



# MERCHANT APPLICATION AND AGREEMENT

## PARTIES AND SERVICES

INTERNAL USE ONLY			
MERCHANT #	MCC	REFERRAL SOURCE/ASSOCIATION NAME	
AGENT #	CORP #	CHAIN #	
SALES REPRESENTATIVE	PHONE	SALES ID	REFERRAL #

**ESTIMATED DATE OF FIRST CREDIT CARD ACCEPTANCE:** \_\_\_\_\_ **CARD ACCEPTANCE REQUESTED:**  CREDIT ONLY  DEBIT ONLY  CREDIT and DEBIT

MERCHANT INFORMATION*			
BUSINESS LEGAL NAME			IS YOUR BUSINESS SEASONAL? <input type="checkbox"/> YES <input type="checkbox"/> NO
MAILING/BILLING ADDRESS		CITY	STATE      ZIP
PHONE	DBA FAX #** LEGAL FAX #**	TAX ID #	TOTAL # OF LOCATIONS
MERCHANT "DOING BUSINESS AS" NAME		BUSINESS START DATE (MONTH/YEAR)	HOW LONG AT THIS LOCATION?
LOCATION ADDRESS (No P.O. Box)		CITY	STATE      ZIP
PHONE	PRIMARY MERCHANT CONTACT NAME	E-MAIL ADDRESS**	
<b>TYPE OF OWNERSHIP:</b> <input type="checkbox"/> SOLE OWNERSHIP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> LLC <input type="checkbox"/> PUBLIC CORP <input type="checkbox"/> PRIVATE CORP <input type="checkbox"/> GOVT. CORP <input type="checkbox"/> NON-PROFIT <input type="checkbox"/> OTHER			
<b>TYPE OF BUSINESS:</b> <input type="checkbox"/> RETAIL <input type="checkbox"/> WHOLESALE <input type="checkbox"/> RESTAURANT <input type="checkbox"/> LODGING <input type="checkbox"/> MAIL ORDER <input type="checkbox"/> TELEPHONE ORDER <input type="checkbox"/> CONVENIENCE STORE <input type="checkbox"/> CONVENIENCE STORE WITH GAS <input type="checkbox"/> INTERNET <input type="checkbox"/> BUSINESS TO BUSINESS <input type="checkbox"/> HOME-BASED <input type="checkbox"/> OTHER			
<b>LIST ALL WEBSITE ADDRESSES:</b>			
DESCRIBE THE MERCHANDISE SOLD OR SERVICE PROVIDED			
<b>CHECK METHOD OF ADVERTISING AND INCLUDE ANY MATERIALS:</b> <input type="checkbox"/> YELLOW PAGES AD <input type="checkbox"/> CATALOG <input type="checkbox"/> DIRECT MAIL — LETTER/BROCHURE <input type="checkbox"/> TV/RADIO <input type="checkbox"/> TELEPHONE/TELEMARKETING <input type="checkbox"/> NEWSPAPER/MAGAZINE ADVERTISEMENT <input type="checkbox"/> REFERRAL <input type="checkbox"/> INTERNET/E-MAIL			
MAIL/FAX CHARGEBACK/RETRIEVALS TO: <input type="checkbox"/> OUTLET <input type="checkbox"/> CORPORATE			<input type="checkbox"/> RECON SOLUTIONS
DELIVER STATEMENTS TO: <input type="checkbox"/> OUTLET <input type="checkbox"/> CORPORATE		DELIVER BY: <input type="checkbox"/> MAIL <input type="checkbox"/> E-MAIL** _____	<input type="checkbox"/> OUTLET <input type="checkbox"/> CHAIN
AMERICAN EXPRESS MERCHANT #		DISCOVER MERCHANT #	
EQUIPMENT TYPE: <input type="checkbox"/> RENT <input type="checkbox"/> PURCHASE <input type="checkbox"/> LEASE <input type="checkbox"/> REPROGRAM <input type="checkbox"/> SOFTWARE CODING ONLY: _____			

**LEASE COMPANY: (04) First Data Global Leasing      Lease Term: \_\_\_\_\_ Months      Annual Tax Handling Fee: \$10.20**  
**Total monthly lease charge: \$ \_\_\_\_\_ w/o taxes, late fees, or other charges that may apply —**  
**See Lease Agreement for details. This is a NON-CANCELABLE lease for the full term indicated.**

SALES DEPOSIT & REFUND POLICY			
% ANNUAL CREDIT CARD SALES GENERATED BY: [MAIL/PHONE      %] [INTERNET      %] [CARD SWIPE      %] [HAND-KEYED ITEMS FACE-TO-FACE      %] TOTAL = 100%			
PERCENTAGE OF CUSTOMER ORDERS DELIVERED IN: [0 DAYS      %] [1-7 DAYS      %] [8-14 DAYS      %] [15-30 DAYS      %] [MORE THAN 30 DAYS      %] TOTAL = 100%			
NUMBER OF DAYS TO PREPARE SHIPMENTS FOR DELIVERY TO CUSTOMER FROM DATE OF ORDER: _____			
ARE CUSTOMERS REQUIRED TO PROVIDE A DEPOSIT? <input type="checkbox"/> YES <input type="checkbox"/> NO		IF A DEPOSIT IS REQUIRED, WHAT PERCENT OF THE TOTAL SALE IS REQUIRED?      %	
MC/VISA SALES ARE DEPOSITED (CHECK ONE): <input type="checkbox"/> AT DATE OF ORDER <input type="checkbox"/> AT DATE OF DELIVERY <input type="checkbox"/> OTHER			
DO YOU HAVE A REFUND POLICY FOR YOUR MASTERCARD/VISA SALES? <input type="checkbox"/> YES <input type="checkbox"/> NO			
CHECK THE APPLICABLE REFUND POLICY: <input type="checkbox"/> EXCHANGE <input type="checkbox"/> STORE CREDIT <input type="checkbox"/> MC/VISA CREDIT <input type="checkbox"/> OTHER			
IF MC/VISA CREDIT, WITHIN HOW MANY DAYS DO YOU DEPOSIT CREDIT TRANSACTIONS? <input type="checkbox"/> 0-3 DAYS <input type="checkbox"/> 4-7 DAYS <input type="checkbox"/> 8-14 DAYS			
WHAT % OF PRODUCT/SERVICE DOES CUSTOMER RECEIVE AT TIME OF PURCHASE:      %			

OWNERS/OFFICERS*			
(List the two owners with the largest share of ownership. Information on the individual(s) signing the application is needed below.)			
1. NAME		TITLE	PERCENT OF OWNERSHIP %
RESIDENCE ADDRESS		CITY	STATE      ZIP
HOME TELEPHONE	SOCIAL SECURITY #	DATE OF BIRTH	DRIVER'S LICENSE #      STATE
2. NAME		TITLE	PERCENT OF OWNERSHIP %
RESIDENCE ADDRESS		CITY	STATE      ZIP
HOME TELEPHONE	SOCIAL SECURITY #	DATE OF BIRTH	DRIVER'S LICENSE #      STATE
COMPANY PRESIDENT		COMPANY CFO	

CREDIT INFORMATION		
ANNUAL VISA/MASTERCARD VOLUME	AVERAGE CREDIT CARD TICKET	TOTAL SALES

\* Federal regulations require that we collect information to verify customer identity and that we retain this information in our records.

\*\* By providing us your fax number and e-mail address, you agree that we may fax and/or email information to you from time to time regarding our products and services, and third party products and services which may be of interest to you.

<b>MAIL OR TELEPHONE ORDER SALES</b>				
(Complete if your sales are generated by mail, telephone or Internet orders, or if your product is not delivered at the point of sale.)				
NAME OF FULFILLMENT HOUSE (IF ANY)		DELIVERY TIME FRAME	IF USING A FULFILLMENT HOUSE, WHO OWNS THE MAJORITY OF THE INVENTORY? <input type="checkbox"/> MERCHANT <input type="checkbox"/> FULFILLMENT HOUSE	
FULFILLMENT HOUSE — STREET ADDRESS		CITY	STATE	ZIP
<b>BANK REFERENCES (attach separate sheet with trade references if applicable)</b>				
BANK NAME (Please attach preprinted voided check.)		TRANSIT ROUTING # (ABA #)	ACCOUNT NUMBER	
ADDRESS		CITY	STATE	ZIP
<b>IF THE MERCHANT HAS PREVIOUSLY ACCEPTED CREDIT CARDS, THE LAST 3 MONTHS* MERCHANT STATEMENTS MUST BE PROVIDED</b>				
CURRENT CREDIT CARD PROCESSING BANK, IF APPLICABLE		REASON FOR LEAVING CURRENT PROCESSOR (IF APPLICABLE)		
BANK OR PROCESSOR NAME:				
CITY	STATE	ZIP	CONTACT	PHONE
HAVE ANY OF THE PRINCIPALS EVER FILED FOR BANKRUPTCY? FIRST PRINCIPAL <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, STATE: CHAPTER FILED: DATE:				
SECOND PRINCIPAL <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, STATE: CHAPTER FILED: DATE:				
HAVE ANY OF THE PRINCIPALS EVER MANAGED OR OWNED ANOTHER BUSINESS THAT ACCEPTED CREDIT CARDS?				
FIRST PRINCIPAL <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, BUSINESS NAME: CITY/STATE				
SECOND PRINCIPAL <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, BUSINESS NAME: CITY/STATE				

THIS MERCHANT APPLICATION AND AGREEMENT (this "Agreement") is entered into by and between First Data Services, LLC ("FDS"), for itself and on behalf of Wells Fargo Bank, N.A. and the Merchant identified in this Agreement. Under the terms of this Agreement, FDS will be the sole provider to Merchant of the services necessary to authorize, process and settle all of Merchant's credit and debit card transactions set forth in Schedule A to this Agreement. If a third party referred you to us for the services provided under this Agreement, such third party may be party to the Agreement, but has no rights with respect to Merchant except as provided in such third party's agreement with us.

**FOR MERCHANT AND INDIVIDUAL GUARANTORS:** As the person signing below on behalf of the business designated on the above Application ("Merchant"), I certify that I am an owner, partner or officer of the Merchant and have been duly authorized to sign this Merchant Application and Agreement on behalf of the Merchant. Merchant and each guarantor signing below ("Guarantor") hereby acknowledge that they have each received and read (1) Terms and Conditions for Merchant Agreement, (2) Schedule A (Pricing) and (3) the Operating Guides – Retail and Mail Order/Telephone Order/Internet Transactions. Merchant agrees to be bound by the terms and conditions contained in those documents, and each Guarantor hereby agrees to be bound as a Guarantor of the Merchant's obligations under this agreement, according to the Personal Guaranty contained in the Terms and Conditions for Merchant Agreement. Merchant hereby authorizes FDS to credit and debit Merchant's designated bank account(s) in accordance with this Agreement. Merchant represents and warrants that all information on this Application, and the related information submitted in conjunction with the Application, is true, complete and not misleading. The Application now belongs to FDS. Merchant understands that the application fee is non-refundable. Merchant, each Owner/Officer and each Guarantor hereby authorizes and agrees that FDS, or its designee, may investigate and verify the credit and financial information of Merchant, each Owner/Officer and any individual Guarantor and may obtain consumer and commercial credit reports on the Guarantors, Owners/Officers and Merchant from time to time. If the Application is approved, subsequent consumer and business credit reports may be required or used in connection with the maintenance, updating, renewal or extension of the Agreement. The Merchant, Owners/Officers and each Guarantor agrees that all business references, including banks, may release any and all credit and financial information to FDS. ANY UNILATERAL ALTERATION, STRIKEOVER OR MODIFICATION TO THE PREPRINTED TEXT OR LINE ENTRIES OF THIS MERCHANT APPLICATION AND LEGAL AGREEMENT SHALL BE OF NO EFFECT WHATSOEVER, AND AT FDS' SOLE DISCRETION, MAY RENDER THIS MERCHANT APPLICATION INVALID.

**MERCHANT:**

BUSINESS LEGAL NAME \_\_\_\_\_

By: \_\_\_\_\_  
Individual Signature (#1 from Application)

By: \_\_\_\_\_  
Individual Signature (#2 from Application)

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Print Individual Name: \_\_\_\_\_

Print Individual Name: \_\_\_\_\_

**GUARANTORS:**

\_\_\_\_\_  
Individual Signature

\_\_\_\_\_  
Individual Signature

Print Guarantor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Guarantor Name: \_\_\_\_\_ Date: \_\_\_\_\_

**For FDS to request an American Express Number on behalf of the merchant through the AMEX ESA Program:** By signing below, I represent that I have read and am authorized to sign and submit this application for the above entity which agrees to be bound by the American Express® Card Acceptance Agreement ("Agreement"), and that all information provided herein is true, complete and accurate. I authorize First Data Services, LLC ("FDS") and American Express Travel Related Services Company, Inc. ("AXP") and AXP's agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies, and disclose such information to their agent, subcontractors, Affiliates and other parties for any purpose permitted by law. I authorize and direct FDS and AXP and AXP agents and Affiliates to inform me directly, or through the entity above, of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize AXP to use the reports from consumer reporting agencies for marketing and administrative purposes. I understand that upon AXP's approval of the Application, the entity will be the Agreement and materials welcoming it, either to AXP's program for FDS to perform services for AXP or in AXP's standard Card acceptance program, which has different servicing terms (e.g., different speeds of pay). I understand that if the entity does not qualify for the FDS servicing program, the entity may be enrolled in AXP's standard Card acceptance program, and the entity may terminate the Agreement. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Agreement.

**For FDS to request a Discover Number on behalf of the merchant through the Discover Program:** Client acknowledges that by accepting a Discover card for payment, Client agrees to the terms and conditions of Discover Business Services ("Discover"). Such terms and conditions will be sent to Client by Discover.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ AMEX Volume: \_\_\_\_\_ Rate / Monthly Fee: \_\_\_\_\_

APPROVED:

**First Data Services, LLC, for itself and on behalf of Wells Fargo Bank, N.A.**

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

## TERMS AND CONDITIONS FOR MERCHANT AGREEMENT

### 1. **Merchant's Acceptance of Payment Instruments.**

**1.1 Exclusivity.** You will tender to us Transaction Data generated from all your Transactions via electronic data transmission according to our formats and procedures. You will not use the services of any bank, corporation, entity, or person other than FDS for authorization or processing of Transaction Data throughout the term of this Agreement.

**1.2 Certain Payment Acceptance Policies.** Each Payment Transaction and Conveyed Transaction must be evidenced by a single Transaction Data record completed with (i) the transaction date; (ii) a brief description of the goods or services sold, returned, or canceled; (iii) the price of the goods or services, including applicable taxes, or amount of any credit or adjustment; (iv) the Customer name; (v) your name in a manner recognizable to Customers; (vi) your address; (vii) a customer service telephone number; (viii) any applicable terms and conditions; (ix) the exact date any free trials end; and (x) any other information that the applicable Payment Brand may require. You shall not impose any surcharge or finance charge on a Payment Transaction or Conveyed Transaction or otherwise require the Customer to pay any fees payable by you under this Agreement if prohibited by the applicable Payment Brand. You shall not engage in any practice that unfavorably discriminates against or provides unequal treatment of the use of any Payment Brand over any other Payment Brand. You shall not set a dollar amount above or below which you refuse to honor otherwise valid Payment Instruments in violation of Payment Brand Rules. With respect to any Payment Transaction or Conveyed Transaction for which the Payment Instrument being used is not physically presented, such as in any on-line, mail, telephone, or pre-authorized transaction, you must (i) have notified us on your application or otherwise in writing of your intention to conduct such transactions and secured our agreement to accept them; and (ii) have reasonable procedures in place to ensure that each Transaction is made to a purchaser who actually is the Customer. Notwithstanding the foregoing, you acknowledge that under certain Payment Brand Rules, you cannot rebut a Chargeback where the Customer disputes making the purchase without an electronic record (for example, "swiping" or "tapping" a Payment Instrument) or physical imprint of the Payment Instrument.

**1.3 Operating Guide; Payment Brand Rules.** You agree to comply with the operating guide attached to this Agreement, as amended from time to time ("Operating Guide"), all Payment Brand Rules, and such other procedures as we may from time to time prescribe for the creation or transmission of Transaction Data. We may modify and supplement the Operating Guide in order to comply with requirements imposed by the Payment Brand Rules. You acknowledge that you have received a copy of the Operating Guide at or prior to your execution of this Agreement and that you can also view the Operating Guide on-line at the FDS website. To the extent that the Operating Guide is inconsistent with the Payment Brand Rules, the Payment Brand Rules shall prevail.

**1.4 Requirements for Certain Transactions.** As to all Payment Transactions and Conveyed Transactions you tender to us for processing, you represent and warrant that:

- 1) The Payment Transaction represents payment or refund of payment for the bona fide sale or lease of the goods, services, or both, that you have provided in the ordinary course of your business, and the Payment Transaction is not submitted on behalf of a third party.
- 2) The Payment Transaction represents an obligation of the Customer for the amount of the Payment Transaction.
- 3) The Payment Transaction does not involve any element of credit for payment of a previously dishonored Payment Instrument or for any other purpose except payment for a current transaction, and, except in the case of approved installment or pre-payment plans, the goods have been shipped or services actually rendered to the Customer.
- 4) The Payment Transaction is free from any alteration not authorized by the Customer.
- 5) The amount charged to the Customer that is represented in the Payment Transaction is not subject to any dispute, setoff, or counterclaim.
- 6) Neither you nor your employee has advanced any cash to the Customer (except as authorized by the Payment Brand Rules) or to yourself or to any of your representatives, agents, or employees in connection with the Payment Transaction, nor have you accepted payment for effecting credits to a Customer.
- 7) The goods or services related to each Payment Transaction are your sole property and you are free to sell them.
- 8) You have made no representations or agreements for the issuance of refunds except as it states in your return/cancellation policy, which has been previously submitted to us in writing as provided in Section 3.
- 9) Any credit transaction submitted to us represents a refund or adjustment to a Payment Transaction previously submitted to FDS.
- 10) You have no knowledge or notice of information that would lead you to believe that the enforceability or collectibility of the subject Payment Transaction is in any manner impaired. The Payment Transaction is in compliance with all applicable laws, ordinances, and regulations. You have originated the Payment Transaction in compliance with this Agreement and the applicable Payment Brand Rules.
- 11) For a Payment Transaction where the Customer pays in installments or on a deferred payment plan, a Transaction Data record has been prepared separately for each installment transaction or deferred payment on the date(s) the Customer agreed to be charged. All installments and deferred payments, whether or not they have been submitted to us for processing, shall be deemed to be a part of the original Payment Transaction.
- 12) You have not submitted any Payment Transaction that you know or should have known to be either fraudulent or not authorized by the Customer or otherwise in violation of any provision of this Agreement or Payment Brand Rules.

### 2. **Authorizations.**

**2.1 Obtaining Authorizations.** You are required to obtain authorization/approval codes through FDS, in accordance with this Agreement, for all Payment Transactions. You acknowledge that the authorization/approval code of a Payment Transaction indicates **only** (i) that the Payment Instrument contains a valid account number; and (ii) that sufficient balance is available for the Payment Transaction at the time the authorization is given, but it does not constitute a representation from us, a Payment Brand or a card issuing bank that a particular Payment Transaction is in fact a valid or undisputed transaction entered into by the actual Customer.

**2.2 Lack of Authorization.** We reserve the right to refuse to process any Transaction Data presented by you (i) if you do not record a proper authorization/approval code, (ii) if we determine that the Transaction Data is or will become uncollectible from the Customer to which the transaction would otherwise be charged, or (iii) if we determine that the Transaction Data was prepared in violation of any provision of this Agreement or the Payment Brand Rules.

### 3. **Refunds and Adjustments.**

**3.1 Disclosure of Refund Policy.** You are required to maintain a fair policy with regard to the return/cancellation of merchandise or services and adjustment of Transactions. You are required to disclose your return/cancellation policy to us on your application. Your return/cancellation policy must be disclosed to your customers.

**3.2 Changes to Policy.** Any change in your return/cancellation policy must be submitted in writing to us not less than 14 days prior to the effective date of such change. We reserve the right to refuse to process any Transaction Data made subject to a revised return/cancellation policy of which we have not been notified in advance.

**3.3 Procedure for Refunds/Adjustments.** If you allow a price adjustment, return of merchandise, or cancellation of services in connection with a Payment Transaction, you will prepare and deliver to us Transaction Data reflecting such refund or adjustment within 3 days of receiving the Customer's request for such refund/adjustment. The amount of the refund/adjustment cannot exceed the amount shown as the total on the original Transaction Data except by the exact amount required to reimburse the Customer for postage that the Customer paid to return merchandise. You are not allowed to accept cash or any other payment or consideration from a Customer in return for preparing a refund to be deposited to the Customer's account; nor may you give cash refunds to a Customer in connection with a Payment Transaction, unless required by law.

#### **4. Settlement.**

**4.1 Submission of Transaction Data.** You must transmit your Transaction Data to us no later than the business day immediately following the day that such Transaction Data is originated. Failure to do so can result in higher interchange fees and other costs and increased Chargebacks. For debit card transactions that are credits to a Customer's account, you agree to transmit such Transactions to us within 24 hours of receiving the authorization for such credit. Unless otherwise indicated on Schedule A, you will be solely responsible for all communication expenses required to facilitate the transmission of all Transaction Data to us.

**4.2 Merchant's Settlement Account.** In order to receive funds from FDS, you must maintain an account at a bank that is a member of the Automated Clearing House ("ACH") system or the Federal Reserve wire system ("Settlement Account"). During the term of the Agreement, and thereafter until we notify you that all monies due from you under this Agreement have been paid in full, you agree not to close your Settlement Account without giving us at least 5 days' prior written notice and substituting another Settlement Account. You are solely liable for all fees, costs, and expenses associated with your Settlement Account and for all overdrafts. You authorize FDS to initiate electronic credit and debit entries and adjustments to your Settlement Account at any time without regard to the source of any monies in the Settlement Account. This authority will remain in full force and effect until we notify you that all monies due from you under this Agreement have been paid in full. We will not be liable for any of your losses or expenses whatsoever resulting from delays in receipt of funds or errors in Settlement Account entries caused by third parties, including, without limitation, delays or errors by either the Payment Brands or your bank.

**4.3 Conveyed Transactions.** To the extent that you submit any Conveyed Transaction for processing by FDS and you do not have a valid agreement in effect with the applicable Payment Brand, you hereby authorize us, at our option, to submit such transaction to the applicable Payment Brand, and to share with the Payment Brand such information from your Merchant Application as may be required by the Payment Brand in order to approve your acceptance of its Payment Instrument as a method(s) of payment. Subject to such approval you agree to the applicable Payment Brand's standard terms and conditions with respect to your acceptance of its method(s) of payment. Upon your transmission of such Conveyed Transaction to us, we will forward the Conveyed Transaction to the appropriate Payment Brand. Payment of the proceeds due you will be governed by whatever agreement you have with that Payment Brand, and we do not bear any responsibility for their performance. If your agreement with a Payment Brand requires such Payment Brand's consent for us to perform the services contemplated by our Agreement, you are responsible for obtaining that consent.

**4.4 Transfer of Settlement Funds.** For all Payment Transactions, we will process your Transaction Data to facilitate the funds transfer between the various Payment Brands and you for Payment Transactions. Promptly after we receive credit for such Transaction Data, we will provide provisional credit to your Settlement Account for the proceeds. The proceeds payable to you shall be equal to the amounts received by us in connection with your Transaction Data minus the sum of the following: (i) all fees imposed by us or any third parties passed through to you, charges, and discounts set forth in Schedule A; (ii) all adjustments and Chargebacks; (iii) all equipment charges (if any); (iv) all Customer refunds, returns, and adjustments; (v) all Reserve Account amounts; and (vi) any fees, charges, fines, assessments, penalties, or other liabilities that may be imposed on us or the Member, from time to time, by the Payment Brands and all related costs and expenses incurred by us. You agree that all amounts set forth above, and any other amounts are due and payable by you at the time the related services are rendered to you; that all Reserve Account amounts are due and payable by you upon establishment; and that the related Chargebacks, Customer refunds, and adjustments, fees, charges, fines, assessments, penalties, and all other liabilities are due and payable by you when we receive notice thereof from the Payment Brands or otherwise pursuant to Section 4. In the event we do not deduct such amounts from the proceeds payable to you, you agree to pay all such amounts to us. Alternatively, at our option, we may debit the Settlement Account for such amounts. Without limiting the foregoing or our rights under Section 7.2 or Section 10, if a Payment Brand notifies us or the Member that it intends to impose any fine or penalty as a result of excessive Chargebacks or your acts or omissions (including, without limitation, your failure to fully comply with any Payment Brand Rules), we may suspend the processing of your Payment Transactions.

**4.5 Negative Amounts.** To the extent the proceeds from Payment Transactions do not represent sufficient credits or the Settlement Account does not have a sufficient balance to pay amounts due or reasonably anticipated to become due under this Agreement, we may pursue one or more of the following options: (i) demand and receive immediate payment for such amounts; (ii) debit your Settlement Account for the amount of the negative balance; (iii) withhold your settlement payments until all amounts are paid; (iv) delay presentation of your refunds until you make a payment to us of a sufficient amount to cover the negative balance; (v) collect any amount due or which may become due to us from any of your bank accounts without notice to you; and (vi) pursue any other remedies we may have at law or in equity. Furthermore, if the amount represented by your Transaction Data in any day is negative due to refunds/credits being submitted by you in excess of your proceeds from Transaction Data, you shall provide us with sufficient funds prior to the submission of the Transaction Data so as to prevent the occurrence of a negative balance.

**4.6 Delinquency/Merchant Fraud.** At any time and from time to time we may temporarily suspend or delay payments to you and/or designate an amount of funds that we must maintain in order to protect us against the risk of, among other things, existing, potential, or anticipated Chargebacks and to satisfy your other obligations under this Agreement (such funds being hereinafter referred to as the "Reserve Account"), which may be funded in the same manner as provided for negative balances in Section 4.5. The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for Chargebacks, returns, unshipped merchandise, and/or unfulfilled services and all additional liabilities anticipated under this Agreement. We may (but are not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable to you, the satisfaction of any amounts which are or become due from you pursuant to this Agreement. The Reserve Account will be held and controlled by FDS, will not bear interest, and you will have no legal right or interest in the funds in the Reserve Account; provided, however, that upon satisfaction of all of your obligations under this Agreement, we will pay to you any funds then remaining in the Reserve Account. Any funds in the Reserve Account may be commingled with other funds, and need not be maintained in a separate account. Effective upon our establishment of a Reserve Account, you irrevocably grant to us a security interest in any interest you may now have or later acquire in any and all funds, together with the proceeds thereof, that may at any time be in our possession and would otherwise be payable to you pursuant to the terms of this Agreement. You agree to execute and deliver to us such instruments and documents (including, without limitation, security agreements and releases) that we may reasonably request (i) to perfect and confirm the security interest and right of setoff set forth in this Agreement; and (ii) in connection with any return of Reserve Account funds.

**5. Accounting.** We will supply a detailed statement reflecting the activity for your merchant account(s) by on-line access (or otherwise if we agree). We will not be responsible for any error that you do not bring to our attention within 90 days from the date of such statement.

**6. Retrieval Requests.**

**6.1 Records.** You agree to store original documentation or legible copies of each Transaction for at least 18 months from the date of such Transaction. You may not charge a fee to your Customers for the creation or storage of such copies. We may, at our discretion, require you to deliver copies of Transaction Data to us rather than storing it.

**6.2 Response to Retrieval Requests.** We will send you any Retrieval Request that we cannot satisfy with the information we have on file concerning any Payment Transaction. In response, you must provide us in writing by certified or overnight mail or by confirmed fax (or by other means as agreed to by FDS) the resolution of your investigation of such Retrieval Request and include legible copies of any documentation required by the Retrieval Request within 7 business days after we send it to you (or such shorter time as the Payment Brand Rules may require). You acknowledge that your failure to fulfill a Retrieval Request in accordance with Payment Brand Rules may result in an irreversible Chargeback.

**7. Chargebacks.**

**7.1 Chargeback Reasons.** You may receive a Chargeback from a Customer or a Payment Brand for a number of reasons under the Payment Brand Rules. The following are some of the most common reasons for Chargebacks, and in no way is this intended to be an exhaustive list of possible Chargeback reasons:

- 1) Your failure to issue a refund to a Customer upon the return or non-delivery of goods or services.
- 2) A required authorization/approval code was not obtained.
- 3) The Transaction Data was prepared incorrectly or fraudulently.
- 4) We did not receive your response to a Retrieval Request within 7 business days or any shorter time period required by the Payment Brand Rules.
- 5) The Customer disputes the Transaction or the signature on the Transaction Data, or claims that the Transaction is subject to a set-off, defense, or counterclaim.
- 6) The Customer refuses to make payment for a Transaction because, in the Customer's good faith opinion, a claim or complaint has not been resolved, or has been resolved by you in an unsatisfactory manner.
- 7) The credit or debit card comprising the Payment Instrument was not actually presented at the time of the Payment Transaction or you failed to obtain an electronic record or physical imprint of such Payment Instrument, and the Customer denies making the purchase. The Merchant acknowledges that, under these circumstances, the fact that an authorization/approval code was obtained does not mean that a particular Transaction is a valid or undisputed transaction entered into by the actual Customer.

**7.2 Excessive Chargebacks.** If you are receiving an excessive amount of Chargebacks, as determined by the Payment Brands from time to time, in addition to our other remedies under this Agreement we may take the following actions: (i) review your internal procedures relating to acceptance of Payment Instruments and notify you of new procedures you could adopt in order to avoid future Chargebacks; (ii) notify you of a new rate we will charge you to process your Chargebacks; (iii) collect from you (pursuant to Section 4.6) an amount reasonably determined by us to be sufficient to cover anticipated Chargebacks and all related fees, expenses, and fines; or (iv) terminate the Agreement with written notice of termination. You also agree to pay any and all Payment Brand fees and fines assessed against you or against FDS or Member relating to your violation of this Agreement, the Operating Guide, or the Payment Brand Rules with respect to your acceptance of Payment Instruments, your Transaction Data or with respect to excessive Chargebacks under this Section.

**7.3 Claims of Customers.** You have full liability if any Transaction Data for which we have given the Settlement Account provisional credit is the subject of a Chargeback. Subsequently, you may resubmit applicable Transaction Data for a second presentment, but only in accordance with Payment Brand Rules. To the extent that we have paid or may be called upon to pay a Chargeback, refund or adjustment for or on the account of a Customer and you do not reimburse us as provided in this Agreement, then for the purpose of our obtaining reimbursement of such sums paid or anticipated to be paid, we have all of the rights and remedies of such Customer under applicable federal, state, or local laws and you authorize us to assert any and all such claims in our own name for and on behalf of any such Customer individually or all such Customers as a class.

**8. Display of Payment Brand Marks.** Merchant is prohibited from using the Payment Brand Marks, as defined below, other than as expressly authorized by us in writing or by the Payment Brands. Payment Brand Marks mean the brands, emblems, trademarks and/or logos that identify a Payment Brand. Additionally, Merchant shall not use the Payment Brand Marks other than to display decals, signage, advertising and other forms depicting the Payment Brand Marks that are provided to Merchant (i) by the Payment Brands; (ii) by us pursuant to this Agreement; or (iii) as otherwise approved in writing by us. Merchant may use the Payment Brand Marks only to promote the services covered by the Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by Merchant must be in writing and approved by us and consistent with Payment Brand Rules. Merchant shall not use the Payment Brand Marks in such a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the Marks. Merchant recognizes that it has no ownership rights in the Payment Brand Marks. Merchant shall not assign to any third party the rights to use the Payment Brand Marks. Merchant's sublicense to use the Payment Brand Marks hereunder terminates simultaneously with the termination of the Agreement.

**9. Fees.**

**9.1 Schedule A.** You agree to pay us for the services as set forth in Schedule A in accordance with this Agreement. Unless otherwise expressly stated in Schedule A, such pricing is based on all Transactions qualifying under the Payment Brand Rules for the lowest Payment Brand interchange rates. For Transactions that do not qualify for the best rate, Payment Brands may provide for a "downgrade," and we will apply a higher rate than the qualifying rate shown on Schedule A. Fees payable under this Agreement that contain a fraction of a cent will be rounded up to the next full cent.

**9.2 Price Changes.** We may modify the pricing on Schedule A with 30 days' prior written notice. In addition, we may change our fees, charges, and discounts resulting from (i) changes in Payment Brand fees (such as interchange, assessments, and other charges); (ii) changes in pricing by any third party provider of a product or service used by you; or (iii) fees which are added by a Payment Brand. Such new prices will be applicable to you as of the effective date established by the Payment Brand or third party provider.

## **10. Termination.**

**10.1 Term.** The initial term of this Agreement shall commence upon our acceptance hereof (as evidenced by our acceptance of your first Transaction for processing hereunder, and shall continue until either (i) terminated by you by giving at least 30 days' prior written notice to us or (ii) terminated by us by giving notice to you (such termination by us to be effective as of a date set forth in such notice, or, if no such date is set forth, to be effective as of the date such notice is received by you). IF YOU TERMINATE THE AGREEMENT WITHIN THE FIRST 3 YEARS FOLLOWING THE DATE OF YOUR EXECUTION OF THIS AGREEMENT (THE "PAYBACK PERIOD"), YOU AGREE TO PAY DE-CONVERSION FEES OF (I) TWO HUNDRED FIFTY DOLLARS (\$250.00) FOR EACH MERCHANT LOCATION and (II) AN AMOUNT EQUAL TO THE STORED VALUE TRANSACTION FEES INCURRED BY YOU DURING THE CALENDAR MONTH IMMEDIATELY PRECEDING TERMINATION, MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE PAYBACK PERIOD. IN THE EVENT THE PAYMENT OF SUCH DE-CONVERSION FEES IS LIMITED BY APPLICABLE LAW, THE AMOUNT PAYABLE TO US PURSUANT TO THIS SECTION SHALL BE LIMITED TO THE MAXIMUM AMOUNT PERMITTED UNDER APPLICABLE LAW. SUCH AMOUNTS WILL BE FUNDED, TO THE EXTENT POSSIBLE, ACCORDING TO THE SAME METHODS FOR COLLECTING AMOUNTS DUE UNDER THIS AGREEMENT. We reserve the right to place you or any person owning or controlling your business in the MATCH file (Member Alert to Control High-Risk Merchants) maintained by Visa and MasterCard in the event this Agreement is terminated for cause.

**10.2 Account Activity After Termination.** Termination does not affect either party's respective rights and obligations under this Agreement as to Transaction Data submitted before termination. If you submit Transaction Data to us after the date of termination, we may, at our sole discretion and without waiving any of our rights or remedies under this Agreement, process such Transaction Data in accordance with all of the terms of this Agreement. Upon notice of any termination of this Agreement, we may estimate the aggregate dollar amount of Chargebacks and other obligations, liabilities, and expenses that we reasonably anticipate subsequent to termination, and you agree to immediately deposit such amount in your Settlement Account or as otherwise directed by us, or we may withhold such amount from your settlement funds, in order to establish a Reserve Account pursuant to and governed by the terms and conditions of this Agreement.

**11. Indemnity.** You agree to indemnify FDS, Member, the Payment Brands, and their respective affiliates, officers, directors, employees, agents, and sponsoring banks from any losses, liabilities, and damages of any and every kind (including, without limitation, our costs, expenses and reasonable attorneys' fees) arising out of any claim, complaint, or Chargeback (i) made or claimed by a Customer with respect to any Transaction or Transaction Data submitted by you, (ii) caused by your noncompliance with this Agreement, the Operating Guide, or the Payment Brand Rules, including any breach of a representation or warranty made by you, (iii) resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against you, or (iv) related to your placement or the placement of any person owning or controlling your business in the MATCH files maintained by Visa and MasterCard. The indemnification provided for in this Section does not apply to any claim or complaint to the extent it is caused by FDS' own negligence or willful misconduct. The indemnity provided under this Section 11 shall survive the termination of this Agreement.

**12. No Disclosure of Customer Information.** You will exercise reasonable care to prevent disclosure or use of Payment Instrument Information, other than (i) to your agents and contractors for the purpose of assisting you in completing a Payment Transaction, (ii) to the applicable Payment Brand, or (iii) as specifically required by law.

You are allowed by the Payment Brand Rules to store only certain Payment Instrument Information (the "Permitted Information") currently limited to the customer's name, Payment Instrument account number and expiration date) and are prohibited from storing additional Payment Instrument Information, including, without limitation, any security code data such as CVV2, CVC2, and PIN data, and any magnetic stripe track data. You will store all media containing Permitted Information in an unreadable format wherever it is stored and in an area limited to selected personnel on a "need to know" basis only and prior to either party discarding any material containing Payment Instrument Information, the party will destroy it in a manner rendering the account numbers unreadable. If at any time you determine that Payment Instrument Information has been compromised you will notify FDS immediately and assist in providing notification to such parties as may be required by law, by Payment Brand Rules, or as we otherwise reasonably deem necessary. Merchant information may be shared by us with our affiliates and with the Payment Brands subject to the provisions of this Agreement and Payment Brand Rules.

You agree to comply with all data security standards, guidelines and requirements that may be published from time to time by any Payment Brand, including, without limitation, the Payment Card Industry Data Security Standards (collectively, the "Security Guidelines"). You further agree provide us upon our request with such tests, scans and assessments of your compliance with Security Guidelines as required by the Payment Brands.

You must notify us of your use of any Service Provider and, to the extent required by each Payment Brand all Service Providers must be (i) compliant with all Security Guidelines applicable to Service Providers, and (ii) registered with and/or recognized by such Payment Brand(s) as being so compliant. You agree to exercise reasonable due diligence to ensure that all of your Service Providers, and any other agents, business partners, contractors, or subcontractors with access to Payment Instrument Information, maintain compliance with the Security Guidelines. To the extent required by each Payment Brand, all payment applications, or software involved in the processing, storing, receiving or transmittal of Payment Instrument Information, shall be (i) compliant with all Security Guidelines applicable to such payment applications or software, and (ii) registered with and/or recognized by such Payment Brand(s) as being so compliant. You understand that your failure to comply with the Payment Brand Rules, including the Security Guidelines, or the compromise of any Payment Instrument Information, may result in assessments, fines, and/or penalties by the Payment Brands, and you agree to indemnify and reimburse us immediately for any such assessment, fine, or penalty imposed on us or the Member and any related loss, cost or expense incurred by us or the Member. If any Payment Brand requires a forensic examination of you or any of your Service Providers, agents, business partners, contractors, or subcontractors due to a data security compromise event or suspected event, you agree to cooperate with such forensic examination (including, without limitation, the engagement of an examiner acceptable to the relevant Payment Brand) and agree to pay for all costs and expenses related to such forensic examination, including all of our attorneys' fees and other costs relating to such forensic examination.

## **13. Information About Merchant's Business.**

**13.1 Additional Financial Information.** Each of Merchant and the undersigned Guarantors(if any) agrees to furnish to us upon 5 days' notice such financial statements and information concerning such Guarantors and Merchant and each of Guarantor's and Merchant's parents, subsidiaries, and affiliated entities as we may request.

**13.2 Other Information.** With prior notice and during your normal business hours, our duly authorized representatives may visit your business premises and may examine your books and records that pertain to your Transaction Data or your compliance with this Agreement. You agree to provide us at least 30 days' prior written notice of your intent to change your product line or services, or your trade name, or the manner in which you accept Payment Instruments. If we determine such a change is material to our relationship with you, we may refuse to process Transaction Data made subsequent to the change. You agree to provide us with prompt written notice if you are the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. You will also provide us with prompt written notice of (i) any adverse change in your financial condition, (ii) any planned

or anticipated liquidation or substantial change the basic nature of your business, (iii) any transfer or sale of any substantial part (25% or more in value) of your total assets, or (iv) if you or your parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, any change in the control or ownership of you or your parent. You will also notify us of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three days after you obtain knowledge of any such judgment, writ, warrant of attachment, execution or levy.

**14. Disclaimer; Limitation of Damages.** Subject to Section 5, we will, at our own expense, correct any Transaction Data to the extent that such errors have been caused by us or by malfunctions of our processing systems. Under no circumstances will FDS' financial responsibility for our failure of performance under this Agreement exceed the total fees paid to us under this Agreement (net of Payment Brand fees, third party fees, interchange, assessments, and fines) for the six months prior to the time the liability arose. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT. **THIS AGREEMENT IS A SERVICE AGREEMENT, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, FDS AND MEMBER DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE) OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENTAL TO SUCH SERVICES.**

**15. Miscellaneous.**

**15.1. Taxes.** Unless you are otherwise exempt, you agree to pay any taxes imposed on the services, equipment, intellectual property, supplies, and other goods purchased or tangible property provided under this Agreement, and you authorize us to increase the amount we collect from you to reflect any and all assessments or increases in the sale, use, occupational, property, lease, or other taxes imposed on such sale or lease of services, tangible property, or intellectual property, equipment, supplies, and other goods purchased.

**15.2 Application and Credit Check.** You represent and warrant that statements made on your Application for this Agreement are true as of the date of your execution of this Agreement. Your signature on this Agreement authorizes us to perform any credit check deemed necessary with respect to Merchant and its directors, officers, affiliates, principals, and guarantors (if applicable).

**15.3 Section Headings.** The section headings of this Agreement are for convenience only and do not define, limit, or describe the scope or intent of this Agreement.

**15.4 Assignment.** We may assign this Agreement to an entity qualified under Payment Brand Rules to perform our obligations under this Agreement. You cannot assign or transfer your rights or delegate your responsibilities under this Agreement without our prior written consent. Failure to obtain our consent may result in a termination of this Agreement.

**15.5 Parties.** This Agreement binds you and us and our respective heirs, representatives, successors (including those by merger and acquisition), and permitted assigns. You represent and warrant that your execution of and performance under this Agreement (i) in no way breaches, contravenes, violates, or in any manner conflicts with any of your other legal obligations, including, without limitation, your corporate charter or similar document or any agreement between you and any third party or affiliated entity; (ii) has been duly authorized by all necessary action and does not require any consent or other action by or in respect of any third party; and (iii) that the person signing this Agreement on your behalf is duly authorized to do so. In providing services to you, we will not be acting in the capacity of your agent, partner, or joint venturer, and we are acting as an independent contractor. Each party agrees that any other party may publicly disclose, through press releases or otherwise, the existence of the business relationship that is the subject of this Agreement. Any such disclosure may identify the parties by name but shall not, without the prior written consent of the non-disclosing party, include any of the terms of this Agreement.

**15.6 Severability.** Should any provision of this Agreement be determined to be invalid or unenforceable under any law, rule, or regulation, including any Payment Brand Rule, such determination will not affect the validity or enforceability of any other provision of this Agreement.

**15.7 Waivers.** No term or condition of this Agreement may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.

**15.8 Entire Agreement.** The Payment Brand Rules, Operating Guide, Application, and all schedules, and attachments to this Agreement are made a part of this Agreement for all purposes. This Agreement represents the entire understanding between Merchant and FDS with respect to the matters contained herein and supersedes any prior agreements between the parties. This Agreement shall prevail over the terms of any agreement governing the Settlement Account.

**15.9 Notices.** Except as otherwise provided in this Agreement, all notices must be given in writing and either hand delivered, faxed, or mailed first class, postage prepaid or sent via overnight courier (and will be deemed to be given when so delivered or mailed), to the addresses set forth below or to such other address as either party may from time to time specify to the other party in writing.

**15.10 Governing Law; Waiver of Jury Trial; Arbitration.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of law provisions. Any action, proceeding, arbitration or mediation relating to or arising from this Agreement must be brought, held, or otherwise occur in Dallas County, Dallas, Texas. **PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING.** Any claim, dispute, or controversy ("Claim") by either you or FDS against the other, or against the officers, directors, employees, agents, parents, subsidiaries, affiliates, beneficiaries, agents, successors, or assigns of the other, arising from or relating in any way to this Agreement or to our relationship, including Claims regarding the applicability of this arbitration clause or the validity of the entire Agreement, shall be resolved exclusively and finally by binding arbitration administered by the National Arbitration Forum, under its Code of Procedure in effect at the time the Claim is filed, except as otherwise provided below. All Claims are subject to arbitration, no matter what theory they are based on. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other source of law. Claims and remedies sought as part of a class action, private attorney general, or other representative action are subject to arbitration on an individual (non-class, non-representative) basis only, and the arbitrator may award relief only on an individual (non-class, non-representative) basis. You and FDS will agree on another arbitration forum if the National Arbitration Forum ceases operations. The arbitration will be conducted before a single arbitrator and will be limited solely to the Claim between you and us. The arbitration, or any portion of it, will not be consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. The prohibition against class action contained in this Section shall be non-severable from the remainder of this Section. If either party prevails in the arbitration of any Claim against the other, the non-prevailing party will reimburse the prevailing party for any fees it paid to the National Arbitration Forum in connection with the arbitration, as well as for any reasonable attorneys' fees incurred by the prevailing party in connection with such arbitration. Any decision rendered in such arbitration

proceedings will be final and binding on the parties, and judgment may be entered in a court of competent jurisdiction. Rules and forms of the National Arbitration Forum may be obtained and Claims may be filed at any National Arbitration Forum office, [www.arb-forum.com](http://www.arb-forum.com), or P.O. Box 50191, Minneapolis, Minnesota 55405, telephone 1-800-474-2371. Any arbitration hearing at which you appear will take place at a location within Dallas County, Dallas, Texas. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. This arbitration agreement applies to all Claims now in existence or that may arise in the future. Nothing in this Agreement shall be construed to prevent any party's use of (or advancement of any Claims, defenses, or offsets in) bankruptcy or repossession, replevin, judicial foreclosure or any other prejudgment or provisional remedy relating to any collateral, security, or other property interests for contractual debts now or hereafter owned by either party to the other. **IN THE ABSENCE OF THIS ARBITRATION AGREEMENT, YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR A JURY AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS (INCLUDING CLASS ACTIONS), BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, THOSE RIGHTS, INCLUDING ANY RIGHT TO A JURY TRIAL, ARE WAIVED AND ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.**

**15.11 Force Majeure.** Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications or utility or power failures, equipment failures, labor strife, riots, war, terrorist attack, nonperformance of our vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this Section 15.11 will affect or excuse your liabilities and obligations for Chargebacks, refunds, or unfulfilled products and services.

**15.12 Amendment.** This Agreement may be amended at any time by FDS upon notice to you. Your continued submission of Transactions to us following such notice will be deemed to be your acceptance of such amendment.

**16. Survival.** The provisions of Sections 4.2, 4.4, 4.5, 4.6, 6.1, 7, 10.2, 11, 12, 14, 15, and 17 shall survive the termination of this Agreement.

**17. Definitions.**

"*Application*" is your statement of your financial condition, the characteristics of your business or organization that you have submitted to us on the cover pages of this Agreement, and related information you have submitted to us, including credit and financial information, to induce us to enter into this Agreement with you and that has induced us to process your Transactions under the terms and conditions of this Agreement.

"*Chargeback*" is a reversal of a Transaction you previously presented to FDS pursuant to Payment Brand Rules.

"*Conveyed Transaction*" is any Payment Transaction conveyed to a Payment Brand for settlement by such Payment Brand directly to Merchant.

"*Customer*" is the person or entity to whom a Payment Instrument is issued or who is otherwise entitled to use a Payment Instrument.

"*Customer Information*" is personal information related to a Customer or a Customer's Payment Instrument that is obtained by a Merchant as part of a Transaction. Such information may include, but not be limited to, Customer's name, address, phone number, date of birth, Payment Instrument account number and expiration date, PIN data, and CVV2 or CVC2 data, and any data read, scanned, or otherwise obtained from the Payment Instrument, whether printed thereon, or magnetically, electronically or otherwise stored thereon.

"*Effective Date*" means the date this Agreement takes effect pursuant to Section 10.1.

"*FDS*," "*we*," "*our*," and "*us*" is First Data Services, LLC, having its principal office at 1307 Walt Whitman Road, Melville, NY 11747.

"*Merchant*," "*you*," and "*your*" is the Merchant identified in the Application on the cover page of the Agreement.

"*Member*" is the entity providing sponsorship to FDS as required by all applicable Payment Brand.

"*Payment Brand*" is any payment method provider whose payment method is accepted by FDS for processing, including, but not limited to, Visa, U.S.A., Inc., MasterCard International, Inc., Discover Financial Services, LLC and other credit and debit card providers, debit network providers, gift cards, and other stored value and loyalty program providers.

"*Payment Brand Rules*" are the bylaws, rules, and regulations, as they exist from time to time, of the Payment Brands.

"*Payment Application*" is a third party application used by Merchant that is involved in the authorization or settlement of Transaction Data.

"*Payment Instrument*" is an account, or evidence of an account, authorized and established between a Customer and a Payment Brand, or representatives or members of a Payment Brand that you accept from Customers. Payment Instruments include, but are not limited to, credit and debit cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates, credit accounts and the like.

"*Payment Instrument Information*" is personal information related to a Customer or the Customer's Payment Instrument, that is obtained by Merchant from the Customer's Payment Instrument, or from the Customer in connection with his or her use of a Payment Instrument (for example a security code, a PIN number, or the customer's Zip code when provided as part of an address verification system). Without limiting the foregoing, such information may include a Customer's name, Payment Instrument account number and expiration date, date of birth, PIN data, security code data such as CVV2, CVC2, and any data read, scanned, or otherwise obtained from the Payment Instrument, whether printed thereon, or magnetically, electronically or otherwise stored thereon.

"*Payment Transaction*" is a transaction conducted between a Customer and Merchant utilizing a Payment Instrument in which consideration is exchanged between the Customer and Merchant.

"*Permitted Customer Information*" is Customer Information which is permitted to be stored in an unreadable format pursuant to the Payment Brand Rules. Currently, permitted information, as of the date of this Agreement, is limited to the Customer's name, the Payment Instrument's account number, and the Payment Instrument's expiration date, if any.

"*Retrieval Request*" is a request for information by a Customer or Payment Brand relating to a claim or complaint concerning a Transaction.

"*Security Standards*" means any rule, regulation, standard or guideline published, provided, or amended from time to time, by the Payment Brands or the Payment Card Industry Security Standards Council, including but not limited to the Payment Card Industry Data Security Standards, Visa's Cardholder Information Security Program, Discover's Information Security & Compliance Program, American Express's Data Security Operating Policy, MasterCard's Site Data Protection Program, Visa's Payment Application Best Practices, , the Payment Card Industry's Payment Application Data Security Standard, MasterCard's POS Terminal Security program, the Payment Application Data Security Standard, and the Payment Card Industry PIN Entry Device Standard.

"*Service Provider*" is any party that processes, stores or transmits Customer Information on your behalf, including, but not limited to your agents, business partners, contractors and subcontractors.

"*Stored Value Transaction*" is a Payment Transaction utilizing a Payment Instrument issued by or on the behalf of a Merchant in which a Customer receives value from the Merchant in exchange for consideration from the Customer. "Transaction" is a Stored Value Transaction and/or a Payment Transaction.

"*Transaction Data*" is the written or electronic record of a Transaction.



### THIRD PARTY AGREEMENTS

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

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

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

This Equipment Lease Agreement ("Lease Agreement") is being entered into by and between First Data Services, LLC (through its business unit First Data Global Leasing), and the Lessee identified on the signature panel of this Merchant Processing Application ("MPA"). In this Lease Agreement, the words "we," "our" and "us" refer to First Data Services, LLC and its successors and assigns and the words "you" and "your" refer to Lessee and its permitted successors and assigns.

Lessee hereby authorizes us or our designees, successors or assigns (hereinafter "Lessor") to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Lessee in conjunction with this Lease Agreement by initiating debit entries to the bank account designated by Lessee on the MPA (the "Settlement Account"). In the event of default of Lessee's obligation hereunder, Lessee authorizes debit of its account for the full amount due under this Lease Agreement. Further, Lessee authorizes its financial institution to accept and to charge any debit entries initiated by Lessor to Lessee's account. In the event that Lessor withdraws funds erroneously from Lessee's account, Lessee authorizes Lessor to credit Lessee's account for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor has received written notice from Lessee of its termination in such time and in such manner as to afford Lessor a reasonable opportunity to act. Lessee also authorizes Lessor from time to time to obtain investigative credit reports from a credit bureau or a credit agency concerning Lessee.

**1. Equipment.** We agree to lease to you and you agree to lease from us the equipment identified on the MPA or such other comparable equipment we provide you (the "Equipment"), according to the terms and conditions of this Lease Agreement. We are providing the Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the Equipment for any particular purpose. The term Equipment includes the Equipment initially deployed under the Lease Agreement and/or any additions, replacements, substitutions, or additions thereto.

**2. Effective Date, Term and Interim Rent.**

- (a) This Lease Agreement becomes effective on the earlier of the date we deliver any piece of Equipment to you (the "Delivery Date") or acceptance by us. This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Equipment to the site designated by you.
- (b) The term of this Lease Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us (the "Commencement Date"), and continues for the number of months indicated on the MPA. THIS IS A NON-CANCELABLE LEASE FOR THE TERM INDICATED.
- (c) You agree to pay an Interim Lease Payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Delivery Date until the date preceding the Commencement Date.
- (d) YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF YOUR MERCHANT PROCESSING AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS LEASE AGREEMENT WITH SAID SERVICE PROVIDER.

**3. Site Preparation.** You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

**4. Payment of Amounts Due.**

- (a) The monthly lease charge is due and payable monthly, in advance. You agree to pay all assessed costs for delivery and installation of Equipment.
- (b) In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes, assessments on or arising out of this Lease Agreement or the Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, tax preparation, compliance expenses, but exclusive of taxes based on our net income. Property taxes are calculated and charged based on the average of the estimated annual property taxes over the course of the term of the lease. You will also be charged an annual Tax Handling Fee, as set forth in the MPA and/or applicable Fee Schedule.
- (c) Your lease payments will be due despite dissatisfaction with the Equipment for any reason.
- (d) Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than \$5.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of \$10.00 for any debit we attempt to make against your Settlement Account that is rejected.
- (e) In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense charge of \$50.00 for each aggregate payment requiring a collection effort.

**5. Use and Return of Equipment; Insurance.**

- (a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.
- (b) You shall not permit any physical alteration or modification of the Equipment, or change the installation site of the Equipment, without our prior written consent.
- (c) You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment without our prior written consent.
- (d) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility.
- (e) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.
- (f) The Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment evidencing our ownership.
- (g) You shall keep the Equipment adequately insured against loss by fire, theft, and all other hazards.
- (h) You shall provide proof of insurance. The loss, destruction, theft or damage of or to the Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly lease charges hereunder.

**6. Title to Equipment.** The Equipment is, and shall at all times be and remain, our sole and exclusive property, and you shall have no right, title or interest in or to the Equipment except as expressly set forth in this Lease Agreement or otherwise agreed in writing. Except as expressly provided in Section 8, no transference of intellectual property rights is intended by or conferred in this Lease Agreement. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Equipment, then we shall be deemed to have a first lien security interest on the Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto.

**7. Return or Purchase of Equipment at End of Lease Period.** Upon the completion of your lease term or any extension thereof, you will have the option to (a) return the Equipment to us; (b) purchase the Equipment from us for its then fair market value, calculated as a percentage of the aggregate lease payments in accordance with the following: If the term of this Lease is forty-eight (48) months or more, the buyout option as a percentage of the aggregate lease payments shall be ten percent (10%). If the term of this lease is thirty-six (36) to forty-seven (47) months, the buyout option as a percentage of the aggregate lease payments shall be fifteen percent (15%). If the term of this lease is twenty-four (24) to thirty-five (35) months, the buyout option as a percentage of the aggregate lease payments shall be twenty percent (20%); or (c) after the final lease payment has been received by FDGL, the Agreement will revert to a month by month rental at the existing monthly lease payment. If Client does not want to continue to rent the Equipment, then Client will be obligated to provide FDGL with 30 day written notice to terminate and return the equipment to FDGL. If we terminate the lease pursuant to Section 34.11(b) due to a default by you, then you shall immediately return the Equipment to us no later than the tenth business day after termination, or remit to us the fair market value of the Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 34.7 by debiting your bank account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

**8. Software License.** We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment other than those owned or licensed by the manufacturer of the Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the Equipment.

**9. Limitation on Liability.** We are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment, including any damage or injury to persons or property caused by the Equipment. We are not liable for the use or maintenance of the Equipment, its failure to operate, any repairs or service to it, or by any interruption of service or loss of use of the Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Lease Agreement shall not exceed the aggregate lease amount paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Lease Agreement are your sole and exclusive remedies.

**10. Warranties.**

- (a) All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment, or non-infringement.
- (b) You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.

**11. Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses resulting from (a) the operation, use, condition, liens against, or return of the Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

**12. Default; Remedies.**

- (a) If any debit of your Settlement Account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Lease Agreement or any agreement with any of our affiliates or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under a processing agreement with us or with an affiliate or joint venture to which we are a party will be treated as a default under this Lease Agreement. Such a default would include a default resulting from early termination of the MPA.
- (b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this lease and our future obligations under this Lease Agreement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued under and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the Equipment (as determined by us), not as a penalty but as liquidated damages for our loss of the bargain. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment. In any case, you shall also be responsible for our costs of collection, court costs, as well as applicable shipping, repair and refurbishing costs of recovered Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by charging your Settlement Account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Without limiting the foregoing, you agree that we are entitled to recover amounts owed to us under this Lease Agreement by obtaining directly from an affiliate or joint venture to which we are a party and with which you have entered into an MPA any funds held or available as security for payment under the terms of the MPA, including funds available under the "Reserve Account; Security Interest" section of the MPA, if applicable.

**13. Assignment.** You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign or transfer this Lease Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent.

**14. Lease Guaranty.** No guarantor shall have any right of subrogation to any of our rights in the Equipment or this Lease Agreement or against you, and any such right of subrogation is hereby waived and released. All indebtedness that exists now or arises after the execution of this Lease Agreement between you and any guarantor is hereby subordinated to all of your present and future obligations, and those of your guarantor, to us, and no payment shall be made or accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full.

**15. Governing Law; Venue; Miscellaneous.** This Lease Agreement shall be governed by and will be construed in accordance with the laws of the State of New York (without applying its conflicts of laws principles). The exclusive venue for any actions or claims arising under or related to this Lease Agreement shall be in the appropriate state of federal court located in Suffolk County, New York. If any part of this Lease Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

**16. Notices.** All notices must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing on the MPA, and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida 33065. Attn: Lease Department. Customer Service toll free number 1-877-257-2094.

**17. Entire Agreement.** This Lease Agreement constitutes the entire Agreement between the parties with respect to the Equipment, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Lease Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Lease Agreement.

## **PERSONAL GUARANTY**

To induce FDS to enter into the foregoing Agreement (as the same may hereafter be renewed, modified, extended, or amended, the "Agreement"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the guarantors named on the cover page of the Agreement (each a "Guarantor" and collectively, the "Guarantors") jointly and severally, irrevocably, and unconditionally guarantee to First Data Services, LLC ("FDS") and its successors and assigns the due and punctual payment of the "Indebtedness" (hereinafter defined). As used herein, the term "Indebtedness" means all indebtedness, obligations, and liabilities of the merchant identified on the cover page of the Agreement ("Merchant") to FDS at any time created or arising, including, without limitation, to all indebtedness, obligations, and liabilities of Merchant arising under the Agreement.

This Personal Guaranty is a guaranty of payment and not a guaranty of collection. Each Guarantor agrees that he or she is liable for the Indebtedness as primary obligor. FDS may proceed against one or more Guarantors whether or not FDS proceeds against Merchant, any other obligors, or any collateral securing the Indebtedness. This Personal Guaranty may not be revoked by any Guarantor and shall continue to be effective with respect to any Indebtedness arising or created after any attempted revocation.

Each Guarantor acknowledges that he or she will benefit from the services and financial accommodation provided by FDS to Merchant's business. Each Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of Merchant and is familiar with the value of any and all collateral intended to be created as security for the payment of the Indebtedness. However, no Guarantor is relying on such financial condition or collateral, including, without limitation, the Merchant's Reserve Account (as defined in Section 4.6 of the Agreement) if any, as an inducement to enter into this Personal Guaranty.

The obligations of each Guarantor hereunder shall be enforceable irrespective of the validity, legality, or enforceability of Merchant's obligations (including without limitation, the expiration of any applicable limitations period) and shall not in any way be affected by or conditional upon (i) any action taken under the Agreement or the exercise of any right or power thereby conferred; (ii) the bankruptcy or similar proceedings involving or affecting Merchant; (iii) any assignment, modification, alteration, or amendment of, or addition to, the Agreement whether with or without such Guarantor's knowledge or consent; (iv) any renewal, extension, increase, modification, alteration or rearrangement of all or any part of the Indebtedness; (v) any adjustment, indulgence, forbearance, or compromise that might be granted by FDS to Merchant or any Guarantor; or (vi) any other action, inaction, or circumstance whatsoever (with or without notice to or knowledge of or consent by such Guarantor) that may in any manner vary the risks of such Guarantor or might otherwise constitute a legal or equitable defense or discharge of any surety or guarantor. The Guarantor hereby waives all defenses based on occurrences of the types described in clauses (i) through (vi) above.

Guarantors authorize FDS, from time to time, without notice or demand and without affecting their liability hereunder, to (i) renew, compromise, extend, accelerate, or otherwise change the time for payment of, or otherwise change the terms of, the Indebtedness or the Agreement; (ii) take and hold security for the payment of the Indebtedness or this Personal Guaranty, and exchange, enforce, waive, and release any such security, or take additional security; (iii) apply such security or the proceeds thereof in such order or manner as FDS, in its discretion, may determine; (iv) release, in whole or in part, Merchant or any Guarantor from liability for the payment of the Guaranteed Debt; (v) substitute any one or more of the Guarantors or acquire additional guarantors; and (vi) to obtain and review such information (including without limitation, the reports of any consumer credit bureau) as FDS may deem necessary to confirm Guarantors' creditworthiness.

Guarantors hereby waive notice of (i) the incurrence by Merchant of any Indebtedness; (ii) acceptance of this Personal Guaranty Agreement; (iii) any renewal, modification, extension, or amendment of the Agreement or of any other instrument or document pertaining to all or any part of the Indebtedness; (iv) the occurrence of any breach or default under the Agreement; (v) FDS' transfer or disposition of the Indebtedness, or any part thereof; (vi) sale or foreclosure (or posting or advertising for sale or foreclosure) of any collateral for the Indebtedness; (vii) protest, proof of non-payment, or default by Merchant; and (viii) any other action at any time taken or omitted by FDS. Guarantors hereby waive all presentment demands for performance or payment, protests, notices of protest, nonperformance, dishonor, default and non-payment, and all other notices or formalities.

This Personal Guaranty shall be binding on, and inure to the benefit of, the parties hereto and their respective heirs, administrators, legal representatives, successors, and assigns. Guarantors may not, without the prior written consent of FDS, assign any of their rights, powers, duties, or obligations hereunder. Guarantors jointly and severally agree to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by FDS in the enforcement of this Personal Guaranty. FDS' rights hereunder shall be cumulative of any and all other rights that FDS may have against Guarantors.

**MERCHANT OPERATING GUIDE  
GENERAL RULES APPLICABLE TO ALL TRANSACTIONS**

**1. ACCEPTANCE OF CERTAIN PAYMENT INSTRUMENTS**

In offering Visa and MasterCard payment options to your Customers, you may elect any one of the following options: (i) accept all types of Visa and MasterCard Payment Instruments – including consumer credit and debit/check cards, and commercial credit and debit/check cards; (ii) accept only Visa and MasterCard credit cards and commercial cards (if you choose this option you must accept all consumer credit cards (but not consumer debit/check cards) and all commercial card products, including business debit/check cards; or (iii) accept only Visa and MasterCard consumer debit/check cards (if you choose this option you must accept all consumer debit/check card products (but not business debit/check cards) and will not accept any kind of credit cards). The acceptance options above apply only to U.S. domestic Visa and MasterCard Payment Transactions and, as such, they do not apply to Visa or MasterCard Payment Instruments issued by non-U.S. banks. In other words, if your Customer presents a Visa or MasterCard Payment Instrument issued from a European or Asian bank, for example, you must accept that card just as you would any other card (provided you receive a valid authorization and confirm the identity of the Customer, etc.), regardless of the acceptance option choice you have made and even if you have elected not to accept that type of Payment Instrument from U.S. issuers. If you choose to limit the types of Visa and MasterCard Payment Instruments you accept, the following rules apply to you: (i) you must display appropriate signage to indicate acceptance of the limited acceptance category you have selected (that is, accept only debit/check card products or only credit and commercial products; (ii) if you elect limited acceptance, any Transaction Data submitted into interchange outside of the selected product category will be assessed the standard interchange fee applicable to that card product and may also have additional fees/surcharges assessed; and (iii) additional Visa and MasterCard Rules that may be applicable to you may be viewed on their respective websites.

**2. AUTHORIZATION/APPROVAL CODES**

All Payment Transactions and Conveyed Transactions require authorization/approval codes. You must request and receive an authorization/approval code for the total amount of the Transaction. An authorization/approval code indicates (i) the availability of credit on the Payment Instrument at the time of inquiry, and (ii) that the Payment Instrument account number is valid. It is not a promise or a guarantee that you will receive payment for that transaction. It does not warrant that the person presenting the Payment Instrument has the authority to do so.

**3. REFUNDS/CREDITS**

You must disclose your return/refund policy to your Customers. You must complete a credit for the total amount of the refund and identify the merchandise being returned and any shipping and handling charges being returned. You must imprint or record the credit voucher with the same Payment Instrument used to make the original purchase. For retail Payment Transactions and Conveyed Transactions, the credit voucher must be dated and signed by the Customer and the appropriate copy provided to the Customer. Cash refunds should never be issued for Payment Transactions or Conveyed Transactions, unless required by law. If you fail to follow these procedures, you may be unable to rebut a Chargeback from the Customer for failure to issue a refund (even if you actually gave the refund by cash or check). Paperwork is not necessary for an even exchange. For an uneven exchange, complete a credit for the total amount of the merchandise being returned and complete a new Transaction receipt for any new merchandise purchased. You cannot process a credit or refund without having completed a previous purchase Transaction with the same Customer.

**4. PROCESSING OF TRANSACTION DATA**

You must submit Transaction Data (including credit vouchers) to us on or before the next business day after the date of the Transaction. Late submission of Transaction Data may result in higher Payment Brand fees and interchange rates, Chargebacks and other negative consequences. You must not submit Payment Transactions or Conveyed Transactions for payment until the goods are delivered, shipped, or the services are performed (except as otherwise provided in the Merchant Agreement, and only if you have notified us that you are doing so on your application or otherwise in writing). If the Customer disputes being charged for merchandise or services before receiving them, the result will be a Chargeback to you. We may from time to time contact Customers to verify that they have received goods or services for which Transactions have been submitted. You cannot present for processing any Transaction Data that was not originated as a result of an act directly between the Customer and you. You cannot present for processing any Transaction Data you know or should have known to be (i) fraudulent or (ii) not authorized by the Customer. You will be responsible for the actions of your employees while acting in your employ. The collection and payment of all federal, state and local taxes is your responsibility. Taxes collected must be included in the total transaction amount and not collected separately by another form of payment. You must submit one Transaction Data record for all goods and services sold in the same transaction. All available information about the sale, including any handling and shipping charges, must be accurately recorded. You must provide to the Customer a true and completed record of the Transaction.

**5. CHARGEBACKS**

Chargebacks of Payment Transactions and Conveyed Transactions may occur under a variety of circumstances, as dictated by the Payment Brand Rules, which are subject to modification from time to time. Consequently, the following is only a partial list of circumstances that might give rise to Chargebacks: (i) a Customer account number is incorrect or otherwise invalid; (ii) an authorization/approval code was not received or other required authorization was not obtained; (iii) an authorization/approval code was obtained for the wrong amount or wrong date; (iv) the Customer never received the merchandise/service requested; (v) a Customer's refund/credit was processed as a sale; (vi) the Transaction Data is for the wrong amount; (vii) a Customer was never credited for returned merchandise or a canceled order; (viii) the Payment Instrument was expired, counterfeit, altered, or invalid at time of sale; (ix) a Payment Transaction or Conveyed Transaction was deposited more than once; (x) the Customer did not authorize or consent to the Transaction; (xi) the signature on the Transaction receipt does not match the signature on the Payment Instrument (if required); (xii) the Payment Instrument was not imprinted or its magnetic strip was not electronically recorded (for example, "swiping" or "tapping" a Payment Instrument) through a terminal; (xiii) the Customer asserts any disputes, claim, counterclaim, defense or offset against you; (xiv) the Transaction Data or any material information thereon is illegible, incomplete, inaccurate or unsigned, or is not delivered to us within the required time limits; (xv) the Transaction Data is fraudulent or does not represent a bona fide transaction in the ordinary course of your business, or is subject to any claim of illegality, negligence, dishonesty or offset; and (xvi) you have failed to provide copies of Transaction Data requested by us (retrieval request) within the prescribed time period.

**6. DISPUTING CHARGEBACKS**

If you have reason to dispute or respond to a Chargeback, then you must do so by the date provided by us on our report to you. We are not required to investigate, reverse or make any adjustment to any Chargeback when thirty (30) calendar days have elapsed from the date of the Chargeback. All responses to Chargebacks must be in writing, and must contain the following information: (i) date of debit/credit advice; (ii) company case number; (iii) total amount of Chargeback; (iv) date and dollar amount for which the Transaction Data was originally submitted (v) if known, the date and authorization approval code; and (vi) any supporting documentation to substantiate your claim. You should include a dated cover letter detailing reasons for requesting a review of the Chargeback. You should retain a copy of the correspondence and all documentation for your files. You should also retain proof that we received your response.

## **7. DATA SECURITY AND PRIVACY**

You agree to post and maintain on all your Web sites both your consumer data privacy policy (which must comply with all Payment Brand Rules, regulations and guidelines) and your method of transaction security. You may not retain or store CVV2/CVC2 data or PIN data subsequent to the authorization. You must comply with all Security Standards published by the Payment Brands and the PCISSC including, but not limited to, Visa's Customer Information Security Program ("CISP"), MasterCard's Security Data Program (MSDP) and the Payment Card Industry Data Security Standard (PCIDSS). Pursuant to the Security Standards, you must, among other things: (i) install and maintain a working network firewall to protect data accessible via the Internet; (ii) keep security patches up-to-date; (iii) encrypt stored data and data sent over open networks; (iv) use and update anti-virus software; (v) restrict access to data by employees who are on a "need-to-know" basis; (vi) assign a unique ID to each person with computer access to data; (vii) not use vendor-supplied defaults for system passwords and other security parameters; (viii) track access to data by unique ID; (ix) regularly test security systems and processes; (x) maintain a policy that addresses information security for employees and contractors; (xi) restrict physical access to Customer information; (xii) when outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data; and (xiii) reference the protection of Customer information and compliance with the Security Standards in contracts with other service providers. You must notify FDS of any third party vendor with access to Customer information, and you are responsible for ensuring that all third party vendors are compliant with the Security Standards, to the extent applicable. The Security Standards may require that you engage an approved third party vendor to conduct quarterly perimeter scans and/or an on-site security review of your systems in order to be compliant. Visa and MasterCard's individual requirements for such scans or security reviews can be accessed through the Visa and MasterCard websites at [www.Visa.com](http://www.Visa.com) and [www.MasterCard.com](http://www.MasterCard.com). The Payment Brand rules provide that Customer information and Transaction Data is owned by the Payment Brand and the Customer. FDS also asserts some ownership rights in the Transaction Data to the extent it belongs to the Payment Brand system. You are responsible for securing Customer information. You will not use any Payment Instrument or Customer information other than for the sole purpose of completing the transaction authorized by the Customer for which the information was provided to you, or as specifically allowed by the Payment Brand Rules, or required by law. FDS or any Payment Brand may inspect Merchant's premises and computers, and the premises and computers of any company the Merchant has contracted with, for the purposes of verifying that Customer information is securely stored and processed, and is not used for any purpose other than processing the transactions to which it relates.

## **8. CERTAIN MERCHANT PROHIBITIONS**

You may not (i) accept Customer payments for previous Visa or Visa Electron charges; (ii) require a Customer to complete a postcard or similar device that includes the Customer's account number, Payment Instrument expiration date, signature, or any other account data in plain view when mailed; (iii) add any tax to a Transaction unless applicable law expressly requires that you be permitted to impose a tax; (iv) request or use a Payment Instrument account number for any purpose other than as payment for its goods or services, except to support Visa's Health Care Eligibility Service or Prepaid Load Network; (v) disburse funds in the form of travelers cheques, if the sole purpose is to allow the Customer to make a cash purchase of goods or services from you; (vi) accept Visa or Visa Electron for the purchase of scrip; or (vii) accept Visa Electron for a manual cash disbursement. You understand and acknowledge that all Visa BIN information provided by us to you is proprietary and confidential information belonging to Visa. You must not disclose Visa BIN Information to any third party without prior written permission from Visa. You understand and acknowledge that Visa may impose conditions on, or permanently prohibit you from participating in the Visa program for any reasons it deems appropriate, including, but not limited to (i) fraudulent activity; (ii) submitting Transaction Data that does not result from an act between you and the Customer (laundering); (iii) entering into this Agreement under a new name with the intent to circumvent provisions of the Rules; (iv) activity that causes us to repeatedly violate the Rules; any other activity that may result in undue economic hardship or damage to the goodwill of the Visa system.

**1. PRESENTATION OF PAYMENT INSTRUMENTS**

You or your employee must examine each Payment Instrument presented to determine that the Payment Instrument presented is valid and has not expired. You must exercise reasonable diligence to determine that the authorized signature on any Payment Instrument presented corresponds to the Customer's signature on the Transaction Data. You must not honor expired, invalid, altered, counterfeit, or revoked Payment Instruments nor any Payment Instrument presented by any person other than the proper Customer as evidenced by the authorized signature on the Payment Instrument. A Customer may authorize another person to use his or her Payment Instrument for purchases, provided the user's signature appears on the back of the Payment Instrument. The signature on the back must match the one on the Transaction Data. If the Payment Instrument is not signed, in addition to requesting an authorization, you may review positive identification as allowed by local and state law, such as a passport or driver's license, to confirm that the user is the Customer, record the information and require the Customer to sign the signature panel of the Payment Instrument prior to completing the Transaction. You should not complete a Transaction if the Customer does not present his or her Payment Instrument or if you cannot obtain an electronic swipe record or physical imprint of the Payment Instrument (this includes mail, telephone and internet orders). By the submission of any Transaction Data to us, you will be deemed to warrant the identity of the purchaser as the authorized holder of the Payment Instrument, and if the Customer later denies making the purchase, you will not be able to rebut the Chargeback.

**2. COMPLETION OF TRANSACTIONS**

You must use a suitable imprinter to legibly imprint Payment Instruments on Transaction Data or, capture the information from the Payment Instrument by electronic data capture. A photocopy of the Payment Instrument is not an acceptable substitute for an imprint. If the account number is manually keyed into the terminal, you must imprint the Payment Instrument. Your name, location, city and state must match the Merchant plate on the imprinter. You must notify us of any changes to the information on the Merchant plate. In addition to having the Customer sign the Transaction receipt, the Transaction date and dollar amounts and other information must be clearly written or printed on the Transaction receipt or captured by an electronic device. A brief description of the goods sold or service rendered must be provided on the Transaction receipt. Authorization/approval code numbers must be clearly recorded in the appropriate place on the Transaction receipt. Never circle or underline any information on the Transaction receipt. Every Transaction Receipt and credit voucher must be imprinted (or printed from electronic draft capture equipment) with the Customer's truncated account number and Merchant name. You will give the Customer a true and completed copy of the Transaction Receipt or appropriate facsimile. If the Customer's copy of the Transaction receipt or credit voucher is printed from electronic draft capture equipment/terminal, it must comply with all applicable Payment Brand Rules and laws. You cannot require Customers to provide any personal information as a condition for honoring Payment Instruments unless otherwise required by the Payment Brand Rules or law. Personal information includes, but is not limited to, a home or business telephone number, a home or business address, a social security number, or a photocopy of a driver's license. You cannot retain or store full magnetic-stripe data, CVV2, CVC2 codes or PIN data after the authorization of a Payment Transaction or Conveyed Transaction, except as required to complete the transmission of such Transaction Data to us.

**3. FORGERIES/COUNTERFEIT PAYMENT INSTRUMENTS**

You should examine all notices received from us or from a Payment Brand to help you determine whether a Payment Instrument presented is counterfeit. You should attempt to retain the Payment Instrument while making an authorization request and then match any signature on the Payment Instrument with the one on the Transaction receipt. You should compare the account number on the Payment Instrument to the account number printed on the receipt or displayed on the terminal. You should examine each Payment Instrument to see if it looks genuine. You should use reasonable, peaceful efforts to recover any Payment Instrument if you have reasonable grounds to believe such Payment Instrument is counterfeit, fraudulent or stolen. You will be solely responsible for your actions in recovering/retaining Payment Instruments.

**4. TRAVEL AND ENTERTAINMENT SERVICES**

At your option and as specified in the applicable sections of the Payment Brand Rules, Merchants may participate in one or more specialized travel & entertainment services offered by any of the Payment Brands. Merchants offering travel and entertainment services must institute and comply with the procedures set forth in the Payment Brand Rules.

**1. COMPLETION OF SALE**

You are responsible for determining that the purchaser is the person whose name appears as the Customer. If an account number is transposed into an invalid or inaccurate account number, the sale will result in a Chargeback. You must be authorized by us to accept Payment Instruments for mail, telephone, internet and pre-authorized orders, and you must have noted such on your application to us. All information that would normally be imprinted from a Payment Instrument must be clearly written in the appropriate areas on the order or Transaction receipt. "Mail Order" or "Phone Order" should be written on the signature line of the Transaction receipt.

**2. RECURRING TRANSACTIONS**

For recurring transactions, you must obtain a written request from the Customer for the goods and services to be charged to the Customer's account, specifying the frequency of the recurring charge and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Customer (ii) notice from FDS or any Payment Brand that the Payment Instrument is not to be honored; or (iii) an authorization/approval code that the Payment Instrument is not to be honored. You must include in your Transaction Data the electronic indicator that the transaction is a recurring transaction.

## SPECIALIZED RULES FOR STORED VALUE TRANSACTIONS

### 1. PAYMENT INSTRUMENTS & PACKAGING

You may be obligated to purchase Stored Value Payment Transaction Payment Instruments ("Gift Cards") from us or pay us a data transfer fee in lieu thereof. Please check the pricing schedule of your Merchant Agreement to see if these requirements apply to you. If you are obligated to purchase Gift Cards from us or if you elect to do so, we will arrange for the Gift Card production and may, at our option, invoice you therefore, in lieu of electronically debiting your account. Any such invoice will be payable upon receipt. Gift Cards, Packaging and Point-of-purchase marketing materials are available and priced on a per bundle basis, based on current rates. All production and delivery timeframes and costs provided by us are estimates only and we do not guarantee any specific date of delivery or price for Gift Cards produced by third parties. You are responsible for all production costs and delivery charges for Gift Cards. The form and content of all Gift Cards will be subject to our approval.

### 2. COMPLIANCE AND WARRANTIES

You are solely responsible for complying with all applicable laws relating to your Gift Card program and you agree to indemnify and hold us harmless from any loss, damage or claim relating to or arising out of any failure to comply with applicable laws in connection therewith. You are solely responsible for monitoring the legal developments applicable to the operation of your Gift Card program and ensuring that your Gift Card program complies fully with such requirements as in effect from time to time. Merchant acknowledges that FDS cannot reasonably be expected to monitor and interpret the laws applicable to its merchants, and has no responsibility to monitor or interpret laws applicable to Merchant's business.

### 3. FRAUD

You hereby agree (i) that you are responsible for ensuring that all Gift Cards require activation at the point of sale; (ii) to provide notification in writing to FDS of any fraud losses by type by fifteen days following the end of each calendar quarter; (iii) that you will be solely responsible for any and all value adding and fraud losses and expenses relating to or arising from your Gift Card; (iv) to discourage transportation of groups of sequentially numbered Gift Cards; and (v) to deactivate or otherwise remove all value from Gift Cards that have been compromised. You will be responsible for any fraudulent transactions involving your Gift Cards, including, without limitation, the unauthorized activation of Gift Cards, reloading of existing Gift Cards (whether pursuant to a manual telephone order or otherwise) with additional value, or the unauthorized replication of Gift Cards or Gift Card data for fraudulent transactions. FDS provides a number of tools and options to help Merchant reduce Merchant's risk of exposure for fraudulent transactions. We urge you to make use of any and all of such tools as we may offer in order to help reduce the risk of such transactions. In particular, we recommend that you utilize only those vendors that have been certified by FDS as having appropriate security measures in place to reduce the risk of counterfeit Gift Cards and the loss of sensitive Gift Card information that might result in unauthorized transactions, and, we recommend that you promptly and frequently reconcile the transaction reports we provide to you against your own internal transaction records, and to report any unauthorized transactions to your account representative at FDS. Because manual Gift Card transactions (i.e. those involving the activation or reloading of Payment Instruments over the telephone in cases where your terminals may be unavailable) pose a higher risk of potential fraud, we urge you to pay special attention to these transactions and reconcile them on an even more frequent basis. In the event that you do not reconcile your transaction reports and promptly report any suspicious activity to us, FDS may not be able to assist you in canceling fraudulently activated or reloaded Gift Cards, or in otherwise identifying the source of any fraud.