



Terms of Service

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Capital Q is a an Elavon Payments Partner & Registered MSP/ISO of US Bank, Minneapolis, MN.

Notes

TABLE OF CONTENTS

Table of Contents.....	i
SECTION A - DEFINITIONS	2
SECTION B - GENERAL PROVISIONS	3
SECTION C - ACCEPTANCE OF VISA, MASTERCARD, & DISCOVER NETWORK ..	17
SECTION D - ACCEPTANCE OF PIN-BASED, ONLINE DEBIT CARDS	26
SECTION E - ACCEPTANCE OF AMERICAN EXPRESS, DINERS, AND/OR JCB	29
SECTION F - ACCEPTANCE OF ELECTRONIC BENEFITS TRANSFER (EBT)	30
SECTION G - ACCEPTANCE OF ELECTRONIC GIFT CARDS	31
SECTION H - WIRELESS SERVICE	34
SECTION I - ELECTRONIC CHECK SERVICES.....	35
SECTION J - DYNAMIC CURRENCY CONVERSION.....	39
SECTION K - ACCEPTANCE OF TRANSACTIONS UTILIZING THE STORE AND FORWARD APPLICATION	40
SECTION L - ACCEPTANCE OF NO SIGNATURE REQUIRED TRANSACTIONS	42
APPENDIX A: GLOSSARY.....	43

Notes

TERMS OF SERVICE

These Terms of Service (TOS) and the other portions of the Agreement govern the Merchant's participation in the Program. The TOS is incorporated into and made part of the Agreement and the signature by an authorized representative of the Merchant on the Merchant Application, or the transmission of a Transaction Receipt or other evidence of a Transaction, shall be the Merchant's acceptance of and agreement to abide by the terms and conditions contained in the Agreement. No strikeover of the preprinted text of the TOS shall be effective. Merchant acknowledges that it has received, understands, and agrees to be bound by the Agreement.

SECTION A - DEFINITIONS

1. **DEFINITIONS.** Definitions used within this TOS are listed alphabetically in the “Glossary” on page 43.
2. **RULES OF CONSTRUCTION.** Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the TOS. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words “hereof,” “herein,” and “hereunder,” and words of similar import when used in the TOS shall refer to the TOS and not to any particular provision of the TOS. The word “day” shall mean “calendar day,” unless specifically stated otherwise. In the event of a conflict between the terms of Section (B) - General Provisions, and any subsequent section of the TOS, the terms of the subsequent section shall prevail.

SECTION B - GENERAL PROVISIONS

3. **ACCEPTANCE OF PAYMENT DEVICES.** Merchant shall determine in accordance with the Payment Network Regulations and the TOS which types of Payment Devices it will agree to accept as payment for goods and services.
4. **DEPOSIT OF TRANSACTION RECEIPTS.**
 - a. **Funds.**
 - i. **Deposits.** You agree that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Subject to this Section, Servicer and Member will deposit to the DDA all funds evidenced by Transaction Receipts complying with the terms of the Agreement and the Payment Network Regulations and will provide you provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement). You acknowledge that your obligation to Servicer and Member for all amounts owed under the Agreement arises out of the same transaction as Servicer's and Member's obligation to deposit funds to the DDA.
 - ii. **Provisional Credit.** All Transaction Receipts and deposits are subject to audit and final checking by Member and Servicer, and may be adjusted for inaccuracies or errors. You acknowledge that all credits for funds provided to you are provisional and subject to Chargebacks and adjustments in accordance with the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer. Member or Servicer may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and Servicer's sole discretion.
 - iii. **Original Transaction Receipts.** Under no circumstances will Member or Servicer be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Member and Servicer.
 - b. **Processing Limits.** Servicer may impose a cap on the dollar amount of Transaction Receipts that it will process for you as indicated on the Merchant Application as your annual volume or as otherwise established by Servicer. This limit may be changed by Servicer from time to time, without prior notice to you. If you exceed the established limit, Servicer may suspend the processing of Transaction Receipts, and either return all Transaction Receipts evidencing funds over the cap to you or hold those deposits in a separate account or Reserve Account.
 - c. **Chargebacks.** You are fully liable to Servicer and Member for all Transactions returned to Servicer or Member for whatever reason including all Chargebacks. You will pay Servicer and Member for all Chargebacks. You agree to accept for Chargeback, and will be liable to Member and Servicer in the amount of any Transaction for which the Cardholder or Issuer disputes the validity of the Transaction for any reason. You authorize Servicer and Member to offset from funds due the Merchant for Transaction activity and to debit the DDA, the Reserve Account, or any other account held at Member or at another financial institution for the amount of all Chargebacks including, as applicable, any currency fluctuations. You will fully cooperate with Servicer and Member in complying with the Payment Network Regulations regarding Chargebacks. Guarantors are personally liable to Servicer and Member for all Chargebacks.

5. DEMAND DEPOSIT ACCOUNT (DDA).

- a. **Establishment and Authority.** You will establish and maintain with Member (or with an ACH receiving depository institution acceptable to Member) one or more DDAs to facilitate payment for Transactions. You will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement. You irrevocably authorize Servicer and Member to debit the DDA and the Reserve Account as defined in Section (B)(6)(b) below for Chargebacks in accordance with the Payment Network Regulations and for returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You also authorize Servicer's or Member's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement. You must obtain prior consent from Member and Servicer to change the DDA. If you do not get that consent, Servicer or Member may immediately and without notice terminate the Agreement and may take any other action either of them deems necessary in their discretion. Servicer and Member have the right to rely upon written instructions submitted by the Merchant to request changes to the DDA. You may request from Servicer written confirmation of Servicer's and Member's consent to change the DDA.
- b. **DDA.** If the DDA is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (B)(4) of the TOS. Servicer and Member have the right to delay, within their discretion, crediting the DDA with funds evidenced by submitted Transaction Receipts. To the extent required, you authorize Member or Servicer to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement and the ACH Authorization (defined below). To the extent required, you authorize and appoint Member to act as your agent to collect Transaction amounts from the Issuer. Member, in its sole discretion or at Servicer's direction, may grant you provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and Servicer and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You shall maintain sufficient funds on deposit in your DDA to pay all items as they come due in the ordinary course of business.
- c. **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from Servicer, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. You must promptly examine all statements relating to the DDA and immediately notify Servicer and Member in writing of any errors in the statement Merchant received from Servicer. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Servicer within forty-five (45) days after the month end date on the statement containing the asserted error. If you fail to provide such notice to Servicer within said forty-five (45) days, Servicer and Member shall not be liable to you for any errors you assert at a later date. You may not make any claim against Member or Servicer for any loss or expense relating to any asserted error for sixty (60) days immediately following Servicer's receipt of your written notice. During that sixty (60) day period, Servicer will be entitled to investigate the asserted error, and you shall not incur any cost or expense in connection with the asserted error without notifying Servicer.
- d. **Depository Institution.** Merchant authorizes its depository institution to grant Servicer and/or Member access to any and all information or records regarding the DDA. Merchant authorizes Servicer and/or Member to direct the depository institution to hold funds in the DDA in an amount which Servicer and/or Member, in their respective discretion, either individually or collectively, deem sufficient to fully protect Servicer's and Member's rights under the Agreement or to block or restrict Merchant's or others' access to funds in the DDA (whether or not such funds are specifically related to any previous deposit for any Transaction Receipt). Merchant directs the depository institution to immediately comply with any such direction from Servicer or Member.

- e. **Indemnity.** You will indemnify and hold harmless Servicer and Member for any action they take against the DDA or Reserve Account pursuant to the Agreement. You will also indemnify and hold harmless the depository institution at which you maintain your DDA for acting in accordance with any instruction from Servicer and/or Member regarding the DDA.
- f. **ACH Authorization.** You authorize Member, Servicer, and their respective vendors and agents to initiate debit/credit entries to the DDA, the Reserve Account, or any other account maintained by you at any institution that is a receiving member of ACH, all in accordance with the Agreement. This authorization will remain in effect after termination of the Agreement and until all of your obligations to Servicer and Member have been paid in full. In the event you change the DDA, this authorization will apply to the new account and you shall provide Servicer and Member such information regarding the new DDA as they deem necessary. It may take Servicer up to ten (10) business days after Servicer's receipt of a complete and verified written notice from you to reflect in its system any change to your DDA.

6. SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.

- a. **Security Interests.**
 - i. **Security Agreement.** The Agreement constitutes a security agreement under the Uniform Commercial Code. You grant to Member and Servicer a security interest in and lien upon: (a) all funds at any time in the DDA, regardless of the source of such funds; (b) all funds at any time in the Reserve Account, regardless of the source of such funds; (c) present and future Transaction Receipts; and (d) any amount which may be due to you under the Agreement, including, without limitation, all rights to receive any payments or credits under the Agreement (collectively, the "Secured Assets"). You agree to provide other security to Servicer and Member, upon request, to secure your obligations under the Agreement. These security interests and liens will secure all of your obligations under the Agreement and any other agreements now existing or later entered into between you and Servicer and/or Member including your obligation to pay any amounts due and owing to Member or Servicer. Servicer and Member may execute this security interest, without notice or demand of any kind, by making an immediate withdrawal or by restricting your access to the Secured Assets.
 - ii. **Perfection.** Upon request of Member or Servicer, you will execute one (1) or more control agreements or other documents to evidence or perfect this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, Member and Servicer will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Member and Servicer written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Member and Servicer are not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by Servicer or Member. You authorize Servicer and appoint Servicer your attorney in fact to sign your name to any control agreement used for the perfection of any security interest or lien granted hereunder.
- b. **Reserve Account.**
 - i. **Establishment.** Servicer and/or Member may establish a Reserve Account at any time for the purpose of providing a source of funds to pay Member and Servicer for any and all amounts owed by you. The Reserve Account shall be maintained with sums sufficient to satisfy your current and/or future obligations as determined by Member or Servicer. Member and Servicer shall have sole control of the Reserve Account. Member and/or Servicer may, at any time, require that the amount on deposit in the Reserve Account be increased.

- ii. **Funding.** Member and Servicer may fund the Reserve Account by any one or more of the following means.
 - aa. Member and Servicer may require you to deposit into the Reserve Account funds in an amount determined by Servicer;
 - bb. Member and Servicer may debit the DDA in any amount;
 - cc. Member and Servicer may deposit into the Reserve Account funds they would otherwise be obligated to pay you.
 - iii. **Use of Funds in Reserve Account.** Member or Servicer may, without notice to you, apply funds in the Reserve Account against any outstanding amounts you owe or future amounts you will owe under the Agreement or any other agreement between you and Member or Servicer. Also, Member or Servicer may debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to Member or Servicer. Further, you agree that Servicer or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.
 - iv. **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (1) the Agreement has been terminated; and (2) Merchant has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustment, fees, fines, penalties, and any other payments due under the Agreement. In no event shall you be entitled to a return of any funds remaining in the Reserve Account before 270 days following the effective date of termination of the Agreement.
- c. **Recoupment and Set-off.** Member and Servicer have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe you under the Agreement or any other agreement. You acknowledge that in the event of a Bankruptcy Proceeding, in order for you to provide adequate protection under Bankruptcy Code Section 362 to Servicer and Member, you must create or maintain the Reserve Account as required by Servicer and/or Member and either of them shall have the right to offset against the Reserve Account for any and all obligations you may owe to Servicer and Member, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the filing of the bankruptcy petition.
- d. **Remedies Cumulative.** The rights conferred upon Member and Servicer in this section are not intended to be exclusive of each other or of any other rights and remedies of Member and Servicer under the Agreement, at law or in equity. Rather, each and every right of Member and Servicer under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.

7. FEES; OTHER AMOUNTS OWED; TAXES.

- a. **Fees.** You will pay Member and Servicer fees for services, supplies, and equipment in accordance with the Agreement and any additional application or setup form(s). Such fees will be calculated and debited from the DDA once each day or month for the previous day's or month's activity as applicable, or will be deducted from the funds due you under the Agreement. In addition, you will pay Servicer at its standard rates for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on your account. Servicer may adjust the fees in accordance with Section (B)(19)(n) below.
- b. **Other Amounts Owed.** You will immediately pay Servicer or Member any amount incurred by Servicer or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties, (including all fines and penalties assessed by the Payment Networks as a result of your Transaction processing) and any other payments due under the Agreement. Servicer or Member may debit these amounts from your DDA by ACH, and in

the event such ACH does not fully reimburse Servicer or Member for the amount owed, you will immediately pay Servicer or Member such amount. Servicer will charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.

- c. **Taxes.** You are also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement. If you are a tax-exempt entity, you will provide Servicer and Member with an appropriate certificate of tax exemption.

8. ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY.

- a. **Accuracy of Information.** You represent and warrant to Member and Servicer that all information provided to Servicer in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement is correct and complete. You must notify Servicer in writing of any changes to such information, including, without limitation, any additional location or new business at which you desire to accept Payment Devices, the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship, partnership, etc.), type of goods and services provided, and how sales are completed (i.e., by telephone, mail, electronic commerce, or in person at your place of business). The notice must be received by Servicer at least ten (10) business days prior to the change. You will provide any additional information requested by Servicer within a reasonable time. You will defend, indemnify, and hold harmless Member and Servicer for all losses and expenses incurred by Member or Servicer arising out of any such change, whether or not reported to Servicer, or your failure to provide requested information. Servicer may immediately terminate the Agreement upon notification by you of a change to the information in the Merchant Application. You authorize Servicer and Member to contact credit reporting agencies and your creditors to make inquiries and obtain reports regarding your credit standing upon Servicer's or Member's receipt of the Merchant Application.
- b. **Indemnification.** You will be liable for and indemnify, defend, and hold harmless Servicer, Member and their respective employees, officers, directors, and agents against all claims, including claims made by third parties, losses, damages, liabilities or expenses arising out of the Agreement and for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member and/or Servicer in the enforcement of the Agreement, including those resulting from any Transaction processed under the Agreement or any breach by you of the Agreement and those related to any Bankruptcy Proceeding.
- c. **Limitation of Liability.** Merchant acknowledges that Servicer's and Member's fees for the services provided to Merchant are very small in relation to the funds advanced to Merchant for Transactions and consequently Servicer's and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on Servicer's or Member's liability that may be provided elsewhere, any liability of Servicer and Member under the Agreement, whether to you or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the fees paid by you during the last three (3) months. In no event will Servicer, Member, or their agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.
- d. **Performance.** Servicer and Member will perform all services in accordance with the Agreement. Servicer makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **Servicer and Member disclaim all implied warranties, including those of merchantability and fitness for a particular purpose.** Neither Servicer nor Member shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of Servicer or Member and without the fault or negligence of Servicer or Member.

9. **REPRESENTATIONS AND WARRANTIES.** You represent and warrant to Servicer and Member as of the time the Agreement is effective, and reaffirm to Servicer and Member each time a Transaction is effected during the Initial Term or any Renewal Term of the Agreement, the following:

- a. **Information.** You are a corporation, limited liability company, partnership, or sole proprietorship validly existing and organized in the United States. All information provided in the Merchant Application, in the bid process if applicable, or any other document submitted to Servicer is true and complete and properly reflects the business, financial condition and principal partners, owners, or officers of Merchant. Servicer has the right to rely upon written instructions submitted by Merchant to request changes to the Merchant's business information. Merchant may request written confirmation of Servicer's consent to the changes to the Merchant's business information. You will not submit unlawful or illegal Transactions or Transactions for processing to Servicer or Member for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of Servicer.
- b. **Corporate Power.** Merchant and the persons signing the Agreement have the power to execute and perform the Agreement. Merchant represents and warrants that the person executing the Agreement is duly authorized to bind Merchant to all provisions of the Agreement and that such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by Servicer, now or in the future. Further, you represent and warrant that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which you are subject.
- c. **No Litigation.** There is no action, suit, or proceeding pending, or to your knowledge, threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), or, if you have, you have disclosed that fact to Servicer in writing.
- d. **Transactions.** All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from you or a return or adjustment related to such purchase. You will not submit unlawful or illegal Transactions. No Transaction involves a Cardholder obtaining cash from you unless allowed by the Payment Network Regulations and agreed to in writing with Servicer.
- e. **Compliance with Laws and Regulations.** You will comply with all Laws and Payment Network Regulations.
- f. **Business Use.** You are obtaining and using the processing services from Servicer for business purposes only and to facilitate lawful business Transactions between yourself and your customers. You also acknowledge that the DDA into which debits and credits are made is being used for lawful business purposes only.

10. **AUDIT AND INFORMATION.**

- a. **Audit.** You authorize Servicer and Member to perform an audit of your business to confirm compliance with the Agreement. You will obtain and submit a copy of an audit from a third party acceptable to Servicer of the financial, physical security, information security, and operational facets of your business at your expense when requested by Servicer or Member. Further, you acknowledge and agree that the Payment Networks have the right to audit your business to confirm compliance with the Payment Network Regulations.
- b. **Information.**
 - i. **Authorizations.** You authorize Servicer and Member to make, from time to time, any business and personal credit or other inquiries they consider necessary to review the Merchant Application or continue to provide services under the Agreement. You also

authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Servicer.

- ii. **Financial Information.** Upon the request of either Servicer or Member, you will provide Servicer and Member audited financial statements prepared by an independent certified public accountant selected by you. You further agree to provide to Servicer and Member such other information regarding your financial condition as Servicer and/or Member may request from time to time. Within 120 days after the end of each fiscal year, you will furnish Servicer, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.
 - c. **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, you must provide certain information and identifying documents to allow Servicer and Member to identify you.
11. **RESPONSIBILITY FOR ACTIONS.** You are responsible for the actions of or failure to act by your officers, directors, employees, agents, business invitees, third party vendors, and those of any other Person who, with or without your consent or cooperation, obtains access to information related to Transactions.
 12. **FRAUD MONITORING.** You are solely responsible for monitoring its Transactions and the actions of its officers, directors, employees, agents, business invitees, third party vendors, including Value Added Services, and those of any other Person who, with or without your consent or cooperation, obtains access to your Transactions, for fraudulent or other suspicious activity. Servicer and Member are under no duty to monitor Merchant's transactions for fraudulent or other suspicious activity.
 13. **BUSINESS CONTINUITY.** Merchant is solely responsible for developing and maintaining a disaster recovery plan. Merchant should test the operation of such plan, or parts thereof, on a periodic basis to ensure its effectiveness in providing disaster recovery capability to Merchant. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction. Servicer is under no duty to recreate lost Transactions.
 14. **PERSONAL GUARANTY.** As a primary inducement to Servicer and Member to enter into the Agreement and in consideration of the services and accommodations of any kind given or continued at any time and from time to time by Servicer or Member to or for the benefit of Merchant, the designated Guarantor(s), jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance by Merchant of each of its duties and obligations to Servicer and Member pursuant to the Agreement, as the same may be amended by either of them from time to time, with or without notice. No act or thing, except full payment and discharge of all of Merchant's duties and obligations to Servicer and Member, which but for this provision could act as a release or impairment of the liability of the Guarantor(s), shall in any way release, impair, or affect the liability of the Guarantor(s). The Guarantor(s) waives any and all defenses of Merchant pertaining to Merchant's duties and obligations to Servicer and Member, any evidence thereof, and any security therefore, except the defense of discharge by payment. Guarantor(s) understands further that Servicer and/or Member may proceed directly against Guarantor(s) without first exhausting their respective remedies against Merchant or any other person or entity responsible therefore or any security held by Servicer, Member, or Merchant. The Guarantor(s) waives: (i) notice of acceptance of this Personal Guaranty and of the creation and existence of the Merchant's duties and obligations to Servicer and Member; (ii) presentment, demand for payment, notice of dishonor, notice of non-payment, and protest of any instrument evidencing the Merchant's duties and obligations; (iii) all other demands and notices to the Guarantor(s) or any other person and all other actions to establish the liability of the Guarantor(s); and (iv) **the right to trial by jury in action in connection with this Personal Guaranty.** This Personal Guaranty will not be discharged or affected by the death of the Guarantor(s), will bind all heirs, administrators, representatives, and assigns, and may be enforced by or for the benefit of any successors in interest to Servicer or Member. Guarantor(s) understands that the inducement to Servicer and Member to enter into the Agreement and give or continue services and accommodations of any kind to or for the benefit of Merchant, is consideration for

the Personal Guaranty and that each Personal Guaranty remains in full force and effect even if the Guarantor(s) receives no additional benefit from the Personal Guaranty.

15. THIRD PARTIES.

- a. **Products or Services.** You may desire to employ Value Added Services to assist you. You shall not utilize any Value Added Services, unless you have disclosed such use to Servicer previously in writing, and unless such Value Added Services are fully compliant with all applicable Laws and Payment Network Regulations. You must ensure that any Value Added Service used by you is registered with the Payment Networks prior to the performance of any contracted services on your behalf. Further, you will be bound by the acts and omissions of the third party offering such Value Added Services and you will be responsible for ensuring compliance by the third party offering such Value Added Services with all applicable Laws and Payment Network Regulations. You will indemnify and hold harmless Servicer and Member from and against any loss, cost, or expense incurred in connection with or by reason of your use of any Value Added Service. Neither Servicer nor Member is responsible for the Value Added Services provided by an unaffiliated third party and neither Servicer nor Member is responsible for any Transaction until Servicer receives data for the Transaction in the format required by Servicer.
- b. **Use of POS Devices Provided by Others.** In addition to the foregoing, if you use Value Added Services for the purposes of data capture and/or authorization, you agree: (i) that the third party providing such services will be your agent in the delivery of Transactions to Servicer and Member via a data processing system or network compatible with Servicer's; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement. Neither Member nor Servicer will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or by a malfunction in a third party POS Device. Neither Servicer nor Member is responsible for any Transaction until Servicer receives data for the Transaction in the format required by Servicer.

16. TERM AND TERMINATION.

- a. **Term.** Unless terminated as set forth below, the Agreement will remain in effect for a period of three (3) years ("Initial Term") following the date of acceptance of the Merchant Application by Servicer and Member, which date shall be the date upon which the Agreement becomes effective. Thereafter, the Agreement will renew for successive two (2) year terms ("Renewal Term") unless terminated as set forth below.
- b. **Termination.**
 - i. **Merchant.**
 - aa. The Agreement may be terminated by you effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Servicer at least thirty (30) days prior to the expiration of the then current term.
 - bb. The Agreement may be terminated by you in the event of a material breach of the terms of the Agreement by Member or Servicer, provided you give Member and Servicer written notice of any alleged breach and such breach remains uncured for a period of thirty (30) days following receipt of written notice by the party you claim to be in breach of the Agreement.
 - ii. **Servicer or Member.**
 - aa. The Agreement may be terminated by Servicer or Member at any time with or without cause during the Initial Term or any Renewal Term.
 - bb. Servicer's and Member's rights of termination under the Agreement are cumulative. A specific right of termination in this section shall not limit any other right of Servicer or Member to terminate the Agreement expressed elsewhere.

- iii. **Notice of Termination.** Notice of termination by Merchant, Servicer, or Member may be given orally or in writing, but if given orally, must be confirmed in writing as soon as practical. Merchant's termination request shall be completed on a form available from Servicer, but at a minimum, must include the name of the Merchant and Merchant Identification Number, and must be signed by the principal owner(s) of Merchant. Termination shall be effective on the date specified by the oral or written notice; provided, however Merchant agrees that closing Merchant's account with Servicer may take up to thirty (30) days following Servicer's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by Servicer following termination by either Merchant or Servicer in the Initial or any Renewal Term, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive two (2) year Renewal Terms effective on the date of reinstatement.
- c. **Action Upon Termination.**
- i. **Accounts.** All your obligations regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until you pay all amounts you owe Servicer or Member or amounts for which you are liable under the Agreement. You must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, and other amounts due under the Agreement for a reasonable time, but in any event, not less than 180 days from termination. If a Reserve Account is established by Servicer, then any balance remaining after Chargeback rights have expired and all other amounts owed by you have been paid will be disbursed to you.
- ii. **Equipment.** If your equipment is leased, you are obligated to honor the terms and conditions of your leasing contract. If your equipment is owned by Servicer, you must return all equipment owned by Servicer within ten (10) business days and immediately pay Servicer any amounts you owe for such equipment.
- iii. **Return to Servicer.** All promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to you and not purchased by you or consumed in use will remain the property of Servicer and must be returned to Servicer or destroyed within ten (10) business days after termination of the Agreement. You will be fully liable for any and all loss, cost, and expense suffered or incurred by Servicer arising out of any failure to return or destroy such materials following termination.

17. COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™.

- a. **Compliance with Laws and Payment Network Regulations.** You agree to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account, and with any policies and procedures provided by Member or Servicer. The Payment Network Regulations are incorporated into the Agreement by reference as if they were fully set forth in the Agreement. You further agree to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic funds transfers, and (iii) confidential treatment of information. You will assist Member and Servicer in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. You will execute and deliver to Member and Servicer all documents they may from time to time reasonably deem necessary to verify your compliance with this provision.
- b. **MATCH™.** Acknowledge that Member and/or Servicer is required to report Merchant's business name and the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed and updated by Visa and American Express pursuant to the requirements of the Payment Network Regulations. You specifically consent to the fulfillment of the obligations related to the listing by Servicer and Member, the listing itself and you waive and hold harmless Servicer and Member from all claims and liabilities you may have as a result of such reporting.

- c. **Security Program Compliance.** You must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard including the Cardholder Information Security Program (CISP) of Visa and the Site Data Protection Program (SDP) of MasterCard, as applicable, and any modifications to, or replacements of such programs that may occur from time to time. You also shall ensure that all third parties from whom you procure Value Added Services or third party POS Devices comply with the requirements of those programs. Upon request, Servicer will provide you with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network programs. You are responsible for your own actions or inactions, those of your officers, directors, shareholders, employees and agents, including any third party vendors with whom you contract to perform services for you. You shall indemnify and hold Servicer and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the program requirements by any of the individuals or entities listed in the immediately preceding sentence. Should you participate in a program with any other Credit Card Association or Issuer, or accept a Payment Device of any other Payment Network that has a security program in place, you must comply therewith and ensure that your officers, directors, shareholders, employees, and agents, including any third party vendors from whom you procure Value Added Services or third party POS Devices also comply with the program requirements of such Payment Network.
- d. **Data Compromise.** You must notify us immediately (and if notice is given orally, it must be confirmed in writing within two (2) business days), if you know or suspect that Cardholder information has been accessed or used without authorization. You must take immediate steps to preserve all business records, logs and electronic evidence and contact local law enforcement authorities including the local FBI and U.S. Secret Service. You must work with us to rectify any issues that may result, including providing us with (and obtaining any necessary waivers for) all relevant information to verify your ability to prevent future data incidents in a manner consistent with this Agreement. Without waiving any of our rights and remedies, you are liable for all fraudulent transactions related to such data incident and all costs Servicer or Member incur as a result of such incident, including claims from third parties and all costs related to the notification of Cardholders and cancellation and re-issuance of Cards, forensic investigation, and PCI review for a report of compliance. You must provide to us, on request, audit reports of your computer systems or data incidents or allow us to perform such audits at your expense. Audits must identify the cause of the data incident and confirm whether or not you were in compliance with the Payment Network's PCI Data Security Standard at the time of the incident.

18. USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.

- a. **Use of Trademarks.** You will prominently display the promotional materials provided by Servicer in your place of business. Your use of Visa, MasterCard, and Discover Network marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Your right to use all such marks will terminate upon termination of the Agreement. Your use of promotional materials, provided by Visa, MasterCard, Discover Network, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, Discover Network, or such other Payment Networks endorse any goods or services other than their own and you may not refer to Visa, MasterCard, Discover Network, or any other Payment Networks in stating eligibility for your products or services.

- b. **Confidentiality.**
- i. **Cardholder and Transaction Information.** In accordance with Section (B)(17)(d), a Merchant shall immediately notify Servicer of any Cardholder or Transaction information compromise of which it becomes aware whether such compromise occurs at: (i) the Merchant; or (ii) a third party from whom the Merchant processes Value Added Services. You shall, at all times protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and Payment Network Regulations. You will not disclose Cardholder or Transaction information to any third party, except to an agent of yours assisting in completing a Transaction, or as required by Laws or the Payment Network Regulations. You must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent access by or disclosure to anyone other than your authorized personnel. You must maintain Cardholder and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy in a manner that will render the data unreadable all such media that you no longer deem necessary or appropriate to maintain. Further, you must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for record keeping or additional authorization processing. After authorization, you may only retain the Cardholder account number, name, and Card expiration date. You may not print on any Transaction Receipt or other document, that is given to the Cardholder, retained by the Merchant, or transferred to a third party, the entire contents of the magnetic stripe or the CVV2/CVC2/CID data elements. In accordance with Section (B)(17)(d), Merchant shall immediately notify Servicer of any Cardholder or Transaction information compromise of which it becomes aware whether such compromise occurred at: (i) the Merchant; (ii) a third party from whom Merchant procures Value Added Services; (iii) Servicer or Member; or (iv) elsewhere.
 - ii. **Bankruptcy.** In the event of failure or other suspension of your business operations, including bankruptcy or insolvency, you must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. You must:
 - aa. Return this information to Servicer, or
 - bb. Provide acceptable proof of destruction of this information to the Servicer.
 - iii. **Servicer or Member Confidential Information.** You shall at all times protect Servicer's and Member's Confidential Information. You will not disclose any of Servicer's or Member's Confidential Information to any third party except as required by Laws.
- c. **Passwords.** If you receive a password from Servicer to access any of Servicer's databases or services you will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Servicer's databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Servicer if you believe the Servicer's databases or services or your information has been compromised by use of the password. If you receive passwords from a third party, you must protect such passwords in the manner required by such third party and indemnify, defend, and hold Servicer and Member harmless from any losses, costs, or expenses that arise from your use or misuse of such third party passwords.
- d. **Proprietary Interest.** Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by Servicer. Nothing in the TOS shall be construed as granting Merchant any patent rights or patent license in any patent which Servicer may obtain in respect to Servicer's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of Servicer's services, equipment, or software.

19. MISCELLANEOUS PROVISIONS.

- a. **Entire Agreement.** The Agreement, Payment Network Regulations, and any amendment or supplement to either, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement; provided, however the Agreement shall not supersede any Personal Guaranty signed by a Guarantor, which Personal Guaranty shall be deemed to remain an agreement separate and distinct from the Agreement. In the event of a conflict between the documents comprising the Agreement, excluding any Personal Guaranty, the following order of priority will apply: (i) the TOS; (ii) the Payment Network Regulations; (iii) the Merchant Application; (iv) any Merchant Agreement or Merchant Processing Agreement; (v) the Merchant Operating Guide; and (vi) any other guides or manuals provided to Merchant from time to time.
- b. **Governing Law.** The Agreement will be governed by and construed in accordance with the Laws of the State of Georgia, except that Section (B)(19)(f) shall be governed by the Federal Arbitration Act. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the State of Georgia and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the State of Georgia. Any challenge to the enforceability of the agreement to arbitrate contained in Section (B)(19)(f) of this Agreement, on any ground, shall be brought in either the Superior Court of Fulton County, Georgia or in the United States District Court for the Northern District of Georgia, and in no other court, and each of the parties to this Agreement consents to the exercise of personal jurisdiction by these courts and waives all objections based on a lack of personal jurisdiction, venue or the inconvenience of the forum.
- c. **Exclusivity.** During the Initial Term and any Renewal Term of the Agreement, you will not enter into an agreement with any other entity that provides processing services similar to those provided by Servicer and Member as contemplated by the Agreement without Servicer's written consent.
- d. **Construction.** Any alteration or strikeover in the text of this preprinted TOS will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.
- e. **Assignability.** The Agreement may be assigned by Member or Servicer, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Servicer. If you, nevertheless, assign the Agreement without Servicer's consent, the Agreement will be binding on the assignee as well as you. **If you sell your business and the new owners incur Chargebacks, the original owner(s) and all original Guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners.**
- f. **Arbitration.** All claims or controversies, or other matters in question, between the parties arising out of or related to the Agreement or the relationship between the parties that are not otherwise settled by agreement of parties will be submitted to and decided by arbitration held in Atlanta, Georgia in accordance with the rules of the American Arbitration Association as modified by this Agreement. The arbitration proceeding shall be conducted before one (1) neutral arbitrator, who shall be a member of the bar of the State of Georgia, actively engaged in the practice of law for at least ten (10) years. The arbitrator will have the authority to award any remedy or relief that a court in Georgia could order or grant, including, without limitation, specific performance, issuance of an injunction or imposition of sanctions for abuse or frustration of the arbitration process. The arbitrator shall have no authority to decide claims on a class action basis. An arbitration can only decide our or your claim and may not consolidate or join the claims of other persons who may have similar claims. You may not assert a claim in arbitration on behalf of any third party or represent any class of claimants in an arbitration brought pursuant to this Agreement. The parties agree that anything communicated, exchanged, said, done, or occurring in the course of the arbitration, including any private caucus between the arbitrator and any party before or after any

joint arbitration session, will be kept confidential. The parties agree that the underlying agreement between the parties involves interstate commerce and that, notwithstanding the choice of law provision in Section (B)(19)(b), any arbitration shall be governed by the Federal Arbitration Act.

- g. **Notices.** Any written notice to the Merchant under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or with a nationally recognized overnight carrier, and addressed to the last address shown on the records of Servicer. Any written notice to Servicer, shall be sent by U.S. mail or a nationally recognized overnight carrier to: 7300 Chapman Highway, Knoxville, TN 37920, and shall be deemed received only upon actual receipt.
- h. **Bankruptcy.** You will immediately notify Servicer of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Servicer on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of the Agreement and shall allow the pursuit of any other action available to Servicer under applicable Payment Network Regulations or Laws. You acknowledge that the Agreement constitutes a contract to extend credit or other financial accommodations to, or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy. Such financial accommodations include, but may not be limited to, the incurrence by Servicer from time to time of credit risk associated with funds transfers and Servicer's compliance with Payment Network Regulations relating to Chargebacks. You further acknowledge that such financial accommodations constitute an integral part of the Agreement.
- i. **Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Member and Servicer for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member or Servicer: (i) in the enforcement of the Agreement; (ii) in collecting any amounts due from Merchant to Member or Servicer; (iii) resulting from any breach by Merchant of the Agreement; or (iv) in defending against any claim or cause of action brought by you against Servicer or Member arising out of the Agreement.
- j. **Customer Contact.** You authorize Member and Servicer to contact your customers or their Issuer if Member or Servicer determines that such contact is necessary to obtain information about any Transaction between you and a customer.
- k. **Telephone Recording.** You authorize Servicer to monitor and record telephone conversations at any time without further notice to the parties to such conversations. The decision to record any conversation shall be solely in Servicer's discretion.
- l. **Information Sharing.** You understand and agree that Servicer may disclose any information gathered by Servicer to (i) Servicer's "affiliates" (i.e., companies related to us by common control or ownership) that offer financial products or services, including those identified in the Agreement and to Servicer's administrative or service units that perform such functions; (ii) to non-affiliated companies to assist Servicer in providing the products and services Merchant has requested; (iii) to credit rating agencies; and (iv) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).
- m. **Communication with Merchant.** You agree that Servicer and Member may provide you with information about the Program including, without limitation, information about new products and/or services by telephone, electronic mail, and/or facsimile.
- n. **Amendments.** Member and Servicer may propose amendments or additions to the Agreement. Member or Servicer will inform you of a proposed change in a periodic statement or other notice. You will be deemed to have agreed to the change if you continue to present Transactions to Member and Servicer after thirty (30) days following the issuance of the notice. Notwithstanding the previous sentence, changes to fees authorized by the TOS will be effective upon notice to you, unless a later effective date is provided. Further, Servicer is entitled to pass through to you any fee

increases imposed upon Servicer by Visa, MasterCard, Discover Network, any other Payment Network, and any other third party including telecommunications vendors.

- o. **Severability and Waiver.** If any provision of the Agreement is found to be illegal or otherwise unenforceable, the invalidity or unenforceability of that provision will not affect any of the remaining provisions and the Agreement will be construed as if the illegal or unenforceable provision is not contained in the Agreement. Neither the failure, the delay by Servicer or Member to exercise, nor the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by you must be signed by Servicer.
- p. **Independent Contractors.** Servicer, Member, and you will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. This Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.
- q. **Privacy Laws.** In addition to Section (B)(18)(b) above, Merchants must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information, using a standard of care at least equal to the standard required of Servicer to protect such information pursuant to applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act (HIPAA), the federal Gramm-Leach-Bliley Act or other applicable privacy laws. Further, a Merchant that is a “covered entity” or “business associate”, as defined under HIPAA, must not use any product to store, transmit, or otherwise maintain “protected health information” as defined by HIPAA. Servicer is not a “business associate” as defined by HIPAA and it is not Servicer's practice to store or accept any information that would cause it to be a “business associate” under HIPAA.
- r. **Survival.** All of your obligations to Servicer and Member shall survive termination of the Agreement, including, without limitation, Sections (B)(4)(a)-(c), (B)(5)(a)-(f), (B)(6)(a)-(d), (B)(7)(a)-(c), (B)(8)(a)-(d), (B)(11), (B)(14), (B)(15), (B)(16), (B)(18)(a)-(d), (B)(19)(b), (B)(19)(f), and (B)(19)(i) of the TOS.
- s. **Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.

SECTION C - ACCEPTANCE OF VISA, MASTERCARD, & DISCOVER NETWORK

- 20. ACCEPTANCE OF VISA, MASTERCARD, AND DISCOVER NETWORK.** If Merchant accepts Credit Cards, Merchant agrees to the following provisions in addition to the General Provisions of Section (B) above and the definitions within the Glossary:
- 21. VISA, MASTERCARD, AND DISCOVER NETWORK DEFINITIONS.** For purposes of this Section, "Credit Card" shall be deemed to be limited to a: (i) credit/business product or card of Visa; (ii) consumer debit/prepaid product of Visa; (iii) credit/business product or card of MasterCard; (iv) consumer debit/prepaid product of MasterCard; (v) credit/business product or card of Discover Network; or (vi) consumer debit/prepaid product of Discover Network as applicable. The credit/business products of Visa are those products for which transactions by the Cardholder are paid by the Cardholder at least fifteen (15) days after the transaction including: (i) consumer credit products (including co-branded and smart Visa versions) such as Classic, Gold, Platinum, Signature, and Infinite cards, as well as cards within these product types that Visa has defined as "Traditional Rewards" or other enhanced cardholder benefit type cards; and (ii) business products such as business credit, business debit, business line of credit, and smart Visa business, purchasing cards, corporate cards, fleet cards, and commercial prepaid cards. The consumer debit/prepaid products of Visa are those products that for which Transactions by the Cardholder are paid by accessing the Cardholder's asset account immediately including: (i) consumer Visa check cards such as Classic, Gold, Platinum and Visa Check Card II; and (ii) consumer prepaid/EBT cards such as Visa Buxx, Visa Payroll, Visa gift cards (including incentives, promotional, and rebate), child support cards, unemployment cards, insurance claim cards, customer service cards, state disbursement cards (not including unemployment or child support), flexible spending account cards, general purpose reloadable and one-time use prepaid cards, and student aid college cards. The consumer debit/prepaid products of MasterCard include Cardholder signature debit cards, prepaid cards, stored value cards, EBT cards and payroll cards. The credit/business products of MasterCard include all other MasterCard products.
- 22. HONORING CREDIT CARDS.**
- a. **Honoring Cards.** Merchant may choose to accept (i) only the credit/business products of Visa, MasterCard, and/or Discover Network; (ii) only the consumer debit/prepaid products of Visa, MasterCard, and/or Discover Network; or (iii) both the credit/business products and consumer debit/prepaid products of Visa, MasterCard, and/or Discover Network. You must indicate your decision to accept a limited category of products on the Merchant Application and if you wish to discontinue acceptance of any category of products, you must provide Servicer with thirty (30) days advance written notice. If you choose to accept only one of the categories of products but later submit a Transaction outside of the selected category, Servicer and Member are not required to reject the Transaction and you will be charged our standard fees and expenses for that category of products. Further, if you choose a limited acceptance option, you must still honor all international cards presented for payment. Merchants who have decided to implement a limited acceptance policy are required to display appropriate signage to communicate that policy to Cardholders.
 - b. **No Minimum or Maximum.** Merchant shall not establish minimum or maximum Credit or Debit Card Transaction amounts.
 - c. **Cardholder Identification.** In Card Present Transactions, you will identify the Cardholder and check the expiration date and signature on each Credit Card. You will not honor any Credit Card if: (i) the Credit Card has expired; (ii) the signature on the Transaction Receipt does not correspond with the signature on the Credit Card, is blank, or uses language to the effect of "see id"; (iii) the account number embossed on the Credit Card does not match the account number on the Credit Card's magnetic stripe, or (iv) you have any reason to suspect that the person presenting the Credit Card is not the true Cardholder.

- d. **Credit Card Recovery.** You will use reasonable, lawful and peaceful means to recover any Credit Card: (i) on Visa Cards, if the printed four digits below the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Member (or its designee), the Issuer, or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Credit Card is lost, stolen, counterfeit, fraudulent, or otherwise invalid, or its use is not authorized by the Cardholder; or (iv) for MasterCard Cards, if the printed four digits below the embossed account number do not match the first four digits of the embossed account number, or the Credit Card does not have the "Twin Globes" hologram on the lower right corner of the Credit Card face.
- e. **Surcharges.** You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Credit or Debit Card, except as permitted by the Payment Network Regulations. This paragraph does not prohibit you from offering a discount to induce a person to pay by cash, check, or similar means rather than by Credit Card.
- f. **Convenience Fees.** You may not assess Convenience Fees unless you have disclosed such fees to Servicer previously in writing and you have been approved by Servicer to assess such fees. If you complete a Transaction and assess a Convenience Fee without having disclosed such fee previously in writing and obtained Servicer's consent, you will be in breach of the Agreement and Servicer may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Payment Network Regulations. Transactions that include a Convenience Fee must comply with each of the following requirements:
- i. A Convenience Fee cannot be assessed in a face-to-face merchant environment.
 - ii. The Convenience Fee is permitted only for one-time payments and may not be imposed on recurring payments or transactions. Examples of recurring charges include, but are not limited to, insurance premiums, subscriptions, Internet service provider monthly fees, membership fees, tuition, or utility charges.
 - iii. You must provide a true "convenience" in the form of an alternative payment channel outside of your customary face-to-face payment channels, and the Convenience Fee must be disclosed by you to the Cardholder as a charge for the alternative payment channel convenience that is provided.
 - iv. The Convenience Fee must be disclosed prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not want to pay the fee.
 - v. The Convenience Fee must be included in the total amount of the Transaction; it cannot be "split" out from the Transaction amount. The only exception is for card acceptance programs involving only MasterCard Credit Cards where Visa Credit Cards are not accepted.
 - vi. If a Convenience Fee is assessed it must be for all payments (Visa, MasterCard, Discover Network, AMEX, ACH, and check) within a particular payment channel (mail, telephone, and internet).
 - vii. Additional Visa Convenience Fee Requirements are as follows: (i) it must be a flat fee; (ii) it cannot be tiered or percentage based regardless of the value of the payment due; (iii) it must not be authorized and settled separately from the primary transaction; (iv) the fee must be assessed by the *same Merchant actually providing the goods and services*; and (v) the fee may not be assessed by a different merchant.
 - viii. Additional MasterCard Convenience Fee Requirements are as follows: (i) the fee may be tiered, percentage based, or flat; and (ii) the fee may be authorized and settled separately from the primary transaction.
 - ix. Merchants who accept both Visa and MasterCard Credit Cards are restricted to assessing Convenience Fees equally across card types and as such the Merchant is restricted to a flat

- Convenience Fee and must combine all charges into one authorization and clearing Transaction.
- x. To the extent Merchant's state has passed legislation that may conflict with the Payment Network Regulations, Merchant bears all responsibility for, and agrees to hold Servicer and Member harmless from, all liability associated therewith, including all fees, fines and penalties levied by the Payment Networks.
 - xi. Convenience Fees may be prohibited by Laws in some states. Merchant may not charge Convenience Fees where prohibited by Laws.
 - xii. In no event is a Convenience Fee to be referred to as a surcharge and further, the Convenience Fee cannot be advertised as an offset to processing fees.
- g. **Return Policy.** You must properly disclose to the Cardholder, at the time of the Transaction and in accordance with the Payment Network Regulations, any limitation you have on accepting returned merchandise.
 - h. **No Claim Against Cardholder.** You will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Transaction unless Member or Servicer refuses to accept the Transaction Receipt or revokes its prior acceptance of the Transaction Receipt (after receipt of a Chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Transaction Receipt, and if you receive such payments, you will promptly remit them to Servicer.
 - i. **Disputes With Cardholders.** All disputes between you and any Cardholder relating to any Transaction will be settled between you and the Cardholder. Neither Servicer nor Member bears any responsibility for such Transactions or disputes, other than with respect to processing Chargebacks under the Payment Network Regulations.

23. AUTHORIZATION.

- a. **Required on all Transactions.** You must obtain an Authorization Code before completing any sales Transaction. An Authorization Code verifies the Credit Card number is valid, the Credit Card has not been reported lost or stolen at the time of the sales Transaction, and confirms the amount of credit or funds requested for the sales Transaction is available. You will follow any instructions received during Authorization. Upon receipt of an Authorization Code, you may consummate only the sales Transaction authorized and must note the Authorization Code on the Transaction Receipt. In any case in which a sales Transaction is completed without imprinting the Credit Card, the Merchant, whether or not an Authorization Code is obtained, shall be deemed to warrant the true identity of the customer as the Cardholder. For all Card Not Present sales Transactions, you must obtain the Credit Card expiration date, Cardholder address and telephone number, and CVV2/CVC2/CID number and forward them as part of the Authorization.
- b. **Effect.** An Authorization Code does not: (i) guarantee the Merchant final payment for a sales Transaction; (ii) guarantee that the sales Transaction will not be disputed later by the Cardholder as any sales Transaction is subject to Chargeback; or (iii) protect you in the event of a Chargeback regarding unauthorized sales Transactions or disputes involving the quality of goods or services. Authorization Codes will not waive any provision of the TOS or otherwise validate a fraudulent sales Transaction or a sales Transaction involving the use of an expired Credit Card.
- c. **Unreadable Magnetic Stripes.** For Card Present Transactions, if you authorize and present Transactions electronically and your POS Device is unable to read the magnetic stripe on the Credit Card, you must obtain the following in addition to key-entering the Transaction into the POS Device for processing: (i) a physical imprint of the Credit Card using a manual imprinter and (ii) the Cardholder's signature on the imprinted Transaction Receipt.

24. PRESENTMENT OF TRANSACTION RECEIPTS.**a. Transaction Receipts.**

- i. **Card Present and Card Not Present Transactions (other than Electronic Commerce Transactions).** You will use a Transaction Receipt to document each Card Present and Card Not Present Transaction. Each such Transaction Receipt must include:
 - aa. Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa, MasterCard, or Discover Network).
 - bb. Merchant name and location.
 - cc. Location Code (i.e., merchant identification number issued by Servicer).
 - dd. Transaction amount, including applicable taxes.
 - ee. Transaction date.
 - ff. Space for Cardholder signature for Card Present Transactions.
 - gg. Indication of who shall receive each copy of the Transaction Receipt (e.g., Merchant Copy, Bank Copy, Cardholder Copy).
 - hh. Authorization Code.
 - ii. Terms and conditions of the sale, if restricted.

If the Merchant is accepting consumer debit products of Visa, MasterCard, or Discover Network, no data referencing the Cardholder's PIN number shall be printed on the receipt.

- ii. **Electronic Commerce Transactions.** You will use a Transaction Receipt to document each Electronic Commerce Transaction. Each such Transaction Receipt must include:
 - aa. Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa, MasterCard, or Discover Network).
 - bb. Merchant name.
 - cc. Merchant online address.
 - dd. Purchaser Name
 - ee. Authorization Code.
 - ff. Transaction amount.
 - gg. Transaction date.
 - hh. Customer service contact, including telephone number.
 - ii. Terms and conditions of the sale, if restricted.
- b. **Signatures.** In Card Present Transactions, Transaction Receipts must be signed by the Cardholder unless otherwise specified under separate criteria for a Card Association program (i.e., no signature required programs). The requirement for the Cardholder's signature on the Transaction Receipt will only be waived if the Credit Card Transaction is a valid Card Not Present Transaction which fully complies with the requirements set forth in the TOS and you have been approved by Servicer to accept Card Not Present Transactions.
- c. **Reproduction of Information.** For Card Present Transactions, if the following information embossed on the Credit Card is not legibly imprinted on the Transaction Receipt, you will legibly reproduce on the Transaction Receipt the: (i) Cardholder's name; (ii) account number; (iii) expiration date; and (iv) Merchant's name and place of business. Additionally, for MasterCard Transactions, on the Transaction Receipt you will legibly reproduce the name of the bank that issued the Credit Card as it appears on the face of the Credit Card.

- d. **Truncation.**
- i. The Credit Card account number must be truncated on all Cardholder-activated Transaction Receipts. Truncated digits should be replaced with a fill character such as "x," "*", or "#," and not with blank spaces or numeric characters.
 - ii. Effective July 1, 2003, all new POS Devices must suppress all but the last four digits of the Credit Card account number and the entire expiration date on the Cardholder's copy of the Transaction Receipt generated from electronic (including Cardholder-activated) POS Devices. Effective July 1, 2006, all existing POS Devices must comply with the rule set forth in this subsection.iii. These truncation rules do not apply to Transactions in which the only way to record a Credit Card account number is in handwriting or by making an imprint or copy of the Credit Card.
- e. **Delivery and Retention of Transaction Receipts.** For Card Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder at the time of the Transaction. For Card Not Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder promptly following completion of the Transaction in either electronic (e.g., e-mail or fax) or paper (e.g., handwritten or POS Device-generated) format. You will retain the "Merchant Copy" of the Transaction Receipt or Credit Transaction Receipt for at least eighteen (18) months following the date of completion of the Credit Card Transaction (or such longer period as the Payment Network Regulations or the Laws may require).
- f. **Electronic Transmission.** If you utilize electronic Authorization and/or data capture services, you will enter the data related to Transactions into a POS Device and settle the Transactions and transmit the data to Servicer or its designated agent in the form specified by the Servicer no later than the close of business on the date the Transactions are completed. If Member or Servicer requests a copy of a Transaction Receipt, Credit Transaction Receipt, or other Transaction evidence, you must provide it within the time frame specified in the request.

25. RETRIEVAL REQUESTS AND CHARGEBACKS; CREDITS; REPROCESSING; FRAUD; AND FACTORING.

- a. **Retrieval Requests.** You must respond to a Retrieval Request with a legible copy of the Transaction Receipt within the time frame specified. If you fail to provide a legible copy of the Transaction Receipt, you will receive a Chargeback that cannot be cured.
- b. **Chargebacks.** You are fully liable to Servicer and Member for all Transactions returned to Servicer or Member for whatever reason including, but not limited to, Chargebacks. You agree to accept for Chargeback and will be liable to Member and Servicer in the amount of any sale for which the Cardholder or Issuer disputes the validity of the sale for any reason. You will pay Servicer and Member on demand the value of all Chargebacks. You authorize Servicer and Member to offset from incoming Transactions and to debit the DDA, the Reserve Account, or any other account held at Member or at another financial institution the amount of all Chargebacks. You will fully cooperate with Servicer and Member in complying with the Payment Network Regulations regarding Chargebacks. Guarantors are personally liable for all Chargebacks. The following is not to be considered a complete listing of the reasons for which you may incur a Chargeback. It is intended only to provide the most commonly encountered situations where a Chargeback may occur.
- i. Failure to respond to a Retrieval Request or failure to provide a legible, complete, or proper copy of a Transaction Receipt in response to a Retrieval Request,
 - ii. Unauthorized use of a Credit Card as alleged by the Cardholder,
 - iii. Dispute by the Cardholder over the quality of goods or services,
 - iv. Failure by Merchant to provide goods or services,
 - v. The Transaction Receipt does not bear the Cardholder's signature,

- vi. The Transaction Receipt represents a sales Transaction for which Authorization was initially declined and was subsequently obtained by means of multiple Authorization attempts or other means not permitted hereunder,
- vii. The sales Transaction was completed under circumstances constituting a breach of the Agreement.
- c. **Excessive Activity.** Your presentation to Servicer of Excessive Activity will be a breach of the Agreement and cause for termination of the Agreement, as set forth in Section (B)(16)(b)(ii)(bb). “Excessive Activity” means, during any monthly period, and for any one of Merchant’s terminal identification numbers or merchant identification numbers, Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of your sales Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of sales Transactions. You authorize, upon the occurrence of Excessive Activity, Member and Servicer to take additional actions as either of them may deem necessary including, without limitation, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with the TOS.
- d. **Credits.**
 - i. **Credit Transaction Receipt.** You will issue a Credit Transaction Receipt, instead of issuing cash or a check, as a refund for any previous sales Transaction. Member will debit the DDA for the total face amount of each Credit Transaction Receipt submitted to Servicer. You will not submit a Credit Transaction Receipt relating to any Transaction Receipt not originally submitted to Servicer, nor will you submit a Credit Transaction Receipt that exceeds the amount of the original Transaction Receipt. You will, within the time period specified by applicable Laws or the Payment Network Regulations, whichever time period is shorter, provide Servicer with a Credit Transaction Receipt for every return of goods or forgiveness of debt for services that was the subject of a previous sales Transaction in accordance with the Payment Network Regulations.
 - ii. **Revocation of Credit.** Member or Servicer may, in their sole discretion, refuse to accept any Credit Transaction Receipt for processing.
- e. **Reprocessing.** You will not resubmit or reprocess any Transaction that has been charged back.
- f. **Fraud and Factoring.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a transaction directly between you and a Cardholder or any Transaction you know or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of fraudulent Transactions will be referred to law enforcement officials. You will not deposit any Transaction Receipt representing the refinancing of an existing obligation of a Cardholder. You agree that Servicer may, within its sole discretion, suspend the disbursement of funds from Transaction Receipt for any reasonable period of time required to investigate suspicious or unusual deposit activity. Servicer may, at its discretion, suspend processing privileges or create or maintain a Reserve Account. Servicer and Member will have no liability for any losses you may attribute to any suspension of funds disbursement or suspension of processing activity.

26. OTHER TYPES OF TRANSACTIONS.

- a. **Mail Order/Telephone Order (MO/TO).** You may not solicit or accept MO/TO Transactions unless you have disclosed such method of sale to Servicer previously in writing and you have been approved by Servicer to submit such Transactions. If you complete a MO/TO Transaction without having disclosed such method of sale previously in writing, you will be in breach of the Agreement and Servicer may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Payment Network Regulations, and you may have to pay a surcharge on each such Transaction. You understand that Transactions processed via MO/TO are high risk and subject to a higher incidence of Chargebacks. You are liable for all

Chargebacks and losses related to MO/TO Transactions. You may be required to use an address verification service (“AVS”) on MO/TO Transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a fraudulent Transaction. You will obtain the expiration date of the Credit Card for a MO/TO Transaction and submit the expiration date when requesting Authorization of the Transaction. For MO/TO Transactions, you will type or print legibly on the signature line of the Transaction Receipt the following applicable words or letters: telephone order or “TO,” or mail order or “MO,” as appropriate. Servicer recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by Cardholder for MO/TO Transactions.

b. **Recurring Transactions.**

- i. **Requirements.** For recurring Transactions (e.g., payment of insurance premiums or subscriptions), you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring Transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) a notice from Servicer or Member that authority to accept recurring Transactions has been revoked; or (iii) a response that the Payment Device is not to be honored. You must provide a subsequent order form to the Cardholder when a Recurring Transaction is renewed by the Cardholder. Merchant is responsible for ensuring its compliance with Laws with respect to Recurring Transactions.
 - ii. **Limitations on the Resubmission of Recurring Transactions.** In some limited instances, you may resubmit a pre-authorized recurring Transaction up to four (4) times within sixteen (16) calendar days of the original Authorization request, provided that the decline response is one of the following: (i) authorization denied; (ii) insufficient funds; (iii) exceeds approval amount limit; or (iv) exceeds withdrawal frequency.
 - iii. **Recurring Transaction Receipts.** You must print legibly on the Transaction Receipt the words “Recurring Transaction.” You must obtain the Cardholder's signature, including an electronic signature or other similar authentication that is effective under applicable Laws on the Transaction Receipt. For an Electronic Commerce Transaction, you must also include the frequency and duration of the Recurring Transaction, as agreed to by the Cardholder, on the Transaction Receipt.
 - iv. **Electronic Commerce Recurring Transactions.** In addition to the above, for an Electronic Commerce Transaction, you must also provide a simple and easily accessible online cancellation procedure that complies with Laws, if the Cardholder's request for goods or services was initially accepted online.
 - v. **Recurring Transactions with Varying Amounts.** For Recurring Transactions of varying amounts, all of the following apply: (i) the order form must allow the Cardholder to specify a minimum and maximum Transaction amount to be charged, unless the Cardholder will be notified of the amount and date of each charge, as specified in the remainder of this section; (ii) you must inform the Cardholder of their right to receive, at least ten (10) calendar days prior to each scheduled Transaction Date, written notification of the amount and date of the next charge; and (iii) the Cardholder may choose to receive the notification in any of the following ways: (a) for every charge; (b) when the Transaction amount does not fall within the range of amounts specified on the order form; or (c) when the Transaction amount will differ from the most recent charge by more than an agreed upon amount. Merchant is responsible for ensuring that all communication with, and disclosure to, Cardholders, comply with Laws.
- c. **Multiple Transaction Receipts.** You will include a description and total amount of goods and services purchased in a single sales Transaction on a single Transaction Receipt unless: (i) partial payment is entered on the Transaction Receipt and the balance of the Transaction amount is paid

in cash or by check at the time of the sales Transaction; or (ii) a Transaction Receipt represents an advance deposit in a sales Transaction completed in accordance with the Agreement and the Payment Network Regulations.

d. **Deposits.**

i. **Prior Consent.** You will not accept for payment by Credit Card any amount representing a deposit or partial payment for goods or services to be delivered in the future unless you have disclosed such method of sale to Servicer previously in writing. If you accept a Credit Card for payment or partial payment of goods or services to be delivered in the future without having disclosed such method of sale to Servicer previously in writing, you will be in breach of the Agreement and Servicer may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Payment Network Regulations.

ii. **Acceptance.** If you have disclosed such method of sale to Servicer previously in writing, then you will complete such sales Transactions in accordance with the Agreement, Laws, and Payment Network Regulations. Merchant must execute one Transaction Receipt when processing the deposit Transaction and a second Transaction Receipt upon processing the balance of the Transaction. You will note the words “deposit” or “balance” on the applicable Transaction Receipt, as appropriate. You will not deposit the Transaction Receipt labeled “balance” until the goods have been delivered to Cardholder.

e. **Future Delivery.** You will not present any Transaction Receipt or Credit Transaction Receipt to Member or Servicer for processing (whether by electronic means or otherwise) that relates to the sale of goods or services for future delivery unless you have disclosed such method of sale to Servicer previously in writing and you have been approved by Servicer to submit such Transactions. If you have disclosed such method of sale to Servicer previously in writing, you represent and warrant to Member and Servicer that you will not rely on any proceeds or credit resulting from such sales Transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Transaction Receipts or other Credit Transaction Receipts in connection with future delivery sales Transactions or until you have fully performed the services.

f. **Electronic Commerce.**

i. **Electronic Commerce.** You may not solicit or accept Electronic Commerce sales Transactions unless you have disclosed such method of sale to Servicer previously in writing, you have been approved by Servicer to submit such Transactions, and you may process such Transactions only if the Transactions have been encrypted by a third party vendor acceptable to Servicer and Member. If you submit Electronic Commerce sales Transactions without having disclosed such method of sale to Servicer previously in writing, you will be in breach of the Agreement and Servicer may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and the Payment Network Regulations. You understand that Transactions processed via the Internet are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to Electronic Commerce Transactions, whether or not: (i) such Transactions have been encrypted; and (ii) you have obtained Servicer's consent to engage in such Transactions. Encryption is not a guarantee of payment and does not waive any provision of the TOS or otherwise validate a fraudulent Transaction. Servicer recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by the Cardholder for all Electronic Commerce sales Transactions. All communication costs and compliance with Laws related to Electronic Commerce Transactions will be your responsibility. You understand that Servicer will not manage the telecommunications link for Electronic Commerce Transactions and that it is your responsibility to manage that link. Merchant authorizes Servicer and Member, at Merchant's cost and expense, to perform an annual audit and examination of

Merchant's website and a due diligence review as required by the Payment Network Regulations for Electronic Commerce Merchants.

- ii. **Requirements.** For goods to be shipped on Electronic Commerce sales Transactions, you may obtain authorization up to seven (7) days prior to the shipment date. You need not obtain a second authorization if the Transaction Receipt amount is within fifteen percent (15%) of the authorized amount, provided the additional amount represents shipping costs. Further, your Web site must contain all of the following information: (a) complete description of the goods or services offered; (b) returned merchandise and refund policy; (c) customer service contacts, including electronic mail address and/or telephone number; (d) complete address (street address, city, state, zip code, and country) of the permanent establishment of the business; (e) complete address of the permanent establishment of the business on either the checkout screen (which displays the total purchase amount) or within the sequence of Web pages presented to the Cardholder during the checkout process; (f) Transaction currency (such as U.S. or Canadian dollars); (g) export or legal restrictions, if known; (h) delivery policy; (i) customer data privacy policy; and (j) your method of Transaction security. If you store Cardholder account numbers, expiration dates, or other personal Cardholder data in a database, you must follow the applicable Credit Card Association rules on securing such data. You may not retain or store CVV2/CVC2/CID data after authorization for record keeping or additional authorization processing.

27. **INTERCHANGE.** Interchange qualification requirements, as defined by the Credit Card Associations, affect the Merchant's fees or surcharges owed for Transactions. Merchant will pay a higher discount rate, higher fees, and surcharges for Transactions that do not meet the best rate qualification criteria or have been processed in a manner other than for which the Merchant was approved.

SECTION D - ACCEPTANCE OF PIN-BASED, ONLINE DEBIT CARDS

- 28. ACCEPTANCE OF DEBIT CARDS.** If Servicer provides PIN-based Debit Card Transaction processing services to Merchant through an online POS Device for certain Debit Cards, the following provisions apply in addition to the General Provisions of Section (B) and Section (C), as applicable, above and the definitions within the Glossary.
- 29. DEBIT CARD DEFINITIONS.** For purposes of this Section (D), "Debit Card" shall be deemed to be limited to any PIN-based, online Debit Card; and "POS Device" shall be deemed to be a POS Device that incorporates: (i) a Track 2 Magnetic Stripe Reader; (ii) communicates electronically, directly or indirectly, with the Servicer Debit System; (iii) uses a receipt printer capable of providing a receipt conforming to the Debit Card Rules and Regulation E; (iv) uses a journal printer, journaling facility or terminal-generated receipt; (v) uses an encrypted alphanumeric PIN Pad; and (vi) uses a keyboard that can perform actions, functions and data entry. POS Device also includes a Pin Entry Device (PED) that is used by the Cardholder to enter a PIN that identifies a Cardholder in an Authorization request originating at a terminal with electronic capability.
- 30. DEBIT CARD RULES.** Merchant shall comply with and be bound by the Debit Card Rules which are incorporated by this reference as if fully set forth herein.
- 31. DEBIT CARD TRANSACTION FEES.** Authorization, Interchange and access fees, as defined by the EFT Networks, affect the Merchant's fees for Debit Card Transactions.
- 32. DISPLAY OF DEBIT CARD MARKS.** Unless otherwise informed by Servicer, Merchant shall prominently display the most current versions of the EFT Network's names, symbols, and/or service marks, as appropriate, at or near the POS Device and may display such marks on promotional materials to inform the public that such Debit Cards will be honored at Merchant's place(s) of business. Merchant's use of such marks must comply with the requirements of each mark's owner. Merchant's right to use or display such marks shall continue only long as the Agreement remains in effect and such right shall automatically terminate upon termination of the Agreement, and Merchant must remove the marks immediately upon termination.
- 33. USE AND AVAILABILITY OF POS DEVICES AND PIN PADS.**
- a. A Cardholder's Debit Card information and PIN are confidential. The Merchant may not request or require a Cardholder to disclose his or her PIN at any point during a Transaction.
 - b. During the Transaction process, the Merchant must provide a reasonably secure area for Cardholders to enter their PIN into the PIN Pad.
 - c. Merchant shall cause a POS Device and PIN Pad to be readily available for the use of all Cardholders at all of Merchant's business locations where Debit Cards are accepted. Merchant shall take all reasonable steps to ensure that all POS Devices and PIN Pads operated at Merchant's business locations function with a minimum of error, in a reliable manner, and in accordance with the standards established from time to time by Servicer and the EFT Networks.
 - d. Merchant shall use a POS Device to initiate every Debit Card Transaction, and Merchant shall require that either the Cardholder or the Merchant insert and "swipe" the Debit Card through the POS Device to initiate every Debit Card Transaction, except as set forth herein. No Debit Card Transaction may be initiated unless the Debit Card is physically present.
 - e. Merchant shall require that each Debit Cardholder enter his or her PIN utilizing a PIN Pad at the POS Device when initiating a Debit Card Transaction. Merchant may not require a Debit Cardholder to sign a Transaction Receipt or other receipt, or require any other means of identification.
- 34. NO MINIMUM OR MAXIMUM.** Merchant shall not establish minimum or maximum Debit Card Transaction amounts except to establish a maximum Cash Back dollar amount not to exceed \$200.00.

- 35. SURCHARGES.** Merchant may not add any amount to the posted price of goods or services Merchant offers as a condition of paying with a Debit Card unless permitted by all of the applicable Debit Card Rules.
- 36. PRE-AUTHORIZATION REQUESTS.** Merchant may initiate pre-authorization requests pursuant to the following procedures:
- a. The Cardholder must enter the PIN on the PIN Pad.
 - b. The Debit Card must be inserted and "swiped" through the POS Device.
 - c. The pre-authorization request must be for a specific dollar amount. The subsequent purchase pre-authorized hereunder must be completed within two (2) hours after the original pre-authorization request.
 - d. Funds shall not be transferred with respect to a pre-authorization request.
 - e. In order to complete the subsequent purchase pre-authorization, Merchant shall transmit a completion message indicating the actual dollar amount of the Debit Card Transaction, and shall comply with all requirements of a purchase Debit Card Transaction, at that time, except that entry of a PIN and "swiping" of a Debit Card is not required to complete the subsequent purchase if these steps were properly taken in order to pre-authorize such purchase. Such subsequent purchase shall not be authorized or completed unless the actual dollar amount of the purchase is less than or equal to the amount specified in the pre-authorization request.
 - f. If Merchant initiates pre-authorization requests, it shall support the processing of partial pre-authorizations.
- 37. DEBIT CARD TRANSACTIONS.**
- a. Merchant shall support the following Debit Card Transactions:
 - i. Purchases, and
 - ii. Merchandise credits.
 - b. Merchant may also support the following Debit Card Transactions if supported by the applicable EFT Network:
 - i. Purchase with cashback, and
 - ii. Balance inquiries.
 - c. **Prohibited Transactions.** Merchant shall initiate Transactions only for products or services approved by Servicer. In no event shall Merchant initiate, allow, or facilitate a gambling or gaming transaction, or fund a stored value account for such purposes.
- 38. TRANSACTION RECEIPT REQUIREMENTS.** Unless otherwise specified under separate criteria for a Card Association program (i.e., no signature required programs), at the time of any Debit Card Transaction (other than a balance inquiry or pre-authorization request), Merchant shall make available to each Cardholder a Transaction Receipt that complies fully with all Laws and containing, at a minimum, the following information:
- a. Amount of the Debit Card Transaction,
 - b. Date and local time of the Debit Card Transaction,
 - c. Type of Transaction;
 - d. Type of account accessed;
 - e. Truncated Debit Card number (showing the final four (4) digits),
 - f. Merchant's name and location at which the Debit Card Transaction was initiated, and

- g. Trace or retrieval reference number.
- 39. MERCHANDISE RETURNS.** Merchant may electronically perform a merchandise return (if permitted by the applicable EFT Network) for a Debit Card Transaction only at the same Merchant named on the Transaction Receipt where the original Debit Card Transaction was initiated. If permitted, a merchandise return requires the following procedures:
- a. The Cardholder must re-enter the PIN on the PIN Pad,
 - b. The Debit Card must be inserted and "swiped" through the POS Device, and
 - c. Merchant must transmit the reference number or authorization number and the exact dollar amount of the Debit Card Transaction to be returned.
- 40. BALANCE INQUIRIES.** Merchant may accommodate balance inquiries if the applicable EFT Network and the Issuer support the balance inquiry function provided that the Merchant requires that the Cardholder enter their PIN on the PIN Pad and insert and "swipe" the Debit Card through the POS Device.
- 41. PURCHASE WITH CASH BACK.** Merchant may offer purchase with cashback Transactions pursuant to the following procedures:
- a. For each purchase with Cash Back, Merchant shall transmit in its Transaction message the amount of cash given to the Cardholder (if permitted by the Servicer's Debit System).
 - b. If a request for Authorization of a purchase with Cash Back is denied solely because the cash requested exceeds the Debit Card Issuer's limit on cash withdrawals, Merchant shall inform the Cardholder of the reason for the denial and that a new purchase Transaction in the amount of the purchase alone might be approved.
 - c. The amount of Cash Back may be limited by the EFT Networks or Issuer.
- 42. TECHNICAL PROBLEMS.** Merchant shall ask a Cardholder to use an alternative means of payment if the Servicer Debit System, the POS Device, or the PIN Pad is inoperative, the electronic interface with any EFT Network is inoperative, or the magnetic stripe on a Debit Card is unreadable, and Merchant elects not to or is unable to store Debit Card Transactions.
- 43. ADJUSTMENT.** A Debit Card Transaction may be adjusted if an error is discovered during Merchant's end-of-day balancing only by means of a written request from Merchant to Servicer. The request for adjustment must reference a settled Debit Card Transaction that is partially or completely erroneous or a denied pre-authorize Transaction for which the pre-authorization request was approved. An adjustment must be completed within forty-five (45) days after the date of the original Debit Card Transaction.
- 44. TERMINATION/SUSPENSION.** When requested by any EFT Network in its sole discretion, Merchant will immediately take action to: (i) eliminate any fraudulent or improper Transactions, (ii) suspend the processing of Debit Card Transactions; or (iii) entirely discontinue the acceptance of Debit Card Transactions.

SECTION E - ACCEPTANCE OF AMERICAN EXPRESS, DINERS, AND/OR JCB

- 45. ACCEPTANCE OF AMERICAN EXPRESS, DINERS, AND/OR JCB CARDS.** If Servicer provides authorization and/or data capture services to Merchant for American Express, Diners, and/or JCB Transactions, Merchant agrees to the following provisions, in addition to the General Provisions of Section (B) above, including, without limitation, Section (B)(8)(b) above, and the definitions within the Glossary.
- 46. ACCESS.** Upon request and fulfillment of the following conditions, Servicer will provide access to authorization and/or data capture services for American Express, Diners, and/or JCB Transactions to Merchants who have been approved by American Express, Diners, and/or JCB and who have entered into a separate Agreement with American Express, Diners, or JCB, respectively; provided, however that neither Servicer nor Member shall be responsible for funding such Transactions unless otherwise agreed to writing. All issues with respect to funding, Chargebacks or other Transaction related disputes shall be resolved between Merchant and American Express, Diners, and/or JCB, as may be applicable.
- 47. FORWARDED INFORMATION.** Servicer will forward certain information pertaining to Merchant, including, but not limited to, contact information and DDA numbers, to one or more of such Card Associations, unless Servicer receives from Merchant written instructions to the contrary.

SECTION F - ACCEPTANCE OF ELECTRONIC BENEFITS TRANSFER (EBT)

- 48. ACCEPTANCE OF EBT CARDS.** If Merchant accepts EBT Transactions, Merchant agrees to the following provisions, in addition to the General Provisions of Section (B) above and the definitions within the Glossary.
- 49. AGREEMENT TO ISSUE BENEFITS.** Subject to the provisions hereof, Merchant agrees to issue Benefits to Recipients in accordance with the procedures specified in Servicer's applicable EBT Policies and Procedures Manual provided to Merchant by Servicer, as amended from time to time (the "Manual") and in accordance with all Laws and Payment Network Regulations pertaining to EBT Transactions, including without limitation, laws pertaining to delivery of services to Recipients and Recipient confidentiality, including, without limitation, the Federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, and regulations issued by the Department of Agriculture pertaining to the Food Stamp Program. The Manual, as amended from time to time, shall be deemed to be incorporated by reference into the TOS and constitutes a part of the Agreement.

SECTION G - ACCEPTANCE OF ELECTRONIC GIFT CARDS

- 50. ACCEPTANCE OF ELECTRONIC GIFT CARDS.** If Servicer provides services to Merchant for the processing of Electronic Gift Cards, Loyalty Cards, or Stored Value Cards ("Cards"), Merchant agrees to the following provisions, in addition to the General Provisions of Section (B) above and the definitions in the Glossary. For purposes of this Section (G) the following additional definitions shall apply: Cardholder means any individual who possesses and uses a Card or who purports to be the person in whose name the Card was registered as an authorized user, if applicable. Cardholder Data means one or more of the following data elements pertaining to a Cardholder's account: Card number, Cardholder name (if applicable), Card account activity, Cardholder account balance, and/or such other data applicable to the Merchant's Card program. Electronic Gift Card (EGC) means a special card purchased by a customer or provided by Merchant to a customer that is redeemable for in-store merchandise or services. Laws means all applicable state, federal and local laws, rules, and regulations, orders and decrees, as amended from time to time. Loyalty Card means a device used to hold a currency and/or points value in a stored value program (also referred to as a "Stored Value Card"). Master Account means the account (e.g. funds pool) that is used to hold the value of Cards that have been issued among a group or chain of merchants, alternatively, this may refer to the back-up account used to offset ACH rejects, if applicable. Primary Merchant means the Merchant Identification Number (MID)/location originally enrolled for Cards and set up to be billed for the card orders placed or designated as the corporate or headquarter location. Stored Value Card means a device used to hold a currency and/or the points value in a stored value program (also referred to as a "Loyalty Card"). Transaction means an activation, adjustment, balance inquiry, balance transfer, batch activation, cancel card/cash back, cancel, credit, increment/reload, pre-authorization, post-authorization, redemption, service fee/deduction, points, points redemption, points cancel, register, or other transaction type, as available.
- 51. SERVICES PROVIDED.** Servicer will provide the following services to Merchant:
- a. Electronic processing of Card Transactions and purchases made by customers of Merchant who hold Cards. Servicer will confirm electronically that the Cardholder activating the Card Transaction through Merchant has an active account on Servicer's Electronic Gift Card processing system in which there is sufficient value that can be reserved or removed for the value of the purchase. Servicer will adjust the Cardholder's account through either a debit or credit, as applicable, in the amount of the purchase and will credit the Cardholder's account any approved Transaction as defined herein.
 - b. Servicer will maintain an accessible electronic record of the Transactions described above for the lifetime of a Card with a balance and after the balance on the Card has been depleted for a period not less than sixty (60) days.
- 52. MERCHANT RESPONSIBILITIES.**
- a. Merchant shall be the issuer of all Cards and shall retain and hold all funds associated with Cards in accordance with applicable Laws.
 - b. Merchant acknowledges and agrees that it is Merchant's sole responsibility to comply with any and all applicable Laws governing the issuance, distribution, use, and acceptance of Cards (e.g., laws regarding expiration, fees, money transmission and abandoned/unclaimed property). Further, Merchant agrees to comply in a complete and timely manner with any such Laws, including but not limited to all abandoned/unclaimed property, money transmission and consumer property/protection laws, now or hereafter applicable to the issuance, distribution, use or acceptance of Cards.
 - c. Merchant will supply to Servicer all information and data requested by Servicer to perform services related to Merchant's issuance and acceptance of Cards including the location of POS Devices and Cardholder Data.

- d. Merchant will maintain all Transaction Receipts and any other receipts as required by Laws.
- e. Until such time as Transaction data has been received and validated by Servicer, Merchant will maintain sufficient "backup" information and data (e.g. Transaction Receipts or detailed reporting) with respect to Electronic Gift Cards previously sold to reconstruct any information or data loss due to any system malfunction.
- f. Servicer must participate in all Transactions. In the event that a third party must participate in the Transaction, Merchant will only use third party entities approved by Servicer to accept or process Card Transactions.
- g. When Merchant sells a Card from its physical location or locations, including sales completed via ecommerce, the Merchant is responsible for the collection and settlement of all funds relating to the sale of the Card including processing costs, such as any credit card transaction fees or bank service fees, where applicable.
- h. In addition to any other applicable fees, Merchant is responsible for all card production and delivery costs. Further, the Merchant agrees to comply with the Graphic Specifications and Procedures provided by Servicer and incorporated herein by reference as such may be amended from time to time.
- i. If applicable, Merchant is responsible for submitting electronic artwork as described in the Graphic Specifications and Procedures provided by Servicer and incorporated herein by reference as such may be amended from time to time. Merchant understands that the card proof cannot be created without the submission of artwork, if requested, and according to the Graphic Specifications. Failure to submit artwork or comply with the Graphic Specifications may result in additional fees charged to the Merchant for design work performed to correct the artwork and will result in the delay of the card production process. Servicer and card manufacturer cannot be held responsible for the quality of cards produced using artwork that does not meet the Graphic Specifications. Merchant is responsible for any intellectual property infringement or similar claims that arise from Servicer's production of Cards bearing Merchant-submitted artwork. Digital artwork should be submitted to:

EGCartwork@elavon.com
-OR-
Elavon, Inc.
Attn: Boarding - EGC
7300 Chapman Highway
Knoxville, TN 37920

When sending in artwork, please include:

1. Name of the Merchant and MID
2. Indicate Standard or Custom card order
3. Name and telephone number of graphic contact should there be any questions or issues with the artwork submitted

For COMPLETE detailed specifications, please send a request for Graphic Specifications to EGCartwork@elavon.com. In your request please indicate that you want Standard card or Custom card specifications.

- 53. DIRECT SETTLEMENT.** Merchants enrolled in direct settlement further authorize Servicer to initiate credit and debit entries among the chain locations for any Transactions that change the balance of the Card. In the event Servicer is unable to accomplish a Transaction among chain locations, Merchant further authorizes Servicer to credit and/or debit the designated Master Account or Primary Merchant Account. Merchant also understands that Servicer may, in its sole discretion, offset any debits against the related Transactions of the applicable chain or merchant location. Merchant also agrees to notify Servicer in writing of any asserted errors within (sixty) 60 days of the statement date on which the asserted error occurred and understands that any failure to do so will preclude further

claims. Both the Merchant and the individual chain locations agree to pay related direct settlement fees.

- 54. SYSTEM DOWNTIME.** Merchant will not be able to process Card Transactions if the Electronic Gift Card processing system is down and will not be able to verify the validity of or available balance on a Card during any such downtime. Merchant will be solely liable for any losses or damages incurred if Merchant accepts a Card Transaction without receipt of Card and available balance verification from Servicer, including during any system downtime.
- 55. WARRANTIES/LIABILITY.**
- a. Servicer is not responsible for lost or stolen Cards.
 - b. Servicer makes no warranty, express or implied, with respect to the services provided hereunder including, without limitation, any express or implied warranty regarding the services' or Cards' compliance with any applicable Laws governing the issuance, distribution, use, and acceptance of Cards. This includes but is not limited to all abandoned/unclaimed property, money transmission and consumer property/protection Laws.
- 56. POST TERMINATION.** Following termination, Merchant will pay Servicer a transfer fee based in part on, but not limited to, the number of issued Cards that must be converted to another processor and the data specifications required.
- 57. ADDITIONAL FEES.** Merchant agrees to pay Servicer for EGC production once Merchant has approved the EGC design proof. Merchant accepts full responsibility for all EGC production costs. Merchant acknowledges that one proof per Card order is included in the cost of Card production and Merchant agrees to pay thirty-five dollars (\$35) for additional proofs. If any order is cancelled prior to Card production, Merchant agrees to pay Servicer a one hundred dollar (\$100) cancellation fee.
- 58. ADDITIONAL LOCATIONS.** Locations added to this processing relationship will be boarded on Servicer's system pursuant to the paperwork submitted by Merchant. However, in the event of an error or omission of fees on the submitted paperwork, the Transaction processing and monthly fees applied to the locations during the initial set up or subsequent negotiations will be applied.
- 59. CLOSING LOCATIONS.** In the event that a particular location closes or changes its MID, Merchant agrees for Servicer to bill the Primary Merchant for any fees associated with subsequent Transactions processed on Cards activated by the closed MID. This would apply to any system generated Transactions including, but not limited to, deduction and points conversion Transactions. Monthly fees billed for Loyalty Cards/members activated at the closed location would also be billed to the Primary Merchant.
- 60. EFFECTIVENESS AND DELIVERY.** These additional provisions will become effective upon your acceptance hereof, which shall be evidenced by your conducting a Transaction involving a Card. Delivery of the various documents and instruments comprising the Electronic Gift Card Enrollment Form/Addendum may be accomplished by electronic communication (e.g., electronic mail or facsimile transmission) and shall be deemed delivered upon receipt.

SECTION H - WIRELESS SERVICE

- 61. WIRELESS SERVICE.** If Merchant utilizes a Wireless POS Device and you have been approved by Servicer to accept wireless Transactions, Merchant agrees to the following provisions, in addition to the General Provisions of Sections (B) and (C) above and the definitions within the Glossary.
- 62. LIMITATIONS OF WIRELESS TECHNOLOGY.** Merchant acknowledges and agrees that because of the emerging nature of wireless technology, certain limitations exist that may affect the performance, Coverage Area, and reliability of wireless technology and wireless processing. Without limiting the generality of the foregoing, wireless processing and the use of a Wireless POS Device are limited to the Coverage Area and may further be limited by a variety of other factors, circumstances, and considerations including, but not limited to, the following: (i) use of a Wireless POS Device outside the Coverage Area will not be possible; (ii) within the Coverage Area, there may exist certain weak coverage areas or other fringe areas where wireless Transaction processing may be intermittent or otherwise interrupted; (iii) within the Coverage Area, certain geographic areas may exist in which wireless Transaction processing may be intermittent or not possible; (iv) at any time and without notice, any wireless network may become inoperative due to technical difficulties or for maintenance purposes thereby affecting the Merchant's use of wireless Transaction processing. In the event Merchant's ability to process wireless Transactions is limited or prevented for any reason, Merchant agrees that it shall not process any such Transaction through the use of wireless technology, and shall in all events obtain an Authorization Code for any such Transaction through means other than wireless processing, as described in the TOS. You understand that wireless Transactions are high risk, including the risk that data from a wireless POS Device can be compromised, and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to wireless Transactions.
- 63. COMPLETING UNAUTHORIZED TRANSACTIONS.** If you choose to complete a Transaction without an Authorization Code because wireless coverage is not available (i.e., you store Transaction data in a WirelessPOS Device, provide the Cardholder goods or services and subsequently request Authorization of the Transaction), you do so at your own risk. You understand the risk associated with not obtaining an Authorization Code prior to completing the Transaction (i.e., you subsequently may receive a "decline" or "error" message in response to the later Authorization request). You are fully liable for all Transactions whether or not an Authorization Code is received.

SECTION I - ELECTRONIC CHECK SERVICES

- 64. ELECTRONIC CHECK SERVICES.** IF Merchant has requested Servicer to provide Merchant with Electronic Check Services (ECS) the Merchant agrees to the following provisions, in addition to the General Provisions of Section (B) above and the definitions within the Glossary.
- 65. RULES OF CONSTRUCTION.** These provisions are intended to complement and are subject to your Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement, including the Terms of Service ("TOS") and the ECS Merchant Operating Guide ("ECS MOG") included as a part thereof. Additionally, the terms of the ECS Primer are incorporated into these provisions when applicable. In the event of a conflict between these provisions and other terms of the Agreement, the terms of this Section shall prevail.
- 66. ECS RULES AND LAWS.** In the course of its acceptance of ECS, Merchant shall comply with and be bound by (a) the ECS Rules, including the ACH Rules, and (b) Laws, including, but not limited to, the Check Clearing for the 21st Century Act and Regulation CC, Article 3 and Article 4 of the Uniform Commercial Code as in effect in the applicable state(s), the Electronic Fund Transfer Act and Regulation E, and the Fair Credit Reporting Act as amended by the Fair and Accurate Credit Transactions Act.
- 67. ECS FEES.** Fees for ECS and Merchant's selection of ECS Service Levels are set forth in the ECS Enrollment Form/Addendum ("ECS Enrollment") or in a Schedule to your Agreement.
- 68. ECS PROCESSING OPTIONS INCLUDED UNDER THE TOS.** ECS supports several Paper Check Conversion and electronic check processing alternatives, as well as Check Replacement Document processing. Merchant shall select the desired ECS processing option(s) on the ECS Enrollment. Paper Checks that are not able to be processed electronically may be processed in the form of Check Replacement Documents, as described from time to time in the ECS MOG.
- a. **POP Transactions.** "POP" is used for Paper Check present/Customer present environments, and includes a "point-of-purchase entry" under the ACH Rules. At the time of any POP Transaction when the Customer's Paper Check is scanned and converted into an electronic payment, Merchant shall make available to each Customer a Transaction Receipt as specified in the ECS MOG. Merchant must obtain the Customer's signature on the Transaction Receipt and retain it for at least two (2) years in accordance with applicable ECS Rules. Any Paper Check images retained by Merchant must be stored in a secure manner and in accordance with applicable Law. Telephone, electronic (online), mail, lock box, internet, pre-authorized or other like transactions are expressly prohibited. Merchant shall ensure that Paper Checks issued Approval are either "franked" or marked "VOID" and returned to the Customer, as described in the ECS MOG.
 - b. **BOC Transactions.** "BOC" is used for Paper Check present/Customer present environments where Merchant can accept and retain Paper Checks at the point of sale or at a staffed bill payment location for back-office conversion into an electronic payment. "BOC" includes a "back-office conversion entry" under the ACH Rules. Merchant must provide Customer notice at the point of sale that it may convert a Paper Check into an electronic payment and must permit Customers to elect not to have their Paper Check converted, as described in the ECS MOG. At the time of any BOC Transaction when the Customer's Paper Check is received, Merchant shall make available to each Customer a Transaction Receipt/takeaway as specified in the ECS MOG. If Merchant selects a Paper Check Image Option other than Outsourced Image, Merchant must perform image capture and initiate image transfer to Servicer of all Paper Checks within one (1) calendar day of the Transaction date. Merchant is responsible for voiding and destroying Paper Checks after image capture in accordance with ECS Rules.
 - c. **ARC Transactions.** "ARC" is used for Paper Check present/Customer absent environments where Merchant receives a Customer's Paper Check via the mail or at a drop-box location, and includes an "accounts receivable conversion entry" under the ACH Rules. Merchant must provide Customer notice that it may convert Paper Checks into electronic payments prior to each

Transaction and must permit Customers to elect not to have their Paper Checks converted, as described in the ECS MOG. Paper Check images retained by Merchant must be stored in a secure manner, and in accordance with applicable Law. Merchant is responsible for voiding and destroying Paper Checks after image capture in accordance with ECS Rules.

- 69. ECS SERVICE LEVELS AVAILABLE UNDER THE TOS.** Merchant shall select an ECS Service Level (the "Service Level") on the ECS Enrollment. In the event Merchant fails to select a Service Level, or the Service Level(s) selected is not in compliance with the ECS Rules or is otherwise unavailable, Merchant shall receive ECS Conversion with Verification as described below and in the ECS MOG. All ECS Service Levels include the Conversion of the Customer's Paper Check into an electronic payment under the applicable processing option(s) selected by Merchant. The ECS Service Levels available to Merchant are as follows:
- a. **ECS Conversion with Guarantee.** The Authorization message is routed to the Participant Drawee Bank or a third party Authorizing Agent to authorize the Transaction. The Participant Drawee Bank or Authorizing Agent issues an "Approval" or "Decline" decision based on access to the Customer's DDA and/or third party risk management database(s). Any Transaction in excess of the maximum Paper Check amount as disclosed in the "Processing Options" Section in the ECS Enrollment form is strictly prohibited. The Guarantee processing rate may apply regardless of the Authorization response message received and regardless of whether the Paper Check processed is eligible for the Guarantee as described in the ECS MOG. **THE GUARANTOR, SUBJECT TO ITS OWN CHARGEBACK CRITERIA, BEARS THE RISK OF LOSS IF AN APPROVED, QUALIFYING TRANSACTION IS REVERSED OR OTHERWISE FAILS TO SETTLE.** If Merchant fails to obtain the information required under this Section and the ECS MOG, provides incorrect information and/or falsifies information, Merchant forfeits the ECS Conversion with Guarantee protection for the affected ECS Transaction(s). Merchant is liable for Chargebacks that may result from such failure. If Merchant knowingly provides false information, Merchant will be subject to termination of the ECS, the Agreement, and any other rights and remedies available to a provider of ECS, including, but not limited to, payment of the amount of each Transaction and any damages, costs, loss, penalties, and/or fees related to such ECS Transactions.
 - b. **ECS Conversion with Verification.** The Authorization message is routed to the Participant Drawee Bank or a third party Authorizing Agent for verification of the probability that the amount of the Paper Check will be paid, based on information available at the time of the request. The Participant Drawee Bank or Authorizing Agent issues an "Approval" or "Decline" decision based on access to the Customer's DDA and/or third party risk management database(s). **MERCHANT RETAINS THE RISK OF LOSS IF THE TRANSACTION IS REVERSED OR OTHERWISE FAILS TO SETTLE.**
 - c. **ECS Conversion Only.** The Authorization message is routed to the Participant Drawee Bank or an Authorizing Agent to determine if the Paper Check contains a valid ABA Routing Number and account number at the time of the request and is eligible for ECS. No additional risk decisioning is made for acceptance of the Transaction. **MERCHANT RETAINS THE RISK OF LOSS IF THE TRANSACTION IS REVERSED OR OTHERWISE FAILS TO SETTLE.**
 - d. **ECS Conversion with Verification and Collections and ECS Conversion Only with Collections.** The Transaction Authorization process and risk allocation is as described above under the applicable Service Level, but Servicer automatically submits Transactions returned for insufficient or uncollected funds to a third-party collection agency. Merchant must enter a separate contract with the collection agent designated to perform this service in order to collect the amount(s) owed to Merchant in connection with an ECS Transaction.
- 70. PAPER CHECK IMAGE OPTIONS.** For qualifying Merchants, the following options may apply:
- a. **POS with Image.** If Merchant elects to receive POS with Image services on the ECS Enrollment, Merchant shall scan the Paper Check at the point of sale to initiate an image transfer to Servicer. Merchant must use a certified Check Reader/Imager integrated with or attached to an approved

POS Device. Merchants must use POS with Image service in connection with POP and ARC Transactions. Merchants electing BOC processing on the ECS Enrollment will be setup for POS with Image as their Paper Check image capture service unless another image capture option is selected on the ECS Enrollment.

- b. **Cash Office Image (COI).** If Merchant elects to receive COI services on the ECS Enrollment, Merchant shall retain all Paper Checks issued Approval and within one (1) calendar day from the Transaction Approval date, Merchant shall scan the Paper Checks to initiate an image transfer to Servicer. Merchant must utilize a certified COI Check Reader/Imager with stacking capabilities interfaced to Image Software or Third Party Image Software. (The term "Image Software" means the software application provided to Merchant by Servicer pursuant to a separate agreement. The term "Third Party Image Software" means any software provided to Merchant by a third party or developed internally by Merchant to be used with COI or CI services that has been certified by Servicer or its agent to be compliant with Servicer's specifications.)
- c. **Outsourced Image (OI).** If Merchant elects to receive OI services on the ECS Enrollment, Merchant and Servicer shall arrange for delivery of physical Paper Checks from Merchant locations to third party image capture locations designated by Servicer. Servicer or its agent will scan the Paper Checks and send the images to the ECS image archival host.
- d. **Centralized/Enterprise Image (CI).** If Merchant elects to receive CI services on the ECS Enrollment, Merchant shall retain and consolidate at a Merchant centralized location all Paper Checks issued Approval and, within one (1) calendar day from the Transaction Approval date, Merchant shall scan the Paper Checks at the centralized location to initiate an image transfer to Servicer. Merchant must utilize a certified high speed imager interfaced with Image Software or Third Party Image Software.

71. MERCHANT'S RESPONSIBILITIES.

- a. In the event Merchant accepts for ECS any Paper Check that is ineligible as specified in the ECS MOG for any reason, such Transactions are subject to Chargeback. Merchant may be liable for the face value of the Paper Check and any actual damages related to or arising out of processing a Transaction that has been charged back. Merchant should consult with an attorney regarding its rights and responsibilities in connection with the ECS.
- b. Merchant shall cause a POS Device to be readily available for use at all applicable Merchant locations.
- c. Merchant shall be solely responsible for providing Customers with notifications and disclosures in connection with ECS, including, but not limited to, posting all POS signage and distributing all Customer takeaways and all notices and disclosures required to be provided under the ECS Rules and Laws.
- d. Merchant may use the ECS only in connection with the presentment and acceptance of a Paper Check in payment for goods or services or for an obligation owed, and only in compliance with the ECS Rules. Merchant shall be the sole user of the ECS, and Merchant may not resell or otherwise transfer any portion of ECS (or any associated information) in whole or in part to any other person.
- e. Merchant represents and warrants with respect to all ECS Transactions accepted and processed by Servicer that the Customer has duly authorized the debiting of their account in accordance with Laws, the Transaction represents an obligation of the person who is tendering the Paper Check, and the ECS Transaction is for merchandise actually sold or rented, for services actually rendered, or for an amount due and owing from Customer to Merchant, in each case for the actual price of such merchandise or services (including tax) or for the actual amount due and owing to Servicer. Merchant represents and warrants that no portion of any ECS Transaction involves any element of credit.

- f. Subject to the restrictions provided herein and in the Agreement, including the ECS MOG, Merchant shall support all ECS Transactions applicable to Merchant.
 - g. Paper Check Conversion and submission for Authorization must be performed by Merchant at the POS, at the time of the Transaction, if Merchant has selected either the ECS Conversion with Guarantee or ECS Conversion with Verification Service Level. If Merchant has selected the ECS Conversion Only Service Level, Merchant may submit Authorizations at the POS, at the time of the Transaction, or may follow the Batch procedures described in the ECS MOG.
 - h. Merchant may not use ECS for returns or refunds, as ECS does not support this function. Merchandise returns or refunds must be handled outside ECS by direct negotiation between Merchant and the Customer.
 - i. Merchant is responsible to Servicer for any Transaction charged back by Servicer or its agent in accordance with the Agreement, including the ECS MOG, plus any fines or penalties permitted by under Laws or the ECS Rules. Merchant agrees to immediately pay to Servicer or its agent (by means of debit or set-off initiated by Servicer or its agent, submission of payment by Merchant, or otherwise, at the sole option of Servicer) an amount equal to the amount of the ECS Transaction that is stopped, not settled, or charged back, as well as any related fees and charges.
 - j. Merchant must fully cooperate with all parties in the resolution of Customer disputes, as well as Chargebacks, returns, adjustments, representations and errors in accordance with the ECS Rules and Laws.
 - k. In the event that Merchant does not elect the ECS Conversion with Guarantee Service Level, or individual ECS Transactions did not receive proper Authorization to be eligible for the Guarantee or were otherwise charged back by Servicer or a Guarantor, Merchant is responsible for all ECS Transactions that are stopped or otherwise are not settled.
 - l. If Merchant elects the ECS Conversion with Guarantee Service Level, Merchant shall cooperate with Customers to avoid stopped ECS Transactions and Customer disputes not protected by the Guarantee.
 - m. Merchant will not disclose to third parties any information related to ECS Transactions including, but not limited to, Customer DDA information, driver's license number, telephone number, or social security number except as specified in the Agreement, including the ECS MOG. Merchant shall keep all such information confidential and secure, in accordance with the Agreement and Laws.
 - n. Merchant does not have the right to use ECS data for any purpose other than to support the ECS itself.
 - o. Merchant must treat all ECS documents, including, but not limited to, the Agreement, including the ECS Rules, the ECS MOG, the ECS QRG and ECS collateral material as confidential and proprietary information and protect it with the same degree of care as it would protect its own confidential and proprietary information and as further specified in the Agreement.
 - p. Merchant's Agreement and use of the ECS may be terminated immediately by Servicer for failure to comply with the terms of this Section, the Agreement and Laws.
 - q. Merchant must use commercially reasonable procedures to verify the identity of each Customer.
 - r. Except as supplemented herein, the Agreement remains unaltered and in full force and effect.
- 72. EXECUTION AND DELIVERY OF ECS ENROLLMENT.** Delivery of executed counterparts of the ECS Enrollment may be effected by facsimile transmission and a signed facsimile or copy of the ECS Enrollment shall constitute a signed original.
- 73. USE OF THIRD PARTY SERVICE PROVIDERS.** Merchant acknowledges that certain portions of ECS may be provided to Merchant by a third party service provider under contract with Servicer.

SECTION J - DYNAMIC CURRENCY CONVERSION

- 74. DYNAMIC CURRENCY CONVERSION.** If Merchant has requested Servicer to provide Merchant with Dynamic Currency Conversion (DCC) through a POS Device, Merchant agrees to the following provisions, in addition to the General Provisions of Section (B) and Section (C), as applicable, above and the definitions within the Glossary.
- 75. DCC DEFINITIONS.** For purposes of this Section (J), the following additional definitions apply: "Transaction Currency" means the international Cardholder's local currency in a DCC Transaction. "Express Service Transaction" means a unique Transaction agreement that is required for an eligible T&E Merchant in those limited situations where a Cardholder authorizes a hotel, lodging or car rental Transaction in advance and chooses to retain their express service options.
- 76. DCC INCLUDED UNDER THE TOS.** Dynamic Currency Conversion is a service that allows a merchant to offer international Cardholders the option to pay in their local currency rather than U.S. Dollars at the point-of-sale.
- 77. DCC FEES AND REBATES.** All Fees and Rebates for DCC are set forth on the DCC Enrollment Form.
- 78. MERCHANT RESPONSIBILITIES AND RESTRICTIONS.**
- a. You have sole responsibility to comply with the Laws and Payment Network Regulations governing DCC Transactions including all of the following:
 - i. You must register through Servicer with the Payment Networks prior to offering DCC service to Cardholders.
 - ii. You must inform the Cardholder that the DCC Transaction is optional and that the Cardholder does not need to do anything additional to have the transaction processed in their local currency. The Cardholder must expressly agree to the DCC Transaction. You are prohibited from using any customer service procedure or contractual language that creates a DCC Transaction for the Cardholder by default.
 - iii. You are prohibited from converting a DCC Transaction in U.S. currency into an amount in a Cardholder's local billing currency, after the transaction has been completed but not yet entered into Interchange.
 - b. Merchant may be terminated for failure to comply with this Section and the Agreement.
 - c. Except as supplemented herein, the TOS remains unaltered and in full force and effect.
- 79. EXECUTION AND DELIVERY.** Delivery of executed counterparts of the DCC Enrollment Form may be effected by a facsimile transmission and a signed facsimile or copy of the DCC Enrollment Form shall constitute a signed original.

SECTION K - ACCEPTANCE OF TRANSACTIONS UTILIZING THE STORE AND FORWARD APPLICATION

- 80. ACCEPTANCE OF STORE AND FORWARD.** If Servicer provides services to Merchant for the processing of Store and Forward transactions, Merchant agrees to the following provisions, in addition to the General Provisions of Section (B), Acceptance of Visa, MasterCard, and Discover Network in Section (C), and the definitions within the Glossary.
- 81. ADDITIONAL DEFINITIONS.** For the purpose of this Section (K) the following additional definitions will apply:
- a. **Transaction Data** - means all data regarding the Transaction including, without limitation, the Cardholder account number, dollar amount of the Transaction, and the information stored in the Card's magnetic stripe.
 - b. **Proper Authorization** - means receipt of an authorization approval code by use of the terminal product or the telephone authorization center provided for authorization referrals.
 - c. **Store and Forward Application** - means the application used to store transaction data in a point of sale terminal at the time of a sale, and forward such transaction data to Servicer at a later time when a communication channel becomes available.
 - d. **Credit Card** - means a valid and unexpired card issued by, and bearing the symbols of, Visa or MasterCard. When appropriate, the term also includes valid and unexpired cards issued by American Express, Diners Club, Discover Network and JCB.
 - e. **Debit Card** - means any device that primarily accesses a demand deposit account of the debit Cardholder.
 - f. **Transaction** - means the purchase of goods or services from Merchant by use of a Credit Card. The term also includes credit transactions and adjustments, when appropriate.
- 82. MERCHANT RESPONSIBILITIES.**
- a. **Participation.** Once the Merchant has been approved to accept Transactions using the Store and Forward Application and their terminal has been programmed with the Store and Forward Application, Merchant may utilize the Store and Forward Application only when a communication channel for transmittal of authorization information cannot be obtained.
 - b. **Limitations.** Merchant will not utilize the Store and Forward Application to process PIN-based Online Debit Card Transactions or any other type of PIN-based transactions, Electronic Gift Card Transactions, or Electronic Check Transactions.
 - c. **Forwarding Transaction Data; Authorizations.** Merchants will forward Transaction Data to Servicer via point-of-sale terminal within twenty-four (24) hours of the Transaction.
 - d. **Risk.** Merchant understands that there is significant risk associated with utilizing the Store and Forward Application and not obtaining an authorization at the time of the sale — i.e., Merchant may receive a “decline” or “error” message in response to the subsequent authorization request. Merchant acknowledges and agrees it is fully liable for all Transactions whether or not an authorization approval code is received.
 - e. **Changes to Store and Forward Application; Termination.** Merchant acknowledges and agrees that Servicer, in its sole discretion, may make changes to or terminate the Store and Forward Application at any time. Merchant will indemnify and hold Servicer harmless for any action it may take pursuant to this Section.
 - f. **Indemnification.** Merchant will be liable for and will hold harmless and indemnify Servicer and Member, and each of their respective employees, officers, directors and agents, against all claims by third parties arising out of the Agreement or the Store and Forward Application and for all

attorney's fees and other costs and expenses paid or incurred by Member and/or Servicer in the enforcement of the Agreement, including but not limited to those resulting from any transaction processed under the Agreement or any breach by Merchant of this Section. In addition, Merchant will be liable for any and will hold harmless and indemnify Servicer and Member, and each of their respective employees, officers, directors and agents, against any fees, fines, or penalties assessed by Visa, MasterCard, or Discover Network.

83. WARRANTIES/LIMITATION OF LIABILITY.

- a. Neither Servicer nor Member is responsible for Store and Forward Transactions.
- b. Neither Servicer nor Member makes any warranty, express or implied, with respect to the services provided hereunder including, without limitation, any express or implied warranty regarding the services' compliance with any Laws or Payment Network Regulations governing the acceptance of Store and Forward Transactions.
- c. Merchant understands that Transactions processed via the Store and Forward Application are high risk and may be subject to, without limitation, a higher incidence of declined authorization requests and Chargebacks. Merchant is liable for all Chargebacks, losses, fees, fines, and penalties related to Transactions processed via the Store and Forward Application including, but not limited to, those resulting from or related to declined authorization requests and fraudulent Transactions. Further, neither Servicer nor Member is liable to Merchant in the event Transaction data is not stored within the point-of-sale terminal for any reason. Notwithstanding the provisions of the Agreement or this Section, the liability, if any, of Servicer or Member under this Section for any claims, costs, damages, losses, and expenses for which they are or may be legally liable, whether arising in negligence or other tort, contract, or otherwise, will not exceed in the aggregate One Thousand Dollars and No Cents (\$1,000.00). In no event will Servicer, Member or their respective agents, officers, directors or employees be liable for indirect, special, or consequential damages.

SECTION L - ACCEPTANCE OF NO SIGNATURE REQUIRED TRANSACTIONS

- 84. ACCEPTANCE OF NO SIGNATURE REQUIRED TRANSACTIONS.** If Servicer provides No Signature Required Transaction processing services to Merchant, the following provisions apply in addition to the General Provisions of Section (B), Acceptance of Visa, MasterCard, or Discover Network Section (C), as applicable, and the definitions within the Glossary.
- 85. NO SIGNATURE REQUIRED DEFINITIONS.** For purposes of this Section (L), “Contactless” refers to a payment card or key fob equipped with a chip and antenna that securely communicates Cardholder account information via radio frequency to a POS Device. “Merchant Category Code (MCC)” refers to the eligible merchant categories that may participate in a No Signature Required Program. “No Signature Required Program” shall refer to a specific program offering by a Card Association that includes required criteria that must be met by the Merchant in order to submit no signature required Transactions and obtain some protection from Chargebacks.
- 86. MERCHANT RESPONSIBILITIES.** It is the Merchant's responsibility to validate that their Merchant Category Code is eligible for participation in a No Signature Required Program and that they have been approved by Servicer to participate in said program. You understand that participation in a No Signature Required Program provides only limited protection against specific Chargebacks as designated by the sponsoring Card Association. It is your responsibility to determine if your POS Device is configured to prompt for and transmit the required data elements. The No Signature Required Program offerings are as follows:
- a. **No Signature Required Program.** Certain Card Associations have waived Regulations that allow qualifying merchants to process under-floor-limit transactions without having to obtain a Cardholder signature or provide a Transaction Receipt unless a Cardholder requests a Transaction Receipt. This No Signature Required Program is available to those Merchants in a qualifying MCC segment if the following Transaction criteria are met:
 - i. Transaction amount is less than \$25.00.
 - ii. Transaction occurs in a qualifying MCC. Please contact Servicer to determine if your MCC is eligible.
 - iii. The Cardholder is present and the Transaction occurs in a face-to-face environment.
 - iv. The full and unaltered content of the Card's magnetic stripe's Track 1 or Track 2 data is read and transmitted, or the Transaction is processed via Contactless processing or unaltered chip data is sent for Authorization.
 - v. Specific MCC's may require at least one (1) Contactless installation within the Merchant location.
 - vi. One Authorization is transmitted per clearing Transaction.
 - vii. Applies to domestic Transactions only.

Eligible Merchants that submit Transactions meeting these requirements will receive Chargeback protection against the signature requirement for Transactions that qualify under the specific Card Associations' No Signature Required Program.

APPENDIX A: GLOSSARY

ABA: The American Bankers Association.

ABA Routing Number: The ABA number that uniquely identifies the bank on which a check is drawn.

ACH: Automated Clearing House.

Agreement: The TOS, the Merchant Application, the Merchant Operating Guide, any Merchant Agreement or Merchant Processing Agreement, and any other guides or manuals provided to Merchant from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.

American Express: The American Express Company.

ARC: An accounts receivable conversion used for check present/ customer absent transaction environments and utilizes the ACH network for clearing checks converted to ECS Transactions.

Authorization: Merchant's request for approval of a Transaction by an Issuer. Authorization is initiated by accessing the authorization center by telephone or electronic terminal.

Authorization Code: The code sent by an Issuer in response to an Authorization request.

Automated Clearing House (ACH): The funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.

Bankruptcy Proceeding: With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file a petition seeking to take advantage of any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws or consent to an Involuntary Bankruptcy Proceeding; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such Person or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.

Card Not Present: The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.

Card Present: The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of sale.

Cardholder: (i) the individual in whose name a Payment Device has been issued; and (ii) any individual who possesses and uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or whose signature appears on the Payment Device as an authorized user.

Cardholder Data: One or more of the following data elements pertaining to a Cardholder's account: Card number, Cardholder name (if applicable), Card account activity, Cardholder account balance, and/or such other data applicable to the Merchant's Card program.

Cardholder Information Security Program (CISP): Visa's data security regulations to protect Cardholder account data and other data security best practices. The exact requirements for CISP can be found at www.visa.com/cisp.

Cash Back: An optional feature for a Debit Card Transaction that allows the Merchant to provide cash to the Cardholder as a part of the purchase request and is included in the total transaction amount.

Certified Guarantor: With respect to Electronic Check Service Transactions, the participating Drawee Bank or the third party authorizing agent designated by Servicer, as appropriate, that warrants the face amount of all authorized checks under the "Conversion with Guarantee" service option provided all warranty requirements are met.

Chargeback: A sales Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.

Check Reader/Imager: A device certified by Servicer that electronically captures the MICR line and captures an image of the check.

Check Replacement Document: A Demand Draft or Photo-in-Lieu.

Confidential Information: All information or items proprietary to Servicer or Member, of which the Merchant obtains knowledge or access as a result of the Merchant's relationship with Servicer and Member, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.

Convenience Fee: Any fee or charge for the use of a Payment Device in a Transaction.

Coverage Area: The geographic area in which wireless Transaction processing is available to Merchant.

Credit Card: A: (i) Visa card or other card bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); (iii) a Discover Card or other card bearing the symbol(s) of Discover Network; or (iv) any card bearing the symbol of any other Credit Card Association.

Credit Card Associations: (i) Visa U.S.A., Inc.; (ii) MasterCard International Incorporated; (iii) American Express; (iv) Discover Network; (v) Diners; (vi) JCB; and (vii) any other organization or association that hereafter contracts with Servicer and/or Member to authorize, capture, and/or settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.

Credit Card Rules: All applicable rules and operating regulations of the Credit Card Associations, and all rules, operating regulations, and guidelines for Credit Card Transactions issued by Servicer from time to time, including, without limitation, all amendments, changes and revisions made thereto from time to time.

Credit Transaction Receipt: A document, in paper or electronic form, evidencing a Merchant's refund or price adjustment to be credited to a Cardholder account.

Debit Card: A card with a magnetic stripe bearing the symbol(s) of one or more EFT Networks which enables the holder to pay for goods or services by authorizing an electronic debit to the Cardholder's designated deposit account, including PIN-based, online debit Transactions.

Debit Card Rules: All applicable rules and operating regulations of the EFT Networks, and all rules, operating regulations, and guidelines for Debit Card Transactions issued by Servicer from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.

Demand Deposit Account (DDA): The commercial checking account at a financial institution acceptable to Servicer and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement.

Diners: Diners Club International Ltd.

Discover Network: Discover Network, Inc.

Drawee Bank: The bank where a customer maintains a checking account on which the customer authorizes an Electronic Check Service Transaction to pay for a purchase at the POS Device. EBT Card: A card utilized for electronic benefits transfers.

EFT Networks: (i) Including but not limited to STAR Network, Inc., Interlink Network Inc., Maestro U.S.A., Inc., NYCE, Pulse and Accel; and (ii) any other organization or association that hereafter authorizes the Servicer and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

Electronic Check Service Association: Visa, NACHA, and any other organization or association hereafter designated as an Electronic Check Service Association by Servicer from time to time.

ECS MOG: The Electronic Check Service Merchant Operating Guide.

ECS Service Level: The service levels available to merchants within the Electronic Check Service product.

Electronic Check Service Rules (ECS Rules): In the course of its acceptance of ECS, Merchant shall comply with and be bound by the Operating Principles and Rules, applicable state and federal law, including, but not limited to, the Check Clearing for the 21st Century Act and Regulation CC, Article 3 and Article 4 of the Uniform Commercial Code as in effect in the applicable state(s), the Electronic Fund Transfer Act and Regulation E, the NACHA Operating Rules, as well as the rules of any other automated clearing house association that are applicable to ECS Transactions by Merchant, all of which may be amended from time to time without notice to Merchant (collectively, the "ECS Rules").

Electronic Check Service Transaction: Any purchase, reversal/void, decline, Chargeback, or representation/resubmit pursuant to the Electronic Check Service Rules.

Electronic Commerce Transaction: A Transaction that occurs when the Cardholder uses the Internet to make a purchase from Merchant or Merchant uses the Internet to submit the Transaction for processing to Servicer.

Electronic Gift Cards (EGC): A special card purchased by a customer or provided by Merchant to a customer that is redeemable for in-store merchandise or services.

Express Service Transaction: A unique Transaction agreement that is required for an eligible T&E Merchant in those limited situations where a Cardholder in advance authorizes a hotel, lodging or, car rental Transaction and chooses to retain their express service options.

Guarantor: A Person that executes a Personal Guaranty for the benefit of Servicer and Member.

Interchange: The clearing and settlement system for Visa and MasterCard Credit Cards and Debit Cards where data is exchanged between the Servicer and the Issuer.

Issuer: The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.

JCB: JCB International Co., Ltd.

Laws: All applicable state, federal and local laws, rules, and regulations, orders and decrees, as amended from time to time.

Loyalty Cards: A device used to hold a currency and/or points value in a stored value program (also referred to as a "Stored Value Card").

Mail Order/Telephone Order (MO/TO) Transaction: For MO, a Transaction that occurs when the Cardholder uses the mail to make a purchase from a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a purchase from a Merchant.

Master Account: The account (e.g. funds pool) that is used to hold the value of Cards that have been issued among a group or chain of merchants, alternatively, this may refer to the back-up account used to offset ACH rejects, if applicable.

MasterCard: MasterCard International Incorporated.

Member: The financial institution designated by Servicer that is a principal, sponsoring, affiliate or other member of the Payment Networks. The Member may be changed by the Servicer at any time.

Merchant (or you): The business entity indicated on the Merchant Application.

Merchant Application: Any document containing information regarding Merchant's business that is submitted to Servicer and Member in connection with Merchant's application for processing services, including any additional location form(s) and any documents submitted by Merchant as a part of the bid process, if applicable.

Merchant Agreement (Merchant Processing Agreement): Any agreement that Merchant has entered into for processing services, which agreement is either with Servicer or another entity that, directly or indirectly, transferred its rights under such agreement to Servicer. **Merchant Application:** Any document containing information regarding Merchant's business that is submitted to Servicer and Member in connection with Merchant's application for processing services.

Merchant Identification Number (MID): A unique identification number assigned to a Merchant to identify its business location (also referred to as the "Merchant Account").

Merchant Operating Guide: The operating manual provided by Servicer to its Merchants. The Merchant Operating Guide may be amended from time to time by Servicer in its sole discretion.

MICR: The magnetic ink character read line encoded on a check that contains information about the checking account.

NACHA Operating Regulations: The rules and regulations established by NACHA.

National Automated Clearing House Association (NACHA): The association that establishes standards, rules, business practices, and procedures to enable depository financial institutions that are members of regional ACH associations to exchange electronic payments.

Non-Participating Transaction: An Electronic Check Service Transaction involving a Drawee Bank that does not participate in the VisaNet point-of-sale check service settlement system. The transaction is routed to the third party authorizing agent for authorization according to the service option for the Transaction, and is cleared and settled through ACH.

Operating Principles and Rules: A set of specifications, guidelines, and principles defined by Visa that govern the operation and flow of information for Electronic Check Service Transactions.

Participant: An organization that agrees to comply with the Operating Principles and Rules, completes comprehensive certification testing with Visa, participates in one or more of the service options, and performs functions and activities appropriate to participating in the service.

Participating Transaction: An Electronic Check Service Transaction involving a Drawee Bank that participates in the VisaNet settlement system. The participating Transaction is routed to the participating Drawee Bank for authorization, according to the service option for the Transaction, and is cleared and settled through VisaNet.

Payment Card Industry (PCI) Data Security Standard: The data security regulations, including maintaining Cardholder account data in a secure environment, and other data security best practices endorsed by the major card associations including Visa and MasterCard, as such may be amended from time to time. Visa requires that Merchants and their agents comply with CISP. MasterCard requires that Merchants and their agents comply with SDP.

Payment Device: Any device used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device, including an Electronic Gift Card, check (whether converted into electronic form or used as a source document for an electronic

fund transfer), EBT Card, stored value card, “smart” card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Merchants.

Payment Network: Any Credit Card Association, EFT Network, Electronic Check Service Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.

Payment Network Regulations: Individually and collectively, as the context may dictate, the Credit Card Rules, the Debit Card Rules, and/ or the Electronic Check Service Rules.

Person: Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.

Personal Guaranty: Any written guaranty of Merchant's duties and obligations to Servicer and Member by a Person that is given in connection with the Agreement including, without limitation, as part of this TOS, the Merchant Application, any Merchant Agreement or Merchant Processing Agreement, or any other document signed by the Person in favor of Servicer and Member.

PIN: A Personal Identification Number.

Pin Entry Device (PED): A device used by the Cardholder to enter a PIN that identifies a Cardholder in an Authorization Request originating at a terminal with electronic capability. PED's are used for debit transactions to purchase goods or services.

PIN Pad: A secure device with an alphanumeric keyboard which conforms with the Laws, Payment Network Regulations, and requirements established from time to time by Servicer, and through which a Cardholder may enter a PIN.

POP: An Electronic Check Service Transaction at the point-of- purchase used for the check present/ customer present environment.

POS Device: A terminal, software, or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by Servicer and the applicable Payment Network.

Prepaid Cards: A reloadable card having available funds to the Cardholder paid for in advance.

Primary Merchant: The Merchant Identification Number (MID)/location originally enrolled for Cards and set up to be billed for the card orders placed or designated as the corporate or headquarter location.

Program: The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.

Reserve Account: The account established pursuant to Section (B)(6).

Retrieval Request: A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.

Servicer: As applicable, Elavon, a Georgia corporation, and any affiliate or subsidiary of Elavon that provides processing services to a Merchant related to Transactions. Servicer is a registered member service provider of each Member.

Servicer Debit System: Servicer's electronic Debit Card Transaction processing system for provision of Debit Card authorization, data capture, and settlement services.

Servicer Electronic Check Service System: Servicer's Electronic Check Service Transaction processing system for provision of Electronic Check Service authorization, data capture, and settlement services.

Sight Draft: A negotiable financial document that is created from an electronic image of a check that was accepted and processed as an Electronic Check Service Transaction. Sight Drafts may be used to resolve administrative returns that result from processing ineligible checks.

Site Data Protection Program (SDP): MasterCard's data security regulations to protect Cardholder account data and other data security best practices. The exact requirements for SDP can be found at <https://sdp.mastercardintl.com/>.

Stored Value Card: A device used to hold a currency and/or the points value in a stored value program (also referred to as a "Loyalty Card").

T&E Merchant: A Merchant whose primary function is to provide travel and entertainment related services.

TOS: These Terms of Service and all additions to, amendments, and modifications of, and all replacements to the TOS, as applicable.

Transaction: (i) Any action by a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return); (ii) an activation, adjustment, balance inquiry, balance transfer, batch activation, cancel card/cash back, cancel, credit, increment/reload, pre-authorization, post-authorization, redemption, service fee/deduction, points, points redemption, points cancel, register, or other transaction type, as available.

Transaction Currency: The international Cardholder's local currency payments in a DCC Transaction.

Transaction Receipt: The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.

Value Added Services: Any product or service provided by a third party unaffiliated with Servicer or Member to assist Merchant in accessing, processing, storing, or transmitting Transaction data, including without limitation, Internet payment gateways, integrated POS Devices, inventory management and accounting tools, loyalty programs, fraud prevention programs, and any other product or service that participates, directly or indirectly, in the flow of Transaction data including access to Cardholder data.

Visa: Visa U.S.A., Inc.

VisaNet: The data processing system, services, and operations used to support and deliver authorization, clearing, and settlement services to Members including, but not limited to, Electronic Check Service Transactions.

Wireless Terminal: A POS Device that allows wireless processing.