



3723 Henley Dr.  
Pittsburgh, PA 15235  
info@thewincard.net  
www.thewincard.net  
direct: 412.512.6839

# Merchant Rewards/Loyalty/Gift Card Services Agreement

| CDA For Partner/Affiliate |  |
|---------------------------|--|
| Merchant Only             |  |
| Merchant via Partner      |  |
| W.I.N. Partner            |  |
| W.I.N. Affiliate #        |  |

## Business Information

Business Legal Name: \_\_\_\_\_  
 DBA: \_\_\_\_\_  
 DBA Address: \_\_\_\_\_  
 City: \_\_\_\_\_ ST: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ ST: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## Contact Information

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ ST: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Email Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## Loyalty Program Provided

Cash Rewards: \_\_\_\_\_ Gift Card Unlimited: \_\_\_\_\_ Avg Ticket: \_\_\_\_\_  
 Level 1: \_\_\_\_\_  
 Level 2: \_\_\_\_\_  
 Level 3: \_\_\_\_\_  
 Level 4: \_\_\_\_\_  
 Level 5: \_\_\_\_\_

Merchants For A Cause: Yes \_\_\_\_\_ No \_\_\_\_\_

## Pricing & Fees

Points Value \_\_\_\_\_  
 Customer Points Per Dollar Spent: \_\_\_\_\_ (plus 1 pt to W.I.N.)  
 Total Merchant Points Per Dollar Earned: \_\_\_\_\_  
 Fixed Costs:  
 Sign Up Fee: \$99  
 Monthly Service Fee (per Store): \$25 ( Returned ACH Fee: \$25.00)  
 Transaction Fee: \$0.12

## Billing Information

Monthly invoices will be emailed to Merchant and collected via Automated Clearing House transfer ("ACH Transfer"). Invoices will also be available via the Merchant's web account. **A copy of a voided check must be submitted with Agreement.** Merchant must maintain a valid email address on file with The W.I.N. Card Inc. and must maintain a valid checking account.

Depository Name: \_\_\_\_\_  
 Branch: \_\_\_\_\_  
 City: \_\_\_\_\_ ST: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Routing Number: \_\_\_\_\_  
 Account Number: \_\_\_\_\_  
 Email Address (for monthly invoice): \_\_\_\_\_

## Cards

**Product Description:** .030 mil PVC Gift Card, CR-80 3.375" x 2.125", lo co mag stripe, white PVC, rounded corners.  
**Printing:** 4cp/black, OA gloss coating (front only), embossed card numbers with silver tipping.(optional)  
**Proof:** eProof included. Printed proof at additional expense, upon request. Signed proof must be returned before production begins.  
**Services:** 2 track encoding. DOD imaging or thermal printing, depending on qty. Bulk packed; 500 cards per sleeve. 10 - 15 day production lead time. 50% payment due upon signing, final balance 50% due before cards are shipped.

## Equipment

Type: \_\_\_\_\_  
 Set-up Fee: \$ \_\_\_\_\_ Other: \_\_\_\_\_

## Term Of Agreement

The initial term of this Agreement shall commence on the Effective Date, and shall expire on Month \_\_\_\_\_ Day \_\_\_\_\_, Year \_\_\_\_\_, unless sooner terminated as provided in this Agreement (the "Initial Term"). At the expiration of the Initial Term, this Agreement shall automatically renew for additional successive one (1) year terms unless or until either party notifies the other party in writing at least 60 days prior to the beginning of such 1-year renewal term that it elects not to extend this Agreement, or unless terminated by either party as set forth herein. The Initial Term, and any renewal thereof, shall be collectively referred to herein as the "Term".

## Signatures & Acknowledgements

### Merchant Acceptance

This Rewards/Loyalty/Gift Card Services Agreement including the Terms and Conditions set forth on the following pages (this "Agreement") has been executed on behalf of and by an authorized representative of each party as of the date below.

#### Merchant agreed and accepted:

*I have read and agree to the terms of this agreement. The officer(s) identified have the authority to execute this Agreement with The W.I.N. Card Inc. on behalf of the corporation or LLC, if applicable.*

X \_\_\_\_\_  
 Authorized MERCHANT or Officer's Signature Printed Name Date

The W.I.N. Card Inc agreed and accepted

X \_\_\_\_\_  
 Authorized Office's or Affiliates Signature Printed Name Date

## TERMS AND CONDITIONS OF MERCHANT REWARDS/LOYALTY/GIFT CARD SERVICES AGREEMENT

These Terms and Conditions of Merchant Gift/Loyalty Card Services Agreement (this "Agreement") are entered into by and between The W.I.N. Card Inc. ("Company") and the party indicated on the first page of this Agreement ("Merchant"). LICENSE GRANT

Subject to the terms and conditions of this Agreement, Company hereby grants to Merchant a limited non-exclusive revocable sublicense and right to use, order and purchase from Company that certain proprietary prepaid software and service program that integrates with various retail store locations to provide a prepaid/stored value tracking system for anonymous activity at a retail business for Merchant's locations to be mutually agreed upon in writing by the parties at a later date (the "Card Service Program"). Merchant may submit requests modifications, changes or additions to the Card Service Program in a form designated and provided by Company (a "Service and Pricing Request"). The service and pricing set forth on the first page of this Agreement shall constitute the initial service and pricing available to Merchant under this Agreement. Each additional Service and Pricing Request provided to Company by Merchant shall contain the duration for which the Card Service Program is ordered and the number of cards requested by Company. Company will notify Merchant of acceptance or rejection, as applicable, in writing of each Service and Pricing Request and the date by which Company will initiate any additional service requested thereunder. If access to non-Company facilities is required for the installation, maintenance or removal of equipment, Merchant shall, at its sole risk, cost and expense, secure such right of access and shall arrange for the provision and maintenance needed for the proper operation of such equipment.

### FEES, PAYMENT AND TAXES

The fees and payment terms for processing the Card Service Program under the terms of this Agreement are set forth on the first page of this Agreement and shall be supplemented, updated or modified, as applicable, by any Service and Pricing Request accepted by Company. Monthly invoices will be emailed to Merchant and payment of all amounts owed to Company for the Card Service Program by Merchant shall be collected via ACH Transfer from Merchant's designated bank account on or about the 5th of each month following the month of invoice. Merchant authorizes Company to debit all amounts due to Company under this Agreement via ACH Transfer from the Merchant's designated bank account, as indicated per the attached copy of a voided check from Merchant. The authority provided to Company by Merchant for ACH Transfers shall remain in full force and effect until all obligations of Merchant to Company under this Agreement have been paid in full. Transactions performed outside the 48 contiguous states may incur a communications surcharge per transaction. Billing for partial months will be prorated. If funds are not available for withdrawal on the date of the ACH Transfer, a fee of \$25 will be assessed and all past due amounts shall bear interest at a rate of 1.5% per month or the highest rate allowed by law (whichever is less). Merchant is responsible for all charges respecting the Card Service Program, even if incurred as the result of unauthorized use. If Merchant reasonably disputes an invoice or a monthly recurring charge, Merchant must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Card Service Program services and invoice(s) or charge(s) disputed). Disputes must be submitted in writing within 90 days from the date of the invoice. If the dispute is resolved against Merchant, Merchant shall pay such amounts plus interest at a rate of 1.5% per month or the highest rate allowed by law (whichever is less) from the date originally due. Charges for the Card Service Program services are exclusive of any applicable taxes and assessments. Merchant shall be solely responsible for any and all taxes and assessments imposed on Company by federal, state or municipal law or regulation based upon the Card Service Program services provided and materials furnished to Merchant hereunder, excluding taxes measured on or by Company's income. Taxes plus interest and penalties (if any) associated therewith shall be paid or reimbursed to Company within 30 days after sending Merchant the invoice therefore.

### SERVICE PROVIDED

Subject to the terms and conditions of this Agreement, Company will provide the following in connection with the Card Service Program:  
Authorization. Company will provide authorization of a Card Service Program transaction requested and initiated by the retail location via a dial telephone, IP or other network structure and will respond to each request with an approval or decline.  
Cards. Each Card Service Program card issued pursuant to this Agreement will contain an account number and magnetic stripe encoded to Company's specifications, and an approved Company logo will be incorporated into the design of the card.  
Reports. Company will provide periodic reports and/or file transfers for the purpose of enabling Merchant to better monitor and manage the Card Service Program implemented at each of its affiliated retail store locations. Merchant will have access to a Card Service Program online website (the "Host Site") through a username and password.

Emergency Service. In the event an act of God, a drastic machine failure, or clerical error renders Merchant's system using the Card Service Program inoperable, Company agrees to use its commercially reasonable best efforts to provide whatever reasonable service is required and requested by Merchant within the scope of Company's ability to restore the Card Service Program to operation.

### Help Desk

Company will provide a telephone Help Desk, which will be used for response to Merchant inquiries and for receiving notification of problems, defects, and malfunctions.

Remote Support. Company will establish remote support for problem diagnosis and provide file transfer capabilities for downloading and uploading applicable portions of the software related to the Card Service Program. Merchant agrees to install Company approved device(s) on its premises to facilitate such remote support.

### Response Time

Company agrees to provide to Merchant within forty-eight (48) hours of the problem reporting time an estimated date and time that a material reported problem will be resolved.

### Host Availability

Company commits to availability of the Card Service Program host server between 6:00AM MST and 1:00AM MST. During that time period, Company commits the Card Service Program host server will be 99.5% functional and serviceable, with such time computed on an average monthly basis. Further Company reserves the time-frame outside those hours specified above (that time period is referred to as the "Service Period") to perform routine and standard maintenance of the Card Service Program system. Although outages during the Service Period are rare, Company will not be required to advise Merchant of scheduled or unscheduled outages during the Service Period. If a scheduled shutdown is required out of the Service Period, Company will advise Merchant at least seven (7) days in advance.

### RESTRICTIONS ON USE

Except as expressly set forth in this Agreement, Merchant and its customers shall not have any right to do any of the following: (i) use, modify, copy, reverse engineer, attempt to obtain the source code for, distribute, transmit, publicly display, create derivative works from or transfer the Card Service Program software, the Card Service Program services or any of the Card Service Program intellectual property; (ii) use the Card Service Program software, the Card Service Program services or any of the Card Service Program intellectual property for any unlawful purpose; (iii) use the Card Service Program software, the Card Service Program services or any of the Card Service Program intellectual property in any manner that could damage, disable, overburden or impair the Card Service Program software, the Card Service Program services or any of the Card Service Program intellectual property or interfere with any other party's use and enjoyment of the Card Service Program software, the Card Service Program services or any of the Card Service Program intellectual property; or, (iv) attempt to gain unauthorized access to the Card Service Program software, the Card Service Program services or any of the Card Service Program intellectual property or other accounts, computer systems or networks associated with the Card Service Program software, the Card Service Program services or any of the Card Service Program intellectual property.

### ACCESS, PASSWORDS AND SECURITY

Merchant shall be responsible for the confidentiality and use of the passwords used by Merchant and its customers to access the Card Service Program's Host Site, the Card Service Program software, the Card Service Program or any of the Card Service Program intellectual property and any account information contained therein. Merchant shall further be responsible for all activities through and under such passwords. Any instructions or transactions received by Company through the use of such passwords shall be deemed to have been received from Merchant. Merchant agrees to take all steps necessary to prevent unauthorized access to any account of Merchant and its customers, and to immediately notify Company of any loss or theft of a password used by Merchant or its customers upon becoming aware of such loss or theft.

## ONLINE SERVICES

The Card Service Program may rely upon or facilitate access to websites other than the Host Site maintained by Company or its affiliates or third parties offering goods, information, software or services ("Online Services"). Merchant's or its customer's access to and use of any such website or Online Services shall also be governed by the terms, conditions, disclaimers and notices found on such site or otherwise associated with such Online Services. In the event of a conflict or inconsistency between such terms, conditions, disclaimers and notices found on such site or otherwise associated with such services, the parties acknowledge and agree that Company shall be afforded the broadest possible rights with respect to such conflicting or inconsistent terms, conditions, disclaimers and notices, as determined by Company in its sole and absolute discretion.

## COMPANY TRADEMARKS

Subject to the terms and conditions of this Agreement, Company hereby grants to Merchant a non-exclusive, non-transferable, revocable license, without the right to sublicense, to use, display and reproduce the trademarks, service marks, or trade names, logos or other symbols owned by Company used in connection with the Card Service Program by Company as provided by Company from time to time ("Company Trademarks"), solely in connection with the use of the Card Service Program during the Term. Merchant's use will be in accordance with Company's guidelines and policies regarding advertising and trademark usage as established from time to time ("Trademark Guidelines"). As a condition to the above trademark license, Merchant agrees to fully comply with the Trademark Guidelines. All rights of Company in and to such Company Trademarks not expressly granted under this Section are reserved by Company.

## DISCLAIMER OF WARRANTIES

EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN THIS AGREEMENT, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED PERTAINING TO THIS AGREEMENT, THE CARD SERVICE PROGRAM, THE CARD SERVICE PROGRAM SOFTWARE OR ANY OTHER CARD SERVICE PROGRAM INTELLECTUAL PROPERTY, INCLUDING WITHOUT LIMITATION REPRESENTATIONS OR WARRANTIES WITH RESPECT TO MERCHANTABILITY, NONINFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, VALUE, CONDITION, QUALITY, DESIGN, CAPACITY, MATERIAL WORKMANSHIP, FITNESS OR SUITABILITY FOR ANY PURPOSE OR USE BY MERCHANT, OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICE, DEFECTS IN THE DISKETTE OR OTHER PHYSICAL MEDIA AND DOCUMENTATION, OPERATION OF THE PROGRAMS AND/OR HARDWARE, PARTICULAR APPLICATION OR USE OF THE PROGRAMS AND/OR HARDWARE CONSTITUTING A PART OF THE SERVICE AND/OR INTEGRATION, VALUE, CONDITION, QUALITY, DESIGN, AND/OR CAPACITY.

## LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, COMPANY SHALL NOT BE LIABLE TO MERCHANT OR ANY PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER RESULTING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHER LEGAL THEORY, EVEN IF COMPANY HAS BEEN ADVISED, KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF ANY OF THE LIMITED REMEDIES OF THIS AGREEMENT FAIL TO FULFILL THEIR ESSENTIAL PURPOSE. FURTHER, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, MERCHANT AGREES THAT IN NO EVENT SHALL COMPANY'S TOTAL CUMULATIVE LIABILITY ARISING UNDER, WITH RESPECT TO OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AGGREGATE NET AMOUNT PAID BY MERCHANT HEREUNDER TO COMPANY DURING THE THREE (3) MONTHS PRIOR TO THE DATE ON WHICH THE EVENT OR OMISSION GIVING RISE TO SUCH LIABILITY OCCURRED.

## INDEMNIFICATION

Merchant shall indemnify, defend and hold Company and its respective affiliates, service providers, agents or representatives harmless from any and all losses, claims, damages, liabilities, fines, judgments, amounts paid in settlement and reasonable costs and expenses (including attorneys' fees, court costs, accountant's fees and fees of expert witnesses) (collectively, "Adverse Consequences") arising out of or related to: (i) any breach of this Agreement by Merchant; or, (ii) any gross negligence or willful misconduct of Merchant or its affiliates, agents, customers or representatives. Company shall indemnify, defend and hold Merchant harmless from any and all Adverse Consequences arising out of or related to: (i) any breach of this Agreement by

Company; (ii) any gross negligence or willful misconduct of Company or its affiliates, agents or representatives. Merchant shall have no claim for any Adverse Consequences that is brought more than two (2) years from the occurrence of any events that may rise to such Adverse Consequences.

## TERMINATION

This Agreement may be terminated under any of the following conditions: (i) expiration of the Term (ii) mutual agreement of the parties; (iii) by Merchant as set forth in the Section titled "Cancellation and Termination Charges"; (iv) if Merchant fails to make a payment within ten (10) days after receipt (or refusal to accept delivery, which refusal shall be deemed receipt for the purposes hereof) of written notice from Company to cure any monetary default (provided, however, that if Merchant fails to make any payment payable by such Merchant to Company when due and cures such default two times within any twelve month period, then any further failure within the same twelve (12) month period shall be an automatic default with no cure period); (v) for any material breach of this Agreement by the other party which has not been cured within thirty (30) days after the delivery of written notice thereof to the party alleged to be in breach, specifying the condition, act, omission or course of conduct asserted to constitute such material breach; (vi) upon dissolution, insolvency, or if a petition is filed in any court to declare such other party bankrupt or for a reorganization under the bankruptcy law or any similar statute; or, (vii) if required by law or by any rule, regulation, order, decree, judgment or other government act of any governmental authority.

## RIGHTS/OBLIGATIONS UPON TERMINATION

Upon the termination of this Agreement for any reason, the following provisions shall apply except as expressly set forth elsewhere in this Agreement: (i) Company may (but shall have no obligation to) continue to process information from Merchant and its customers that had been received by Company prior to the termination effective date under this Agreement; (ii) all outstanding balances owed by Merchant to Company shall become immediately due and payable to Company; (iii) all rights granted to Merchant under this Agreement shall cease, and where appropriate, revert to Company; (iv) Company may terminate Merchant's, or one or more of its customer's access to the Card Service Program, or any portion of the Card Service Program, in its sole discretion; Company shall have no obligation to maintain any content or to forward any unread or unsent messages, reports, data or other information to Merchant, its customers or any third party; and (v) Merchant shall return all equipment pertaining to the Card Service Program that had been supplied by Company.

## TRANSFER OF CARD SERVICE PROGRAM DATA

Notwithstanding anything in this Agreement to the contrary and so long as Merchant has paid all amounts due to Company in full pursuant to the terms of this Agreement, upon the request of Merchant and at Merchant's sole cost and expense, Company agrees to provide information on the active issued Card Service Program cards (including the full card number and balance for any card with a balance greater than zero) to Merchant or its designee in a form mutually agreeable to the parties within ninety (90) days of any expiration, termination or cancellation of this Agreement. Any services provided by Company to Merchant pursuant to this Section shall be charged at the standard hourly rates of Company or its service providers for such services.

## CANCELLATION AND TERMINATION CHARGES

Merchant may terminate the Card Service Program upon 30 days' written notice to Company identifying the terminated Card Service Program service or services. If Merchant does so, or if the Card Service Program is terminated by Company as the result of an uncured default by Merchant, Merchant shall pay Company a termination charge equal to the sum of: (i) all unpaid amounts for the Card Service Program services provided through the date of termination; (ii) any off system third party termination charges paid by Company and related to the Merchant's Card Service Program provided hereunder; and (iii) 75% of the remaining monthly recurring charges for the remainder of the Term. The parties acknowledge and agree that the terms of this Agreement with respect to this Section are fair and reasonable considering the damage Company would sustain in the event of Merchant's failure to perform as required, that such damages have been agreed upon and fixed as liquidated damages because of the difficulty of ascertaining as of the date hereof the exact damages that would be sustained, and that such liquidated damages provisions shall be applicable regardless of the actual amount of damages sustained. All amounts shall be paid as liquidated damages and not as a penalty.

## **CONFIDENTIAL INFORMATION**

Company and Merchant acknowledge that in the course of dealings between parties, each party will acquire information about the other party, its business activities, pricing and operations, its technical information and trade secrets, of a highly confidential and proprietary nature. Each party shall hold such information in strict confidence and shall not reveal the same except for any information generally available to or known to the public, known prior to the negotiations leading to this Agreement, independently developed outside the scope of this Agreement or lawfully disclosed by or to a third party or tribunal. The confidential information of each party shall be safeguarded by the other to the same extent that it safeguards its own confidential materials or data relating to its own business. Further, any information or documentation disclosed between the parties during the performance of this Agreement (including this Agreement) shall be subject to the terms and conditions of the any non-disclosure agreement then in effect between the parties.

## **AUTHORITY**

Merchant represents and warrants that it is an organization duly authorized, validly existing, and in good standing under the laws of the jurisdiction under which it is organized and that this Agreement has been duly executed and delivered by Merchant and constitutes the valid and legally binding obligation of Merchant, enforceable in accordance with its terms.

## **ASSIGNMENT**

This Agreement shall not be assigned by either of the parties without the prior written consent of the other party; provided, however, Company shall have the right to assign or transfer this Agreement in connection with a change of control event (such as a merger, acquisition, reorganization, sale of substantially all its assets or stock or any similar event) without the consent of Merchant. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

## **NOTICES**

Any notice, consent, or other communication required or permitted hereunder will be in writing. It will be deemed given when (a) delivered personally, (b) sent by confirmed facsimile transmission, (c) sent by commercial overnight courier with written verification of receipt, or (d) sent by registered or certified mail, return receipt requested, postage prepaid, and the receipt is returned to the sender. All notices shall be delivered to the address set forth on first page of this Agreement, unless the party giving any such notice has been notified, in writing, of a change of such address.

## **GOVERNING LAW**

The situs for all transactions covered by this Agreement shall be Omaha, Nebraska. This Agreement shall be governed and construed and enforced in accordance with the laws of the State of Nebraska. Any claims or charge made hereunder shall be brought in state or federal court in Douglas County, Nebraska. The parties hereto irrevocably consent to the jurisdiction and venue of such court and waive any present or future objection to venue or jurisdiction in such court. The parties agree that service of process may be made upon them by certified or registered mail or any other method authorized under local rules of civil procedure.

## **SEVERABILITY**

If any term, provision, section or clause of this Agreement or any application thereof shall be invalid or unenforceable for any reason in any particular jurisdiction, the remainder of this Agreement and any other application of such term, provision, section or clause shall not be affected thereby in such jurisdiction (where such remainder or application shall be construed as if such invalid or unenforceable term, provision, section or clause had not been inserted), and this Agreement and such application of such term, provision, section or clause shall not, in any manner, be affected thereby in any other jurisdiction. In the event that any term, provision, section or clause of this Agreement or any application thereof shall be invalid or unenforceable for any reason in any particular jurisdiction, the parties shall use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.

## **RELATIONSHIP OF PARTIES**

Company and Merchant intend for their relationship to be that of independent contractors. Neither party shall have the power or authority to bind the other and neither party shall be deemed an agent, employee, partner or joint venture of or with the other.

## **FORCE MAJEURE**

Neither party shall be liable for damages under this Agreement for a delay or failure in its performance of any obligation (except the obligation to make payments when due) under this Agreement as a result of causes beyond its reasonable control, including war, strikes, lockouts, embargoes, terrorism, insurrection, riots, inability to obtain materials or labor due to governmental acts, rules, regulations or directives, breakdown of machinery, accidents, fires,

floods or other natural disasters. Upon the giving of prompt written notice to the other party of any such causes of a delay or failure in its performance of any obligation under this Agreement, the time of performance by the party so affected shall be extended to the extent and for the period that its performance of said obligations is prevented by such cause.

## **AFFILIATES**

Service may be provided to Merchant pursuant to this Agreement by an affiliate or service provider of Company, but Company shall remain responsible to Merchant for the delivery and performance of the Card Service Program and, Merchant shall look solely to Company for any failure breach or other failure of Company, its affiliates or service providers to provide the services contemplated by this Agreement. Merchant shall be jointly and severally liable for all claims and liabilities related to any Card Service Program ordered by any affiliate of Merchant, and any breach or default under this Agreement by any affiliate of Merchant shall also be a breach or default by Merchant.

## **ENTIRE AGREEMENT**

This Agreement (including the cover page, these Terms and Conditions and any Service and Pricing Request accepted by Company; each of which is incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party.

## **SURVIVAL**

The provisions of this Agreement that, by the express terms of this Agreement, will not be fully performed during the Term, shall survive the termination of this Agreement to the extent applicable.

## **CONSTRUCTION**

The words "or" and "nor" are inclusive and include "and". "Including" means "including without limitation" and does not limit the preceding words or terms. The singular shall include the plural and vice versa. References to "Sections" shall mean the Sections of this Agreement, unless otherwise expressly indicated. The headings or titles preceding the text of the Sections or subsections are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

## **COUNTERPARTS; EXECUTION**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature page by means of facsimile transmission or electronic mail, and the receipt of such executed counterparts by facsimile transmission or electronic mail will be binding on the parties. Following such exchange, the parties will promptly exchange original versions of such signature page, but the failure to do so shall not affect the binding nature of the same.