

STATE OF ALASKA

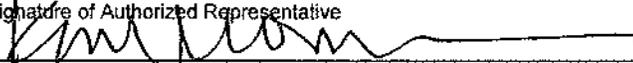
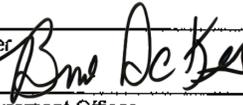
BILATERAL AMENDMENT TO STANDARD CONTRACT FORM Goods and Non-Professional Services

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|--|
| 1. Agency Contact Number RFP 2011-0400-9805 |
| 2. Contract Title Warrant Redemption Services |
| 3. Optional Renewal? Yes No XX |
| 4. Financial Coding N/A |
| 5. Agency Assigned Encumbrance Number N/A |
| 6. Amendment No. One |

| | | | | |
|--|--|---------|-------|----------|
| This agreement is between the State of Alaska, | | | | |
| 7. Department of Revenue | hereafter the State, and | | | |
| 8. Contractor Key Bank, N.A. | hereafter the Contractor | | | |
| Mailing Address | Street or P.O. Box | City | State | ZIP Code |
| | 1301 5 th Ave, 25 th Floor | Seattle | WA | 98101 |

9. This Amendment Serves To:
 Modify Appendix C #11 (Other Services) to add functionality within scope and budget for routine disbursement and payment collection:

- Implement Prepaid Debit Card Disbursement service known as Key2Benefits as described in proposal letter and related documents dated January 8, 2015 [Attachment K2B] and KeyBank Public Sector Prepaid Debit Card presentation dated July 2014.
- Implement Electronic Bill Presentment and Payment solution (EBPP) for Alaska's Child Support non-custodial parent revenue collection as described in the proposal dated October 16, 2014 [Attachment EBPP].
- Append the original schedule of fees to include the related pricing schedules for each above named proposal.
- Listed documents are incorporated by reference and in the event a conflict exists among any following documents the order of precedence for conflict resolution is as follows
 - a. General Provisions (Appendix A) and Indemnity and Insurance (Appendix B)
 - b. Key2Benefits Client Service Agreement
 - c. E-Bill & Collect Service Schedule
 - d. KB Merchant Services Payment Device Processing Agreement, includes Schedules I and J
 - e. Receivables KeyPay Service Schedule

| | |
|---|---|
| 10. CONTRACTOR | 11. CONTRACTING AGENCY |
| Name of Firm Key Bank, N.A. | Department/Division Revenue / Treasury |
| Signature of Authorized Representative  | Signature of Procurement Officer  |
| Typed or Printed Name of Authorized Representative Kim Monson, Managing Director Public Sector | Typed or Printed Name of Procurement Officer Bronze Ickes, Assistant Cash Manager |
| Date 1/28/15 | Date 1/28/2015 |

Cardholder Fees, Transparency and Education are Critical Aspects to any State Prepaid Debit Card Program



Key focuses on ensuring cardholders (beneficiaries and employees) have easy access to cash at no charge along with 24/7/365 customer service and transparency into any fees that may occur.

| LIST OF DISCLOSED FEES ON CARDS ANALYZED BY CFSI, RANKED BY FREQUENCY OF DISCLOSURE | | | | |
|---|---------------|---------------------|---|----------------|
| DISCLOSED FEES | # OF PROGRAMS | AVERAGE FEE | KeyBank Fee | Percent Diff % |
| Out-of-network ATM | 36 | 2.12 ^[1] | 2 Free / Month then \$1.50 ^[1] | (65%) |
| FX conversion | 34 | 2.00% | 2% | |
| Replacement card | 30 | 7.64 ^[2] | 1 Free / Year then \$4.95 ^[2] | (78%) |
| Balance inquiry at an ATM | 29 | \$0.84 | No Charge | (100%) |
| Monthly fees | 28 | \$6.82 | No Charge | (100%) |
| Paper statement | 27 | \$3.00 | No Charge | (100%) |
| International: out-of-network ATM | 26 | \$3.59 | \$2.75 | (23%) |
| Expedited delivery of replacement card | 24 | \$28.74 | \$15.00 | (48%) |
| Activation | 23 | \$8.85 | No Charge | (100%) |
| Get cash from a teller | 23 | \$6.76 | No Charge | (100%) |
| ATM decline | 22 | \$1.10 | No Charge | (100%) |
| Live customer service | 20 | \$2.16 | No Charge | (100%) |
| Get remaining funds when closing account | 19 | \$17.34 | No Charge | (100%) |
| Point of sale PIN transaction | 16 | \$0.99 | No Charge | (100%) |
| Online bill pay transaction | 16 | \$1.05 | No Charge | (100%) |
| Second card | 15 | \$6.25 | No Charge | (100%) |
| Overdraft | 14 | \$19.98 | No Charge | (100%) |
| Transfer from card to bank account | 13 | \$3.98 | No Charge | (100%) |
| Automated phone customer service | 12 | \$0.54 | No Charge | (100%) |
| International: point of sale PIN transaction | 12 | \$0.94 | No Charge | (100%) |
| International: balance inquiry at an ATM | 12 | \$1.31 | No Charge | (100%) |
| Point of sale decline | 10 | \$1.15 | No Charge | (100%) |
| International: ATM decline | 10 | \$1.66 | No Charge | (100%) |
| Transfer between cards | 9 | \$2.68 | No Charge | (100%) |
| Dormancy (inactivity) | 9 | \$5.30 | \$1.40 ^[3] | (74%) |
| International: point of sale sig. transaction | 9 | \$0.78 | No Charge | (100%) |
| Point of sale sig. transaction | 7 | \$0.78 | No Charge | (100%) |
| International: point of sale decline | 6 | \$1.52 | No Charge | (100%) |
| Point of sale cash back | 2 | \$1.00 | No Charge | (100%) |
| On-line bill pay enrollment | 2 | \$2.00 | No Charge | (100%) |

[1] Average fee based upon 4 ATM withdrawals out-of-network per month [2] Based upon 1.5 replacement cards per cardholder per year [3] Dormancy based upon 12 months



CFSI "Center for Financial Services Innovation"

Pricing

Electronic Bill Presentment and Payment (EBPP)

| Description | Price | Per | Optional / Mandatory |
|--|----------|---------------|----------------------|
| Implementation | | | |
| EBPP Setup for Web / CSR / Agent Payments – Tier 2 Biller | \$ 500 | One Time | Mandatory |
| EBPP Custom Programming ¹ | \$ 150 | Hour | Optional |
| File Management Complex Map Creation | \$ 5,400 | One Time | Optional |
| Monthly | | | |
| EBPP Payments Monthly – Tier 2 Biller | \$ 100 | Month | Mandatory |
| Transactional | | | |
| EBPP Web / CSR Payments, items 1 – 3,000 ² | \$ 0.30 | Payment | Mandatory |
| EBPP Web / CSR Payments, items 3,001 – 10,000 ² | \$ 0.25 | Payment | Mandatory |
| EBPP External Payment (MoneyGram) | \$ 0.10 | Payment | Optional |
| EBPP ACH Return | \$ 1.50 | Returned Pymt | Mandatory |
| EBPP ACH Notification of Change | \$ 0.75 | NOC | Mandatory |
| EBPP SMS Customer Notification ³ | \$ 0.03 | Message | Optional |

1 – For Account Master File (billing data sent to Key), no custom programming will be needed if CSSD can provide data in a delimited file without header or footer.

2 – Applies to payments in Division 1 and 3. Does not apply to payments in Division 2 nor MoneyGram.

3 – SMS Customer Notification fee only applies if EBPP is configured to offer SMS notifications (e.g. new bill; due date alert; payment reminder; etc.) and if non-custodial parents opt-in online to receive specific notifications.

MoneyGram charges a bill payment fee to non-custodial parents.

Integrated Receivables

| Description | Price | Per | Optional / Mandatory |
|--|----------|------------|----------------------|
| Implementation | | | |
| Integrated Receivables Setup | \$ 125 | One Time | Mandatory |
| Monthly | | | |
| Integrated Receivables Monthly | \$ 50 | Month | Mandatory |
| Transactional | | | |
| Integrated Receivables Transmission ⁴ | \$ 5.00 | File | Mandatory |
| Integrated Receivables ACH/EDI Item | \$ 0.005 | Settlement | Mandatory |
| Integrated Receivables EBPP Item | \$ 0.005 | Payment | Mandatory |

4 –Fully offset by elimination of \$5 ACH Data Transmission fee currently charged for received ACH files

E-BILL & COLLECT SERVICE SCHEDULE

For Bank Use Only
TIN # (required) 926001185
Account # (optional)
Document Type: Treasury Services Agreement
Aux Doc Type: E-Bill & Collect Agreement
Contact Name: Debbie Kinnett
Phone: 206 343 6961
Agreement Modified Yes or No

Client: ("Client")

THIS SCHEDULE. Client has decided to use the Service described below and KeyBank National Association ("Bank") agrees to provide the Service as stated herein. Client and Bank agree that the Service shall be performed in accordance with this Schedule and Client's selections, designations, authorizations and/or other instructions, and subject to the Master Agreement between Client and Bank for cash management services, a copy of which has been received and signed by Client (said agreement, together with all other addenda, exhibits and schedules attached thereto, collectively called the "Master Agreement"). This Schedule is hereby made a part of the Master Agreement. Client has also executed an Automated Clearing House / Electronic Data Interchange Service Schedule with Bank. All capitalized terms in this Schedule shall, unless otherwise defined herein, have the same meaning as ascribed to them in the Master Agreement or the Automated Clearing House / Electronic Data Interchange Service Schedule.

1. Service. The E-Bill & Collect Service ("Service") is a suite of services that delivers managed electronic payment processing as selected by Client. The Service provides for processing of electronic payments made by Client's customers who have agreed to use Client's electronic payment services ("Customers"). "Provider" as used herein means such third party service provider selected by Bank for all or part of the Services hereunder. Subject to the terms of this Agreement, Bank grants to Client a non-exclusive, limited and revocable subscription license to use, in the ordinary course of Client's business, Provider's application, which is created for and incorporated into the Services. Such subscription license shall not exceed the term of Bank's ability to grant such a license.

2. Service Requirements. Client agrees that:

(a) ACH Entries. Provider shall act as a third party processor for Client for electronic payments made by Customers in the form of ACH Entries. Client authorizes Provider to process and otherwise provide to Bank, on behalf of Client, ACH Entries, and adjustments, corrections and instructions relative to ACH Entries.

(b) Card Payments. Client shall enter into a written agreement with Key Merchant Services, LLC ("KMS), or such other merchant services processor approved by Bank ("Merchant Services Processor"), for processing and settlement of card transactions and related services, where a Customer has initiated a payment using any

credit card, debit card, prepaid debit card, stored value card, or other access device issued by Bank or any other financial institution that participates in the card network whose service mark is branded on the Customer's card.

(c) Website Services. The Services may include such Internet website enablement services as are commercially reasonable and necessary to support the Services offered by Client to its Customers. Client's website shall include Client's privacy policy, refund policy, and customer service contact information. If Client chooses to utilize a single sign on interface between Client's website and the Service website, Client's website shall use commercially reasonable methods to authenticate users before redirecting them to the Service website. Client's website shall not display any Bank service mark, trademark, logo or other proprietary information without the prior written approval of Bank.

(d) Customer Support. Client shall provide, at its sole cost, primary customer support to its Customers. Client's customer service personnel will take all calls for support from its Customers.

3. Client Responsibilities. (a) General. Client is solely responsible for (i) obtaining and maintaining all system interface (e.g., hardware/software, communication) access to enable Client to receive the Services; (ii) obtaining appropriate contractual and other required authorizations from, and, as necessary, providing appropriate notices to, Customers; (iii) complying with all contractual and other obligations of Client owed to Customers; and (iv) complying with the obligations for each portion of the Services selected by Client and agrees to execute such additional documentation as required. Client agrees to participate in acceptance testing of and implementation services associated with the Services Client agrees that it is responsible for the accuracy of all data, information and documentation supplied to Bank and/or Provider in connection with this Agreement. Bank and Provider are not responsible for detecting errors in information received from Client.

(b) Payment Files. Upon receipt of remittance or payment files, Client agrees that it will inform Bank and Provider by e-mail or facsimile of any payment data which contains an invalid (non-postable) Customer account number within two (2) Banking

Days. Client agrees to cooperate in resolving such occurrences. Client further agrees that an ACH debit to Client's account may be made for the amount of all invalid remittances which fail to be resolved and which have not been refunded to Customer by Client.

(c) Payment Transactions. (i) ACH Transactions. Client expressly authorizes Provider, upon receipt by Provider of information purporting to show that a Customer approves a payment in a specific amount through the Services, to generate an ACH entry to Customer's account on behalf of Client in that amount. If an approval is received on any business day prior to the established deadline, reasonable efforts will be made to generate the ACH debit entry relating to that approval on that same day. If approval is received after the final deadline for that business day, or on a day other than a business day, reasonable efforts will be made to originate the ACH entry on the next business day.

(ii) Card Transactions. Client expressly authorizes Provider, upon receipt by Provider of information purporting to show that a Customer grants an approval, to submit a transaction to Merchant Services Processor on behalf of Client in the amount indicated in the approval. Merchant Services Provider shall generally route such transaction to the card issuing financial institution through the credit card networks; provided, however, that certain debit card transactions may be routed through the debit card networks if Client has been approved by Merchant Services Processor for pinless debit card processing.

(d) Settlement. (i) Credits. Client agrees that payments will be caused to be made from the Customer's account at the request of the 1) the Customer, or 2) Client on behalf of the Customer in accordance with the provisions of this Schedule. From those payments, Client agrees that credits will be initiated to Client's account, in accordance with the operating procedures determined by the parties. Client agrees that each payment transaction which it receives through the Service which contains a valid Customer account number will be posted to such Customer account as a credit no later than the same Banking Day as Client receives settlement credit.

(ii) Returned Payments. In the event Bank and/or Provider has been unable, for any reason, to collect the funds from the Customer's account for any payment processed, or where any payment is returned or charged-back for any reason, Client shall accept an electronic debit to Client's account for the aggregate amount of uncollected remittances. No action on the part of Client, including but not limited to a bankruptcy, insolvency, attachment, execution by any third party, or other proceeding shall affect these rights. If for any reason the reversal debit described in this Section is not

successful and is returned, then no later than the third (3rd) business day after the notification date of the non-funded payment, Client shall send the amount of such uncollected remittances by wire transfer, plus interest at the then-current Federal Funds rate for the amount of time that the Client had the funds. Bank reserves the right at any time to suspend the Services hereunder in the event chargebacks or returns to Client's account exceed rates established by Bank and/or Provider from time to time.

4. Customer Fees. Fees may be charged to Customers upon mutual agreement by Client, Bank, and Merchant Services Processor, where not otherwise prohibited by applicable law or payment network association rules. For each payment processed by Provider through the Service on behalf of a Customer, Provider or Merchant Services Processor may charge a service or convenience fee (each a "Customer Fee"). Such Customer Fee shall represent a fixed amount or percentage of the payment, or both. The Customer Fee rate shall be determined by the party receiving the Customer Fee proceeds and may be changed from time to time. For the purpose of calculating Customer Fees, each submission of an ACH debit, credit card, or debit card transaction performed in accordance with this Agreement will be considered a "Transaction," whether or not such Transaction is later reversed or charged back. Customer Fees are payable at the time a Transaction is requested and neither Bank nor Provider shall be responsible for processing any Transaction in connection with which an associated Customer Fee is declined or otherwise fails to be paid. If a revised Customer Fee is agreed upon by the parties, such agreement shall be evidenced in writing and deemed an amendment to the terms of this Schedule. Client shall be responsible for providing Customers all disclosures and notices with respect to Customer Fees as may be required pursuant to Applicable Law, payment network association regulation or otherwise.

5. Training. Training shall be provided in such amount, at such times, and at such fees and costs as mutually agreed upon.

6. Data. Client hereby authorizes and directs Provider and KMS or other Merchant Services Processor to provide data regarding the Services to Bank upon Bank's request.

7. Privacy/Security. Client and Bank agree that (a) Customers are at all times customers of Client for purposes of this Agreement and applicable privacy and security laws and regulations, and (b) Client has a responsibility to protect the security and privacy of

**KEY2BENEFITS® PROGRAM
Client Services Agreement**

| | |
|--|--|
| For Bank Use Only | |
| TIN # (required) | 926001185 |
| Account # (optional) | |
| Document Type: Treasury Services Agreement | |
| Aux Doc Type: Key2Benefits Program Client Services Agreement | |
| Contact Name: | Debbie Rivetti |
| Phone: | 206 3436961 |
| Agreement Modified | <input type="checkbox"/> Yes or <input checked="" type="checkbox"/> No |

Client Name: ("Client")

THIS SCHEDULE. Client has decided to enroll in Bank's Key2Benefits Program ("Program") described below and KeyBank National Association ("Bank") agrees to provide the Program as stated herein. Client and Bank agree that the Program shall be administered in accordance with this Agreement and Client's selections, designations, authorizations and/or other instructions, and subject to the [Agreement Title] between Client and Bank for cash management services, a copy of which has been received and signed by Client (said agreement, together with all other addenda, exhibits and schedules attached thereto, collectively called the "Master Agreement"). This Agreement is hereby made a part of the Master Agreement. Reference to the "Agreement" herein shall include the Master Agreement.

1. Definitions. All capitalized terms in this Agreement shall, unless otherwise defined herein, have the same meaning as ascribed to them in the Master Agreement.

- a. "Applicable Law" means any and all laws, treaties, rules, regulations, regulatory guidance, determinations of (or agreements with) an arbitrator or governmental authority and mandatory written direction from (or agreements with) any arbitrator or governmental authority, that are applicable to the Program, either Party, and/or any potential or existing Cardholder.
- b. "Beneficiary" or "Cardholder" means an individual designated by Client as a recipient of government benefits via the Program.
- c. "Card" means the access device issued by Bank to a Cardholder for accessing those funds in the Program Account reflected in the Cardholder Subaccount records as belonging to the Cardholder.
- d. "Cardholder Agreement" means the agreement between Bank and each Cardholder which sets forth the terms and conditions (including, without limitation, all fees and other charges) applicable to the Card, and all disclosures associated therewith.
- e. "Marketing Material" means those Bank marketing, support and/or enrollment materials developed by Bank to facilitate the promotion and offering of the Program.
- f. "Regulatory Authority" means NACHA—The Electronic Payments Association, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, each electronic payment network operated by any payment card or electronic funds transfer network, and any other federal, state or local agency or authority having jurisdiction over Bank, Client, any Cardholder (or potential Cardholder) or the Program.

2. Description of the Program. Bank shall provide the following services as part of the Program for the fees set forth herein:

- a. For Cardholder. Each Cardholder will receive: (i) a Card; (ii) access to a Cardholder support call center; and (iii) any other services and features set forth in the Cardholder Agreement applicable to such Cardholder.
- b. For Client. Client will receive: (i) access to client support; (ii) web-based tools for enrollment of Cardholders in the Program; and (iii) reasonable training to facilitate Client's on-boarding of Cardholders in the Program. Client agrees to cooperate with Bank in the implementation of the Program.
- c. General.
 - i. No interest will be paid to Client or any Cardholder with regard to any funds held in the Program Account.
 - ii. Bank will provide additional or customized Marketing Materials or Cards to Client for an additional fee as agreed to by the Parties in writing.
 - iii. Client agrees that it shall not use the Program for anything other than the payment of government benefits funds to qualified beneficiaries.
 - iv. Client agrees that it will be the sole source of funds made to the Program Account and that Cardholders will not be permitted to add their own funds to the Program Account or to associate the Card with any other account.

3. Promotion of and Enrollment in the Program.

- a. Promotion. Client shall promote the Program to Cardholders in compliance with any guidelines and procedures established by Bank and shall only offer the Program to Beneficiaries in a manner that is compliant with Applicable Law.
- b. Enrollment Information. Client must obtain and deliver to Bank the information required by Bank to establish a Cardholder Subaccount for each potential Cardholder through the enrollment process made available to you by Bank through Bank's Program website portal (the "Client Website") for that purpose and/or the batch file enrollment process agreed upon by Client and Bank. Client must verify all information prior to providing the enrollment form to Bank. If information is missing or cannot be verified by Client, Bank will not be able to issue a Card to the Beneficiary.
- c. Cardholder Identity Verification. Client agrees that it has verified the identity of the individuals Client is enrolling in the Program. The information Client has obtained includes name, street address (residence street address, not P.O. Box, for individuals), social security number, and date of birth for individuals. Client covenants and agrees that the Client information provided to Bank is accurate and

has been verified by supporting identification documentation. In support of the USA PATRIOT Act, Bank may independently verify identification information on enrollees supplied by your organization, as new Cards are issued. Bank may request additional identification information or documentation for any potential or existing Cardholder at its discretion from time to time.

d. Transmission of Information. Client hereby covenants and agrees that it shall only transmit information to Bank: (x) via a method approved by Bank; (y) after obtaining the consent of the individual whose information is being transmitted to transfer such information to Bank; and (z) for which it has the full power and authority to obtain.

e. Document Retention. Client shall maintain in its records during the Term and for a period of no less than five (5) years following the Term, or such longer period as may be required by Applicable Law: (i) the identification information transmitted to Bank for enrollment for each potential Cardholder and a copy of the related documentation; and (ii) the potential Cardholder's consent for the transmission of his or her information to Bank and the use thereof by Bank in connection with the Program.

4. Deposits to the Program Account. Client shall promptly deposit in the pooled FDIC-insured account established for the benefit of Cardholders by Bank (the "Program Account") by timely, irrevocable wire transfer, direct deposit, ACH transfer or other means specified by Bank good and immediately available funds due to the Cardholders to be paid pursuant to the Program in the appropriate amounts and at the appropriate times pursuant to its procedures and applicable law. With respect to each transfer of funds by the Client to the Program Account, Client shall deliver to Bank in the format specified by Bank data identifying the amount of such funds attributable to each Cardholder ("Disbursement Detail"). Bank shall have no obligation to make any funds available (or provide related services), to Cardholders with respect to whom inadequate funds are held in the Program Account or for whom Disbursement Detail is not delivered by Client. The Program Account shall be maintained at Bank on behalf of all Cardholders and Bank shall maintain individual sub-account entries in its system reconciled to amounts in the Program Account for each Cardholder (each, a "Cardholder Subaccount"). Client shall retain no interest in the funds once paid into the Program Account other than the right to correct inadvertent overpayments in accordance with rules governing the means of payments transfer.

5. Fees.

a. Client Fees. Client shall pay Bank the fees set forth in the Master Agreement, and incorporated herein by reference, for the Program in accordance with the terms set forth therein. Notwithstanding any of provision of herein to the contrary, Client shall be responsible for all fees, assessments, and penalties imposed by any Regulatory Authority as a result of Client's acts or omissions in connection with the Program.

b. Cardholder Fees. Cardholder fees shall be set forth in the fee schedule attached hereto as Exhibit A, and to the applicable Cardholder Agreement and shall be subject to that Cardholder Agreement. In no case shall any of the Cardholder fees inure to the benefit of the Client.

6. Regulatory Compliance Obligations of the Parties.

a. Obligations of Bank. In addition to any other obligations set forth herein, Bank covenants and agrees that it shall:

- i. Structure the Program Account and maintain Cardholder Subaccount records so that each Cardholder is eligible for FDIC insurance to the extent available under Applicable Law;
- ii. Respond to any garnishment action on any Cardholder funds in the Program Account; and
- iii. Handle Card transaction disputes by Cardholders.

b. Obligations of Client. In addition to any other obligations set forth herein, Client covenants and agrees that it shall:

- i. Be solely responsible for compliance with all Applicable Laws relating to the government benefits enrolled in the Program and payments thereof, and any other matters with regard to the payment of Beneficiaries who are Cardholders, including, without limitation, proper payment of benefits payable by Client to Beneficiaries, tax withholding, timely remittance of all applicable taxes, proper delivery of payment stubs and similar information, payment of benefits by prepaid card, the administration of the State's benefits program, or the use of such prepaid card by a Cardholder, as the same laws may be amended, from time to time, and expressly including any successor laws.
- ii. Without limiting the provision set forth in subsection (b)(i), (A) ensure that Client's payment of government benefits to Cardholders through the Program is permissible under Applicable Law; (B) obtain the consent of each Beneficiary to be paid via the Program, if, and to the extent, required by Applicable Law; (C) make all disclosures required to be made in order to pay benefits or other compensation to Cardholders through the Program, or ensure that such disclosures have been made; and (D) obtain the authorization of any Regulatory Authority required to pay Beneficiaries via the Program.
- iii. Notify Bank of any failure, of which it obtains knowledge, by Client, its employees, subsidiaries, affiliates, agents or representatives, to comply with Applicable Law and related to the Program.

7. Representations, Warranties and Covenants.

a. Client hereby represents, warrants and covenants that the information it has provided to Bank in connection with this Agreement (the "Client Due Diligence Information") is true, complete and accurate in all respects, and that Client will promptly provide updated information to Bank if any

Client Due Diligence Information becomes untrue, incomplete or inaccurate during the Term. Client further covenants that any information that it provides to Bank with regard to Client or any prospective or existing Cardholder during the Term will be true, complete and accurate in all respects. Client covenants and agrees to promptly provide any information that Bank requests to comply with Applicable Law.

b. Bank represents and warrants that it will provide the Program in a professional manner and pursuant to its obligations set forth herein.

c. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, BANK MAKES NO REPRESENTATIONS OR WARRANTIES, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, RELATING TO OR ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

d. Client represents, warrants and covenants that it will comply with all applicable OFAC sanctions.

8. Termination.

a. In addition to any termination rights in the Master Agreement, Bank may terminate this Agreement upon ninety (90) days prior written notice to Client and the Program at any time for any reason or no reason upon written notice to Client.

b. Effect of Termination of the Agreement on Cardholders. Notwithstanding any termination of this Agreement, Bank will continue to provide services to any Cardholder pursuant to the terms of the applicable Cardholder Agreement.

c. Cancellation of Cards. Client acknowledges that all Cards issued to Cardholders are the property of Bank and are subject to cancellation by Bank in accordance with the terms of the applicable Cardholder Agreement and Applicable Law, at any time, unrelated to the termination of the Agreement.

d. Effect of Termination: Survival. In the event of any termination, all fees incurred under this Agreement so terminated shall become immediately due and payable. All warranties of the Client made herein and obligations of Client that arose prior to termination shall survive the termination of this Agreement and shall bind the successors and permitted assigns of the Client and shall inure to the benefit of bank, its successors and assigns. For the avoidance of doubt, the provisions set forth in Sections 3.e (Document Retention), Section 5.a (Client Fees), Section 7.c (Warranty Disclaimer), Section 10 (Ownership), Section 11 (Confidentiality), Section 12 (Audit Rights), and Section 14 (Miscellaneous) shall also survive the termination of this Agreement.

9. **Exclusivity.** Throughout the Term, Bank shall be the exclusive provider of any prepaid card program for all Beneficiaries of Client. Client understands and agrees that Bank's relationship with the Client under this Agreement is non-exclusive, and that Bank may at any time establish similar relationships with one or more other parties for similar or any other purposes.

10. **Ownership.** The Program, Program Card Packs, the Cards, Card numbers, PINs, Marketing Materials, and the intellectual property related to the operation and functionality of such items and processes, as well as their relationship to, and interaction with, the services provided by Bank, are the sole property of Bank (collectively, the "Bank Materials"). Unless otherwise expressly provided herein or agreed to in writing by Bank, no rights in or to this property are created, assigned or otherwise transferred from Bank to Client pursuant to the Agreement, and Bank shall retain all rights with respect thereto. Bank hereby grants to Client a non-exclusive, non-transferrable, non-sublicensable, revocable, royalty-free license to use the applicable Bank Materials in accordance with the terms and conditions set forth herein, for the limited purpose of carrying out Client's obligations under this Agreement for the Term, and for no other purpose. Client may not grant any sublicenses in the Bank Materials without the express written consent of Bank.

11. **Confidentiality.** Notwithstanding any provision in the Master Agreement to the contrary, the information that Client provides to Bank relating to Cardholders (or potential Cardholders) pursuant to this Agreement (collectively, the "Cardholder Information") shall not be considered either Party's Confidential Information hereunder, but each Party covenants and agrees to protect all Cardholder Information as required by Applicable Law. To the extent this provision conflicts with any other provision in the Agreement, this provision shall control.

12. **Audit Rights.** Bank shall have the right, upon reasonable prior written notice, to visit (and/or have its third party auditors visit) Client's facilities during normal business hours for the purpose of determining the adequacy of procedures for complying with its obligations under the Agreement relating to Cardholder identity verification and compliance with Applicable Law. All audits must be reasonable in scope and duration, and conducted at the expense of Bank.

13. **Limitation on Liability.** Notwithstanding any provision in the Master Agreement to the contrary, neither Bank nor Client shall be liable to the other for any indirect, special, or consequential damages of any kind, and irrespective of whether such party is advised of the possibility that such damages may arise, occur, or result. Bank shall be liable to Client for direct damages only to the extent such damages arise from Bank's gross negligence or willful misconduct.

14. Miscellaneous.

a. Assignment. Neither Party will have the right to assign this Agreement, in whole or in part, without prior written

consent from the other Party, except that either Party: (i) may assign this Agreement, together with the assignment of all or substantially all of such Party's assets reasonably necessary to perform its obligations under this Agreement, to any of its affiliates (provided such affiliate is willing and able to fulfill the assigned obligations under this Agreement) without prior written consent from the other Party, but with prior written notice thereof to such other Party; and (ii) may assign its rights and obligations under this Agreement, either in whole or part, as a result of sale, consolidation, or merger, to a successor in interest without prior written consent but with prior written notice thereof to such other Party. Any attempt to assign this Agreement, without such consent, will be null and void. Consent will not be unreasonably withheld. Subject to the foregoing, this Agreement shall be fully binding upon, inure to the benefit of, and be enforceable by, the Parties hereto and their respective successors and assigns. In the case of any assignment by Client (whether or not consent by Bank is required), Client must provide Bank with the same information regarding the proposed assignee that Client was required to provide Bank as part of the Client Due Diligence Information, and if Bank is unable to verify the identification of such proposed assignee as required by Applicable Law or if the proposed assignee does not otherwise satisfy Bank's criteria, then Bank may terminate this Agreement upon ten (10) days' notice to Client, and if assigned, to the assignee.

b. Governing Law and Venue. The validity of this Agreement, the enforcement of its terms, and the interpretation of the rights and duties of the Parties shall be governed by the domestic laws of the State of Alaska, without regard to its conflict of law provisions and without regard to the Uniform Computer Information Transactions Act, UCITA, as may be adopted. The Parties agree that any dispute arising out of this agreement shall be resolved under the laws of Alaska. Any appeal of an administrative order or any original action to enforce any provision of this agreement or to obtain any relief from or remedy in connection with this agreement may be brought only in the superior court for the State of Alaska.

c. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. Except where otherwise specified, the rights and remedies granted to a party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies which the party may possess at law or in equity.

d. Waiver. The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

e. Notices. All notices required or permitted under this Agreement will be in writing and delivered by courier,

overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All notices will be sent to the addresses set forth below or to such other address as may be specified by either Party to the other in accordance with this Section. Either Party may change its address for notices under this Agreement by giving written notice to the other Party by the means specified in this Section.

f. Relationship of Parties. The Parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Neither Party shall represent itself as an agent, employee, legal representative, joint venturer, or partner of the other and shall not assume or purport to create any obligation on behalf of the other.

g. Headings. The captions and headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

h. Amendment. This Agreement may not be amended except in a writing signed by both Parties.

i. Publicity. Neither Party shall disclose, use or refer to this Agreement or any of its terms, or the names, trademarks or service marks of the other Party in any advertising, publicity releases, promotional materials, or materials without the prior written consent of the other Party, which, with respect to Bank, shall be Bank's Public Affairs Department.

j. Further Assurances. Each Party shall take such action (including, but not limited to, the execution, acknowledgment, and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

{Remainder of page intentionally left blank.}

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates below written.

Client:

By: Bruce DeKes 1/28/2015
Signature Date

Title: Assistant Cash Manager

Notice Address: State of Alaska, Treasury Cash Management, PO Box 110406, Juneau, AK 99811-0406

KEYBANK NATIONAL ASSOCIATION

By: [Signature] 1-30-15
Signature Date

Title: VP & Sr. Treasury Services Client manager

Notice Address:

EXHIBIT A

CARDHOLDER FEE SCHEDULE

SCHEDULE I
PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS

PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS. Merchant elects and agrees to accept the Payment Device Processing Services for government entities and institutions, as such services are further described in this Schedule and the Exhibits hereto, and subject to the terms and conditions of the applicable provisions of the Agreement. Except as expressly modified pursuant to this Schedule, all terms and conditions of the Agreement, including all other Schedules to the Agreement, remain in full force and effect and shall govern the relationship among the parties to this Schedule I.

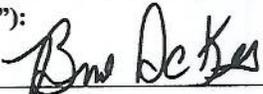
KeyBank Fee Collection Model (check one):

- Direct Debit
- Monthly Net Settlement
- Invoice (when available)

Capitalized terms used and not otherwise defined in this Schedule I shall have the meanings ascribed to them in the Agreement or in the Merchant Operating Guide ("MOG"), which is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule I to the Agreement.

STATE OF ALASKA CCSD (Child Support Services Division), on behalf of itself and each of the affiliated entities identified on Schedule B to the Agreement (the "MERCHANT"):

By: 
 Name: Bronze Ickes
 Title: Assistant Cash Manager

KEYBANK NATIONAL ASSOCIATION

By: 
 Name: PATRICK MALONEY
 Title: SUP
 Date: 2-2-15
 (Schedule I "Effective Date")

Section A – General Provisions Applicable to All Merchants under this Schedule

- 1) **Fees.** KeyBank will be compensated for the Processing Services provided under this Schedule as provided in the Agreement as such Agreement may be modified by this Schedule.
- 2) The following provisions hereby replace the like-numbered provisions of the Agreement or are hereby inserted or deleted from the Agreement, as indicated, for Merchants operating under this Schedule.
 - a) **Section (A)(4)(a)(i) Security Agreement.** is deleted.
 - b) **Section (A)(4)(a)(ii) Perfection.** is deleted.
 - c) **Section (A)(6)(a) Accuracy of Information.** is revised to read as follows:

“a) **Accuracy of Information.** Merchant must promptly notify KeyBank in writing of any material changes to the information provided in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement, including, without limitation, any additional location or new facility at which Merchant desires to use the Processing Services provided under this Schedule, the form of entity, change in control, material changes to the type of goods and services provided and/or payments accepted, and how Transactions are completed (e.g., by telephone, mail, electronic commerce, or in person at Merchant’s place of business). The notice must be received by KeyBank at least ten (10) business days prior to the change. Merchant will promptly provide any additional information reasonably requested by KeyBank. Merchant will be responsible for all losses and expenses incurred by KeyBank arising out of Merchant’s failure to provide proper notice or requested information for any such change, and will not make any claims against KeyBank for any losses sustained by Merchant as a result of such failure. KeyBank may immediately terminate the Agreement upon a material change to the information in the Merchant Application if such change is not approved by KeyBank. KeyBank has the right to rely upon written instructions submitted by Merchant to request changes to Merchant’s business information. Merchant may request written confirmation of KeyBank’s consent to the changes to the Merchant’s business information.”
 - d) **Section (A)(6)(b)(i) Merchant Responsibilities.** is revised to read as follows:

“i) **Merchant Responsibilities.** As between Merchant and KeyBank, Merchant will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of or in connection with (A) any dispute with a Customer, Cardholder or any third party relating to any Transaction, (B) any action taken by KeyBank with respect to the DDA or Reserve Account in accordance with the Agreement, or (C) any breach by Merchant of any obligation under this Agreement. Merchant will not make any claims against KeyBank for any liabilities, claims losses, costs, expenses and demands of any kind or nature, arising out of or in connection with any of the foregoing suits, claims, losses, demands or damages.”
 - e) **Section (A)(6)(b)(ii) KeyBank Responsibilities.** is revised to read as follows:

“ii) **KeyBank Responsibilities.** KeyBank will be responsible for and will at its own expense defend itself against any suits, claims, losses, demands or damages arising out of (A) KeyBank’s breach of the Agreement, or (B) KeyBank’s negligence, gross negligence or willful misconduct.”
 - f) **Section (A)(8)(b)(ii) Financial Information.** is revised to read as follows:

“ii) **Financial Information.** Upon the request of KeyBank, Merchant will provide KeyBank audited financial statements prepared by an independent certified public accountant selected by Merchant, or if Merchant is audited by a governmental authority, then Merchant will provide financial statements from such governmental authority. Within one hundred twenty (120) days after the end of each fiscal year (or in the case of a government entity, when available), Merchant will furnish KeyBank, 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, each audited as provided above. Merchant shall also provide KeyBank such interim financial statements and other information as KeyBank may request from time to time.”
 - g) **Section (A)(11)(a) Products or Services.** is revised to read as follows:

“a) **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any Value Added Servicer unless Merchant has disclosed such use to KeyBank 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 this Agreement, Merchant will be bound by the acts and omissions of its Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will be responsible for any loss, cost, or expense incurred in connection with or by reason of Merchant’s use of any Value Added Servicer. KeyBank is not responsible for the Value Added Servicer, nor are they responsible for any Transaction until KeyBank

SCHEDULE J
PROCESSING SERVICES FOR CONVENIENCE FEES

PROCESSING SERVICES FOR CONVENIENCE FEES. Merchant elects and agrees to the following Processing Services for Convenience Fees as part of the Payment Device Processing Services, as such services are further described in this Schedule and Exhibits hereto, and subject to the terms and conditions of the applicable provisions of the Agreement. Except as expressly modified pursuant to this Schedule, all terms and conditions of the Agreement, including all other Schedules to the Agreement, remain in full force and effect and shall govern the relationship among the parties to this Schedule J.

Convenience Fee (check one):

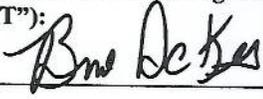
- Merchant-managed¹
- KeyBank-managed²

1. "Merchant-managed" means that Merchant establishes the amount of the Convenience Fee (subject to the requirements of this Schedule and applicable Payment Network Regulations) and retains the Convenience Fee. Merchant pays KeyBank the per transaction fees as set forth on Schedule A to the Agreement for all Convenience Fee Transactions.
2. "KeyBank-managed" means that KeyBank establishes the amount of the Convenience Fee and retains the Convenience Fee in lieu of Merchant's obligation to pay KeyBank the per transaction fees as set forth on Schedule A to the Agreement for Convenience Fee Transactions.

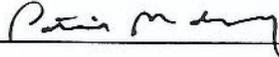
Capitalized terms used and not otherwise defined in this Schedule J shall have the meanings ascribed to them in the Agreement or in the Merchant Operating Guide ("MOG"), which is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule J to the Agreement.

STATE OF ALASKA CSSD (Child Support Services Division), on behalf of itself and each of the affiliated entities identified on Schedule B to the Agreement (the "MERCHANT"):

By: 
 Name: Bronze Ickes
 Title: Assistant Cash Manager

KEYBANK NATIONAL ASSOCIATION

By: 
 Name: PATRICK MALONEY
 Title: SVP
 Date: 2-2-15
 (Schedule J "Effective Date")

PAYMENT DEVICE PROCESSING AGREEMENT

This Payment Device Processing Agreement (“Agreement”) is entered into as of the Effective Date by and among the entity identified below as the Merchant (together with any affiliated entities listed on Schedule B to the Agreement), referred to collectively as the “Merchant” and KeyBank National Association (“KeyBank”) and includes the following Terms of Service (the “TOS”) and all Schedules and other attachments to the Agreement, and all Schedules and other attachments to the Agreement as may be added from time to time, each of which is incorporated in full by this reference. The Agreement governs the Merchant’s receipt and use of the Processing Services.

PAYMENT DEVICE PROCESSING SERVICES ELECTED BY MERCHANT. Merchant elects the following Payment Device Processing Services as described in the Agreement (including all applicable Schedules) and subject to the additional terms and conditions of the applicable provisions of the Merchant Operating Guide (the “MOG”):

- TOS, General Provisions and the MOG
- Schedule A, Schedule of Fees
- Schedule B, Affiliated Entities
- Schedule C, Merchant Application (Large Relationship)
- Substitute Form W-9 (required for U.S. entities)
- Substitute Form W-8BEN (required for non-U.S. entities)

Payment Device Processing Services Available to Merchants Generally (check desired Processing Services):

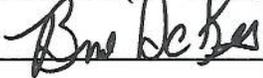
- Credit Card Services
- Debit Card (signature-based) Services
- Debit Card (PIN-based) Services
- Bill Payment (Pinless Debit) Services
- DCC Services
- Multi-Currency Pricing Services
- Wireless Services
- Contactless Services
- Schedule D, Electronic Gift Card Services
- Schedule E, Electronic Check Services
- Schedule J, Processing Services for Convenience Fees
- Schedule K, Biller Direct Services
- Schedule L, [Reserved]
- Schedule N, Internet PIN-Based, Debit Card Services
- Schedule O, Global eCommerce Gateway Services
- Schedule P, [Reserved]

Payment Device Processing Services Available to Merchants Operating in Certain Merchant Categories (check desired Processing Services):

- EBT Services
- Hospitality Services
- No Signature Required Program Services
- Schedule F, Petroleum Services
- Schedule I, Processing Services for Government Entities and Institutions

IN WITNESS WHEREOF, the parties hereto have executed the Agreement.

STATE OF ALASKA CSSD (Child Support Services Division), on behalf of itself and each of the affiliated entities identified on Schedule B (the “MERCHANT”):

By: 
 Name: Bronze Ickes
 Title: Assistant Cash Manager

KEYBANK NATIONAL ASSOCIATION

By: 
 Name: PATRICK MALONEY
 Title: SVP
 Date: 2-2-15
 (“Effective Date”)

TERMS OF SERVICE

Section A - General Provisions Applicable to All Services

- 1) **DEFINITIONS; RULES OF CONSTRUCTION.** Capitalized terms used in the Agreement and in any applicable Schedule shall have the meanings ascribed to such terms in the Glossary set forth in Section B of this TOS or in such Schedules. All Schedules are expressly incorporated in their entirety and made a part of the Agreement. Captions in the Agreement and in the attached Schedules are for convenience only and do not constitute a limitation of the terms in the Agreement. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. 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 applicable Schedule, the terms of the applicable Schedule shall prevail.
- 2) **ACCEPTANCE OF PAYMENT DEVICES.** Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices and Processing Services it will agree to accept as a form of payment from its Customers by selecting the applicable Processing Services on page 1 of the Agreement and/or on the appropriate Schedule. The terms and conditions for the acceptance of the applicable Payment Devices and Merchant’s use of the Processing Services are set forth in the Agreement and in the Merchant Operating Guide (the “MOG”), incorporated herein by this reference and located at www.key.com/cashmanagement. Each Schedule 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 Schedule.
- 3) **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 by KeyBank from time to time.
 - b) **Settlement of Transactions.** Subject to the other provisions of the Agreement and subject to Merchant’s compliance with the terms of the Agreement and the Payment Network Regulations, KeyBank will process Transactions daily, and if Merchant maintains its DDA with KeyBank, provisional credit for Transactions (less recoupment of any Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to KeyBank under the Agreement) may be available as soon as the next banking day after the banking day on which KeyBank processes the Transactions. Regardless of where Merchant maintains its DDA, Merchant acknowledges and agrees that KeyBank may use either “direct” (ACH

debit authority pursuant to which Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to KeyBank under the Agreement are debited from the DDA) or “net” (pursuant to which Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to KeyBank under the Agreement are netted from Transaction proceeds) methods to recover any amounts owed by Merchant to KeyBank under the Agreement. To the extent required, Merchant authorizes and appoints KeyBank to act as Merchant’s agent to collect Transaction amounts from the Customer, the Issuer or the Customer’s financial institution.

- 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. Merchant acknowledges that its obligation to KeyBank for all amounts owed under the Agreement arises out of the same transaction as KeyBank’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 KeyBank does 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 KeyBank 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, KeyBank may delay Merchant-issued Cardholder credits for up to five (5) business days for accounting verification. Cardholder credits issued by Merchant to PIN-Debit Cards will not be subject to this delay.
- iii) **Chargebacks.** Merchant agrees to accept for Chargeback, and will be liable to KeyBank in the amount of any Transaction disputed by the Cardholder or Issuer for any reason under the Payment Network Regulations. Merchant authorizes KeyBank to offset from funds due Merchant or to debit the DDA or the Reserve Account for the amount of all Chargebacks.

- Merchant will fully cooperate with KeyBank in complying with the Payment Network Regulations regarding all Chargebacks.
- iv) **Original Transaction Receipts.** Under no circumstances will KeyBank be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by KeyBank.
- c) **DDA and ACH Authorization.** Merchant will establish and maintain with KeyBank (or with another ACH participating financial institution) 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, assessments from the Payment Networks and other payments due under the Agreement. Merchant irrevocably authorizes KeyBank, and its authorized vendors and agents who provide services under the Agreement at Merchant's request, to initiate ACH debit and credit entries to the DDA or the Reserve Account for any products or services requested by Merchant 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 KeyBank have been paid in full. KeyBank has the right to delay, at its reasonable discretion, crediting the DDA with funds related to Transactions in order to investigate any Transactions related to suspicious or fraudulent activity or funds for Transactions for which KeyBank has not received funding from the applicable Payment Networks. KeyBank will endeavor to investigate or process any delayed Transactions expeditiously and will endeavor to notify Merchant if any Transactions are delayed for more than forty-eight (48) hours. KeyBank has 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 KeyBank such information regarding the new DDA as KeyBank deems necessary to effect payments to and from the DDA as provided under the Agreement. It may take KeyBank up to ten (10) business days after KeyBank's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA.
- d) **Depository Institution.** Merchant authorizes its depository institution to grant KeyBank access to any and all information or records regarding the DDA reasonably requested by KeyBank to debit or credit the DDA and to otherwise exercise KeyBank's rights under the Agreement with respect to the DDA.
- e) **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from KeyBank, any Payment Network, and any third party vendors with the statements Merchant receives for the DDA. Merchant must promptly examine all statements relating to the DDA and promptly notify KeyBank in writing of any errors in the statement Merchant received from KeyBank. 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 KeyBank within forty-five (45) days of the date of the KeyBank statement containing the asserted error. If Merchant fails to provide such notice to KeyBank within said forty-five (45) days, KeyBank shall not be liable to Merchant for any errors Merchant asserts at a later date. Merchant may not make any claim against KeyBank for any loss or expense relating to any asserted error for forty-five (45) days immediately following KeyBank's receipt of Merchant's written notice. During that forty-five (45) day period, KeyBank (i) 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 KeyBank, and (ii) notify Merchant of its proposed resolution of the asserted error.
- 4) **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 KeyBank a security interest in and lien upon: (a) all funds at any time in the Reserve Account, regardless of the source of such funds, and (b) all funds underlying present and future Transaction Receipts in process by KeyBank (collectively, the "Secured Assets"). These security interests and liens will secure all of Merchant's obligations under the Agreement. KeyBank may execute this security interest, 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 KeyBank, Merchant will execute one (1) or more control agreements or other documents to evidence or perfect this security interest. Merchant represents and warrants that no other Person has a security interest in the Secured Assets. With respect to such security interests and liens, KeyBank will have all rights afforded under the Uniform Commercial Code, any other

applicable law and in equity. Merchant will obtain from KeyBank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and KeyBank is 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 KeyBank. If Merchant fails to execute control agreements or other documents to evidence or perfect the security interest or lien within ten (10) days of KeyBank's request, Merchant authorizes and appoints KeyBank as Merchant's attorney in fact to sign Merchant's name to any control agreement or other documents used for the perfection of any security interest or lien granted hereunder.

b) **Reserve Account.**

i) **Establishment.** KeyBank may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing security and a source of funds to pay KeyBank for any and all amounts that may be owed by Merchant hereunder. KeyBank shall have sole control of the Reserve Account.

ii) **Reserve Amount.** The Reserve Amount is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period + average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [# days delayed delivery multiplied by the average day's processing volume]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the product is shipped to the Cardholder (if the goods are being shipped) or the date the Cardholder receives the product or service. Further, for purposes of this calculation, KeyBank will determine, in its sole reasonable discretion, the applicable period considering factors such as Merchant's Transaction volume and seasonality.

(A) **Reserve Event.** The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equals or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed one percent (1%) of the

total dollar value of incoming items to KeyBank, (c) KeyBank's reasonable belief that a Merchant not approved by KeyBank to engage in delayed delivery transactions has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against Merchant, (e) termination of the Agreement for any reason or the occurrence of an event listed in Section (A)(12)(b)(ii)(B) or (C) giving KeyBank the right to terminate the Agreement, (f) nonpayment of amounts owed by Merchant to KeyBank, (g) fines or assessments imposed or reasonably expected to be imposed by the Payment Networks, (h) the occurrence of a material adverse change in Merchant's financial condition, (i) assignment of the Agreement by Merchant in violation of Section 15(e), and (j) revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or any other Alternate Security provided in connection with the Agreement, if applicable.

iii) **Funding.** KeyBank may fund the Reserve Account (in each case up to the Reserve Amount) by any one or more of the following means.

- (A) KeyBank may require Merchant to deposit funds into the Reserve Account;
- (B) KeyBank may debit the DDA; and/or
- (C) KeyBank may deposit into the Reserve Account funds KeyBank would otherwise be obligated to pay Merchant.

iv) **Use of Funds in Reserve Account.** KeyBank may, without notice to Merchant, apply funds in the Reserve Account against any outstanding amounts Merchant owes under the Agreement. Also, KeyBank may debit the Reserve Account to exercise KeyBank's rights under the Agreement including, without limitation, KeyBank's right of set-off and recoupment to collect any amounts due to KeyBank. Further, Merchant agrees that KeyBank may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.

v) **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account, and shall be used only to pay amounts due to KeyBank (except as otherwise provided in the Agreement), until the Merchant has paid in full all amounts owing or that may be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks 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. Notwithstanding the foregoing, if KeyBank determines that the Reserve Event that gave rise to the establishment of the Reserve Account has been sufficiently cured, KeyBank may, in its sole discretion, terminate the Reserve Account and/or release funds from the Reserve Account prior to the termination of the Agreement.

- vi) **Alternate Security.** In lieu of or in addition to establishing and funding a Reserve Account, KeyBank may, in its sole and absolute discretion, accept an alternative form of security (“Alternate Security”) for the purpose of providing a source of funds to pay KeyBank for any and all amounts owed by Merchant. KeyBank retains the right, at any time, to reject Alternate Security previously accepted by KeyBank and/or to require funding of a Reserve Account so that the amount of funds held in a Reserve Account, taken together with amounts represented by any Alternate Security accepted by KeyBank, equal the Reserve Amount.
 - c) **Recoupment and Set-off.** KeyBank has the right of recoupment and set-off. This means that KeyBank may offset any outstanding or uncollected amounts owed to KeyBank hereunder from: (i) any amounts KeyBank would otherwise be obligated to deposit into the DDA; and (ii) any other amounts KeyBank may owe Merchant under the Agreement. Merchant acknowledges that in the event of a Bankruptcy Proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code Section 362 to KeyBank hereunder, KeyBank may require the creation of a Reserve Account and KeyBank shall have the right to offset against the Reserve Account for any and all obligations Merchant may owe to KeyBank, without regard to whether the obligations relate to Transactions initiated or processed before or after the initiation of the Bankruptcy Proceeding.
 - d) **Remedies Cumulative.** The rights conferred upon KeyBank in this section are not intended to be exclusive of each other or of any other rights and remedies of KeyBank under the Agreement, at law or in equity. Rather, each and every right of KeyBank under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.
- 5) **PROCESSING SERVICES; FEES; OTHER AMOUNTS OWED; TAXES.** KeyBank will provide Merchant with Processing Services in accordance with the Agreement. Merchant will compensate KeyBank for Processing Services as indicated on Schedule A,

Schedule of Fees, and in any other Schedules executed by KeyBank and Merchant.

- a) **Fees.** Merchant will pay KeyBank fees in the ordinary course of business for all Processing Services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) (including enrollment forms) or schedules provided by KeyBank in writing to Merchant. 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.
- b) **Research.** In addition, Merchant will pay KeyBank at its standard rates for research as set forth on Schedule A including, but not limited to, research required to respond to any third party or government subpoena, levy, garnishment or required reporting on Merchant’s account.
- c) **Change of Fees.** The fees set forth in the Agreement and any additional application or setup form(s) (including enrollment forms) will not be amended by KeyBank for the Initial Term of the Agreement except (i) as provided in Schedule A or (ii) to pass through to Merchant increases in interchange, assessments, or increased or new fees imposed by a third party.
- d) **Other Amounts Owed.** Merchant will promptly pay KeyBank any amount incurred by KeyBank attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties, assessments (including all fines, penalties, or assessments by the Payment Networks as a result of Merchant’s Transaction processing), and any other payments due under the Agreement. KeyBank may offset these amounts from funds otherwise owed by KeyBank to Merchant or may debit these amounts from the DDA or Reserve Account by ACH. In the event such offset or ACH debit does not fully reimburse KeyBank for the amount owed, Merchant will promptly pay KeyBank such amount upon demand. KeyBank will charge interest on all uncollected amounts owed to KeyBank that are more than thirty (30) days past due at a rate equal to the lesser of (i) the product of the uncollected amounts and the then-current Federal Funds Rate plus 10% (calculated and computed on the basis of a 365-day year), or (ii) the maximum daily rate of interest permitted under applicable law.
- e) **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 excluding the income taxes attributable to KeyBank. If Merchant is a tax-exempt entity, Merchant will provide KeyBank with an appropriate certificate of tax exemption.

6) **ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY.**

- a) **Accuracy of Information.** Merchant must promptly notify KeyBank in writing of any material changes to the information provided in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement, including, without limitation, any additional location or new facility at which Merchant desires to use the Processing Services, the form of entity (e.g., partnership, corporation, etc.), change in control, material changes to the type of goods and services provided and/or payments accepted, and how Transactions are completed (e.g., by telephone, mail, electronic commerce, or in person at Merchant's place of business). The notice must be received by KeyBank at least ten (10) business days prior to the change. Merchant will promptly provide any additional information reasonably requested by KeyBank. KeyBank has the right to rely upon written instructions submitted by Merchant to request changes to Merchant's business information. Merchant may request written confirmation of KeyBank's consent to the changes to the Merchant's business information.
- b) **Indemnification.**
- i) **By Merchant.** Merchant will be liable for and indemnify, defend, and hold harmless KeyBank and its employees, officers, directors, and agents against all claims by third parties for losses, damages, liabilities or expenses, including all reasonable attorneys' fees and other costs and expenses paid or incurred by KeyBank, any Transaction processed under the Agreement, any breach by Merchant of the Agreement, Merchant's negligence, gross negligence or willful misconduct, any action taken by KeyBank with respect to the DDA or Reserve Account in accordance with the Agreement, or any Merchant Bankruptcy Proceeding, but excluding claims to the extent attributable to KeyBank's negligence, willful misconduct, or breach of the Agreement.
- ii) **By KeyBank.** KeyBank will be liable for and indemnify, defend, and hold harmless Merchant and its employees, officers, directors, and agents against all claims made by third parties for losses, damages, liabilities or expenses arising out of KeyBank's breach of the Agreement, negligence, gross negligence, or willful misconduct, but excluding claims to the extent attributable to Merchant's negligence, gross negligence, willful misconduct, or breach of the Agreement.
- c) **Limitation of Liability.** Merchant acknowledges that fees for the Processing Services provided to Merchant by KeyBank are very small in relation to

the funds advanced to Merchant for Transactions and consequently KeyBank's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on KeyBank's liability that may be provided elsewhere, any liability of KeyBank 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 lesser of (a) the fees paid by Merchant to KeyBank during the last three (3) months, exclusive of fees and variable costs incurred by KeyBank to process Transactions, such as Interchange costs, assessments, and fees imposed by a third party or, (b) fifty thousand dollars (\$50,000). In no event will the parties, or their agents, officers, directors, or employees be liable to any other party to the Agreement for indirect, exemplary, punitive, special, or consequential damages.

- d) **Performance; Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, KEYBANK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PROCESSING SERVICES, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. KEYBANK DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No party hereto 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 such party and without the fault or negligence of such party.

7) **REPRESENTATIONS AND WARRANTIES; COVENANTS.**

- a) **Merchant Representations and Warranties.** Merchant represents and warrants to KeyBank the following as of the Effective Date:
- i) **Information.** Merchant is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all necessary authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Merchant conducts business, in compliance with all Laws and Payment Network Regulations. All written information provided in the Merchant Application, in the bid process if applicable, the assumptions in Schedule A or any other document submitted to KeyBank is true and complete and properly reflects the business, financial condition and ownership of Merchant in all material respects.
- ii) **Authority and Power.** Merchant and the person signing the Agreement on Merchant's behalf have the power to execute and perform the Agreement. The person executing the

- Agreement is duly authorized to bind Merchant and each affiliated entity identified in Schedule B to all provisions of the Agreement as if each affiliated entity had executed the Agreement, and such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by KeyBank to carry out the Agreement. Further, the 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.
- iii) **MasterCard MATCH™ System and Consortium Merchant Negative File.** Merchant has never been (i) placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), (ii) named to the Consortium Merchant Negative File maintained by Discover, or (iii) placed on or named to any other negative or terminated merchant file of any other Payment Network or, if it has, it has disclosed this fact to KeyBank in writing.
- iv) **No Litigation.** There is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened that would reasonably be expected to materially impair Merchant's ability to carry on Merchant's business substantially as now conducted or which would materially and adversely affect Merchant's financial condition or operations.
- b) **Merchant Covenants.** Merchant covenants the following to KeyBank during the Initial Term and any Renewal Term:
- i) **Compliance with Laws and Payment Network Regulations.** Merchant will comply with all Laws and Payment Network Regulations.
- ii) **Business Use.** Merchant is obtaining and using the Processing Services from KeyBank for business purposes only and to facilitate lawful business Transactions between Merchant and its Customers. Merchant will not submit Transactions for processing to KeyBank 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 KeyBank. Merchant also acknowledges that the DDA into which debits and credits are made is being used for lawful business purposes only.
- iii) **Transactions.** To the best of Merchant's knowledge, all Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the payment to Merchant or a return or adjustment related to such payment. Merchant has all power and authority to provide all Customer information, Cardholder Data and Transaction information that Merchant provides to KeyBank. No Transaction involves a Cardholder obtaining cash from Merchant unless allowed by the Payment Network Regulations and agreed to in writing by KeyBank. All Transactions will be accepted at entities properly identified to KeyBank on Schedule B attached hereto.
- iv) **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, but excluding all actions or failures to act to the extent attributable to KeyBank's breach of the Agreement, negligence or willful misconduct.
- c) **KeyBank Representations and Warranties.** KeyBank, represents and warrants to Merchant the following as of the Effective Date of the Agreement:
- i) **Information.** KeyBank is a banking association validly existing and organized in the United States.
- ii) **Corporate Power.** KeyBank and the persons signing the Agreement on behalf of KeyBank has the power to execute and perform the Agreement. The persons executing the Agreement are duly authorized to bind KeyBank to all provisions of the Agreement and such persons are authorized to execute any document and to take any action on behalf of KeyBank, which may be required to carry out the Agreement. Further, the signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which KeyBank is subject.
- iii) **No Litigation.** There is no action, suit, or proceeding pending, or to KeyBank's knowledge threatened, which if decided adversely would impair KeyBank's ability to carry on KeyBank's business substantially as now conducted or which would adversely affect KeyBank's financial condition or operations.
- d) **KeyBank Covenants.** KeyBank covenants to Merchant the following during the Initial Term and any Renewal Term:
- i) **Compliance with Laws and Payment Network Regulations.** KeyBank will comply with all Laws and Payment Network Regulations including the requirements of the Payment Card Industry ("PCI") Data Security Standard, as applicable to KeyBank and KeyBank's systems, for the Processing Services provided under the Agreement. The Merchant

may review KeyBank's current PCI compliance status on the Payment Network websites as available.

- ii) **Responsibility for Actions.** KeyBank is responsible for any violations of this Agreement that result from the actions of or failure to act by KeyBank's officers, directors, employees and agents; but excluding actions or failures to act to the extent attributable to Merchant's breach of the Agreement, negligence or willful misconduct.

8) AUDIT AND INFORMATION.

a) Audit.

- i) **KeyBank Audit.** In the event that KeyBank reasonably suspects that KeyBank is subject to a financial or reputational risk due to Merchant's actions or omissions, Merchant authorizes KeyBank to perform an audit or inspection of Merchant's operations to confirm compliance with the Agreement upon reasonable advance notice and at KeyBank's expense. Merchant agrees to cooperate, in good faith, with any such audit conducted by KeyBank.

- ii) **Data Compromise, Security, and Payment Network Audit.** In addition to Merchant's obligations under Section 13(e)(i), in the event of a known or suspected data compromise, security incident, the occurrence of suspicious activity, or otherwise if required by the Payment Networks, Merchant will obtain, at the request of KeyBank or any Payment Network, and submit a copy of a forensic audit from a qualified incident response assessor of the information security of Merchant's business at Merchant's expense. Merchant acknowledges and agrees that the Payment Networks have the right to audit Merchant's operations to confirm compliance with the Payment Network Regulations.

b) Information.

- i) **Authority.** Merchant authorizes KeyBank to make, upon receipt of the Merchant Application and from time to time, any business credit or other inquiries KeyBank considers reasonably necessary to review the Merchant Application or continue to provide Processing Services under the Agreement. Merchant also authorizes any Person or credit reporting agency to compile information to answer those business credit inquiries and to furnish that information to KeyBank.
- ii) **Financial Information.** Upon the request of KeyBank, Merchant will provide KeyBank audited financial statements prepared by an independent certified public accountant selected by Merchant. Within one hundred twenty (120) days after the end of each fiscal year, Merchant

will furnish KeyBank, 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, each audited as provided above. Merchant shall also provide KeyBank such interim financial statements and other information as KeyBank may request from time to time. Notwithstanding the foregoing, Merchant shall not be obligated to provide financial statements or similar information other than those included in Merchant's filings with the Securities and Exchange Commission so long as Merchant remains registered and obligated to file financial statements (including annual reports on Form 10-K and quarterly reports on Form 10-Q) pursuant to the Securities Exchange Act of 1934, as amended.

- iii) **Merchant Information.** Merchant agrees that any Merchant financial information, Transaction Data, and other information regarding Merchant, its principles, affiliates, or agents that Merchant or Merchant principal provides to KeyBank on the Merchant Application or otherwise obtained by KeyBank in connection with the Agreement may be: (i) used by KeyBank and its service providers, affiliates, agents, and referral partners, (a) in order to provide the Processing Services and related functions to Merchant and to respond to any further application for services, or (b) for administrative purposes and to maintain Merchant's account pursuant to this Agreement; (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) utilized to enhance or improve KeyBank's products or services, generally, (iv) used or disclosed in the course of any actual or potential sale, reorganization or other change to KeyBank's business; (v) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (vi) retained for such periods of time as required by KeyBank to perform KeyBank's obligations and exercise KeyBank's rights under the Agreement. KeyBank may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of KeyBank's customers or specific segments of KeyBank's customers.

- 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 KeyBank to identify Merchant.

9) **FRAUD MONITORING.** Merchant is solely responsible for monitoring its Transactions. KeyBank is under no duty to monitor Merchant's Transactions for fraudulent or other suspicious activity.

10) **BUSINESS CONTINUITY.**

a) **Merchant.** Merchant is solely responsible for all Transactions and Transaction Receipts until such time as the Transaction Receipts have been received and validated by KeyBank. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions and will provide such information and data to KeyBank upon request in order to reconstruct any information or data lost due to any malfunction of Merchant's or KeyBank's systems. KeyBank is under no duty to recreate lost Transactions or Transaction Receipts unless such loss results from KeyBank's breach of the Agreement.

b) **KeyBank.** KeyBank is required, pursuant to federal banking regulations, to establish, maintain, and test an effective and comprehensive business continuity plan ("BCP"). KeyBank maintains a BCP that is commercially reasonable within the industry for the Processing Services. KeyBank will continue to adhere to the BCP and will modify those plans from time to time to meet the objectives and requirements of KeyBank's businesses.

11) **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 KeyBank 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 KeyBank 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. KeyBank is not responsible for any Value Added Servicer, nor is KeyBank responsible for any Transaction until KeyBank receives data for the Transaction in the format required by KeyBank.

b) **Third Party Contractors.** Merchant acknowledges and understands that KeyBank may use the services of third party service providers in connection with

the performance of KeyBank's obligations under the Agreement, including any Schedule to the Agreement. Except as otherwise provided in the Agreement, KeyBank shall be responsible for the performance of KeyBank's obligations hereunder notwithstanding any use of or delegation of any responsibility to a third party service provider.

12) **TERM AND TERMINATION.**

a) **Term.** Unless terminated as set forth below, the Agreement, including all Schedules hereto executed as of or following the Effective Date, will remain in effect for the Initial Term, as defined on Schedule A, Schedule of Fees, following the Effective Date set out on page 1 of the Agreement. Thereafter, the Agreement, including all Schedules thereto, will automatically renew for successive Renewal Terms, as defined on Schedule A, Schedule of Fees, 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) **By Merchant.**

(A) 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 KeyBank at least ninety (90) days prior to the expiration of the then current term.

(B) The Agreement may be terminated by Merchant if any of the following conditions remain uncured thirty (30) days after Merchant provides KeyBank written notice of the existence of the condition:

- (1) KeyBank has failed to pay Merchant an undisputed amount owed to Merchant under the Agreement; or
- (2) KeyBank has failed to perform a material obligation under the Agreement.

ii) **By KeyBank.**

(A) The Agreement may be terminated by KeyBank effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Merchant at least ninety (90) days prior to the expiration of the then current term.

(B) The Agreement may be terminated by KeyBank if, after providing thirty (30) days written notice, any of the following conditions remain:

- (1) The occurrence of Excessive Activity.
- (2) The acceptance of Card Not Present or Convenience Fee Transactions without proper disclosure to KeyBank in the Agreement or an amendment to the Agreement.

- (3) The failure to pay KeyBank any amount Merchant owes KeyBank.
- (4) The failure by Merchant to perform a material obligation of the Agreement.
- (C) The Agreement may be terminated by KeyBank immediately upon the occurrence of one or more of the following:
 - (1) The occurrence of a material adverse change in Merchant's financial condition.
 - (2) The garnishment or attachment of Merchant's deposit accounts with KeyBank, Alternate Security, the DDA, the Reserve Account, or any of Merchant's property in the possession of KeyBank.
 - (3) The commencement of a Bankruptcy Proceeding by or against Merchant.
 - (4) Any representation, warranty or covenant by Merchant is false or misleading in any material respect as of the date made, or becomes false or misleading in any material respect at any time during the term of the Agreement.
 - (5) Any Payment Network requires KeyBank to terminate the Agreement or cease processing transactions for Merchant.
 - (6) Any change, not approved by KeyBank, that constitutes a material change in the types of goods and services Merchant sells or in the methods by which Merchant sells them, or any change that results in Merchant's violation of KeyBank's underwriting policy.
 - (7) Assignment of the Agreement or a change in control of Merchant without KeyBank's written consent.
 - (8) Revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or other Alternate Security executed in connection with the Agreement, if applicable.
- i) Notice of termination by Merchant or KeyBank must be given in writing. Termination shall be effective on the date specified by the written notice; provided, however Merchant agrees that closing Merchant's account with KeyBank may take up to thirty (30) days following KeyBank's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by KeyBank following termination by either Merchant or KeyBank in the Initial Term or any Renewal Term, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.
- d) **Action upon Termination.**
 - i) **Accounts.** All obligations of a party 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 Merchant owes KeyBank or 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, assessments from the Payment Networks and other amounts due under the Agreement for a reasonable time, but in any event, not less than 180 days from termination.
 - ii) **Equipment.** If Merchant's equipment is leased, Merchant is obligated to honor the terms and conditions of Merchant's leasing contract.
 - iii) **Early Termination Fee.** If Merchant terminates the Agreement before the end of the Initial Term, except for termination pursuant to Section (A)(12)(b)(i)(B), Merchant will immediately pay KeyBank, as liquidated damages, an early termination fee as specified on Schedule A, Schedule of Fees. Merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. In addition to the foregoing, if Merchant terminates the Agreement during the Initial Term, other than a termination under Section (A)(12)(b)(i)(B), any incentives, discounts or credits granted by KeyBank to Merchant, as reflected on Schedule A, Schedule of Fees, will be immediately due and payable to KeyBank in accordance with Schedule A.

The parties' rights of termination under the Agreement are cumulative. A party may exercise its termination rights with respect to an individual Schedule to the Agreement or the participation of any affiliate without terminating other Processing Services or Schedules, provided that any termination of the Agreement in whole shall automatically terminate all related Processing Services and Schedules. A specific right of termination in this section shall not limit any other right of the party to terminate the Agreement or any Schedule expressed elsewhere.

c) **Notice of Termination.**

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

- a) **Compliance with Laws and Payment Network Regulations.** Merchant and KeyBank agree to comply with all applicable Payment Network

Regulations, including all requirements applicable to obtaining authorization for ACH debits from or charges to a consumer account, as applicable, and with any policies and procedures provided by KeyBank. Merchant and KeyBank further agree to comply with all Laws applicable to the selected Processing Services, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic fund 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 Cardholders. Merchant will execute and deliver to KeyBank all documents KeyBank may from time to time reasonably deem necessary to verify Merchant's compliance with this provision.

- b) **Privacy Laws.** In addition to Section (A)(14)(b), each party hereto must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information 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) **MATCH™ and Consortium Merchant Negative File.** Merchant acknowledges that KeyBank is required to report Merchant's business name and the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed by Visa, to the Consortium Merchant Negative File maintained by Discover, if applicable, or to any other negative or terminated merchant file of any other Payment Network, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to KeyBank's fulfillment of the obligations related to the listing of Merchant in such databases, and Merchant waives all claims and liabilities Merchant may have as a result of such reporting.
- d) **Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry (PCI) 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 (collectively, "Security Programs"). Upon request, KeyBank will

provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. Merchant will not disclose Cardholder or Transaction information to any third party, except to an agent of Merchant assisting in completing a Transaction, or as otherwise required or permitted by Laws and the Payment Network Regulations. Merchant must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent unauthorized access to or disclosure of such information. All Value Added Servicers must comply with the requirements of those 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 KeyBank 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.

- e) **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 KeyBank 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, KeyBank 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 KeyBank to assess the vulnerability of the compromised data and related systems. Merchant must provide weekly written status reports to KeyBank 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 KeyBank may request. In addition, Merchant must provide all audit reports to KeyBank, and such audits must be completed to the satisfaction of the Payment Networks and/or of KeyBank. If Merchant fails to supply the forensic audits or other information required by the Payment Networks and/or by KeyBank, Merchant will allow KeyBank 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 KeyBank to rectify, correct and resolve any issues that may result from the Data Incident, including providing KeyBank 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 KeyBank's rights and remedies, Merchant is liable for all fraudulent transactions related to any Data Incident and all costs KeyBank incur as a result of such Data Incident, including any fees, fines, penalties and/or assessments 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.
- iv) **KeyBank Data Compromise.** If KeyBank suffers a data incident and Cardholder, Customer, or Transaction information has been accessed from KeyBank, its employees or agents, or systems within KeyBank's control, then KeyBank will follow all applicable Payment Network Regulations with respect to such data incident including providing the required reporting and forensic audits to the Payment Networks.
- f) **Office of Foreign Assets Control Compliance.** KeyBank is an entity governed by the Laws of the United States of America and as such, KeyBank may not provide any products or services to Merchant or its Customers that contravene the Laws of the United States of America, including, without limitation, the Laws promulgated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") or any successor thereto.
- 14) **USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.**
- a) **Use of Trademarks.** Merchant shall use and display the Payment Networks' marks as may be required or requested by the Payment Networks, and shall display such marks in accordance with the standards for use established by the Payment Networks. Merchant's right to use all such marks will terminate upon termination of the Agreement or upon notice by a Payment Network to discontinue such use. Merchant's use of promotional materials provided by the Payment Networks will not indicate, directly or indirectly, that such Payment Networks endorse any goods or services other than their own and Merchant may not refer to any Payment Networks in stating eligibility for Merchant's products or services.
- b) **Confidentiality.**
- i) **Cardholder and Transaction Information.** Merchant and KeyBank shall, at all times, protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and Payment Network Regulations. Merchant and KeyBank must maintain Cardholder and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that KeyBank no longer deems necessary or appropriate to maintain. Further, Merchant and KeyBank must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed to unauthorized parties or otherwise misused. Merchant may not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose, including record keeping or additional authorization processing. After authorization, Merchant may only retain the Customer account number, name, and Card expiration date if Merchant has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement.
- ii) **Bankruptcy.** In the event of failure or other suspension of Merchant's business operations, including any Bankruptcy Proceeding, Merchant must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties and Merchant must:
- (A) Return this information to KeyBank, or
- (B) Provide acceptable proof of destruction of this information to KeyBank.
- iii) **Confidential Information Generally.** Each party acknowledges that during the Initial Term

and any Renewal Term of this Agreement, a party may disclose certain Confidential Information to the other party. Each party agrees to protect the other party's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and shall not use, reproduce, distribute, disclose, or otherwise disseminate the other party's Confidential Information, except in connection with the performance of its obligations under this Agreement. Each party recognizes that the disclosure or unauthorized use of Confidential Information will injure the Disclosing Party. Each party further recognizes and agrees that the injury that the Disclosing Party will suffer for any actual or threatened breach by the Receiving Party of the covenants or agreements contained herein cannot be compensated by monetary damages alone, and the Receiving Party therefore agrees that the Disclosing Party, in addition to and without limiting any other remedies or rights which it may have under the Agreement or otherwise, shall be entitled to equitable relief, including injunction and specific performance. The Receiving Party further agrees to waive any requirement for the securing or posting of any bond in connection with such equitable remedy. The obligations of non-disclosure provided hereunder shall continue during the term of the Agreement and (i) with respect to Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and (ii) with respect to Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter.

- c) **Passwords.** If Merchant receives a password from KeyBank to access any of KeyBank'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 KeyBank's or any of its agent's databases or services; (iii) be liable for all action taken by any user of the password that obtained access to the password from Merchant; and (iv) promptly notify KeyBank if Merchant believes KeyBank's databases or services or Merchant's information has been compromised by use of the password. If Merchant receives passwords from a third party for products or services related to Transaction processing, Merchant must protect such passwords in the manner required by such third party and indemnify, defend, and hold KeyBank 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 KeyBank, unless specifically agreed to in a separate license or use agreement between Merchant and KeyBank. Nothing in the Agreement shall be construed as granting Merchant any patent rights or patent license in any patent which KeyBank may obtain in respect to KeyBank's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of KeyBank's services, equipment, or software.
- e) **Actions upon Termination.** Upon the request of the Disclosing Party or upon the termination of the Agreement, the Receiving Party shall promptly return all Confidential Information and all copies of such Confidential Information in the Receiving Party's possession or in the possession of its agents and/or will deliver to the Disclosing Party, destroy or irreversibly erase, as the Disclosing Party shall request, all originals and copies prepared by the Receiving Party or its agents or prepared for the Receiving Party's use containing or reflecting any Confidential Information of the Disclosing Party. In the event a dispute arises between the parties in relation to the Confidential Information (or a part thereof) or the Agreement, the Receiving Party may retain a copy of such Confidential Information (or part thereof) as, in the Receiving Party's discretion, reasonably exercised, is necessary for its defense of the dispute and its retention and use of such Confidential Information shall continue to be subject to the terms of the Agreement.
- f) **Disclosure of Confidential Information.** In the event that the Receiving Party and/or its agents become legally required or compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or by any similar process or court or administrative order) to disclose Confidential Information, then the Receiving Party shall provide the Disclosing Party with prompt prior written notice of such legal requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section 14. In the event that such protective order or other remedy is not obtained, and regardless of whether the Disclosing Party waives compliance with the terms of this Section 14, the Receiving Party agrees to disclose only that portion of the Confidential Information which the Receiving Party, as advised

by the written opinion of counsel, is legally required to be disclosed and to exercise best efforts to obtain assurances that confidential treatment will be accorded such Confidential Information.

15) **MISCELLANEOUS PROVISIONS.**

- a) **Entire Agreement.** The Agreement (including all Schedules, attachments, exhibits, addenda and other documents incorporated by reference into the Agreement or any of its Schedules, attachments, exhibits or addenda) and any amendment or supplement to it, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement. In the event of a conflict between the documents comprising the Agreement, the following order of priority will apply: (i) any amendment or Schedule to the Agreement; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Operating Guide; and (v) any other guides or manuals provided to Merchant from time to time.
- b) **Jurisdiction and Venue; Governing Law.** All matters arising out of or related to the Agreement will be governed by and construed in accordance with the Laws of the State of Ohio. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the State of Ohio and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the State of Ohio. Jurisdiction and venue for any claim or cause of action arising under the Agreement (other than collection actions by KeyBank relating to amounts owed by Merchant under the Agreement) shall be exclusively in the United States District Court for the Northern District of Ohio, and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, that court. If subject matter jurisdiction does not exist in the United States District Court for the Northern District of Ohio, then the exclusive forum and venue for any such action shall be the courts of the State of Ohio located in Cuyahoga County and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, such court. Merchant and KeyBank hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the Agreement. KeyBank and Merchant each represents to the other that this waiver is knowingly, willingly and voluntarily given.
- c) All matters arising out of or related to the Agreement will be governed by and construed in accordance with the Laws of the State of Ohio. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the State of Ohio and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the State of Ohio. Jurisdiction and venue for any claim or cause of action arising under the Agreement (other than collection actions by KeyBank relating to amounts owed by Merchant under the Agreement) shall be exclusively in the United States District Court for the Northern District of Ohio, and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, that court. If subject matter jurisdiction does not exist in the United States District Court for the Northern District of Ohio, then the exclusive forum and venue for any such action shall be the courts of the State of Ohio located in Cuyahoga County and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, such court. Merchant and KeyBank hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the Agreement. KeyBank and Merchant 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 KeyBank as contemplated by the Agreement without KeyBank's written consent.
- e) **Construction.** Any alteration or strikeover in the text of the Agreement or any Schedule thereto will have no binding effect and will not be deemed to amend the Agreement. The headings used in the Agreement 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 not be assigned by Merchant, directly or by operation of law or by change in control of Merchant, without the prior written consent of KeyBank. If Merchant, nevertheless, assigns the Agreement without KeyBank's consent, the Agreement will be binding on the assignee as well as Merchant. KeyBank will not transfer or assign the Agreement without the prior written consent of Merchant, provided that such consent shall not be required for (i) the assignment or delegation to an affiliate of KeyBank, or (ii) the assignment or delegation to any Person into or with which KeyBank shall merge or consolidate, or who may acquire substantially all of KeyBank's stock or assets.
- g) **Notices.** Any written notice to the other party 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 (iii) one (1) business day after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to the Merchant's last address shown on the records of KeyBank or to Merchant Services at 127 Public Square, Cleveland, Ohio 44114.
- h) **Bankruptcy.** Merchant will immediately notify KeyBank of any Bankruptcy Proceeding initiated by or against Merchant. Merchant will include KeyBank 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. Merchant acknowledges that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy.
- i) **Customer Contact.** Merchant authorizes KeyBank to contact Merchant's Customers or their Issuer if KeyBank determines that such contact is necessary to obtain information about any Transaction between Merchant and a Customer.
- j) **Telephone Recording.** For quality assurance and training purposes Merchant authorizes KeyBank to monitor and record telephone conversations at any time. The decision to record any conversation shall be solely in KeyBank's discretion and pursuant to applicable Law.
- k) **Communication with Merchant.** Merchant agrees that KeyBank may provide Merchant with information about KeyBank's services including, without limitation, information about new products and/or services by facsimile, telephone, mobile telephone and/or electronic mail.
- l) **Amendments.** Except as otherwise provided in the Agreement, amendments to the Agreement shall be in writing and signed by the parties. Notwithstanding the foregoing, KeyBank may amend or modify the Agreement, to the extent such changes are required by or attributable to changes in the Payment Network Regulations or other Laws, upon written notice to Merchant. KeyBank will inform Merchant of such a change in a periodic statement or other written notice, and such change will become effective not less than 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.
- m) **Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby if the essential terms and conditions of the Agreement for each party remain valid, legal and enforceable. None of the failure, the delay by any party to exercise, or 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 a party must be signed by the waiving party.
- n) **Independent Contractors.** KeyBank, 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.
- o) **Survival.** All of the obligations of each party hereto that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including, without limitation, Sections 3, 4, 5, 6, 7, 10, 12, 13, 14, and 15(b) of the TOS, shall so survive and remain binding upon and for the benefit of the parties hereto.
- p) **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.
- q) **Force Majeure.** KeyBank shall not be considered in default in performance of KeyBank's obligations to the extent such performance is delayed by force majeure affecting KeyBank's ability to so perform. Force majeure shall include, but not be limited to, hostilities, restraint of rulers or peoples, revolution, civil commotion or riots, strike, lockout, epidemic, accident, fire, flood, earthquake, windstorm, explosion, lack of or failure of telecommunication facilities, regulation or ordinance, demand or requirement of any government or governmental agency, or any court, tribunal or arbitrator(s), having or claiming to have jurisdiction over the subject matter of the Agreement or over the parties hereto, or any act of God or any act of government or any cause whether of the same or different nature existing now or in the future which is beyond the reasonable control of KeyBank.

Section B - Glossary

- 16) **ACH Rules:** The NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.
- 17) **Agreement:** The Payment Device Processing Agreement, including the TOS, MOG, any Schedules, attachments, exhibits, addenda, the Merchant Application, amendments, or additions as permitted under the terms of the Agreement.

- 18) **Alternate Security:** The security described in Section (A)(4)(b)(vi).
- 19) **American Express:** American Express Travel Related Services Company, Inc.
- 20) **ACH:** Automated Clearing House.
- 21) **ACH Network:** The funds transfer system governed by the ACH Rules. The ACH Network allows participating depository financial institutions to clear interbank entries electronically.
- 22) **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; (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.
- 23) **Card Not Present:** The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.
- 24) **Card Present:** The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction.
- 25) **Cardholder:** (i) the individual in whose name a Payment Device has been issued; or (ii) any individual who possesses or uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or who purports to be an authorized user of the Payment Device.
- 26) **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.
- 27) **Chargeback:** A Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.
- 28) **Confidential Information:** All information or items proprietary to any party to the Agreement, of which another party to the Agreement obtains knowledge or access as a result of the relationship formed as a result of the Agreement, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information. For the avoidance of doubt, as between Merchant, on the one hand, and KeyBank, on the other hand, Cardholder and Transaction information shall constitute KeyBank Confidential Information and shall not constitute Merchant Confidential Information.
- 29) **Convenience Fee:** A fee charged by Merchant for an added convenience to the Cardholder for the use of a Payment Device in a Transaction in accordance with the Payment Network Regulations.
- 30) **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. 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.
- 31) **Credit Card Associations:** (i) Visa.; (ii) MasterCard; (iii) American Express; (iv) Discover Network; (v)

- Diners; (vi) JCB; (vii) UnionPay; and (viii) any other organization or association that hereafter contracts with KeyBank to authorize, capture, and/or settle Transactions effected with Credit Cards or signature-based Debit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.
- 32) **Customer:** A client of Merchant who elects to conduct a payment Transaction with Merchant through presentation of a Payment Device (including a Cardholder).
- 33) **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.
- 34) **Demand Deposit Account (DDA):** The commercial checking account at a financial institution acceptable to KeyBank designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other payments due under the Agreement.
- 35) **Diners:** Diners Club International Ltd.
- 36) **Disclosing Party:** The party providing the Confidential Information to the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the party providing its Confidential Information).
- 37) **Discover:** DFS Services LLC.
- 38) **Discover Network:** The payment network operated and maintained by Discover.
- 39) **EBT Card:** A card utilized for electronic benefits transfers.
- 40) **ECS Association:** NACHA and any regional ACH association or network, the Federal Reserve (in its processing of ACH entries or Demand Drafts or other legal replacements or substitutes for a Paper Check, including under the Check Clearing for the 21st Century Act or under applicable provisions of the Uniform Commercial Code), and any other organization or association used by KeyBank in connection with the ECS that is hereafter designated as an ECS Association by KeyBank from time to time.
- 41) **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.; and (ii) any other organization or association that hereafter authorizes KeyBank to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
- 42) **Effective Date:** The date set forth in the signature block of KeyBank on page 1 of the Agreement.
- 43) **Electronic Check Services (ECS):** The service offering by KeyBank pursuant to which Transactions effected via an ACH Payment Device are presented for clearing and settlement by or through an ECS Association.
- 43) **Electronic Commerce Transaction:** A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant.
- 44) **Electronic Gift Card (EGC):** A special stored value card provided by Merchant that is redeemable for merchandise, services or other Transactions.
- 45) **Excessive Activity:** The occurrence, during any monthly period, of Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of Merchant's Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of Transactions.
- 46) **Interchange:** The clearing and settlement system for Visa, MasterCard and, where applicable, Discover Credit Cards and Debit Cards, where data is exchanged between KeyBank and the Issuer through the applicable Payment Network.
- 47) **Issuer:** The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.
- 48) **JCB:** JCB International Co., Ltd.
- 49) **KeyBank:** KeyBank National Association, a national banking association, and any affiliate or subsidiary of KeyBank that provides processing services, directly or indirectly, to Merchants related to Transactions. KeyBank may exercise any of its rights or perform any of its obligations hereunder through its Service Provider, in KeyBank's sole discretion. KeyBank and/or any Service Provider may also be referred to as "Servicer" in the Agreement, the MOG or other documents provided to Merchant in connection with the Processing Services.
- 50) **Laws:** All applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.
- 51) **Mail Order/Telephone Order (MO/TO) Transaction:** For MO, a Transaction that occurs when the Cardholder uses the mail to make a payment to a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a payment to a Merchant.
- 52) **MasterCard:** MasterCard International Incorporated.
- 53) **Member:** The sponsoring Member designated on the Merchant Application or on a particular Schedule hereto, as applicable. KeyBank may serve as the Member and KeyBank may change the Member at any time and the Merchant will be provided notice of same.
- 54) **Merchant:** The entity set out in the first page of the Agreement and the affiliated entities listed on Schedule B attached hereto, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties, and Merchant may add additional accounts or locations that are owned

- by Merchant without the need to execute a new Schedule B.
- 55) **Merchant Application:** The Merchant Application attached hereto as Schedule C and any additional document containing information regarding Merchant’s business that is submitted to KeyBank in connection with Merchant’s application for Processing Services, including documents submitted by Merchant as a part of the bid process, if applicable.
- 56) **Merchant Operating Guide (MOG):** KeyBank’s operating manual that prescribes rules and procedures governing Transactions and Merchant’s use of the Processing Services. The MOG may be amended from time to time by KeyBank in its sole discretion, which amendments will be effective upon notice to Merchant.
- 57) **NACHA—The Electronic Payments Association:** The national association that establishes standards, rules, and procedures governing the ACH Network, including the ACH Rules.
- 58) **OFAC:** The United States Department of the Treasury’s Office of Foreign Assets Control.
- 59) **Payment Device:** Any device or method used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device or method, 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.
- 60) **Payment Network:** Any Credit Card Association, EFT Network, ECS Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.
- 61) **Payment Network Regulations:** Individually and collectively, as the context may dictate, all rules and operating regulations of the EFT Networks, Credit Card Associations and ECS Associations, and all rules, operating regulations, and guidelines for Transactions issued by KeyBank from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.
- 62) **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.
- 63) **POS Device:** A terminal, software or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by KeyBank and the applicable Payment Network.
- 64) **Processing Services:** The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.
- 65) **Receiving Party:** The recipient of Confidential Information from the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the other party).
- 66) **Reserve Account:** The account established pursuant to Section (A)(4).
- 67) **Reserve Amount:** The amount established pursuant to the calculation set forth in Section (A)(4).
- 68) **Reserve Event:** The events designated in Section (A)(4).
- 69) **Retrieval Request:** A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder’s signed Transaction Receipt within a specified period of time.
- 70) **Service Provider:** Elavon, Inc. or such other third party service provider(s) as KeyBank may select from time to time to exercise any rights or perform any obligations of KeyBank in connection with this Agreement or the Processing Services.
- 71) **Servicer:** See “KeyBank.”
- 72) **TOS:** These Terms of Service and all additions, amendments, modifications and replacements to the TOS, as applicable.
- 73) **Transaction:** Any action between a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder’s account (e.g., payment, purchase, refund, or return).
- 74) **Transaction Receipt:** The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.
- 75) **UnionPay:** China UnionPay Co., Ltd.
- 76) **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, except to the extent such services are performed by the entity in its capacity as an agent of KeyBank performing KeyBank’s obligations under the Agreement.
- 77) **Visa:** Visa U.S.A., Inc.

SCHEDULE A
SCHEDULE OF FEES

[Separately Provided]

SCHEDULE B
AFFILIATED ENTITIES

Check one:

Merchant named on page 1 only, and all locations will operate under Tax ID Number _____.

Merchant named on page 1, with Tax ID Number _____ and the following affiliate(s) (a separate Form W-9 or Form W-8BEN, as applicable, must be submitted for each entity identified below):

Name

Tax ID Number

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

STATE OF ALASKA CSSD (Child Support Services Division), on behalf of itself and each of the affiliated entities identified above:

By: _____

Name: _____

Title: _____

KEYBANK NATIONAL ASSOCIATION

By: _____

Name: _____

Title: _____

Date: _____

(Schedule B "Effective Date")

SCHEDULE C
MERCHANT APPLICATION (LARGE RELATIONSHIP)

[Separately Provided]

Terms of Service

1) Convenience Fees.

a) **Merchant-Managed.** If Merchant is both eligible to charge Convenience Fees and has elected on page 1 of this Schedule J to manage Convenience Fees, then Merchant shall comply with the standard provisions regarding Convenience Fees set forth in the Agreement and the MOG.

b) **KeyBank-Managed.** If Merchant is both eligible to charge Convenience Fees and has elected on page 1 of this Schedule J to have KeyBank manage Convenience Fees, Merchant agrees to the following provisions, as and to the extent applicable, in addition to requirements regarding Convenience Fees set forth in the Agreement and the MOG.

1. **General.** At Merchant's election, Merchant may choose to have KeyBank manage the Convenience Fee Merchant will charge to its Customers for eligible Transactions, provided that Merchant is in compliance with the Payment Network Regulations and Laws. In such circumstances, KeyBank will communicate to Merchant the amount of the Convenience Fee Merchant is required to charge for each eligible Transaction. Merchant agrees that any Convenience Fee charged by Merchant for such Transactions will be retained by KeyBank and constitutes KeyBank's property, and Merchant acknowledges that Merchant has no right, title or interest in such amounts. Further, Merchant acknowledges that KeyBank may use Service Providers to effectuate the management of and KeyBank's right, title and interest to the Convenience Fees such that either KeyBank's name or that of its Service Provider may appear on statements or other documentation in relation to any Convenience Fee Transaction. KeyBank may adjust the Convenience Fee from time to time as necessary to accommodate changes in Payment Network fees (including Interchange fees), material changes in average ticket size and/or monthly Transaction volume, Interchange classification or downgrades, changes in Chargeback rates, or changes in Payment Devices accepted and/or payment channels offered by Merchant. Additionally, KeyBank may immediately terminate the Processing Services for Convenience Fees if Merchant's Chargeback rates materially exceed industry averages.

2. **POS Devices and Convenience Fee Changes.** Merchant is responsible for ensuring that its software, POS Devices and Payment Device acceptance procedures fully

comply with KeyBank's instructions and Payment Network Regulations, including with respect to programming of software and POS Devices to handle eligible Transactions to ensure proper assessment of Convenience Fees and modifying the amount of Convenience Fees charged upon request from KeyBank. Merchant is further responsible for complying with all requirements as provided by KeyBank from time to time to appropriately process the eligible Transactions to qualify for optimal Interchange rates within five (5) days of KeyBank's communication to Merchant of the same. If Merchant fails to make changes to its POS Devices or Payment Device acceptance procedures, or fails to adjust the amount of the Convenience Fee charged per Transaction, within five (5) days of KeyBank's request therefor, KeyBank may, in its discretion, discontinue the program or suspend a certain payment type, or bill the Merchant for charges in excess of the Convenience Fee to recover losses related to Transactions that did not qualify for optimal Interchange rates or did not include the Convenience Fee amount requested by KeyBank.

2) **Fees.** If Merchant has elected on page 1 of this Schedule J that Convenience Fees will be "Merchant-managed," then Merchant will compensate KeyBank for the Processing Services for Convenience Fee Transactions as indicated on Schedule A to the Agreement (i.e., Merchant will pay standard per transaction fees for Convenience Fee Transactions). If Merchant has elected on page 1 of this Schedule J that Convenience Fees will be "KeyBank-managed," then KeyBank will net from the Transaction settlement paid to Merchant the full amount of the Convenience Fee established by KeyBank (as communicated to Merchant in Exhibit A to this Schedule J). Subject to the provisions above, the Convenience Fee retained by KeyBank where Merchant has elected "KeyBank-managed" Convenience Fees will constitute full payment to KeyBank for KeyBank's processing of such Transactions.