



# Terms of Service Agreement

This Service Agreement (Agreement) is entered into by \_\_\_\_\_,  
(the "Customer") and WashCard Systems, ("WashCard").

## 1. Customer Requirements.

The Customer is responsible for maintaining the hardware and software specifications required by WashCard's secure on site computer, known as the Site Management Controller (SMC), and at no cost to WashCard, a high-speed telecommunications link into their system for the purpose of providing card processing, maintenance and support. WashCard shall provide the SMC upon initiation of services.

## 2. Acceptable Use.

The Customer agrees not to use, or allow a third party to use, directly or indirectly, WashCard products or services for or in the pursuit of illegal purposes, including but not limited to harassment, fraudulent advertising, hacking, spamming, unsolicited advertising and copyright infringement. The Customer agrees not to make any attempt to disrupt or attack the WashCard system or services, and WashCard reserves the right to seek damages or legal resource against Customers who abuse, attack, or hack their systems, servers, or services. The Customer agrees not to add, remove or modify any software, hardware, or applications to the SMC that are not first authorized by WashCard. The Customer agrees that the SMC shall not be used for personal or business purposes of the Customer such as e-mail, web surfing or security cameras and that any such unauthorized use could jeopardize the security of the WashCard database server.

## 3. Maintenance and Support Services.

WashCard will make commercially reasonable efforts by providing fixes, workarounds, or other reasonable solutions, to remedy reproducible errors and bugs in the current version of its software that are reported to WashCard and cause a Material Malfunction, where a "Material Malfunction" means the substantial failure of the software to function for its intended use. WashCard will provide reasonable support by telephone or e-mail and use commercially reasonable efforts to respond to any request by the Customer for support Monday through Saturday from 9:00 a.m. to 5:00 p.m. CST. WashCard maintenance and support services do not include fixes of errors that arise out of the Customer's alteration of the software, hardware or housing unit, or fixes or errors caused in whole or in part by persons other than WashCard, or by products, computer programs, or stored procedures not furnished by WashCard, or for programming, error correction or custom work required as a result of conversions or updates involving Customer's core software, or by improper hardware installation or server configuration, housing unit specifications or defect, or due to issues related to Customer's core processing systems or server. If a suspected error results from unauthorized alteration of the software, hardware or housing unit or the use of the software that is not in accordance with standard operating procedures, then the Customer agrees to pay for any fix provided on a time and materials basis at WashCard's then-current standard hourly rate.

# Terms of Service Agreement

## **4. Confidential Information; Cardholder data.**

It is the goal of WashCard to not store any of the Customer's cardholders identifying information, including debit or credit card numbers, PIN numbers, security codes or other sensitive identifying information ("Identifying Information"). WashCard agrees that it will not seek any such Identifying Information from the Customer and the Customer agrees that you will not send us any such Identifying Information. If you inadvertently do, the Customer agrees to notify WashCard immediately upon learning of such transmission so that we can take steps to completely and securely destroy such data.

## **5. Other Proprietary Information.**

WashCard and the Customer agree not to disclose any of each other's proprietary and otherwise competitively sensitive information to any person not authorized to receive it. The Customer shall treat all WashCard software, hardware, housing units and all related information including any and all updates, improvements, modifications and enhancements as confidential and proprietary, and shall protect such information in the same manner that it protects the confidentiality of its own confidential proprietary information.

## **6. Service and Support Charges.**

Charges for use of WashCard products and services are set forth in the "Service Plan Summary" document which you agree to pay as set forth on such agreement.

## **7. Force Majeure.**

In no event will WashCard nor the Customer be held liable to the other for any breach, default, or delay in performance of any obligation occasioned by occurrences or contingencies beyond reasonably control, including but not limited to, acts of God, Fire, flood, strike or lockout, civil commotion, war, embargo, public health crisis, government demand, or invasion.

## **8. Severability.**

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

## **9. Entire Agreement.**

Except for the Summary of Fees attached, this agreement contains the entire understanding between the WashCard and Customer with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understands, inducements, or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersedes any course of performance or usage of trade inconsistent with any of the terms hereof.

## **10. Governing Law.**

This Agreement shall be construed in accordance with, and all actions arising under or in connection therewith shall be governed by, the internal laws of the State of Minnesota, without regard to principles relating to conflicts of law.

## **11. Indemnification, Limitation of Liability, Warranty and Disclaimer.**

In no event shall WashCard, its directors, officers, or employees, be liable to the Customer or any customer of the Customer for damages resulting from a Material Malfunctions that arise out of the Customer's alteration of WashCard's software, hardware or housing unit, a Material Malfunction caused in whole or in part by persons other than WashCard, or by products, computer programs or stored procedures not furnished by WashCard, or for programming, error connection or custom work required as a result of conversions or updates involving your core software, or by improper hardware installation or server configuration, housing unit specifications or defects, or due to issues related to your core processing systems or server. The Customer shall indemnify, defend and hold harmless, WashCard from and

## Terms of Service Agreement

against any and all losses resulting from and Material Malfunction described in this provision. EXCEPT FOR THE FOREGOING, WASHCARD MAKES NO OTHER WARRANTIES OR REPRESENTATIONS AS TO THE SERVICES RENDERED OR PRODUCTS OFFERED, AND HEREBY DISCLAIMS ALL EXPRESS AND OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. WASHCARD FURTHER DISCLAIMS ANY WARRANTY THAT THE SERVICES WILL SUCCEED IN RESOLVING ANY PROBLEM, OR THAT ANY WORK PRODUCT OF THE SERVICES WILL BE FREE FROM ERRORS. IN NO EVENT SHALL WASHCARD BE LIABLE TO THE CUSTOMER FOR ANY AMOUNT IN EXCESS OF THE FEES ACTUALLY PAID BY THE CUSTOMER TO WASHCARD FOR SERVICES PROVIDED. IN NO EVENT SHALL WASHCARD BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR INTERRUPTION OF BUSINESS, WHETHER SUCH DAMAGES ARE ALLEGED IN TORT, CONTRACT, INDEMNITY, OR OTHERWISE, EVEN IF WASHCARD HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES.

While WashCard assumes no obligation to monitor the Customer's behavior with respect to compliance with this agreement, the Customer agrees and understands that WashCard may monitor the Customer's usage and behavior relating to this agreement. The Customer agrees and understands that WashCard reserves the right to immediately, without notice, refuse, suspend or terminate the Customer's current and future services if WashCard reasonably believes that the Customer is in violation of any of the forgoing provisions.

The individuals executing this Agreement represent and warrant that they have the requisite power and authority to execute and deliver this Agreement and that all action necessary, corporate or otherwise, to authorize the execution, delivery and performance of this Agreement has been duly taken, and this Agreement has been duly executed and delivered by an officer or other representative authorized to execute and deliver this Agreement. WashCard and Customer acknowledge that this Agreement was made for good and valuable consideration and, in acknowledgment of the receipt and sufficiency of such consideration, WashCard and Customer execute this Agreement to be effective on the date that it is signed (the "Effective Date").