

For FMS Usage Only

Account Key \_\_\_\_\_

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ALC \_\_\_\_\_

## PLASTIC CARD NETWORK

### AGENCY PARTICIPATION AGREEMENT

This Plastic Card Network Agency Participation Agreement (APA) sets forth the terms and conditions of the \_\_\_\_\_'s (Agency) participation in the Master Agreement between the Financial Management Service (FMS), and the \_\_\_\_\_ (Financial Institution) for plastic card services to be provided by the Financial Institution. This APA incorporates the Master Agreement by reference and in the event of any conflict between the Master Agreement and this APA, the Master Agreement shall govern.

#### 1.0 GENERAL

##### 1.1 Incorporation By Reference

The terms of this APA and any addendum hereto incorporate by reference following the policies and procedures, as from time to time may be amended, which are given the same force and effect as if set out in full text:

- a. Invitation For Expression of Interest In the Plastic Card Network (IEI), dated July 17, 1997;
- b. [Volume I, Part 5, Chapter 4600](#) of the *Treasury Financial Manual* (I TFM 5-4600);
- c. [Volume 1, Part 5- Chapter 4700](#) of the *Treasury Financial Manual* (V TFM 3000); and
- d. The deposit reporting and funds transfer instructions contained in Supplemental #1 and #2 of V TFM 2000.

#### 2.0 CREDIT AND OFF-LINE DEBIT CARDS

## **2.1 Networks**

VISA U.S.A. and MasterCard International, and NOVUS Services Inc., are wholly separate national credit card networks operated according to each network's distinct set of operating rules and regulations. American Express, and Diner's Club are wholly separate national charge card networks operated according to each network's distinct set of operating rules and regulations.

## **2.2. Terms and Conditions**

The Agency agrees to honor all valid VISA, MasterCard, American Express, Diners and NOVUS Cards ("Cards") for the purchase or lease of goods or services and payment of fees, fines, or debts (collectibles) whenever the holder of a valid Card (Cardholder) offers to pay for such goods or services or collectibles by presenting a Card to the Agency at any locations operated by the Agency at which Cards are accepted. Such transactions are referred to herein as "Card Transactions."

The Financial Institution shall acquire the Cardholder Indebtedness solely as the Agency's agent for collection and not for the Financial Institution's account. Such items shall be provisionally credited to the Agency's account until (i) receipt of final payment by the bank, and/or (ii) any charge-backs the Financial Institution and the Agency agree are properly made to the Agency's account under this Agreement. The settlement and transfer of funds by the Financial Institution to Treasury and the Agency through CASH-LINK are governed by the terms of the Plastic Card Network Invitation for Expression of Interest (IEI) published July 17, 1997. See Appendix 4: CASH-LINK Reporting Requirements. Any chargeback dispute shall be resolved in accordance with the dispute clauses in the Master Agreement (Subsection 26-29), and the rules and regulations of the applicable network. When a chargeback is properly made, the Financial Institution shall debit the Agency's account for the proper amount.

The Agency agrees to follow and be bound by the rules and regulations of the aforementioned networks, as amended from time to time, to the extent that these rules and regulations do not conflict with federal law or the terms of this Agreement. In the event of a conflict, federal law or the terms of this Agreement shall govern. To the extent, that the rules and regulations of these networks, as amended from time to time, are or become inconsistent with the best interest of the Agency, as determined by the Agency in their sole discretion, the Agency may agree not to apply the rule or regulation determined to be inconsistent. As the network rules and regulations are amended, the Financial Institution shall submit the amendments which the Financial Institution believes conflict in a significant and/or material way with the Master Agreement to the Agency and FMS for approval.

## **2.3 Credit Card Sales and Authorization**

Cardholder indebtedness shall be evidenced by a form supplied by the Financial Institution ("transaction form") which the Agency will fully and legibly complete to include: a) the Agency's official name as set forth above; b) the Cardholder's name, account number, interbank number (if applicable), Card expiration date (if applicable), and Card effective date (if

applicable), all as embossed on the Card presented at the time of the Card Transaction; c) the signature of the Cardholder or other authorized person presenting the Card (except in the case of telephone and mail orders) and the date of the Card Transaction; d) an accurate, itemized description, by individual item or department, of all goods, services, and collectibles in a single transaction (except in the case of purchases in separate departments or in a partial payment or delayed delivery situation); e) the price of each item, any down payment received, together with applicable taxes, gratuities, and any other identified charge; f) the total amount of the transaction; g) the authorization number if required under the terms of this Agreement; and h) the Agency employee's initials or ID number.

All transactions must be authorized in one format or another (e.g. via terminal, voice response unit or voice). Before completing a transaction, the Agency will call the Financial Institution's authorization center to request authorization to honor the Card if: the transaction form cannot be imprinted with the Card; the transaction form is not signed by the Cardholder; the Cardholder presents an unsigned or expired Card; the Cardholder does not present a Card at the time of transaction (except in the case of telephone or mail orders); or the transaction involves any other suspicious or unusual circumstances. The agency shall call the Financial Institution before completing the transaction and request a "Code 10" authorization to honor the Card.

If the Agency agrees to accept a pre-authorized order, the Cardholder shall be required to execute and deliver to the Agency a written request for such pre-authorization, which the Agency will retain and make available upon request to the Financial Institution. The Agency will not deliver goods or perform services covered by a pre-authorization after receiving specific notification that the pre-authorization is canceled or that the Card is not to be honored.

#### **2.4 Partial Payment or Delayed Delivery**

The Agency will not effect a Card Transaction when only a part of the amount due is included on a single transaction form except: a) when the balance of the amount due is paid by the customer at the time of sale in cash or by check; or b) when the goods or services are to be delivered at a later date and one transaction form represents a deposit and the second transaction form is conditioned upon delivery of the goods or performance of services. The Agency will note on the transaction forms the words "deposit" and "balance" as appropriate. The transaction form marked "balance" shall not be presented to the Financial Institution until the goods are delivered or services performed.

#### **2.5 Credit Card Floor Limit**

For agencies which employ electronic terminals with access to the Financial Institution's computer authorization facilities ("electronic terminals"), the applicable Floor Limit shall be zero (\$0.00), unless otherwise notified by the Financial Institution in writing.

#### **2.6 Transaction Procedures**

The Agency will comply with the following procedures relating to all Card Transactions:

a) before concluding a Card Transaction, the Agency employee will determine, in good faith and to the best of their ability, that: **1.** the Card is valid on its face; **2.** the Agency employee will ensure that the four digits printed above the account number are the same as the first four digits embossed on the card; **3.** if the Card bears a "valid from" date, that such date has passed; **4.** the Card bears the signature of the Cardholder; **5.** if the Card bears a termination date; that such date has not expired and; **6.** the Cardholder's signature has not been visibly altered.

b) if required by the Financial Institution or requested by the card issuer, before concluding a Card transaction the Agency employee shall examine one or more Card security features;

c) the transaction form is to be signed in the Agency employee's presence, and the Agency employee will compare the signature on the transaction form to the signature on the Card to ascertain that they appear to be the same. NOTE: The signature may, but need not be, the name embossed or printed on such Card. If the Card has a photograph of the Cardholder, the Agency employee will determine that the Cardholder and the person presenting the Card appear to be the same person. If such identification is uncertain or if the Agency employee questions the validity of the Card, the Agency will contact the Financial Institution for instructions;

d) the Agency employee will obtain an authorization number, as required by this Agreement;

e) the Agency employee will deliver a true copy of the transaction form, fully completed in accordance with the requirements of this Agreement, to the Cardholder at the time of delivery of the goods or performance of the services covered thereby, or, for transactions initiated at point-of-transaction terminals, at the time of transaction:

f) the Agency will not establish minimum or maximum transaction amounts as a condition for honoring Cards;

g) the Agency will not impose an extra or special or financial charge or surcharge or require any special agreement, condition, or security from the Cardholder in connection with any Card Transaction. The Cardholder shall not be required to pay any part of the fees which the Financial Institution charges, directly or indirectly, through any increase in price or otherwise;

h) the Agency agrees to preserve all of the Agency's records relating to each Card Transaction, including the underlying transaction forms, for a period of at least 6 years from the date of such Card purchase;

(i) for transactions that have to be manually keyed for credit cards, imprint legibly in the transaction form the embossed date from the Card and from the Agency identification plate on the imprinter;

j) If a Card is presented, but the sales transaction is completed without a Card imprint, the Agency will note legibly on the transaction form sufficient detail to identify: the Agency's official name and address; the name of the card issuer as it appears on the face of the card; the account number, the interbank number and the interbank initials (if applicable), the expiration date (or, in the case of a Card bearing a dual date, both the effective date and the expiration

date); the Cardholder name and/or any company name; and any other embossed data such as security symbols.

## **2.7 Presentment of Transaction Forms**

a) Except as provided in subsection b of this section, the Agency will transmit the completed Batch to the financial institution within one (1) business day after completion of the card transaction.

b) The above time requirements shall not apply: (i) until the goods are shipped or the services performed, unless the Cardholder agrees to a delayed delivery of the goods or services at the time of the transaction; (ii) if the Agency requested and received authorization for delayed presentment (the authorization number and the words "Delayed Presentment" shall be legibly noted on the transaction form) presentation will be made within the period permitted for delayed presentment; (iii) if the Agency is obligated by law to retain the transaction form or return it to the Cardholder upon timely cancellation, presentment will be made within ten (10) business days after the date of the transaction; and (iv) if the Agency has multiple locations or offices and a central office or facility is responsible for collecting and transmitting all transactions, presentment will be made within twenty (20) calendar days after the date of the transaction.

d) All credits to the Agency's Deposit will be subject to review, audit and correction by the Financial Institution. The Financial Institution is authorized to credit the Agency's Deposit Account for any sums due the Agency. The Financial Institution is authorized to debit the Agency's Deposit Account only upon prior written notice to, and agreement by, the Agency.

Note: Debits shall not include any agreed fee payment for services.

e) Each deposit related to, or other delivery of, any transaction from the Financial Institution for purchase shall comply with the terms of this Agreement.

## **2.8 Claims Procedures**

a) The Agency agrees to resolve any claims or complaints arising from Card Transactions directly with Cardholders. If the Financial Institution receives notification from any authorized Card issuer that their Cardholder has been unable to resolve any such claims or complaints through proper Agency channels, the Financial Institution and the Agency will work together to resolve the claim or complaint. If a claim cannot be resolved, the Financial Institution will debit the Agency account for the agreed upon amount of the claim and forward to the Agency a copy of the debit advice and supporting documentation.

b) The Financial Institution shall have no obligation to pay the Agency for any Cardholder Indebtedness disputed by the Cardholder or Card issuer (1) if a transaction form does not have a card imprint; (2) for mail or telephone orders, (3) if the transaction form is illegible; or (4) if the Agency otherwise fails to comply with the terms of this Agreement.

If the Financial Institution has paid the Agency for such transactions, the Financial Institution may recover such payment by debiting the Agency's account. Upon making any debits to the Agency's account, the Financial Institution shall forward to the Agency a copy of the debit advice together with supporting documentation.

## **2.9 Credit Vouchers**

The Agency will establish and maintain a fair policy for the exchange and return of goods, the cancellation or termination of services, and the cure of any defective performance relating to Card Transactions. For returned goods and canceled or terminated services, the Agency will complete a credit voucher in the form supplied by the Financial Institution. The Agency will not make any cash refunds. The total amount indicated on the credit voucher shall not exceed the original transaction amount. The Agency will ensure that the following information is entered legibly on each credit voucher: (1) the Agency name and address; (2) the name and account number embossed on the Cardholder's Card; (3) the interbank number (if applicable); (4) the date of the credit; (5) a description of the goods or services for which credit is being given; (6) the amount of credit for each item; (7) any applicable taxes; (8) the total amount of the credit voucher; (9) the initials of the persons making and approving the credit voucher; and (10) the Agency employee signature.

The Agency will give the Cardholder a true copy of the completed credit voucher marked for the Cardholder. Upon the Financial Institution's receipt of the credit voucher, the Financial Institution will charge the Agency the amount shown thereon and transmit the credit voucher for credit to the Cardholder by the issuer of the Card. The Agency shall not accept money from a Cardholder to prepare and deposit a credit voucher for the purpose of effecting a deposit to the Cardholder's account with the issuer of the Card.

## **2.10 Receipt of Payments**

The Agency will not accept or collect any payments due on any Card Indebtedness. Any payments sent to the Agency on account of a Cardholder will be held by the Agency in trust for the Financial Institution in the form received and the Agency will promptly remit such payments to the Financial Institution.

## **3.0 ON-LINE DEBIT CARD**

### **3.1 Networks**

Interlink Network is a national on-line debit card network and an affiliated of the VISA system. Maestro U.S.A. Network is an international on-line debit card network and an affiliate of the MasterCard system. The Interlink and Maestro U.S.A. Networks operate under distinct operating rules and regulations. The Interlink and Maestro U.S.A. Networks will be referred to in this Agreement as the "National/International Networks."

The Networks listed in the Appendix One of this agreement are regional on-line debit card networks. Each Regional Network operates under its own set of operating rules and regulations. These debit card networks will be referred to in the Agreement as "Regional Networks."

### **3.2 Terms and Conditions**

The Agency agrees to honor all valid National/International and Regional Network debit cards (Cards) that bear a service mark of a National/International or Regional Network. Such Cards will be honored for the purchase or lease of goods or services and the payment of fees, fines, or debts (collectibles) whenever the holder of a valid Card (Cardholder) offers to pay for such goods or services or collectibles by presenting a Card to the Agency at any location operated by the Agency at which Cards are accepted. Such transactions are referred to herein as "Card Transactions."

The Financial Institution shall acquire the Cardholder Indebtedness solely as the Agency's agent for collection and not for the Financial Institution's account. The settlement and transfer of funds by the Financial Institution to FMS and the Agency through CASH LINK are governed by the terms of the Plastic Card Network Invitation for Expressions of Interest (IEI) published on July 17, 1997. See e.g., IEI Appendix 4: CASH-LINK Reporting Requirements. Any chargeback dispute shall be resolved in accordance with the dispute clauses in the Master Agreement (§ § 26-29), and the rules and regulations of the applicable network. When a chargeback is properly made, the Financial Institution shall debit the Agency's account for the proper amount.

The Agency and FMS agree to be bound by National/International and Regional Network rules and regulations to the extent these rules apply under the terms of this Agreement and do not conflict with Federal law. The Financial Institution shall provide FMS and the Agency with the current National/International and Regional Network rules and regulations on the date the Agreement is executed by the Financial Institution.

### **3.3 Technical On-Line Debit Card Sales Requirements**

The Agency will have at, or in proximity to, the point of sale where a National/International or Regional Network debit card is accepted, Point of Sale (POS) terminal equipment with an operating Track 2 magnetic stripe reader, Personal Identification Number (PIN) pad with alphanumeric keyboard, printer, and keyboard lock function.

Agency POS terminal equipment will be situated to permit Cardholders to input their PINs without revealing them to other persons, including agency personnel. The PIN keyed in by the Cardholder will not be displayed, transmitted or stored in non-encrypted form. The Agency POS terminal equipment must comply with the Data Encryption Standards required by National/International and Regional Networks listed in appendix One. Encryption transition at the Financial Institution host computer shall be performed in hardware. At no point shall translation be effected by software.

Agency POS terminal equipment will have an Enter/Clear key; a Cancel key; and Receipt Printer. The Agency terminal will be capable of locking the keyboard to prevent additional

transactions, other than Cancels, from being entered into the system while the transaction is being processed. Agency POS terminal equipment will also be capable of supporting the automatic printing of transaction receipts and must be able to identify authorization and denial status.

The Agency POS terminal equipment, and related transaction equipment such as electronic cash registers, must be fully compatible with the central processing unit of the Financial Institution or its designated processor, and must be able to directly send, receive and process information, on-line authorizations, and daily on-site reconciliation for the balancing of close-out procedures.

### **3.4 Transaction Procedures**

The Agency will require the Cardholder to enter his or her PIN when initiating an on-line debit card transaction. Agency transactions that do not use the Cardholder's debit card PIN are strictly prohibited.

The Agency is not permitted to complete any POS debit card transaction, via the Agency POS terminal, which has not been authorized on-line by the Financial Institution and/or the National/International or Regional Network switch. Agency transactions will be strictly prohibited when the applicable network switch, debit terminal magnetic stripe reader, PIN pad, and/or the network terminal is inoperative, and/or the magnetic stripe is unreadable. Manual or off-line transaction authorizations are prohibited.

The Agency will not accept cash, checks, or other negotiable instruments from any Cardholder and forward a credit through a National/International or Regional Network, as a purported payment of deposit to an account maintained by the Cardholder. The Agency will not require a minimum transaction amount below which the Agency will refuse to honor valid National/International and Regional Network debit cards.

Cashback transactions, insurance or redemption of scrip, and chained transactions by the Agency are strictly prohibited.

### **3.5 Transaction Fees**

The amount of any transaction fee levied by the Agency may be included in the transaction amount, if permitted by the applicable Network rules and regulations and by Federal, state and local law, provided the amount of the fee is disclosed on the receipt and the amount of the terminal. The sign will indicate the entity charging the fee and disclose any other conditions pertaining to the fee or its method of calculation.

### **3.6 On-Line Debit Card Sales Involving Cards Indicating Multi-Network Membership**

When the Financial Institution has agreements with more than one National/International and/or Regional Network listed in this Agreement, and issues multi-network Cards, the Financial Institution shall process all card transactions using the least expensive network, which is

available in the location where the transaction takes place, in terms of the transaction fees charged to FMS, subject to routing rules established by each applicable network.

### **3.7 Claims Procedures and Credit Vouchers**

With respect to any transaction, an Agency with proper disclosure to the Cardholder at the time of the transaction and in accordance with the rules and regulations of the applicable network may: 1) issue a refund to the Cardholder; 2) accept merchandise in immediate exchange for similar merchandise of a price equal to the amount of the original transaction; 3) accept merchandise in return and deliver to the Cardholder a credit slip for the value of the merchandise returned, which may be used only in the Agency place(s) of business; 4) if permitted by applicable law, stipulate special circumstances agreed to by the Cardholder, including, but not limited to, late delivery charges or insurance charges; or 5) cause the transaction to be completed, even though delivery of goods or service may be delayed.

Proper disclosure shall be deemed to have been given at the time of the transaction if one of the following phrases or substantially similar wording appeared legibly on all copies of the transaction receipt, or on an invoice issued at the time of the sale prior to the receipt being presented to the Cardholder: 1) "no refund"; 2) "exchange only"; 3) "in store credit only"; and 4) (any special terms). Failure of the Agency to provide an invoice or transaction receipt substantially incorporating any of these phrase does not necessarily mean proper disclosure has not been made.

If proper disclosure is not made at the time of the transaction, and any merchandise is accepted for return, or any services are terminated or canceled, or any price adjustment is allowed by the Agency, the Agency is authorized to make a cash refund to the Cardholder, or the Agency may process a credit transaction to the Financial Institution, and provide the Cardholder a credit receipt evidencing such refund or adjustment provided that any such refund or adjustment is in accordance with the rules and regulations of the applicable network. The Agency will sign and date each credit receipt and will include thereon a brief identification of the merchandise returned, services canceled, or adjustment made, and the amount of the credit, in sufficient detail to identify the transaction.

## **4.0 AGENCY RESPONSIBILITY**

### **4.1 General**

The Agency will observe all card association and network rules and regulations for credit and off-line debit cards and On-line debit cards including, but not limited to, rules and regulations for transaction procedures, claims procedures, credit vouchers, scrip and cashback.

### **4.2 Retrievals**

The Agency will have five (5) business days to locate and return a requested sales draft retrieval to the Financial Institution. Failure to return the requested sales draft retrieval within five business days, or to provide an explanation of why the sales draft retrieval cannot be located or

returned will result in a Financial Institution chargeback to the Agency and a separate penalty charge for the delay. Any penalty charges levied by the Financial Institution against the Agency will be billed directly to the Agency. FMS will not be responsible for and will not pay penalty charges levied against the Agency by the Financial Institution.

#### **4.3 Additional Fees**

Additional fees imposed by the Financial Institution for non-receipt of chargebacks or duplicate processing will be billed directly to the Agency. FMS will not be responsible for, and will not pay additional fees levied against the Agency by the Financial Institution.

#### **4.4 Non-Qualification Fees**

The Agency will pay the Financial Institution a non-qualification fee for failure to close a terminal(s) at the end of the business day. Non-qualification fees will be billed directly to the Agency. FMS will not be responsible for and will not pay non-qualification fees levied against the Agency by the Financial Institution.

#### **4.5 Equipment**

The Agency is solely responsible for the costs of leasing or purchasing on-line POS terminal equipment, and related equipment such as electronic cash registers, which are required to initiate and complete on-line electronic debit card transactions under this Agreement. See section 3.3, *Technical On-Line Debit Card Sales Requirements*, for applicable equipment technical standards, and section 5.2, *Consulting and Training Responsibilities*, setting out the Financial Institution's duties to ensure that the Agency on-line equipment satisfies all applicable technical requirements and is compatible with the Financial Institution's processing equipment.

#### **4.6 Periodic Meetings**

The Agency and the Financial Institution shall attend periodic meetings with FMS to discuss the ongoing Agency operation of the plastic card program; other potential card applications within the Agency; and potential new industry developments. FMS will determine the need, frequency of, and schedule of the periodic meetings. The Agency also will be required to respond to periodic surveys and requests for information by the FMS.

#### **4.7 Written Response**

The Agency will respond to all written inquiries from FMS within a period of not more than 30 calendar days from the date of receipt. Unless otherwise directed by FMS, the Agency shall submit all responses directly to FMS regardless of whether the written inquiry originated with FMS, or was received by FMS from the Financial Institution and referred to the Agency.

#### **4.8 Sale or Lease of Goods or Services**

The Agency will be responsible for the underlying sale or lease of goods and/or services to the Cardholder.

#### **4.9 Agency/Financial Institution Ongoing Operations**

The Agency shall attempt to resolve all recurring and unresolved operational problems directly with the Financial Institution. Treasury should be notified if these problems continue to appear or not resolved in a timely manner.

### **5.0 FINANCIAL INSTITUTION RESPONSIBILITIES**

#### **5.1 Written Inquires**

The Financial Institution shall submit all written inquiries regarding on-line processing issues under the terms of this Agreement to FMS. When appropriate, FMS will consult with the Agency before responding to the Financial Institution's written inquiries. FMS will respond to the Financial Institution., in writing, within 60 calendar days of receipt of such inquiries.

#### **5.2 Consulting and Training Responsibilities**

The Financial Institution shall consult with Agency personnel responsible for purchasing or leasing on-line POS terminal equipment to ensure that such equipment, and related transaction equipment such as electronic cash registers, complies with applicable technical requirements, and that such equipment is compatible with the Financial Institution on-line debit card processing equipment, as required under section 3.3. The Financial Institution consultants shall ensure that Agency POS terminal equipment meet those technical specifications set forth in the National/International or Regional Network rules and regulations which apply under the terms of section 3.2 of this Agreement, including, but not limited to, Maestro U.S.A. regulations which requires the PIN pad keyboard to permit entry of a PIN with four to twelve characters and Regional Network regulations which require the PIN pad keyboard to permit entry of a PIN with up to sixteen characters. The Financial Institution requires the agency to issue: Upon completion of an authorized on-line transaction, the Agency will provide the Cardholder with a transaction receipt printed by the Agency POS terminal specifying the: a) transaction amount, b) date of transaction, c) transaction type, d) card account number, e) terminal location as defined in Regulation E (12 C.F.R. § 205.9(a)(5)), f) trace number, g) transaction time, if the terminal has the capability, and h) any other information required under applicable Federal, state or local laws, rules, or regulations, including Regulation E (12 C.F.R. Part 205).

The Financial Institution also is responsible for training Agency personnel to interface Agency POS terminal equipment with Financial Institution on-line equipment.

The Financial Institution is responsible for carrying out its consulting and training responsibilities under this section whether the Agency purchases or leases its on-line POS terminal equipment, or related transaction equipment, from the Financial Institution. However, in the event the Financial Institution does lease or sell POS terminal equipment or related transaction equipment to the Agency, the Financial Institution is deemed to guarantee that such

equipment complies with applicable technical requirements, and that the equipment is compatible with the Financial Institution's on-line debit card processing equipment, as required under section 1.3.

## **6.0 FINANCIAL MANAGEMENT SERVICE RESPONSIBILITY**

FMS will monitor this and all other Agreements between the Agency and the Financial Institution for the entire duration of the Master Agreement. FMS will be a party to, and will sign all Agency participation agreements.

### **6.1 Amendments**

FMS may, at any time, by written notification to the Financial Institution and the Agency, modify this Agreement. If a modification or change causes an increase or decrease in the cost, or time required for performance of any part of the service required by this Agreement, then the Agreement shall be adjusted accordingly. The Financial Institution must assert its right to an adjustment, in writing, within 30 days from the date of the receipt of the written notice of modification or the date of the implementation of the change, whichever is earlier, unless FMS concurs in a later submission.

If the parties fail to agree informally to an adjustment in price, or other term of performance, the Financial Institution shall submit to FMS a second written statement signed by a senior Financial Institution official certifying that (1) the claim is made in good faith, (2) supporting data are accurate and complete to the best of the Financial Institution's knowledge and belief, and (3) the amount requested accurately reflects the adjustment to which the Financial Institution believes it is entitled. If a final FMS decision on the claim becomes necessary, that decision shall be issued by no lower level than the Director, Financial Services Division.

## **7.0 TERMINATION OF AGENCY AGREEMENT**

### **7.1 Termination by FMS for Default**

The Agency may terminate this Agreement, in whole or in part, if the Financial Institution (1) fails to perform services within the time specified in this Agreement; 2) or fails to take actions to correct any identified deficiencies so as to materially endanger performance of services under this Agreement; 3) fails to perform any of the other provisions of this Agreement.

Prior to termination of this Agreement for default, FMS will give the Financial Institution written notice of the deficiencies giving rise to the proposed default action and will be given a minimum of 15 days from the date of the letter to correct the deficiency. If the Financial Institution fails to correct identified deficiencies in the time provided to FMS' satisfaction, FMS may terminate for default. FMS may terminate this Agreement without notices if the Financial Institution becomes insolvent or engages in criminal malfeasance.

If this Agreement is terminated for default, the Financial Institution shall complete all services in process at the time of default unless otherwise directed in writing by FMS. The Financial

Institution shall be compensated at existing applicable rates for all completed services delivered and accepted.

In the case of either a partial or total termination for default, FMS may acquire services similar to those terminated, and the Financial Institution shall be liable for the increased costs of those services, and the administrative costs of acquiring the substitute services. The Financial Institution shall be liable for any administrative costs if the failure to perform this Agreement arises from causes beyond the reasonable control and without the fault or negligence of the Financial Institution. The Financial Institution has the burden of establishing that its failure to perform was beyond its reasonable control and that the Financial Institution was not at fault or negligent.

If it is determined that the Financial Institution was not in default, or that the default was excusable, after this Agreement is terminated for default, the rights and obligations of the parties shall be the same as if the termination had been issued under section 7.3.

## **7.2 Termination by FMS for Reasons Other Than Default**

FMS may terminate this Agreement, in whole or in part, for reasons other than default, if such termination is determined by FMS to be in the best interest of the government. The termination will be made by providing the Financial Institution with a 30 day written Notice of Terminations specifying the effective date.

In the event of a termination the Financial Institution shall be entitled to submit a written claim. The Financial Institution shall submit the written claim promptly, but in any event not later than one (1) year from the effective date of termination. The claim shall be accomplished by a written statement signed by a senior Financial Institution official certifying that (1) the claim is made in good faith, (2) supporting data are accurate and complete to the best of the Financial Institution's knowledge and belief, and (3) the amount requested accurately reflects the adjustment for which the Financial Institution believes FMS is liable. If the claim can not be resolved by mutual agreement, or if the Financial Institution fails to submit a claim within the required period, and a final FMS decision on the claim becomes necessary, that decision shall be issued by no lower level than the Director, Financial Services Division.

## **7.3 Termination by Financial Institution for Default**

The Financial Institution may terminate this Agreement for default by providing FMS and the Agency with a 90 calendar day notice, in writing, setting forth the cause for the termination for default notice.

The termination shall become effective only in the event that the stated cause is not cured to the mutual satisfaction of all parties to this Agreement within the 90 day period. An effective termination of this Agreement, under this subsection, does not modify or terminate the Master Agreement executed between the Financial Institution and FMS.

## **7.4 Active Acceptance**

From time to time, the operating procedures may be amended, by providing the Agency and FMS with at least 30 days prior written notice. After 30 days, those provisions will be deemed incorporated into this Agreement. For those changes in the Card Association Rules or for security reasons certain changes in Card procedures may become effective on shorter notice subject to agreement by the parties.

### **7.5 Ancillary Services**

The Agency shall coordinate with FMS prior to obtaining any additional services from the Financial Institution excluding equipment.

### **8.0 ACCEPTANCE OF TERMS OF AGENCY PARTICIPATION AGREEMENT**

In witness whereof the following parties have executed this Agreement  
on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

By affixing their signatures, the parties certify that they are authorized to enter into this Agreement and bind their respective organizations to the provisions of this Agreement.

**Agency Name**

Agency Official

Title

Telephone Number

Date

**Financial Institution Name**

Financial Institution Official

Title

Telephone Number

Date

**Financial Management Service**

Kristine Conrath  
Director  
Emerging Technology Division  
202-874-7019

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Date

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Signature