

ATTACHMENT C
TERMS APPLICABLE TO LIABILITY WAIVER

C.1. Liability Waiver

(a) **Data Security Event Expenses.** Subject to the limitations, terms and conditions of this Amendment, we agree to waive liability (the “**Liability Waiver**”) that you have to us under your Processing Agreement for **Security Event Expenses** and **Post Event Services Expenses** resulting from a **Data Security Event** first discovered by you or us while this Amendment is in effect. Except for the Liability Waiver for expenses as specifically set forth in this Amendment, (i) you remain responsible to perform all agreements and obligations under your Processing Agreement as amended by this Amendment including, without limitation your obligation to comply with data security requirements and (ii) we waive no rights or remedies under your Processing Agreement including, without limitation, our right to terminate your Processing Agreement in the event of a **Data Security Event**.

(b)**Maximum Waiver Amount.**

(i) The maximum amount of liability that we shall waive under your Processing Agreement for all **Security Event Expenses** and **Post Event Services Expenses** arising out of or relating to **Data Security Events** first discovered during any Program Year regardless of the number of such **Data Security Events** is as follows:

- (1) \$100,000.00 maximum per each MID (merchant identification number) you have; and
- (2) \$500,000 aggregate maximum for all of your MIDs.

(ii) The maximum amount of liability during any Program Year that we will waive under your Processing Agreement for EMV Upgrade Costs is as follows:

- (1) \$10,000 maximum per each MID you have; and
- (2) \$25,000.00 aggregate maximum for all of your MIDs.

For avoidance of doubt, the limit set forth in this **Section C.1(b)(ii)** is part of and not in addition to the maximums set forth in **Section C.1(b)(i)**.

C.2. Definitions: (a) **Cardholder Information** means the data contained on a Card, or otherwise provided to Customer, that is required by the Card Organization or us in order to process, approve and/or settle a Card transaction; (b) **Card Organization Assessment** means a monetary assessment, fee, fine or penalty levied against your or us by a Card Organization as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event; The Card Organizational Assessment shall not exceed the maximum monetary assessment, fee, fine or penalty permitted upon the occurrence of a Data Security Event by the applicable rules or agreement in effect as of the inception date of this Amendment for such Card Organization; (c) **Card replacement expenses** means the costs that the we or you are required to be paid by the Card Organization to replace compromised Cards as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event; (d) **Data Security Event** means the actual or suspected unauthorized access to or use of Cardholder Information, arising out of your possession of or access to such Cardholder Information, which has been reported (i) to a Card Organization by you or us or (ii) to you or us by a Card Organization. All Security Event Expenses and Post Event Services Expenses resulting from the same, continuous, related or repeated event or which arise from the same, related or common nexus of facts, will be deemed to arise out of one Data Security Event; (e) **EMV Upgrade Costs** means the costs that we or you are required by a Card Organization to pay, as a result of a Data Security Event, to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled **Card** in a manner compliant with PCI Data Security Standards; (f) **Forensic Audit Expenses** means the costs of a security assessment conducted by a qualified security assessor approved by a Card Organization or PCI Security Standards Council to determine the cause and extent of a Data Security event; (g) **Liability Waiver** has the meaning as set forth

in **Section C.1(a)** above; (h) **Pollutants** means, but are not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, asbestos, acids, alkalis, chemicals and waste. “Waste” includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials; and (i) **Post Event Services Expenses** means reasonable fees and expenses incurred by us or you with our prior written consent, for any service specifically approved by us in writing, including without limitation, identity theft education and assistance and credit file monitoring. Such services must be provided by or on behalf of us or you within one (1) year following discovery of a Data Security Event to a Cardholder whose Cardholder Information is the subject of that Data Security Event for the primary purpose of mitigating the effects of such Data Security Event; (j) **Program Year** means the period from August 1st through July 31st of each year, with the first Program Year being from August 1, 2014 through July 31, 2015; and (k) **Security Event Expenses** means Card Organization Assessments, Forensic Audit Expenses and Card Replacement Expenses. Security Event Expenses also includes EMV Upgrade Costs you agree to incur in lieu of a Card Organization Assessment.

C.3 Duties in the Event of a Data Security Breach

(a) You shall contact us immediately and, as directed by us, investigate, perform all remedial events and cooperate fully with us, in the event of a **Data Security Event**. In all events, you shall not take any action, or fail to take any action, without our prior written consent, which prejudices our rights hereunder.

(b) Under all circumstances, you shall not admit any liability, assume any financial obligation, pay any money, or incur any expense in connection with any **Data Security Event** without our prior written consent. If you do so, it will be at your own expense.

C.4. EXCLUSIONS

The Liability Waiver hereunder shall not apply to:

(a) Any **Security Event Expenses** and **Post Event Services Expenses** arising out of or resulting, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, if committed by (i) you or your officers, agents or directors; or (ii) any of your employees (other than officers) if you or any of your officers or directors had knowledge thereof.

(b) Any **Security Event Expenses** and **Post Event Services Expenses** arising out of or resulting from a claim, suit, action or proceeding against you that is brought by or on behalf of any federal, state or local government agency;

(c) Any **Data Security Event** relating to you if you have experienced a prior **Data Security Event** unless you were later certified as PCI compliant by a qualified security assessor;

(d) Any **Data Security Event** arising out of your allowing any party (other than your employees or us) to hold or access **Cardholder Information**;

(e) Any **Data Security Event** if you: (i) are categorized by any **Card Organization** as “Level 1” or (ii) processed more than six million (6,000,000) Card transactions during the twelve month period prior to the date this Amendment became effective;

(f) Any expenses, other than **Security Event Expenses** and **Post Event Services Expenses**, incurred by you arising out of or resulting, directly or indirectly, from a **Data Security Event**, including without limitation, expenses incurred to bring you into compliance with the PCI Data Security Standard or any similar security standard;

(g) Any **Security Event Expenses**, and **Post Event Services Expenses** arising out of or resulting, directly or indirectly, from physical injury, sickness, disease, disability, shock or mental anguish sustained by any person, including without limitation, required care, loss of services or death at any time resulting therefrom;

(h) Any **Security Event Expenses**, and **Post Event Services Expenses** arising out of or resulting, directly or indirectly, from any of the following:

1. fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused; or

2. strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions;

(i) any **Security Event Expenses**, and **Post Event Services Expenses** arising out of or resulting, directly or indirectly, from the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, or in any way respond to or assess the effects of pollutants;

(j) your failure to comply with this Amendment or your Processing Agreement in connection with a **Data Security Event**;

(k) any **Data Security Event** occurring before the effective date of this Amendment;

(l) any expenses incurred for, or as a result of, regularly scheduled, recurring or routine security assessments, regulatory examinations, inquiries or compliance activities; or

(m) any fines or assessment levied against you that are not the direct result of a **Data Security Event**;

(n) any **Data Security Event** arising out of any software not within your control; provided, however, this exclusion shall not apply to a **Data Security Event** arising out of a virus, Trojan horse or other software used by a third party to obtain fraudulent access to data to your computer system or to collect data in transit to or from your computer system; or

(o) any **Data Security Event** arising out of a breach in a computer system in which you and other merchants, with no legal relationship to one another, have hosted accounts or share a common database, operating system or software applications.