



CHAPTER TEN – LIABILITIES AND INDEMNIFICATION

SECTION 10.1 Indemnification and Hold Harmless by Issuers

Each Issuer shall indemnify and hold harmless each other Participant against any and all claims, losses, costs, damages, liabilities or expenses (including reasonable attorneys' fees) that are incurred as a result of a Transaction, attempted Transaction or other transaction initiated with a card purporting to be a Card but which was not properly issued by or on behalf of the Issuer and that arise out of:

- a. The Authorization or denial of Authorization of a Transaction whether done by the Issuer's CAS or by a third party providing Stand-In Processing;
- b. Malfunction of or failure to operate the CAS (unless such malfunction was caused by the party claiming indemnification);
- c. Unauthorized access being obtained to the systems utilized to process, route and authorize Transactions from any point under the ownership or control of the Issuer or the CAS;
- d. The failure of the Issuer or the CAS to comply, as to any Transaction, with any Applicable Law;
- e. The negligence or fraudulent conduct of the Issuer; (*Amended September 27, 1996*) and
- f. The failure of the Issuer to comply with these Rules.

SECTION 10.2 Indemnification and Hold Harmless by Acquirers

Each Acquirer shall indemnify and hold harmless each other Participant against any and all claims, losses, costs, damages, liabilities or expenses (including reasonable attorneys' fees) that are incurred as a result of a Transaction or attempted Transaction and that arise out of:

- a. Personal injury or tangible property damage suffered or incurred by any person and caused, directly or indirectly, in whole or in part, by the placement, location, operation, condition, servicing or use of a Terminal owned, operated or controlled by an Acquirer or for which an Acquirer is otherwise responsible under these Rules or located on the premises of a Merchant with which the indemnifying Acquirer has a Merchant Agreement;
- b. Malfunction of or failure to operate the Acquirer's system for processing and routing Transactions, whether such system is operated by the Acquirer or a third party on its behalf (unless such malfunction was caused by the party claiming indemnification);
- c. Unauthorized access being obtained to the systems utilized to process, route and authorize Transactions from any point between and including the Terminal or Point of Sale through the Acquirer's system for processing and routing Transactions, whether such system is operated by the Acquirer or a third party on its behalf;
- d. The failure of the Acquirer or any Third Party Service Provider (including Terminal Operators) or Merchant with which the Acquirer has a Third Party Provider Agreement or Merchant Agreement, respectively, to comply, as to any Transaction, with any Applicable Law;
- e. The negligence or fraudulent conduct of the Acquirer, or any Third Party Service Provider (including Terminal Operators) or Merchant with which the Acquirer has a Third Party Provider Agreement or Merchant Agreement, respectively;



- f. The failure of the Acquirer or any Third Party Service Provider (including Terminal Operators) or Merchants with which the Acquirer has a Third Party Provider Agreement or Merchant Agreement to comply with these Rules;
- g. The completion by the Acquirer, its Terminal Operator or its Merchants of any Transaction denied by, or on behalf of, an Issuer; and
- h. Any agreement by a Merchant of the Acquirer with, or obligation of such Merchant to, a Cardholder with respect to the sale or lease of goods or services by means of a Transaction.

SECTION 10.3 Indemnification and Hold Harmless by Processors

Each Processor other than a Network, including each CAS and Terminal Operator, shall indemnify and hold harmless each other Participant against any and all claims, losses, costs, damages, liabilities or expenses (including reasonable attorneys' fees) that are incurred as a result of a Transaction or attempted Transaction and that arise out of:

- a. The Authorization or denial of Authorization of a Transaction by such Processor operating a CAS;
- b. Malfunction of or failure to operate the CAS, Acquirer's or Network's system for processing and routing Transactions (unless such malfunction was caused by the party claiming indemnification);
- c. Unauthorized access being obtained to the systems utilized to process, route and authorize Transactions from any point in such system that is under the ownership or control of such Processor;
- d. The failure of the Processor to comply, as to any Transaction, with any Applicable Law;
- e. The negligence or fraudulent conduct of the Processor;
- f. The failure of the Processor to comply with these Rules; and
- g. The Completion by the Processor of any Transaction denied by, or on behalf of, an Issuer.

SECTION 10.4 Liability of Networks

The liability of each Network acting in its capacity as such and not as a CAS or Terminal Operator shall be governed by such Network's rules and regulations governing the processing and routing of transactions through such Network, regardless of whether such Rules specifically reference Transactions under these Rules. If a Network operates as a CAS or Terminal Operator, it shall be treated as a Processor for purposes of Section 10.3 above.

SECTION 10.5 Liability of NACHA (Amended December 16, 2008)

NACHA, and each of their members when acting in such capacity, shall have no liability or duty of indemnity for their respective participation in drafting, updating and enforcing these Rules and otherwise performing the functions allocated to each of them hereunder.