__________ $__________

WEX $__________ $__________

EQUIPMENT DETAILS

<table>
<thead>
<tr>
<th>Rental - Purchase</th>
<th>QTY</th>
<th>Equipment Type (i.e., Clover/Terminal/VAR)</th>
<th>Industry Type</th>
<th>Model Code and Name</th>
<th>Unit Price w/o Tax and S&amp;H</th>
<th>For Customer-Owned Track Version Serial #</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Customer-Owned</em></td>
<td></td>
<td>R P C 'L</td>
<td></td>
<td></td>
<td>$__________</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>R P C 'L</td>
<td></td>
<td></td>
<td>$__________</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>R P C 'L</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td>R P C 'L</td>
<td></td>
<td></td>
<td>$__________</td>
<td></td>
</tr>
</tbody>
</table>

Shipping and Handling: Standard $__________ Overnight $__________ □ Enable EMV

*See Equipment Lease Agreement for the Terms and Conditions governing your Leased equipment.

Merchant Initials __________________________

EMPSSanZBSA1905(e)
Please read this entire Agreement. It describes the terms on which we will provide merchant processing Services to you. This summary provides answers to commonly asked questions about your Agreement.

1. Your Discount Rates and other fees are calculated based on transactions qualifying for certain program pricing and interchange rates levied by the applicable Card Organization. Transactions that fail to qualify for these rates will be charged an additional fee. Interchange and program pricing levied by the Card Organization is subject to change, (see Section 6 of the General Terms & Conditions).

2. We may debit your bank account (also referred to as your Settlement Account) for amounts owed to us.

3. You are liable for Chargebacks and there are many reasons why a Chargeback may occur. When they occur we will debit your Settlement Account. See Section 8 of the General Terms & Conditions.

4. If you wish to dispute any charge or funding, you must notify us within 60 days of the date of the statement on which the charge or funding appears.

5. This Agreement limits our liability to you. See Section 10 of the General Terms & Conditions for further details.

Information about Bank:

a) Your Bank, who is a Visa and MasterCard Member Bank, is Santander Bank (Bank). Mail Stop: MA 1SST03-10, 75 State Street, Boston, MA 02109. 1-877-768-1145.

b) Bank is the entity approved to extend acceptance of Visa and MasterCard products directly to you and will be a party to the sections of this Agreement listed in Section 2.2.

c) Bank works with Processor to provide the Services to you with respect to Visa Cards and to MasterCard Cards.

d) Bank shall, either directly or through Processor, advise you of pertinent Card Organization Rules with which you must comply.

e) Bank is responsible for and must provide settlement funds to you and will be responsible for all funds held in a reserve.

Your Responsibilities:

a) You must comply in full at all times with this Agreement (including the Your Payments Acceptance Guide), all Card Organization Rules and all Cardholder and customer data security and storage requirements.

b) You may view and download the Your Payments Acceptance Guide at https://www.businesstrack.com

c) You may view and download the Interchange Qualification Matrix and American Express OptBlue® Guide at https://www.businesstrack.com


e) For your account to stay operational, you must keep fraud and Chargeback levels below Card Organization thresholds.

f) Please retain a signed copy of your Agreement.

Print Merchant's Business Legal Name: ____________________________

By signing below, you:

(i) confirm that you have received and read the Application, General Terms & Conditions [version EMPSSanZB1905(la), consisting of 12 pages including this Confirmation Page], [Interchange Rate Schedule]; and

(ii) agree to all terms in this Agreement in your capacity as a person authorized to sign on behalf of the business set out in the Application.

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

Business Principal:
Signature (Please sign below):

X

Title
Date

Please Print Name of Signer
Please read this entire Agreement. It describes the terms on which we will provide merchant processing Services to you. This summary provides answers to commonly asked questions about your Agreement.

1. Your Discount Rates and other fees are calculated based on transactions qualifying for certain program pricing and interchange rates levied by the applicable Card Organization. Transactions that fail to qualify for these rates will be charged an additional fee. Interchange and program pricing levied by the Card Organization is subject to change. (See Section 6 of the General Terms & Conditions).

2. We may debit your bank account (also referred to as your Settlement Account) for amounts owed to us.

3. You are liable for Chargebacks and there are many reasons why a Chargeback may occur. When they occur we will debit your Settlement Account. See Section 8 of the General Terms & Conditions.

4. If you wish to dispute any charge or funding, you must notify us within 60 days of the date of the statement on which the charge or funding appears.

5. This Agreement limits our liability to you. See Section 10 of the General Terms & Conditions for further details.

Information about Bank:

a) Your Bank, who is a Visa and MasterCard Member Bank, is Santander Bank (Bank), Mail Stop: MA 1SST03-10, 75 State Street, Boston, MA 02109, 1-877-768-1145.

b) Bank is the entity approved to extend acceptance of Visa and MasterCard products directly to you and will be a party to the sections of this Agreement listed in Section 2.2.

c) Bank works with Processor to provide the Services to you with respect to Visa Cards and to MasterCard Cards.

d) Bank shall, either directly or through Processor, advise you of pertinent Card Organization Rules with which you must comply.

e) Bank is responsible for and must provide settlement funds to you and will be responsible for all funds held in a reserve.

Your Responsibilities:

a) You must comply in full at all times with this Agreement (including the Your Payments Acceptance Guide), all Card Organization Rules and all Cardholder and customer data security and storage requirements.


d) You may download the Visa and MasterCard rules at: https://usa.visa.com/support/merchant.html


e) For your account to stay operational, you must keep fraud and Chargeback levels below Card Organization thresholds.

f) Please retain a signed copy of your Agreement.

Print Merchant’s Business Legal Name: 

By signing below, you:

(i) confirm that you have received and read the Application, General Terms & Conditions [version EMPSSanZB1905(a), consisting of 12 pages including this Confirmation Page], [Interchange Rate Schedule]; and

(ii) agree to all terms in this Agreement in your capacity as a person authorized to sign on behalf of the business set out in the Application.

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

Business Principal: 

Signature (Please sign below):

X

Please Print Name of Signer

Title

Date
PART II: GENERAL TERMS & CONDITIONS

1. Your Payments Acceptance Guide and Card Organization Rules

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

1.2 You agree to comply with the Your Payments Acceptance Guide and, either the Card Organization Rules relevant to you, as they may change over time. The Your Payments Acceptance Guide is available at www.businessreps.com.

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

1.4 You may not alter this Agreement.

2. Services and Non-Bank Services

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

2.2 Subject to Card Organization Rules, Services may be performed by us, our Affiliates, our agents, or other third parties we may designate. References to "we", "our" and "us" shall be deemed to be references to Bank and Processor except for the purposes of Sections 2.1, 2.2, 4.3, 6.2, 11.1, 12.2, 11.2, 13.1, 20.1, 21.4, 22.3, 36. Bank shall not be a party to the aforementioned Sections or shall Bank have any responsibility or liability pursuant to such Sections. Third Party Services, including any apps available in our application marketplace or exchange services you purchase directly from a third party provider, are not governed by this Agreement and we are not responsible for providing, maintaining, servicing or supporting such services. If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services. Any third party content downloaded or otherwise otherwise through the use of the Services is downloaded at your own risk. WE WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND WE EXPRESSLY DISCLAIM ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR_ASSUME RESPONSIBILITY FOR ANY THIRD PARTY SERVICE OR PRODUCT ADVERTISED OR OFFERED THROUGH THE SERVICES OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND WE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

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

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

3. Access and Use of Services

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

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

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

3.4 We have the right to rely on user names, password and other sign on credentials/access controls for the Services or any Software provided or approved by us to authenticate access to, and use of, the Services and any Software.

4. Settlement

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

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

5. Exclusivity

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

6. Fees: Adjustments; Collection of Amounts Due

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

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

6.3 If you accept a Card or transaction other than the type anticipated for your account, we will charge you our then-current transaction fee(s) for the Card and transaction and you will be responsible for the transaction to the same extent as you would if it was of a Card type elected and approved. If your fees are not paid through our automatic debiting process, and we are required to pursue collection efforts, you will reimburse us for our costs in an amount of not less than $100.00.

6.4 The fees specified on your Fee Schedule are based on (a) estimated annual volume and average transaction size for all Services provided under this Agreement; and (b) your method of doing business. If the actual volume or average transaction size are not as expected or if you significantly alter your method of doing business, we may adjust our fees without prior notice to you. It is your responsibility to notify us of any such changes to your business.

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

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

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

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

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

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

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

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

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

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

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

6.12 If you believe any adjustments should be made to your Settlement Account, you must notify us in writing within 60 days after any debit or credit is or should have been effected. If you notify us after 60 days, we agree we have no obligation to investigate or effect any adjustments. Any voluntary efforts by us to assist you in investigating such matters do not obligate us to continue such investigation or to conduct any future investigation.

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

7. Electronic Funding Authorization

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

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

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

8. Chargebacks, fines and penalties

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

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

8.3 Refunds, Credits, returns and Chargebacks for GEP Transactions shall be treated as independent transactions with a Transaction Rate as determined by the Card Organization.
DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK, LESS ONE PERCENT (1%), AND OUR LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY EQUIPMENT OR SOFTWARE SHALL NOT EXCEED THE PURCHASE PRICE OR PRIOR TWELVE MONTHS RENT OR FEES, AS APPLICABLE, PAID TO US FOR THE PARTICULAR EQUIPMENT OR SOFTWARE INVOLVED.

11. Communicating with Customers through the Services.
11.1 You shall provide and obtain any disclosures and consents related to the E-SIGN Act that may be required in connection with your communications and agreements with your customers through the Services.
11.2 If you are able to discern any information about a particular entity or individual from the information available through Insights or any other Service, either alone or with other information in your possession, you agree that the information may be subject to certain privacy, marketing, insider trading, or other applicable laws and you shall limit your use and disclosure of that information in accordance with all applicable laws.
11.3 With respect to each customer who desires to receive marketing material, transaction receipts or other communications from you via text message or email, such customer must give the appropriate consent in writing, you are not permitted to add or modify a customer's consent indication on behalf of the Customer.
11.4 You (or your agents acting on your behalf) shall only send marketing materials or other communications to a customer's provided number, street address, and/or email address if the customer has specifically consented in writing executed by the customer.
11.5 If you offer any loyalty program to customers through the Services or otherwise, you are solely responsible for any and all offerings made available to customers in connection with your loyalty program (each, an Offer). The Offer and all of the related information, including branding (trademarks and logos) and images (collectively, the Content) are provided and determined by you. You are solely responsible for ensuring the accuracy of the Offer and Content.
11.6 By providing Content to us as part of your services, you grant us the right and license to use, modify (e.g., for formatting and display purposes), publicly perform, publicly display, reproduce and distribute such Content on and through the Services, including any Software we make available to you. This license includes the right for us to make Content available to other users who may access and use your Content.
11.7 You are solely responsible for (a) fulfilling the terms of your Offers and determining the criteria for your customers to earn and redeem perks, rewards, stamps, credits or incentives (Rewards); and (b) honoring Rewards for eligible customers who earn those Rewards and you agree not to withdraw or terminate any Offer after it has been made publicly available to your customers without offering a reasonable alternative method for customers to redeem any Rewards related to the Offer.
11.8 You are solely liable for, and we shall have no liability in relation to, any costs or expenses (including refunds) associated with your Offers or Rewards or your failure to issue, accept, fulfill or redeem any Rewards.

12. Confidentiality
12.1 You shall safeguard all confidential information we supply or otherwise make accessible to you (including the terms of this Agreement) using a reasonable degree of care. You shall only use our confidential information for the purposes of this Agreement and shall not disclose our confidential information to any person, except as may be agreed in advance and in writing. At our request you shall return to us or destroy all of our confidential information in your possession or control.
12.2 You agree that breach of the restrictions on use or disclosure of our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.
12.3 You may submit comments or ideas about our Services, including about how to improve our Services. By submitting any idea, you agree that: (a) we expressly disclaim any confidentiality obligations or use restrictions, express or implied, with respect to any idea; (b) your submission will be non-confidential; and (c) we are free to use and disclose any idea on an unrestricted basis without notifying or compensating you. You release us from all liability and obligations that may arise from our receipt, review, use or disclosure of any portion of any idea.

13. Use of Data
13.1 You agree we may use Transaction Data for the purpose of providing additional products and services to you, other merchants, or third parties. This includes using Cardholder information, dates, transaction details, and other Transaction Data to provide you with analytics products and services as well as collecting and using Transaction Data aggregated with other merchant transaction data to provide other merchants, and third parties with analytic products and services.
13.2 In the course of providing Services, we may collect information relating to activities on your network, including network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horses. We retain the right to use this information or aggregations of this information, in addition to the Transaction Data described above, for any reasonable purpose.
13.3 You agree that we may obtain relevant information from any applicable telecommunication providers you utilize, as necessary to investigate any alleged violation of fraud, suspected fraud or order actual or alleged wrongful action by you in connection with the Services.

14.1 All right, title, and interest in and to all confidential information and intellectual property related to the Services (including the Marks, all Software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods and any updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by us prior to, during the term of, or after this Agreement, or employed by us in connection with the Services, shall be and remain, as among the Parties, our or our affiliates', our vendors' or our licensors' (as applicable) sole and exclusive property and all right, title and interest associated with the Services. Equipment and Software not expressly granted by us in this Agreement are deemed withheld. You may not use our Marks in any manner, including in any advertisements, displays, or press releases, without our prior written consent.
14.2 You may not, nor may you permit any third party to do any of the following: (a) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Service, Software or Equipment (or any part), except to the extent that such restriction is expressly prohibited by law; (b) modify, translate, or alter in any manner, the Service, Software or Equipment (or any part); (c) create derivative works of or based on the Service (or any part), Software or the Marks; (d) except for backup and archival purposes, directly or indirectly copy the Service or any Software (or any part); (e) republish, upload, post, transmit, disclose, or distribute (in any format) the Service or Software (or any part) except as permitted in this Agreement; or (f) remove, relocate, or otherwise alter any proprietary rights notices from the Service, Software or documentation (or any part) or the Marks.
14.3 If we provide you with copies of or access to any Software or documentation, unless otherwise expressly stated in writing, that Software and documentation is provided on a personal, non-exclusive, non-transferable, non-assignable, revocable limited license for the period of your subscription to the applicable Service and solely for you to access and use the Software and documentation to receive the relevant Services for its intended purpose on systems owned or licensed by you. Software can only be used with certain computer operating systems and it is your responsibility to ensure that you have the appropriate hardware and software to use the Software.
14.4 You shall not take any action inconsistent with the stated title and ownership in this Section 14. You will not file any action, in any forum that challenges the ownership of any part of the Service or any Software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the Service in the event of a challenge by you.
14.5 If you are acquiring any Services on behalf of any part of the United States Government (Government): (a) any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause of FAR 52.227-19 when applicable, or in subparagraph (c)(1)(i) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement; and (b) we are the contractor/manufacturer, with the address set forth in this Agreement.

15. Assignment
15.1 Any attempt to transfer or assign this Agreement in whole or part, or rent, lease, sell, sublicense or otherwise transfer any licensed rights, without our prior written consent, including by operation of law, transfer of voting control of you or your parent or otherwise, is prohibited and voidable by us and, in such event we may: (a) suspend Services at any time and without notice, (b) hold you and your guarantors liable for all obligations incurred by such purchaser or transferee, and (c) offset funding and obligations incurred on your accounts without regard to whether such funding or obligations relate to activities of you or of such purchaser or transferee.
15.2 If you make an assignment (or provide a security interest) of receivables covered by this Agreement, then we may at our option, elect to: (a) refuse to acknowledge such assignment unless accompanied by an authorization to both initiate debits or credits to the bank account of the assignee; (b) terminate this Agreement immediately; or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of $10 per transfer.
15.3 Subject to Card Organization Rules, and without providing notice to you or obtaining your consent, we may assign or transfer this Agreement and our rights, duties and obligations under this Agreement to any direct or indirect assignee, which, in addition, another Visa and MasterCard member may be substituted for Bank under whose sponsorship this
Agreement is performed with respect to Visa and MasterCard transactions. Upon such substitution, such other Visa and MasterCard member shall be responsible for all obligations required of Bank, including full responsibility for any Card program and such other obligations as may be expressly required by applicable Card Organization Rules.

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

16. Term; Events of Default

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

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

16.3 A party may give written notice to the other party not later than 30 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be. Should you fail to notify us in writing that you wish to terminate this Agreement under this Section 16.3 you agree that you will continue to be charged certain fees pursuant to this Agreement even if you are not using your account. If you have an equity account, termination of this Agreement does not terminate that equity lease.

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

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

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

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

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

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

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

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

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

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

16.8 Your right to terminate under Section 10.7 does not apply to increases in rates or any other changes or new fees imposed on us by third parties (including the Card Organizations) which we pass on to you in accordance with Section 6.5 or where we adjust your fees in accordance with Section 6.4. Any termination in these circumstances shall be considered a breach of this Agreement.

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

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

16.11 The Card Organizations maintain merchant fines such as the Merchant Alert To Control High-Risk (Merchants) MATCH who have had their merchant agreements or card acceptance rights terminated for cause. If this Agreement is terminated for cause, you (a) agree that we may report your business name and the names and other information regarding your principals to the Card Organizations for inclusion on such list(s); and (b) waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

17. Reserve; Security Interest

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

17.2 The amount of the Reserve shall be set by us in our sole discretion based upon your processing history and the potential risk of loss to us, as we may determine.

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

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

17.5 If this Agreement is terminated by any party, an immediate Reserve may be established without notice in the manner provided above. In these circumstances, the Reserve will be held by us for 60 days after termination of this Agreement or for such longer period of time as is consistent with resolution of all liability from your Card acceptance including Chargebacks, fines, fees or obligations of any other kind.

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

17.7 Notwithstanding Section 17.6 you agree that we have a security interest in all funds or other assets that we hold in Reserve and to provide us with any documentation we may request in connection with the Reserve.

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

18. Account Information

18.1 You are solely responsible for (a) ensuring the accuracy of all information and data required for your business that you provide to us or our service providers in connection with the Services, including any menus loaded onto a Device; (b) verifying that all information and data loaded onto a Device by us or our service providers at your request are accurate prior to your business use of such Device; and (c) immediately notifying us should any information you have provided to us become inaccurate or misleading. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.
18.2 Upon request, you will provide us and our Affiliates quarterly financial statements within 45 days of the end of each fiscal quarter and annual audited financial statements within 90 days of the end of each fiscal year. Any financial statements provided must be prepared in accordance with generally accepted accounting principles. You will also provide other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request.

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

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

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

19. Audit Rights

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

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

20. Software Updates and Maintenance

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

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

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

20.4 We and our Wireless Vendor(s) reserve the right to make changes in the configuration of Wireless Services, Wireless Networks, Wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms and design of the control center serving you at the particular additional.

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

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

21.1 You may access certain of our Services through a Device using a wireless (ethernet) or cellular connection to the internet. You are solely responsible for the payment of any fees that may be imposed by your internet/data provider. You use of any Services accessed wirelessly or through the internet is subject to: (a) the terms of any agreements you have with your internet/data provider; and (b) availability, transmission range and uptime of the services and any wireless equipment.

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

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

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

22. Service Integration

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

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

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

23. Security

23.1 You are solely responsible for establishing and maintaining Card Organization compliance policies and procedures to prevent unauthorized access to and use of Cardholder Information and any other data by you or any representative, agent, or contractor or any other person, including instituting appropriate policies to prevent employees or others from submitting credit cards that do not reflect bona fide returns or rebates (reimbursements of earlier transactions). You acknowledge that you have access to and may use for any legitimate purpose any data or information that are made available to you.

23.2 You shall cooperate fully with any investigation or audit, and we or any Card Organization may undertake in relation to data security and you authorize us to share the details of any questionnaire or compliance report with the Card Organizations.

23.3 We acknowledge that you shall have access to and may use for any legitimate purpose any data or information that are made available to you.

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

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

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

24. Supply of Equipment

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

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

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

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

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

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

24.7 You will prepare the installation site(s) for the Equipment, including the power supply circuits and phone lines, in conformance with the manufacturer’s and our specifications and will make the site(s) available to us by the confirmed shipping date. Any alterations required for installation of Equipment will be done at your expense.

24.8 You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.

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

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

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

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

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

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

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

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

24.17 You hereby grant to us a security interest in (a) all Purchased Equipment and the related Software to secure payment of the purchase price; and (b) all Rental Equipment and the related Software to secure payment of the monthly payments and authorizations, or to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.

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

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

25. Compliance with Laws

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

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

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

26. Indemnification

26.1 You agree to indemnify and hold us, our Affiliates and third party service providers harmless from and against all losses, liabilities, damages and expenses arising from: (a) any breach or misrepresentation by you under this Agreement; (b) your or your employees’ or your agents’ negligence or willful misconduct; (c) any breach of your obligations under the Agreement, or any acts or omissions which are in violation of any federal, state or local statutes or regulations; (d) your use of the Services, including any Software or Equipment provided under this Agreement; (e) any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Card Organization or Issuer); (f) your use of any Cardholder Information or other customer information obtained in connection with your use of the Services; (g) the content or delivery of any marketing messages that you send or cause to be sent to any customer; or (h) any other persons authorized or unauthorized access and/or use of any Service, Software or Equipment, whether or not using your unique username, password, or other security features.

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

27. Arbitration

27.1 This arbitration provision shall be broadly interpreted. If you have a dispute with us that cannot be resolved informally, you or we may elect to arbitrate that dispute in accordance with the terms of this arbitration provision rather than litigate the dispute in court. In arbitration, there is no judge or jury, and there is less discovery and appellate review than in court.

27.2 Notwithstanding Section 27.1, you and we agree that the following will not be subject to arbitration: (a) disputes relating to the scope, validity, or enforceability of this arbitration provision; (b) any claims filed by you or us in which the amount in controversy is properly within the jurisdiction of a small claims court; and (c) any dispute related to the validity of any party’s intellectual property rights.

27.3 If you or we elect to resolve your dispute through arbitration pursuant to this arbitration provision, the party initiating the arbitration proceeding shall open a case with the American Arbitration Association - Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-495-4185, www.adr.org.

27.4 Because the Services provided to you under this Agreement concern interstate commerce, the Federal Arbitration Act (FAA) will govern this arbitration provision, including the issue of whether the dispute is subject to arbitration. Any arbitration will be governed by Commercial Arbitration Rules of the American Arbitration Association (AAA). If there is a conflict between this arbitration provision and the AAA Rules, this arbitration provision shall govern. If the AAA will not administer a proceeding under this arbitration provision as written, it cannot serve as the arbitration organization to resolve your Dispute. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this arbitration provision as written. If there is a conflict between this arbitration provision and the rest of this Agreement, this arbitration provision shall govern.

27.5 A single arbitrator will resolve the Dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect your information and other confidential or proprietary information. If the claim alleged in the Dispute is for $10,000 or less, and the Dispute is not excluded based on Section 27.2 above, you may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing.
under the rules of the selected arbitration organization. The arbitrator will make any
award in writing but need not provide a statement of reasons unless requested by a
party. An award rendered by the arbitrator may be entered in any court having
jurisdiction over the parties for purposes of enforcement.

27.6 If an award granted by the arbitrator exceeds $50,000, either party can appeal that
award to a three-arbitrator panel administered by the same arbitration organization
by written notice of appeal filed within thirty (30) days from the date of entry of
the written arbitration award. The arbitration organization will then notify the other
party that the award has been appealed. The members of the three-arbitrator panel
will be selected according to the AAA's Commercial Arbitration Rules. The three-
arbitrator panel will issue its decision within one hundred and twenty (120) days of the
date of the appealing party's notice of appeal. The decision of the three-arbitrator panel
shall be final and binding, except for any appellate right which exists under the
AAA.

27.7 All PARTIES TO AN ARBITRATION MUST BE INDIVIDUALLY NAMED. THERE
SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR
LITIGATED ON A CLASS ACTION BASIS, OR CONSOLIDATED OR ON A
BASIS INVOLVING CLAIMS BROUGHT IN A PURSUANT REPRESENTATIVE
CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE
ATTORNEY GENERAL). OTHER CLIENTS, OR OTHER PERSONS.

27.8 The arbitrator may award injunctive or similar relief only in favor of the individually
named party and only to the extent necessary to provide relief warranted by that
individual party's claim. The arbitrator may not award injunctive relief applicable to
any class or similarly situated individual or groups.

27.9 The arbitration will take place in Suffolk County, NY.

27.10 We will pay arbitration filing fees and arbitrator's costs and expenses notified to us
prior to the commencement of the arbitration. You are responsible for all additional
costs that you incur in the arbitration, including, but not limited to, fees for attorneys
or expert witnesses. If the arbitration is resolved in your favor, you shall reimburse
us for the filing fees and costs paid to you only up to the extent allowable in a judicial
proceeding. If the arbitration is resolved in your favor, you will not be required to
reimburse us for any of the fees and costs paid by us. Notwithstanding anything to the
contrary in this arbitration provision, we will pay all fees and costs that we are
required by law to pay.

27.11 IF YOU DO NOT WISH TO ARBITRATE DISPUTES, YOU MUST NOTIFY US IN
WRITING WITHIN 30 DAYS OF THE DATE THAT YOU FIRST RECEIVE THIS AGREEMENT
BY WRITING YOUR NAME, ADDRESS AND ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES THROUGH ARBITRATION AND SENDING THAT NOTICE EITHER (a) BY EMAIL TO ARBITRATIONOPTOUT@FIRSTDATA.COM; (b) BY FAX AT 402-
916-2200; or (c) BY MAILING TO 'ARBITRATION OPT OUT NOTICE, FIRST DATA
NO. 120TH AVENUE, CORAL SPRINGS, FL 33065 (THESE FAX NUMBERS AND
ADDRESSES ARE ONLY FOR SUBMITTING THE NOTICE DESCRIBED IN THIS
SECTION). YOUR DECISION TO OPT OUT OF ARBITRATION WILL HAVE NO
ADVERSE EFFECT ON YOUR RELATIONSHIP WITH US OR THE SERVICES
PROVIDED BY US.

27.12 If any part of Section 27.7 is found to be illegal or unenforceable, the entire arbitration
provision will be unenforceable, and the Dispute will be decided by a court. If any
other clause in this arbitration provision is found to be illegal or unenforceable, that
clause will be severed from this arbitration provision, and the remainder of this
arbitration provision will be given full force and effect.

27.13 YOU AND WE HAVE AGREED TO WAIVE THE RIGHT TO TRIAL BY JURY.

28. Notices

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

a) if to you, to your email address or postal address appearing on the Application;

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

c) if to Bank, to the address appearing on the confirmation page.

28.2 Notices shall be effective when actually received, or if sent by courier, when delivered.

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

28.4 Notwithstanding the above, all bankruptcy, credit reporting or collection related
notices must be sent to the following address: Merchant Services Department, 5251
Westheimer Road, Fourth Floor, Houston, Texas 77056 Attn: Bankruptcy and
Collection Notifications.

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

29. Communications

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

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

30. Whole Agreement; Waiver; Severability

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

30.2 A party's waiver of a breach of any term or condition of this Agreement shall not be
deemed a waiver of any subsequent breach of the same or another term or condition.

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

31. Amendment

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

31.2 Notwithstanding Section 31.1, we may at any time modify this Agreement in
accordance with Section 9.5 or to reflect changes in applicable law, the Card
Organization Rules or security procedures and your right of termination shall not
arise in such circumstances.

32. Third Party Beneficiaries

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

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

33. 6050W of the Internal Revenue Code

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

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

34. Export Compliance

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

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

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

35. No Investment Advice

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

35.2 We expressly state, and you hereby acknowledge, that any information services
are provided solely for informational purposes and are not to be used as a substitute
for independent financial investment advice nor are they intended to be relied upon by
any person or entity including you or your customers for the purposes of investment
or other financial decisions.
TransArmor Data Protection Service

36.8 TransArmor Data Protection Service encrypts Cardholder Information at the point of transaction and replaces it with a unique identifier (a "token") that is returned with the authorization response. The TransArmor Data Protection Service can only be used with a point of sale device, gateway, or service that we have certified as being TransArmor Data Protection Service eligible. If you use the TransArmor Data Protection Service, the token returned to you with the authorization response cannot be used to initiate a financial sale transaction by an unauthorized person outside your point of sale systems or the systems where you store Transaction Data. Use of the TransArmor Data Protection Service does not (a) guarantee compliance with all laws, Card Organization Rules, or applicable standards (including the PCI DSS), (b) affect your obligation to comply with laws, Card Organization Rules, and applicable standards (including the PCI DSS), or (c) guarantee protection against a Data Security Event. The TransArmor Data Protection Service is provided to you by Processor and not by Bank.

37. Interpretation; Definitions

37.1 The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement. References in this Agreement to include, including, or in particular shall not be given a restrictive meaning and shall be interpreted without limitation. Reference to any legislation is to such legislation as amended or supplemented in the future.

37.2 Certain terms used in this Agreement are defined below:

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

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

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

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

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

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

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

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

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

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

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

**Clover:** Clover Network, Inc.

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

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

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

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

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

**Device:** a tablet, smartphone, or other mobile or fixed form factor identified by us as compatible with and capable of accessing and/or supporting a particular Service.
Discount Rate: a percentage rate or amount charged to a merchant for processing its qualifying daily Credit Card and Non-PIN Debit transactions, as set forth in the Application.

Dispute: any dispute, claim, or controversy related to or arising under any aspect of your relationship with us, whether directly with Processor and/or Bank, or indirectly with any other person or entity related to the relationship, and arising at any time during, before, or after that relationship.

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

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

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

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

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

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

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

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

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

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

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

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

MID: merchant identification number.

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

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

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

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

PCI: Payment Card Industry.

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

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

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

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

Reserve: funds that are otherwise payable to you which we hold to secure your obligations under this Agreement, pursuant to Section 18 of this Agreement. The Reserve may also refer to other collateral that you may provide to us to secure such obligations. References to "Reserve Account" shall refer to our records and accounting of such funds or other collateral.

Security Event Expenses: means: (a) any obligation that you have to us arising from a Data Security Event, including EMV Upgrade Costs; (b) the cost of a security assessment conducted by a qualified security assessor approved by a Card Organization or PCI to determine the cause and extent of a Data Security Event; and (c) any reasonable fees or expenses incurred by or with our prior written consent, for any Mitigation Service specifically approved by us in writing but only if the Mitigation Service is provided within one (1) year after discovery of the relevant Data Security Event.

Servicers: Bank and Processor collectively. The words "we," "us" and "our" refer to Servicers; unless otherwise indicated.

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

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

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

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

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

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

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

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

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

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

You, Your: the merchant signing this Agreement.

Your Payments Acceptance Guide: the information prepared by us, containing operational procedures, instructions and other rules and requirements relating to Card transactions.
Forte Payment Systems is proud to provide a robust processing platform and flexible pricing strategies. We will provide a Service Fee pricing whereby the fee is passed onto the resident or business for credit card/debit and electronic checks versus the city absorbing the merchant processing fees.

**Service / Convenience Fee Model Pricing:**

In this scenario, with a service fee model approach, the Resident pays a service fee for processing the transaction through all payment channels. Forte will deposit the principal amount of the transaction due to your entity bank account and the service fee will be deposited into a Forte account.

Should the city choose to pass a service fee onto the Resident, Forte acknowledges the card association rules and will process the transactions according to those rules.

**MasterCard, Visa, Discover and American Express cards**

- 2.50% of the payment amount with a minimum fee of $1.95

Example 1 - if the department’s average payment is $100.00, the service fee that would be charged to the citizen for this department would be $2.50 ($100.00 x 2.50%=$2.50).

Example 2 - if a department’s average payment is $50.00, the service fee that would be charged to the citizen for this department would be $1.95. ($50.00 x 2.50%=$1.25, the minimum fee of $1.95 would apply).

**EChecks**

- Flat fee of $1.50

_ForteVerify_ is a powerful check verification service that will be integrated into the payment processing services that Forte provides. Payment verification is processed using the following methods:

- Valid Bank
- Valid Open – Active Account Number
- Positive Fund Balance

Fund balance availability is based on the data provided by the account holder’s bank.
All of the products/services that we provide including our reporting tools and access to our Virtual Terminal are provided at no cost to the county. The IVR system is also provided at no cost in a service fee model approach. The same service applies to the IVR transactions.

Equipment Pricing:

<table>
<thead>
<tr>
<th>Standard Product &amp; Optional Pricing</th>
<th>Description</th>
<th>Fees and Cost of Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verifone POS (all-in-one) Terminal/Printer</td>
<td></td>
<td>$249.00/Terminal</td>
</tr>
</tbody>
</table>
TO: Mayor and City Council
SUBJECT: Stair Replacement
INITIATED BY: City Administrator, Kyler Ludwig

Background:
The City has an 80 foot easement on Florida Street east of Main; within the easement a loading ramp was built (1950s or earlier). The adjacent landowners (Gary and Erica Goodman) have talked with City staff about having the stairs of the dock replaced. The stairs have cracked away from the dock and have significant wear. The last repair to the sidewalk/dock was in 1991, but it is unclear if the City or adjacent landowner performed the repairs.

Analysis:
The City’s Main Street project included a few feet of sidewalk on each cross street (including Florida), but the adjacent landowner was held responsible for extending the sidewalk (ie Centera Bank, Greensburg State Bank, & Kiowa County). The City in recent history has not replaced or built sidewalks within the City’s easement.

The stairs are in the City’s easement and the City may be found liable for hazardous sidewalks if the condition is seen as negligent.

A picture of the stairs and condition of the dock has been included.

Financial:
No bids have been taken to determine the cost.

Recommendations/Actions: It is recommended the City Council:
   1. Authorize staff to collect bids to replace the stairs.
   2. Allow for the adjacent landowner to replace the stairs if they deem it necessary.
   3. Select not to repair the location at this time.

Attachments:
Exhibit A: Pictures of the stairs
TO: Mayor and City Council
SUBJECT: Incubator Rent Discussion
INITIATED BY: Kyler Ludwig, City Administrator

Background:
The City Council has indicated that the success of the Sunchips Business Incubator is a priority in 2016. Staff has presented information on the incubator 5 times this year (February 15th, March 7th, May 2nd, and May 16th).

Analysis:
On May 16th council directed staff to put together a proposal for adjusting rent costs at the incubator. The costs are to help offset the increased burden from inflation and from increased maintenance. The proposal would increase rent by about 3% each year through 2020.

In addition to adjusting the base rate staff has suggested a market rate adjustment for businesses that have been in the incubator for longer than 36 months. The rate adjustment would be set by the council; staff recommends 10-20%.

Recommendations/Actions: It is recommended the City Council:
Discuss the proposed rate changes, and direct staff to proceed with any needed changes.

Attachments: Exhibit A: Proposed Rates, Exhibit B: Map of the incubator, Exhibit C: Budget Graph (3 years), Exhibit D: 2015 Expenses, Exhibit E: Incubator Leases
### Incubator Proposed Rate Increase: 2016-2020

<table>
<thead>
<tr>
<th>Space #</th>
<th>S.F.</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>111</td>
<td>778</td>
<td>$374.10</td>
<td>$382.88</td>
<td>$399.44</td>
<td>$416.00</td>
<td>$432.56</td>
</tr>
<tr>
<td>113</td>
<td>793</td>
<td>$380.85</td>
<td>$389.78</td>
<td>$406.64</td>
<td>$423.50</td>
<td>$440.36</td>
</tr>
<tr>
<td>116</td>
<td>586</td>
<td>$287.70</td>
<td>$294.56</td>
<td>$307.28</td>
<td>$320.00</td>
<td>$332.72</td>
</tr>
<tr>
<td>117</td>
<td>493</td>
<td>$245.85</td>
<td>$251.78</td>
<td>$262.64</td>
<td>$273.50</td>
<td>$284.36</td>
</tr>
<tr>
<td>119</td>
<td>703</td>
<td>$340.35</td>
<td>$348.38</td>
<td>$363.44</td>
<td>$378.50</td>
<td>$393.56</td>
</tr>
<tr>
<td>Utilities</td>
<td></td>
<td>$24.00</td>
<td>$25.00</td>
<td>$26.00</td>
<td>$27.00</td>
<td>$28.00</td>
</tr>
<tr>
<td>Cost/sqft</td>
<td></td>
<td>$0.45</td>
<td>$0.46</td>
<td>$0.48</td>
<td>$0.50</td>
<td>$0.52</td>
</tr>
</tbody>
</table>

| 205     | 204  | $207.60 | $214.18 | $222.80 | $229.38 | $238.00 |
| 206     | 208  | $210.20 | $216.86 | $225.60 | $232.26 | $241.00 |
| 207     | 236  | $228.40 | $235.62 | $245.20 | $252.42 | $262.00 |
| 208     | 236  | $228.40 | $235.62 | $245.20 | $252.42 | $262.00 |
| 212     | 231  | $225.15 | $232.27 | $241.70 | $248.82 | $258.25 |
| Utilities |     | $75.00 | $77.50 | $80.00 | $82.50 | $85.00 |
| Cost/sqft |     | $0.65 | $0.67 | $0.70 | $0.72 | $0.75 |

| Monthly Rent (full capacity) | 4468 | $2,728.60 | $2,801.93 | $2,919.94 | $3,026.80 | $3,144.81 |
| Annual Rent (full capacity)  | 4468 | $32,743.20 | $33,623.16 | $35,039.28 | $36,321.60 | $37,737.72 |
Downstairs:
Metered separately for electric.
$24 of rent is for water/sewer/trash.
Upstairs:
$75 of rent pays for all utilities
(water, sewer, trash, electric)
Incubator

<table>
<thead>
<tr>
<th></th>
<th>Revenue:</th>
<th>Expenses:</th>
<th>Loss:</th>
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</thead>
<tbody>
<tr>
<td>2013:</td>
<td>$23,289.64</td>
<td>$34,424.43</td>
<td>$11,134.79</td>
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<tr>
<td>2014:</td>
<td>$23,517.98</td>
<td>$43,311.09</td>
<td>$19,793.11</td>
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<tr>
<td>2015:</td>
<td>$22,182.80</td>
<td>$47,516.11</td>
<td>$25,333.31</td>
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</table>
### 2015 INCUBATOR EXPENSES

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PERSONEL</strong></td>
<td></td>
</tr>
<tr>
<td>Employee Salary/Benefits</td>
<td>$11,062.53</td>
</tr>
<tr>
<td><strong>UTILITIES</strong></td>
<td></td>
</tr>
<tr>
<td>ELECTRICITY</td>
<td>$8,122.85</td>
</tr>
<tr>
<td>PHONE SERVICE</td>
<td>$3,757.71</td>
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<tr>
<td><strong>MAINTENANCE</strong></td>
<td></td>
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<tr>
<td>PEST CONTROL</td>
<td>$1,153.00</td>
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<tr>
<td>UNIFIRST - SUPPLIES</td>
<td>$2,169.58</td>
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<tr>
<td>BUILDING SUPPLIES</td>
<td>$383.80</td>
</tr>
<tr>
<td>BUILDING/SYSTEM REPAIRS AND TESTING</td>
<td>$9,868.02</td>
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<tr>
<td><strong>TAXES</strong></td>
<td></td>
</tr>
<tr>
<td>NRP REBATE CHECK</td>
<td>-$11,344.94</td>
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<tr>
<td>2015 TAXES</td>
<td>$13,508.64</td>
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<tr>
<td><strong>INSURANCE</strong></td>
<td></td>
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<tr>
<td>EMC Insurance</td>
<td>$8,795.00</td>
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<tr>
<td><strong>TOTAL 2015 INCUBATOR EXPENSES</strong></td>
<td>$47,476.19</td>
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</table>
### Incubator Leases

5.1.16

<table>
<thead>
<tr>
<th>Suite</th>
<th>Leasee</th>
<th>Lease Began</th>
<th>Lease Renewed</th>
<th>Lease Ends</th>
<th>Sq Ft</th>
<th>Rent</th>
<th>Utilities</th>
<th>Potential Total Monthly</th>
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</thead>
<tbody>
<tr>
<td>103</td>
<td>Unoccupied Manager's Office</td>
<td></td>
<td></td>
<td></td>
<td>186</td>
<td>$120.90</td>
<td>$75.00</td>
<td>$195.90</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12.1.10</td>
<td>01.01.15</td>
<td>01.01.19</td>
<td>778</td>
<td>$350.10</td>
<td>$24.00</td>
<td>$374.10</td>
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<tr>
<td>113</td>
<td>Emblazon Designs</td>
<td>08.21.15</td>
<td>08.21.19</td>
<td>793</td>
<td></td>
<td>$356.85</td>
<td>$24.00</td>
<td>$380.85</td>
</tr>
<tr>
<td>116</td>
<td>J. Scott James</td>
<td>03.23.16</td>
<td>03.23.20</td>
<td>586</td>
<td></td>
<td>$263.70</td>
<td>$24.00</td>
<td>$287.70</td>
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<tr>
<td>117</td>
<td>Carmen Renfrow</td>
<td>10.01.15</td>
<td>10.01.19</td>
<td>493</td>
<td></td>
<td>$221.85</td>
<td>$24.00</td>
<td>$245.85</td>
</tr>
<tr>
<td>119</td>
<td>Asian Kitchen</td>
<td>01.01.16</td>
<td>01.01.20</td>
<td>703</td>
<td></td>
<td>$316.35</td>
<td>$24.00</td>
<td>$340.35</td>
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<tr>
<td>205</td>
<td>Stull Law</td>
<td>03.01.12</td>
<td>03.01.16</td>
<td>204</td>
<td></td>
<td>$132.60</td>
<td>$75.00</td>
<td>$207.60</td>
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<tr>
<td>206</td>
<td>Southwest Kansas Title, LLC</td>
<td>03.01.16</td>
<td>03.01.20</td>
<td>208</td>
<td></td>
<td>$135.20</td>
<td>$75.00</td>
<td>$210.20</td>
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<tr>
<td>207</td>
<td>Great Plains Fluid Service Inc.</td>
<td>09.01.15</td>
<td>09.01.19</td>
<td>236</td>
<td></td>
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<td>$75.00</td>
<td>$228.40</td>
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<tr>
<td>208</td>
<td>Shattuck Law/Smoll &amp; Banning</td>
<td>01.01.08</td>
<td>01.01.15</td>
<td>01.01.19</td>
<td>236</td>
<td>$153.40</td>
<td>$75.00</td>
<td>$228.40</td>
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<tr>
<td>212</td>
<td>Post Accounting</td>
<td>11.01.10</td>
<td>01.01.15</td>
<td>01.01.19</td>
<td>231</td>
<td>$150.15</td>
<td>$75.00</td>
<td>$225.15</td>
</tr>
</tbody>
</table>

**Totals**

$2,354.50  $570.00  $2,924.50

*Upstairs - Rent is $0.65/sq ft. Electric is metered altogether. The City collects $75/mo. for utilities.*

*Suite 103 - Rented in the same manner as the upstairs units.*

*Downstairs - Rent is $0.45/sq ft. Electric is metered seperately. City collects $24/mo for water/sewer/trash.*