

Terms of Service

September 2009

Notes

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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 - GENERAL PROVISIONS

1. **DEFINITIONS.** Definitions used within this TOS are listed alphabetically in the “Glossary” on page 22.
2. **RULES OF CONSTRUCTION.** Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement. 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 (A) – General Provisions, and any subsequent section of the TOS, the terms of the subsequent section shall prevail.
3. **ACCEPTANCE OF PAYMENT DEVICES.** Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices it will agree to accept as a form of payment from its Customers. The terms and conditions for the acceptance of the applicable Payment Devices and Merchant’s use of the Payment Device Processing Services are set forth in the Agreement and in the Merchant Operating Guide (the “MOG”), incorporated herein and located at our website <http://www.elect-mer.com/downloads-resources.html>. Each schedule, exhibit, addendum or attachment to the Agreement shall be governed by the TOS and the applicable provisions of the MOG, as well as by the terms set forth in the Merchant Application.
4. **TRANSACTIONS.**
 - a. **Merchant Compliance.** Merchant must comply with all the requirements under the Agreement. Merchant must also comply with the procedures set forth in the MOG and any other guides, manuals, or rules provided in writing to Merchant by Servicer from time to time.
 - b. **Settlement of Transactions.**
 - i. **Deposits.** Merchant agrees 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. For purposes of Transactions in Canada, Merchant agrees that the Agreement is a contract for the advance of credit to Merchant within the meaning of Section 11.3(b) of the Companies’ Creditors Arrangement Act (Canada) and within the meaning of Section 65.1(4) of the Bankruptcy and Insolvency Act (Canada). 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 Merchant provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement). Merchant acknowledges that its obligation to Servicer & Member for all amounts owed under the Agreement arises out of the same transaction as Servicer’s & Member’s obligation to deposit funds to the DDA and such amounts are owed in the ordinary course of business.
 - ii. **Provisional Credit.** Merchant acknowledges that all credits for funds provided to it are provisional and subject to reversal in the event that Servicer and Member do not receive payment of corresponding settlement amounts from the Payment Networks. Merchant further acknowledges that all credits are subject to adjustments for inaccuracies and errors (including rejects) and Chargebacks in accordance with the Agreement and the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer or Customer. Merchant authorizes Servicer or Member to initiate reversal or adjustment (debit or credit) entries and to initiate or suspend such entries in accordance with the Agreement as may be necessary to grant or reverse provisional credit for any Transaction. Further, Servicer may delay Merchant-issued

Customer credits for up to five (5) business days for accounting verification. Customer credits issued by Merchant to PIN-Debit Cards will not be subject to this delay. 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 Servicer or Member be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Servicer and Member.
- c. **Processing Limits** Servicer may impose a cap on the dollar amount of Transaction Receipts that it will process for Merchant as indicated on the Merchant Application as Merchant's annual volume or as otherwise established by Servicer. This limit may be changed by Servicer from time to time, without prior notice to Merchant. If Merchant exceeds the established limit, Servicer may suspend the processing of Transaction Receipts, and either return all Transaction Receipts evidencing funds over the cap to Merchant or hold those deposits in a separate account or Reserve Account.
- d. **Chargebacks.** Merchant is fully liable to Servicer and Member for all Transactions returned to Servicer or Member for whatever reason including all Chargebacks. Merchant will pay Servicer and Member for all Chargebacks. Merchant agrees to accept for Chargeback, and will be liable to Servicer and Member in the amount of any Transaction for which the Customer or Issuer disputes the validity of the Transaction for any reason. Merchant authorizes Servicer and Member to offset from funds due Merchant for Transaction activity or 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. Merchant will fully cooperate with Servicer and Member in complying with the Payment Network Regulations regarding all Chargebacks. Guarantors are personally liable to Servicer and Member for all Chargebacks.

5. DEMAND DEPOSIT ACCOUNT (DDA).

- a. **DDA and ACH Authorization.** Merchant will establish and maintain with Member (or with another ACH participating financial institution acceptable to Member) one or more DDAs to facilitate payment for Transactions. Merchant 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 the Agreement. Merchant irrevocably authorizes Servicer, Member, and their respective authorized vendors and agents who provide services under the Agreement, to initiate ACH debit and credit entries to the DDA, the Reserve Account or any other account maintained by Merchant at any institution that is a receiving member of the ACH network, in order to make payments to or collect payments from Merchant due under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Merchant's obligations to Servicer and Member have been paid in full. Merchant also authorizes Servicer's or Member's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement. Merchant must obtain prior consent from Member and Servicer to change the DDA. If Merchant does 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 Merchant requesting changes to the DDA. In the event Merchant changes the DDA, the ACH debit and credit authorization established hereunder will apply to the new account and Merchant shall provide Servicer and Member such information regarding the new DDA as they deem necessary to effect payments to and from the new DDA. It may take Servicer up to ten (10) business days after Servicer's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA. Merchant may request from Servicer written confirmation of Servicer's and Member's consent to change the DDA. If the DDA is maintained with Member, Member will

deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (A)(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, Merchant authorizes Member or Servicer to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement and the ACH authorization. To the extent required, Merchant authorizes and appoints Member to act as its agent to collect Transaction amounts from the Issuer, the Customer or the Customer's financial institution. Member, in its sole discretion or at Servicer's direction, may grant Merchant 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.

- b. **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. Merchant 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. Merchant's 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 Merchant believes 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 Merchant fails to provide such notice to Servicer within said forty-five (45) days, Servicer and Member shall not be liable to Merchant for any errors Merchant asserts at a later date. Merchant 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 Merchant's written notice. During that sixty (60) day period, Servicer will be entitled to investigate the asserted error, and Merchant shall not incur any cost or expense in connection with the asserted error without notifying Servicer.
- c. **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.
- d. **Indemnity.** Merchant will indemnify and hold harmless Servicer and Member for any action they take against the DDA or Reserve Account pursuant to the Agreement. Merchant will also indemnify and hold harmless the depository institution at which it maintains its DDA for acting in accordance with any instruction from Servicer and/or Member regarding the 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 Merchant grants to Servicer and Member a security interest in and lien upon (and in Quebec, a hypothec on): (a) all funds at any time in the Reserve Account or DDA, regardless of the source of such funds, and (b) all funds underlying present and future Transaction Receipts; and (c) any amount which may be due to Merchant under the Agreement, including, without limitation, all rights to receive any

payments or credits under the Agreement (collectively, the “Secured Assets”). Merchant agrees to provide other security to Servicer and Member, upon request, to secure its obligations under the Agreement. These security interests and liens (and hypothecs) will secure all of Merchant’s obligations under the Agreement and any other agreements now existing or later entered into between Merchant and Servicer and/or Member including Merchant’s obligation to pay any amounts due and owing to Member or Servicer. Servicer and Member may execute this security interest (and hypothecs), without notice or demand of any kind, by making an immediate withdrawal or by restricting Merchant’s access to the Secured Assets.

- ii. **Perfection.** Upon request of Servicer or Member, Merchant will execute one (1) or more control agreements or other documents to evidence or perfect this security interest (and hypothec). Merchant represents and warrants that no other person or entity has a security interest (or hypothec) in the Secured Assets. With respect to such security interests and liens (and hypothecs), Servicer and Member will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Servicer and Member written consent prior to granting a security interest (or hypothec) of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and Servicer and Member are not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by Servicer or Member. Merchant authorizes and appoints Servicer as Merchant’s attorney in fact to sign Merchant’s name to any control agreement used for the perfection of any security interest or lien (or hypothec) 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 Merchant. The Reserve Account shall be maintained with sums sufficient to satisfy Merchant’s 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 Merchant to deposit into the Reserve Account funds in an amount determined by Servicer;
 - bb. Member and Servicer may debit the DDA in any amount; or
 - cc. Member and Servicer may deposit into the Reserve Account funds they would otherwise be obligated to pay Merchant.
- iii. **Use of Funds in Reserve Account.** Member or Servicer may, without notice to Merchant, apply funds in the Reserve Account against any outstanding amounts Merchant owes or future amounts Merchant will owe under the Agreement or any other agreement between Merchant 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, Merchant agrees 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 Merchant be entitled to a return of any funds remaining in the Reserve Account before two-hundred-seventy (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 Merchant under the Agreement or any other agreement. Merchant acknowledges that in the event of a Bankruptcy Proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code Section 362 or applicable law to Servicer and Member, and in order to ensure that Servicer and Member do not and are not obliged to advance credit to Merchant, Merchant 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 Merchant may owe to Servicer and Member, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the initiation of the Bankruptcy Proceeding or the filing of the petition, motion, request for stay or other proceeding in connection with a Bankruptcy Proceeding.
- 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.** Merchant 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 or the Reserve Account once each day or month for the previous day's or month's activity as applicable, or will be deducted from the funds due Merchant under the Agreement. In addition, Merchant 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 Merchant's account. Servicer may adjust the fees in accordance with Section (A)(18)(p) below.
- b. **Other Amounts Owed.** Merchant 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 Merchant's Transaction processing) and any other payments due under the Agreement. Servicer or Member may offset these amounts from funds otherwise owed by Servicer or Member to Merchant or may debit these amounts from Merchant's DDA or Reserve Account by ACH, and in the event such offset or ACH debit does not fully reimburse Servicer or Member for the amount owed, Merchant 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.** Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement. If Merchant is a tax-exempt entity, Merchant will provide Servicer and Member with an appropriate certificate of tax exemption.

8. ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY

- a. **Accuracy of Information.** Merchant represents and warrants 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. Merchant must promptly notify Servicer in writing of any changes to such information, including, without limitation, any additional location or new business at which Merchant desires 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 Transactions are completed (i.e., by telephone, mail, electronic commerce, or in person at Merchant's place of business). The notice must be received by Servicer at least ten (10) business days prior to the change. Merchant will provide any additional information requested by Servicer within a reasonable time. Merchant 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 Merchant's failure to provide requested information. Servicer may immediately terminate the Agreement upon notification by Merchant of a change to the information in the Merchant Application. Merchant authorizes Servicer and Member to contact credit reporting agencies and Merchant's creditors to make inquiries and obtain reports regarding Merchant's credit standing upon Servicer's or Member's receipt of the Merchant Application.

- b. **Indemnification.** Merchant 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 Merchant 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 Processing Services provided to Merchant by Servicer and Member 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 Merchant or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the fees paid by Merchant 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.** Merchant represents and warrants 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.** Merchant is a corporation, company, limited liability company, unlimited liability company, limited liability partnership, limited partnership, general partnership, business trust, association or sole proprietorship validly existing and organized in the United States, or validly existing and federally organized in Canada or in a province or territory of Canada, as applicable. All written 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, officers, or ownership 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. Merchant 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 and each affiliated entity identified in the Agreement 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, Merchant represents and warrants that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which Merchant is subject.
- c. **No Litigation.** There is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened which if decided adversely would impair Merchant's ability to carry on Merchant's business substantially as now conducted or which would adversely affect Merchant's financial condition or operations. Merchant has never been placed on the MasterCard MATCHTM system (formerly known as the Combined Terminated Merchant File) or been named to the Consortium Merchant Negative File maintained by Discover, or, if Merchant has, Merchant has 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 Merchant or a return or adjustment related to such purchase. Merchant will not submit unlawful or illegal Transactions. No Transaction involves a Customer obtaining cash from Merchant unless allowed by the Payment Network Regulations and agreed to in writing with Servicer.
- e. **Compliance with Laws and Regulations.** Merchant will comply with all Laws and Payment Network Regulations.
- f. **Business Use.** Merchant is obtaining and using the Processing Services from Servicer for business purposes only and to facilitate lawful business Transactions between Merchant and Merchant's Customers. Merchant will not submit Transactions for processing to Servicer or Member for any businesses, materially different products, or methods of selling other than those set forth in the Merchant Application without the prior written consent of Servicer. Merchant also acknowledges that the DDA into which debits and credits are made is being used for lawful business purposes only.
- g. **Responsibility for Actions.** Merchant is responsible for any violations of this Agreement that result from the actions of or failure to act by Merchant's officers, directors, employees, agents, Value Added Servicers, business invitees, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to information related to Transactions from Merchant or access to systems under Merchant's control.

10. **AUDIT AND INFORMATION.**

- a. **Audit.** Merchant authorizes Servicer and Member to perform an audit of its business to confirm compliance with the Agreement. Merchant 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 Merchant's business at its expense when requested by Servicer or Member.

Further, Merchant acknowledges and agree that the Payment Networks have the right to audit Merchant's business to confirm compliance with the Payment Network Regulations.

b. **Information.**

i. **Authorizations.** Merchant authorizes 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. Merchant also authorizes 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, Merchant will provide Servicer and Member audited financial statements prepared by an independent certified public accountant selected by Merchant. Merchant further agrees to provide to Servicer and Member such other information regarding Merchant's financial condition as Servicer and/or Member may request from time to time. Within one-hundred twenty (120) days after the end of each fiscal year, Merchant will furnish Servicer or Member, 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.

iii. **Merchant Information.** Merchant agrees that any information about Merchant or any of its principals, affiliates or agents that is provided to Servicer or Member on the Merchant Application or otherwise obtained by Servicer or Member in connection with the Agreement may be: (i) used by Servicer and Member, and their respective affiliates and agents, in order to provide the Processing Services and related functions to Merchant and to respond to any further application for services; (ii) disclosed and shared for reporting purposes to credit rating agencies, under the Payment Network Regulations, to Issuers and to the financial institution where the DDA is maintained; (iii) used or disclosed in the course of any actual or potential sale, reorganization or other change to Servicer's or Member's business; (iv) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (v) retained for such periods of time as required by Servicer and Member to perform their obligations and exercise their rights under the Agreement.

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, Merchant must provide certain information and identifying documents to allow Servicer and Member to identify Merchant.

11. **FRAUD MONITORING.** Merchant is solely responsible for monitoring its Transactions and the actions of its officers, directors, employees, agents, business invitees, third party vendors, including Value Added Servicers, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to Merchant's 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.

12. **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 is solely responsible for all Transactions and Transaction Receipts until such time as the Transaction Receipts have been received and validated by Servicer. 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. Neither Servicer nor Member has a duty to recreate lost Transactions.

13. **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.

14. **THIRD PARTIES.**

- a. **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to Servicer previously in writing, and unless such Value Added Servicer is fully compliant with all Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to the Agreement, Merchant will be bound by the acts and omissions of any Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will indemnify and hold harmless Servicer and Member from and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any third parties, including Value Added Servicers. Neither Servicer nor Member is responsible for any Value Added Servicer, nor are they 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 Merchant uses a Value Added Servicer for the purposes of data capture and/or authorization, Merchant agrees: (i) that the 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 Merchant 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.

15. **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. If Merchant processes Transactions beyond the Initial Term or Renewal Term, then the terms of the Agreement shall govern such Transaction processing.

b. **Termination.**

i. **Merchant.**

- aa. The Agreement may be terminated by Merchant 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 Merchant in the event of a material breach of the terms of the Agreement by Member or Servicer, provided Merchant gives 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 Merchant claims 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 Merchant’s 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 Merchant pays all amounts you owe Servicer or Member or amounts for which Merchant is liable under the Agreement. Merchant 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 one-hundred-eighty (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 Merchant has been paid will be disbursed to Merchant.
- ii. **Equipment.** If Merchant’s equipment is leased, Merchant is obligated to honor the

terms and conditions of its leasing contract. If Merchant's equipment is owned by Servicer, Merchant must return all equipment owned by Servicer within ten (10) business days and immediately pay Servicer any amounts Merchant owes for such equipment.

- iii. **Return to Servicer.** All promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, Plates, and other forms supplied to Merchant and not purchased by Merchant or consumed in use will remain the property of Servicer and must be returned within ten (10) business days after termination of the Agreement. Merchant will be fully liable for any and all loss, cost and expenses suffered or incurred by Servicer arising out of any failure to return such materials following termination.

16. **COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™ AND CONSORTIUM MERCHANT NEGATIVE FILE**

- a. **Compliance with Laws and Payment Network Regulations.** Merchant agrees 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. Merchant further agrees to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic funds transfers; (iii) confidential treatment of information; and (iv) the Fair and Accurate Credit Transactions Act of 2003 (FACTA), including its requirements relating to the content of Transaction Receipts provided to Customers. Merchant 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. Merchant will execute and deliver to Member and Servicer all documents they may from time to time reasonably deem necessary to verify Merchant's compliance with this provision.
- b. **Privacy Laws in the United States (if applicable).** In addition to Section (A)(17)(b), Merchant must take all commercially reasonable steps to protect the confidentiality of Customer and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Customer and Transaction information and in a manner that complies with applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act, the federal Gramm-Leach-Bliley Act, FACTA or other applicable privacy laws.
- c. **Privacy Laws in Canada (if applicable).** Merchant represents, covenants and agrees that it is in compliance with all applicable privacy laws, including without limitation the Personal Information Protection and Electronic Documents Act (Canada), and that any personal information of a Customer that may be communicated or disclosed to Servicer under or in connection with this Agreement or any services to be provided by Servicer to Merchant has been obtained in compliance with such laws and that Servicer will not be in breach of any such laws by receiving and using such information in connection with performing its obligations under or in connection with this Agreement or any services to be provided by Servicer to Merchant.
- d. **MATCH™ and Consortium Merchant Negative File** . Merchant acknowledges 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 or to the Consortium Merchant Negative File maintained by Discover, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to the fulfillment of the obligations related to the listing by Servicer and Member; the listing itself and Merchant waives and holds harmless Servicer and Member from all claims and liabilities Merchant may have as a result of such reporting.
- e. **Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry Data Security Standard (PCI DSS) including the Cardholder Information Security

Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI DSS regulations of Discover Network, and the security programs of any other Payment Network regarding which Merchant accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time. Merchant also shall ensure that all third parties from whom Merchant procures a Value Added Servicer or third party POS Devices comply with the requirements of those programs. Upon request, Servicer will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. Merchant is responsible for Merchant's own actions or inactions, those of Merchant's officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, "Merchant's Agents"). Merchant shall indemnify and hold Servicer and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by any of Merchant's Agents. Should Merchant participates 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, Merchant must comply therewith and ensure that Merchant's officers, directors, shareholders, employees, and agents, including Value Added Servicers or third party POS Devices also comply with the program requirements of such Payment Network.

f. **Data Compromise.**

- i. **Notice and Investigation.** Merchant acknowledges and agrees that Cardholder Data and bank account information obtained by Merchant in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Merchant must notify Servicer and Member within twenty-four (24) hours (and if notice is given orally, it must be confirmed in writing within the same twenty-four hour period), if Merchant knows or suspects that Cardholder Data, Customer information, or Transaction information has been accessed or used without authorization from Merchant, Merchant's Agents or systems within Merchant's or its agent's control (a "Data Incident"). The notice must include: (a) a detailed written statement about the Data Incident including the contributing circumstances; (b) the form, number and range of compromised account information; (c) specific account numbers compromised; and (d) details about the ensuing investigation and Merchant's security personnel who may be contacted in connection with the Data Incident. Merchant must fully cooperate with the Payment Networks, Servicer and Member in the forensic investigation of the Data Incident. Within seventy-two (72) hours of becoming aware of the Data Incident, Merchant must engage the services of a data security firm acceptable to the Payment Networks and/or to Servicer and Member to assess the vulnerability of the compromised data and related systems. Merchant must provide weekly written status reports to Servicer and Member until the forensic audit is complete. Merchant must promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks and/or Servicer and Member may request. In addition, Merchant must provide all audit reports to Servicer and Member, and such audits must be completed to the satisfaction of the Payment Networks and/or of Servicer and Member. If Merchant fails to supply the forensic audits or other information required by the Payment Networks and/or by Servicer and Member, Merchant will allow Servicer or Member to perform or have performed such audits at Merchant's expense.
- ii. **Preservation of Records.** In the event of a Data Incident, Merchant must take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Merchant shall cooperate with Servicer and Member to rectify, correct and resolve any issues that may result from the Data Incident, including providing Servicer and Member with (and obtaining any necessary waivers for) all relevant information to verify Merchant's ability to prevent future data incidents in a manner consistent with the Agreement.

- iii. **Liability for Data Incident.** Without waiving any of Servicer's & Member's rights and remedies, Merchant is liable for all fraudulent transactions related to any Data Incident and all costs Servicer or Member incur as a result of such Data Incident, including any fees, fines, and/or penalties assessed by the Payment Networks, claims from third parties, all costs related to the notification of Cardholders or Customers and cancellation, re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI DSS review for a report of compliance.

17. **USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.**

- a. **Use of Trademarks.** Merchant will prominently display the promotional materials provided by Servicer in Merchant's place of business. Merchant's use of Visa, MasterCard, and Discover Network marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Merchant's right to use all such marks will terminate upon termination of the Agreement. Merchant's 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 Merchant may not refer to Visa, MasterCard, Discover Network, or any other Payment Networks in stating eligibility for Merchant's products or services.
- b. **Confidentiality.**
 - i. **Customer and Transaction Information.** In accordance with Section (A)(16)(e), a Merchant shall immediately notify Servicer of any Customer or Transaction information compromise of which it becomes aware whether such compromise occurs at: (i) the Merchant; or (ii) a Value Added Servicer. Merchant shall, at all times protect the confidentiality of Customer and Transaction information in accordance with all applicable Laws and Payment Network Regulations. Merchant will not disclose Customer or Transaction information to any third party, except to an agent of Merchant assisting in completing a Transaction, or as required by Laws or the Payment Network Regulations. Merchant must maintain all systems and media containing Customer and Transaction information in a secure manner to prevent access by or disclosure to anyone other than Merchant's authorized personnel. Merchant must maintain Customer 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 Merchant no longer deems necessary or appropriate to maintain. Further, Merchant must take all steps reasonably necessary to ensure that Customer and Transaction information is not disclosed or otherwise misused. Merchant may not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for record keeping or additional authorization processing. After authorization, Merchant may only retain the Customer account number, name, and Card expiration date. Merchant may not print on any Transaction Receipt or other document, that is given to the Customer, 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 (A)(16)(e), Merchant shall immediately notify Servicer of any Customer or Transaction information compromise of which it becomes aware whether such compromise occurred at: (i) the Merchant; (ii) a Value Added Servicer; (iii) Servicer or Member; or (iv) elsewhere.
 - ii. **Bankruptcy.** In the event of failure or other suspension of Merchant's business operations, including bankruptcy or insolvency, Merchant must not sell, transfer, or disclose any materials that contain Customer or Transaction information to third parties. Merchant 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.** Merchant shall at all times protect Servicer's or Member's Confidential Information. Merchant will not disclose any of Servicer's or Member's Confidential Information to any third party except as required by Laws or the Payment Network Regulations.
- c. **Passwords.** If Merchant receives a password from Servicer to access any of Servicer's databases or services Merchant 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 Merchant believes the Servicer's databases or services or Merchant's information has been compromised by use of the password. If Merchant receives passwords from a third party, Merchant 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 Merchant's 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 Agreement 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, system passwords, schematics or operation of, or otherwise attempt to reverse engineer any of Servicer's services, equipment, or software.

18. MISCELLANEOUS PROVISIONS.

- a. **Entire Agreement.** The Agreement (including all attachments, exhibits, addenda and other documents incorporated by reference into the Agreement, attachments, exhibits or addenda), 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) any amendment to the Agreement; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Application; (v) any Merchant Agreement or Merchant Processing Agreement; (vi) the Merchant Operating Guide; and (vii) any other guides or manuals provided to Merchant from time to time.
- b. **Governing Law in the United States (if applicable).** The Agreement will be governed by and construed in accordance with the Laws of the State of Georgia with respect to Transactions occurring in the United States, except that Section (A)(18)(g) 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 (A)(18)(g) 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. Merchant, hereby waives any and all right to trial by jury in any action or proceeding relating to the Agreement. Merchant represents that this waiver is knowingly, willingly and voluntarily given.
- c. **Jurisdiction and Venue; Governing Law Canada (if applicable).** All matters arising out of

or related to the Agreement will be governed by and construed in accordance with the Laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario with respect to Transactions occurring in Canada. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the Province of Ontario and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the Province of Ontario. Any action or proceeding relating to or arising from this Agreement (other than collection actions by Servicer or Member relating to amounts owed by Merchant under the Agreement) must be brought, held, or otherwise occur exclusively in Toronto, Canada, and the parties hereby attorn to the exclusive jurisdiction of the courts of Ontario. Merchant, Member and Servicer hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the Agreement. Merchant, Member and Servicer each represents to the other that this waiver is knowingly, willingly and voluntarily given.

- d. **Exclusivity.** During the Initial Term and any Renewal Term of the Agreement, Merchant 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.
- e. **Construction.** Any alteration or strikeover in the text of the Agreement 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.
- f. **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 Merchant, nevertheless, assigns the Agreement without Servicer's consent, the Agreement will be binding on the assignee as well as Merchant. If Merchant sells its 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.
- g. **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 Merchant's claim and may not consolidate or join the claims of other persons who may have similar claims. Merchant 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 (A)(18)(b), any arbitration shall be governed by the Federal Arbitration Act.
- h. **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.

- i. **Bankruptcy in the United States (if applicable).** Merchant 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. Merchant 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. Merchant acknowledges that the Agreement constitutes a contract to extend credit or other financial accommodations to, or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's 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. Merchant further acknowledge that such financial accommodations constitute an integral part of the Agreement.
- j. **Bankruptcy in Canada (if applicable).** Merchant 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. Merchant will include Servicer on the list and matrix of creditors as filed with any bankruptcy, commercial or civil 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. Merchant agrees that the Agreement is a contract for the advance of credit to you within the meaning of Section 11.3(b) of the Companies' Creditors Arrangement Act (Canada) and within the meaning of Section 65.1(4) of the Bankruptcy and Insolvency Act (Canada) and cannot be assigned by Merchant in the event of a Bankruptcy Proceeding relating to Merchant. Merchant hereby acknowledges but that for the agreement in the immediately preceding sentence, Member and Servicer would not have entered into this Agreement.
- k. **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 Merchant against Servicer or Member arising out of the Agreement.
- l. **Customer Contact.** Merchant authorizes Member and Servicer to contact its Customers or their Issuer if Member or Servicer determines that such contact is necessary to obtain information about any Transaction between Merchant and a Customer.
- m. **Telephone Recording.** Merchant authorizes 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.
- n. **Information Sharing.** Merchant understands and agrees 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).
- o. **Communication with Merchant.** Merchant agrees that Servicer and Member may provide Merchant with information about their services including, without limitation, information about new products and/or services by telephone, electronic mail, and/or facsimile.

- p. **Amendments.** Member and Servicer may propose amendments or additions to the Agreement. Member or Servicer will inform Merchant of a proposed change in a periodic statement or other notice. Merchant will be deemed to have agreed to the change if Merchant continues 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 Agreement will be effective upon notice to Merchant, unless a later effective date is provided. Further, Servicer is entitled to pass through to Merchant any fee increases imposed upon Servicer by Visa, MasterCard, Discover Network, any other Payment Network, and any other third party including telecommunications vendors.
- q. **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 Merchant must be signed by Servicer.
- r. **Independent Contractors.** Servicer, Member, and Merchant 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. The 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.
- s. **Survival.** All of Merchant's obligations to Servicer and Member shall survive termination of the Agreement, including, without limitation, Sections (A)(4)(a)-(d), (A)(5)(a)-(d), (A)(6)(a)-(d), (A)(7)(a)-(c), (A)(8)(a)-(d), (A)(9)(g), (A)(13), (A)(14), (A)(15), (A)(17)(a)-(d), (A)(18)(b), (A)(18)(g), and (A)(18)(k) of the TOS.
- t. **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.
19. **PROVISIONS APPLICABLE TO MERCHANT'S ACCEPTANCE OF TRANSACTIONS IN CANADA**
- a. **Pre-Authorized Debits (PADs).** Merchant authorizes Member, Servicer, and their respective vendors and agents to initiate debit and credit entries to the DDA, the Reserve Account, or any other account maintained by Merchant at any institution that is a member of the CPA, all in accordance with the Agreement. Merchant agrees that any withdrawal by Member, Servicer and their respective vendors and agents in accordance with the Agreement are PADs for business purposes, as defined under Rule H1 of the CPA. Merchant hereby waives the right to receive advance notice from Member, Servicer and their respective vendors and agents of any and all such debits. This authorization will remain in effect after termination of the Agreement and until all of Merchant's obligations to Servicer and Member have been paid in full. If Merchant changes the DDA, this PAD authorization will apply to the new account and Merchant shall provide Servicer and Member in writing 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 written notice from Merchant to reflect in its system any change to Merchant's DDA. If Merchant changes the DDA, Merchant agrees that it is responsible for all costs incurred by Member and/or Servicer in connection with Merchant's decision to change the DDA. Merchant may revoke the PAD authorization upon thirty (30) days' prior written notice to Servicer, but any such revocation shall constitute a material breach of the Agreement. Merchant may obtain a sample cancellation form, as well as further information on Merchant's right to cancel a PAD authorization by contacting Merchant's financial institution or by visiting www.cdnpay.ca.

Merchant has certain recourse rights if any debit does not comply with this agreement. For example, Merchant has the right to receive reimbursement for any debit that is not authorized or is not consistent with this PAD Agreement. To obtain more information on Merchant's recourse rights, Merchant may contact its financial institution or visit www.cdnpay.ca.

- b. **Language.** The parties hereby acknowledge that they have required the Agreement and all related documents to be drawn up in the English language. Les parties reconnaissent avoir demandé que les présents contrats ainsi que les documents qui s'y rattachent soient rédigés en langue anglaise.

SECTION B – ELECTRONIC CHECK SERVICES

If Merchant has selected Electronic Check Services, Merchant shall be subject to this Section B in addition to the terms and conditions of Section A of this TOS. The terms and conditions for ECS are set forth in the Agreement and the ECS Merchant Operating Guide (the “ECS MOG”), incorporated herein and located at our website <http://www.elect-mer.com>. In the course of its acceptance and use of ECS, Merchant represents, warrants and covenants the following:

1. Merchant shall comply with and be bound by (a) the ECS Rules, including the ACH Rules, the ECS MOG and the ECS Primer, 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.
2. Merchant shall pay the fees for ECS as set forth in the Merchant Application, and in any additional application and setup forms.
3. In the event Merchant accepts for ECS certain types of Customer payments that are ineligible as specified in the ECS MOG for any reason, such Transaction is subject to Chargeback. Merchant may be liable for the face value of the Transaction and any actual damages related to or arising out of processing a Transaction that has been charged back.
4. Merchant shall cause a Check Reader/Imager to be readily available for use at all Merchant locations where Merchant will accept Paper Checks for ECS processing.
5. Merchant must use commercially reasonable procedures to verify the identity of each Customer that submits a payment.
6. Merchant shall be solely responsible for providing Customers with notifications and disclosures in connection with ECS, including, but not limited to, posting all point of sale signage and distributing all Customer takeaways and all notices and disclosures required to be provided under the ECS Rules and Laws.
7. Merchant may use the ECS only in connection with the presentment and acceptance of certain types of Customer payments in payment for goods or services sold by Merchant, or in payment for an obligation owed to Merchant, 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.
8. Merchant represents and warrants, with respect to all ECS Transactions submitted for processing by Servicer, that (i) the Customer has duly authorized the debiting of the Customer’s account for the amount of the ECS Transaction in accordance with Laws and ECS Rules, (ii) the Transaction represents an obligation of the Person who is submitting a Customer payment, and (iii) the ECS Transaction is for merchandise actually sold or rented, for services actually rendered, or for the actual amount due and owing from the 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 Merchant. Merchant represents and warrants that no portion of any ECS Transaction involves any element of Merchant’s extension of credit.
9. Merchant may not use ECS for merchandise 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.
10. Merchant is responsible to Service for any Transaction charged back by Servicer or its agent in accordance with the Agreement, including the ECS MOG, and for any fines or penalties incurred as a result of Merchant’s non-compliance with 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 any ECS Transaction that is stopped, not settled, or charged back, as well as any related fees and charges.
11. Merchant must fully cooperate with all parties in the resolution of Customer disputes, as well as Chargebacks, returns, adjustments, representments, and errors in accordance with the ECS Rules and Laws.
 12. All of the representations and warranties made to Visa as a Merchant pursuant to the Visa POS Check Service Operating Regulations and all of the representations and warranties an Originating Depository Financial Institution or a third party sender is deemed to make on behalf of an Originator pursuant to the ACH Rules shall be deemed representations and warranties Merchant makes to Servicer and Member upon Merchant's submission of an Item or a Transaction for ECS processing.
 - a. Merchant acknowledges Visa's right to terminate or limit its relationship with Member or to terminate the Visa POS Check Service at any time. Merchant further acknowledges that Visa may permanently prohibit Merchant's participation in the Visa POS Check Service in the event of (A) fraudulent activity, (B) presenting a Transaction that was not the result of an act between Merchant and a Customer, (C) presenting a Transaction as a Customer-present Transactions where the Customer was not present at the point of sale or Merchant accepts previously voided Paper Checks, (D) repeated violations of the Visa POS Check Service Operating Regulations, or (E) any other activity that may result in undue economic hardship or damages to the goodwill of the Visa POS Check Service.
 - b. Merchant has satisfied all of the Merchant standards and obligations set forth in the Visa POS Check Service Operating Regulations and the Originator standards and obligations set forth in the ACH Rules as of the effective date of the Agreement and shall continue to satisfy such standards and obligations during the Initial Term and any Renewal Term, as applicable.
 13. Merchant is responsible for and will ensure that all information, including MICR data and payment amounts, are accurately captured from a Paper Check in accordance with the applicable ECS Rules, and that all such information is accurately reflected in the related Item Merchant sends to Servicer for processing through ECS. Merchant will not submit for clearing or settlement any physical Paper Check unless and until Servicer and Member have processed and settled a Chargeback to Merchant with respect to any Items created from such Paper Check.
 14. 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.
 15. Merchant does not have the right to use ECS data for any purpose other than to support the ECS itself.
 16. Merchant must treat all ECS documents, including, but not limited to, the Agreement, including the ECS Rules, the ECS MOG and ECS collateral material or related guides, as confidential and proprietary information and must protect it with the same degree of care as Merchant would protect its own confidential and proprietary information and as further specified in the Agreement.
 17. Merchant's Agreement and use of the ECS may be terminated immediately by Servicer for failure to comply with the terms of the TOS, the Agreement or Laws.

SECTION C: GLOSSARY

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

ACH: Automated Clearing House.

Agreement: The TOS, including the Merchant Application, the Merchant Operating Guide, the Electronic Check Service Merchant Operating Guide (if applicable), 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 or Amex Bank of Canada and, to the extent applicable in Canada, The American Express Company.

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.

Canadian Payments Association (CPA): The national association that establishes standards, rules, and procedures and maintains a funds transfer system to enable depository financial institutions to exchange electronic payments.

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.

Chargeback: A Transaction disputed by a Customer or Issuer pursuant to the Payment Network Regulations. For purposes of Section B, “Chargeback” means (i) a sales Transaction disputed by a Customer or an Item not in compliance with Conversion with Guarantee warranty provisions or ECS Rules; (ii) for all Service Levels other than Conversion with Guarantee, the face amount of any Item that is returned by the Drawee Bank or an ECS Association to Servicer unpaid and that is ineligible for resubmission to the Drawee Bank or the ECS Association, including any Item returned for non-sufficient or uncollected funds after the third presentment; and (iii) for all Service Levels, an Item that is not in compliance with Merchant’s obligations, representations and warranties under the Agreement or the TOS.

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

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, passwords and all other financial information.

Credit Card: A card or device associated with a revolving line of credit that may be used to purchase goods and services from Merchant or to pay an amount due to Merchant or to obtain cash advances. A “Credit Card” includes any of the following cards or devices that are associated with a line of credit extended to the Person to whom the card or device is issued: (i) a Visa card or other card or device 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 or device bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); (iii) a Discover Network card or other card or device bearing the symbol(s) of Discover Network; or (iv) any card or device 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.

Customer: A client of Merchant who elects to conduct a payment Transaction with Merchant through presentation of a Payment Device (including a Cardholder).

Debit Card: A card or device bearing the symbol(s) of one or more EFT Networks or Credit Card Associations, which may be used to purchase goods and services from Merchant or to pay an amount due to Merchant by an electronic debit to the Cardholder’s designated deposit account. A “Debit Card” includes (i) a card or device that bears the symbol of a Credit Card Association and may be used to conduct signature-based, offline debit Transactions; and (ii) a card or device that bears the symbol of an EFT Network and can be used to conduct 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. In the instance of a Debit Card or ATM Card, this refers to the Cardholder's deposit account.

Diners: Diners Club International Ltd.

Discover: DFS Services LLC.

Discover Network: Discover Network, Inc.

Drawee Bank: The financial institution where a Customer maintains a checking account on which a Paper Check that serves as the source document to generate an Item at the POS Device or payment for a Transaction is drawn.

EFT Networks: (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE Network LLC, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; (ii) (i) Interac and the Interac Direct Payment service; and (iii) 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.

Elavon: As applicable, Elavon, Inc., a Georgia corporation, Elavon Canada Company, a company validly existing and organized in Nova Scotia, and any affiliate or subsidiary of Elavon, Inc. that provides Processing Services to a Merchant related to Transactions. Elavon is a registered member service provider of each Member. Elavon may also be referred to as "Servicer" in the Agreement, the MOG or other documents provided to Merchant in connection with the Processing Services.

Electronic Check Service (ECS) Association: NACHA, any regional ACH association or network, and any other organization or association used by Servicer and/or Member in connection with the ECS that is hereafter designated as an ECS Association by Servicer from time to time.

Electronic Check Service (ECS) Primer: The detailed information relating to ECS processes and implementation provided by Servicer to Merchant, which must be used by Merchant in conjunction with the technical specifications and certification requirements provided by Servicer to promote integrated point of sale system connectivity and integration between Merchant and Servicer.

Electronic Check Service Rules (ECS Rules): All applicable rules and operating regulations of or applicable to the ECS Associations (including the ACH Rules) and the ECS MOG, in each case including without limitation, all amendments, changes, and revisions made thereto from time to time.

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

Electronic Gift Cards (EGC): A special card purchased by a Customer or provided by Merchant to a Customer that is redeemable for merchandise, services or other Transactions. A program that allows a Merchant to sell Electronic Gift Cards redeemable for in store merchandise or services.

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

Interac: Interac Association.

Interac Direct Payment: The service provided by Interac to permit Customers to pay for goods and services by debiting money directly from their accounts using a POS Device equipped with a PIN pad with PIN verification.

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 local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.

MasterCard: MasterCard International Incorporated.

MasterCard Merchant Agreement: The Merchant Agreement that is a part of the Agreement and is between Merchant, the Member of MasterCard and Servicer, if as part of the Program Merchant has requested the ability to accept MasterCard Credit Cards. The Member of MasterCard is a party to the MasterCard Merchant Agreement for purposes of compliance with the MasterCard Credit Card Rules while Servicer is a member service provider of MasterCard and as such is also a party to the MasterCard Merchant Agreement. The Member of Visa is not a party to the MasterCard Merchant Agreement and shall have no liability with respect to any matters relating to or arising out of the MasterCard Merchant Agreement, including any actions of Servicer or the Member of MasterCard thereunder. The MasterCard Merchant Agreement is contained within the Agreement and is identical to the Visa Merchant Agreement except as set out herein

Member: A financial institution designated by Servicer that is a principal, sponsoring affiliate or other member of Visa, MasterCard or other member of the applicable Payment Network. References to “Member” in the MasterCard Merchant Agreement shall refer to the Member of MasterCard and references to “Member” in the Visa Merchant Agreement shall refer to the Member of Visa. As of the date of distribution of the TOS, the Visa Member is U.S. Bank National Association, acting through its Canadian branch, and the MasterCard Member is GE Money Canada, (formerly known as GE Consumer Finance Canada). The Member may be changed by Servicer at any time and the Merchant will be provided notice of same.

Merchant (or you): The business entity indicated on the Merchant Application that provides goods and/or services to Customers, or that accepts payments from Customers.

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: The Merchant Application and any additional 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 Operating Guide (MOG): The operating manual provided by Servicer to its merchant that prescribes rules and procedures governing the Transactions. The Merchant Operating Guide may be amended from time to time by Servicer in its sole discretion, which amendments will be effective upon notice to Merchant.

MICR: The magnetic ink character read line encoded on a Paper Check that contains information about the Customer’s checking account, including the ABA Routing Number and checking account number.

NACHA – The Electronic Payments Association: The national association that establishes standards, rules, business practices, and procedures governing the ACH Network, including the ACH Rules.

Paper Check: A Customer’s paper check presented to Merchant for payment to the Merchant, which check will serve as the source document for Items.

Payment Card Industry Data Security Standard (PCI DSS): 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, MasterCard and Discover, 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 and the PCI DSS regulations of Discover Network.

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 number that must be entered by a Cardholder in order to complete certain types of Transactions (e.g., online debit, EBT).

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 Card transactions to purchase goods or services and must comply with applicable standards administered by the Payment Card Industry Security Standards Council.

POS Device: A terminal, software, or other point-of-sale device, including a Third Party Terminal, at a Merchant location that conforms with the requirements established from time to time by Servicer and the applicable Payment Network. The requirements incorporate: (i) a Track 2 Magnetic Stripe Reader; (ii) communicates electronically, directly or indirectly, with the Servicer’s 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.

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

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 (A)(6).

Servicer: See “Elavon.”

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>.

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

Transaction: Any action by a Customer using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, return, or debit).

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

Value Added Servicer: Any entity that stores, processes, transmits or accesses Payment Device data or Transaction data on behalf of Merchant or that provides software to Merchant for transaction processing, storage, or transmission.

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

Visa Merchant Agreement: The Merchant Agreement that is a part of the Agreement and is between you, the Member of Visa and Servicer, if as part of the Program you have requested the ability to accept Visa Credit Cards. The Member of Visa is a party to the Visa Merchant Agreement for purposes of compliance with the Visa Credit Card Rules while Servicer is a registered independent sales organization of Visa and as such is also a party to the Visa Merchant Agreement. The Member of MasterCard is not a party to the Visa Merchant Agreement and shall have no liability with respect to any matters relating to or arising out of the Visa Merchant Agreement, including any actions of Servicer or the Member of Visa thereunder. The Visa Merchant Agreement is contained within the Agreement and is identical to the MasterCard Merchant Agreement except as set out herein.

Visa POS Check Service Operating Regulations: A set of specifications, guidelines, and principles defined by Visa that govern the operation and flow of information for transactions participating in the Visa POS Check Service.