



**OPELIKA CITY COUNCIL**  
**“ REGULAR MEETING AGENDA “**

204 South 7th Street

**May 19, 2015**

**TIME: 7:00 PM**

1. CALL TO ORDER
2. ROLL CALL
  1. Patricia Jones, Larry Gray, Dozier Smith T, David Canon, Eddie Smith
3. INVOCATION
4. PLEDGE OF ALLEGIANCE
  1. Ben Bryant, Nathanaiel Huggins & Marquevious Swanson, OHS State Track Champions.
5. READING OF MINUTES
  1. Council Minutes for 5-05-15
6. UNFINISHED BUSINESS
7. REMARKS BY THE MAYOR
  1. Financial Report - April 2015
  2. Building Permit Detail Report - April, 2015
  3. YTD & Monthly Council Report - April, 2015
  4. Recognition of YEA winner and runner up.
  5. Proclamation for Jodi Fuller - Funniest Man in Opelika.
  6. Recognize OHS Boys track team as the 6A State Champions.
8. CITIZEN COMMUNICATIONS
9. REPORT OF DISBURSEMENTS
10. COMMITTEE REPORTS
11. GENERAL BUSINESS
  1. City Fireworks Display, Request for Permit by P&R Board
  2. Request Temoprary St Closure, Run to Read on 10-24-15
  3. Request Temporary St Closure, Memorial Day Service on 5-25-15
  4. Request Temporary Blocking of Parking Spaces, N RR Ave. on 6-5-15
12. AWARDING OF BIDS
  1. 2Nd Avenue and North 6Th Street Intersection Improvements B15-018 - Oral Recommendation
13. RESOLUTIONS

1. Tabled, Order Demolition at 303 Byrd Avenue
  2. Tabled, Order Demolition at 122 & 124 Plum and 18 & 20 Easy St
  3. Tabled, Order Demolition at 410 Raintree St.
  4. Tabled, Order Demolition at 418 Raintree Street
  5. Tabled, Order Demolition at 1701 Old Columbus Rd.
  6. Employee Expense Reports
  7. Designate City Personal Property Surplus & Authorize Disposal
  8. Emergency Repair SW Truck #844
  9. Sole Source Purchase, OPS, Underground Cable
  10. Temporary Position of Economic Development Intern
  11. Approving and Authorizing the Execution of a Merchant Services Application and Agreement by and Between the City of Opelika, Alabama, and Electronic Clearinghouse, Inc.
  12. Approving and Authorizing the Execution of Merchant Processing Applications and Agreements by and Among the City of Opelika, Alabama, National Information Solutions Cooperative, First Data Merchant Services Corporation and Intuit, Inc.
  13. Accepting Proposal With Eministration, LLC for Fiber Sales Services
  14. Approving Employment Contract with Derek S. Lee
  15. Authorizing Agreement for Installation And/Or Maintenance of Traffic Control Signal With the Alabama Department of Transportation
  16. Approving the Installation of Traffic Control Signal at the Intersection of Fox Run Parkway and Jeter Street
  17. Amending Resolution No. 035-15, Adopted on February 3, 2015, Allocating Additional Funds to Reimburse Aldot For the Installation of Traffic Control Signal
  18. Approving Agreement Between the City of Opelika and Building & Earth to Provide Construction Testing Services to Assist in Completing Various Construction Projects for the City.
  19. Annual Appropriation Contract, American Red Cross
  20. Special Appropriation, GEM Empowered, Juneteenth Celebration.
  21. Resolution Approving Sidewalk Improvements On South Railroad Avenue in Front of City Cafe
  22. Resolution Approving Sidewalk Improvements On South Railroad Avenue in Front of Niffer's Place
14. ORDINANCES
1. Amend City Code, Chapter 16, Add Article IX, Skateboards, Etc. (Second Reading)
  2. Annexation, 1070 Lee Rd 389, Gallahan Property (Second Reading)
  3. Amend City Code, Chapter 4, Humane Traps and Capture Methods in Animal Control (First Reading)
15. APPOINTMENTS
1. Appoint Chuck Wacker to the Alabama Municipal Electric Election Committee. New term expires 5-31-16.
  2. Re-appoint Bill Parker to the Indian Pines Recreation Authority. New term expires 6-07-19.
16. ADJOURN



**City Council**  
204 South 7Th Street  
Opelika, AL

**SCHEDULED**

**CM MINUTES (ID # 1108)**

Meeting: 05/19/15 07:00 PM  
Department: City Clerk  
Category: CM Minutes  
Prepared By: Robert Shuman  
Initiator: Robert Shuman  
Sponsors:  
DOC ID: 1108

## **Council Minutes for 5-05-15**

**CITY OF OPELIKA**  
Minutes of City Council Meeting – May 5, 2015

The City Council of the City of Opelika met in regular session on the above date in the Council Chambers at City Hall.

President Eddie Smith called the meeting to order at 7:00 p.m. asking City Clerk Bob Shuman to call the roll.

**PRESENT AND PRESIDING:** Eddie Smith

**MEMBERS PRESENT:** Patricia Jones, Larry Gray, Dozier Smith T, David Canon

**MEMBERS ABSENT:** None.

President Smith called on the Reverend Sunil Macwan to provide the invocation.

President Smith asked Adriane King, Abbey Rowe & Danielle Martin, seniors at Opelika High School, to come up front to lead the Pledge of Allegiance.

**READING OF MINUTES:**

Mr. Smith T made the motion to approve the City Council meeting minutes of April 21, 2015 and was seconded by Mr. Canon. Designated item no. 1. Said minutes were approved as prepared with the following vote:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None.

**UNFINISHED BUSINESS –**

**REMARKS BY THE MAYOR – Gary Fuller**

Mayor Fuller reminded everyone that Thursday is the National Day of Prayer with this event taking place a Noon at Court House Square.

Mayor Fuller reminded everyone that the annual Garden in the Park is Saturday at the Municipal Park.

Mayor Fuller stated Frederick Road is open for traffic and the speed limit is still 25 MPH.

Mayor Fuller reminded the city council that the City's financial report for March 2015 is in their CM agenda information for their review and/or questions. Designated item no. 2.

Mayor Fuller presented a proclamation recognizing May as Mental Health Awareness Month.

Mayor Fuller presented a proclamation recognizing Small Business Week.

Mayor Fuller recognized the 2015 Duke TIP Scholars.

Mayor Fuller recognized the 2015 AMEA scholarship winners.

**CITIZENS COMMUNICATION – none.**

**REPORT OF DISBURSEMENTS – none.**

**COMMITTEE REPORTS – none.**

**GENERAL BUSINESS –**

Bob Shuman, City Clerk, presented a request for a temporary street closure for the Juneteenth Celebration on June 20<sup>th</sup>. Designated item no. 3. Mr. Smith T made the motion to approve with a second provided by Mr. Gray. The following vote was recorded:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None

Mr. Shuman presented a request for a temporary road closure for the Airport Fly-in on May 16<sup>th</sup>. Designated item no. 4. Mr. Canon made the motion to approve with a second provided by Ms. Jones. The following vote was recorded:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None



Mr. Shuman presented a public hearing for a demolition at 303 Byrd Avenue. Designated item no. 5. President Smith opened the public hearing asking if there was anyone present that would like to speak or against said demolition.

Baron Coleman, a Montgomery attorney representing Sirco Inc., stated that the City did not follow the State statutes and Federal rules concerning the demolition of structures owned by Sirco. Mr. Coleman stated that Sirco does not want their buildings destroyed and he will defend such demolitions by all legal means. Mr. Coleman questioned how the City could tag a structure as unsafe and move to demolish when no inspection of the inside of these properties have occurred and no explanation of what repairs were needed. Mr. Coleman asked to delay the demolition action on the Sirco properties that are on the council meeting agenda tonight.

Jeff Kappelman, the City Chief Building Inspector, stated that the documentation covering the demolition of these properties date back to 2012. President Smith closed the public hearing.

Mr. Shuman presented a public hearing for a demolition at 122 & 124 Plum Avenue and 18 & 20 East Street. Designated item no. 6. President Smith opened the public hearing asking if there was anyone present that would like to speak or against said demolition. Baron Coleman stated that his previous statements apply to all Sirco property to be discussed tonight. President closed the public hearing.

Mr. Shuman presented a public hearing for a demolition at 410 Raintree Street. Designated item no. 7. President Smith opened the public hearing asking if there was anyone present that would like to speak or against said demolition. No one came forward to speak. President Smith closed the public hearing.

Mr. Shuman presented a public hearing for a demolition at 418 Raintree Street. Designated item no. 8. President Smith opened the public hearing asking if there was anyone present that would like to speak or against said demolition. No one came forward to speak. President Smith closed the public hearing.

Mr. Shuman presented a public hearing for a demolition at 1701 Old Columbus Road. Designated item no. 9. President Smith opened the public hearing asking if there was anyone present that would like to speak or against said demolition. Mr. Mark Boddie, 2808 East Pointe Way, stated that he is negotiating with his insurance company to be able to tear the structure down himself. Mr. Boddie asked for a 60-90 day extension from the City. President Smith closed the public hearing.

#### **AWARDING OF BIDS – Lillie Finley**

##### **RESOLUTION NO. 100-15**

Purchase a Cloud Based Offsite DR solution and Hybrid for the IT dept. Designated item no. 10. Mr. Canon made the motion to approve and was seconded by Mr. Gray. After the council had discussed the resolution in full, the question being put as to the passage of said motion and the adoption of said resolution, the roll was called with the following results:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith  
VOTING NAY: None

#### **RESOLUTIONS – Guy Gunter.**

##### **RESOLUTION NO. 101-15**

Expense reports from various departments. Designated item no. 11. Ms. Jones made the motion to approve and was seconded by Mr. Smith T. After the council had discussed the resolution in full, the question being put as to the passage of said motion and the adoption of said resolution, the roll was called with the following results:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith  
VOTING NAY: None

##### **RESOLUTION NO. 102-15**

Designate City personal property surplus & authorize disposal. Designated item no. 12. Mr. Gray made the motion to approve and was seconded by Mr. Smith T. After the council had discussed the resolution in full, the question being put as to the passage of said motion and the adoption of said resolution, the roll was called with the following results:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith  
VOTING NAY: None

##### **RESOLUTION TABLED**

To authorize a demolition at 303 Byrd Avenue. Designated item no. 13. Mr. Canon made the motion to table this resolution and was seconded by Ms. Jones. The following vote was recorded:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith  
VOTING NAY: None

## RESOLUTION TABLED

To authorize a demolition at 122 & 124 Plum Avenue and 18 & 20 East Street. Designated item no. 14. Mr. Canon made the motion to table this resolution and was seconded by Mr. Gray. The following vote was recorded:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None

## RESOLUTION TABLED

To authorize a demolition at 410 Raintree Street. Designated item no. 15. Mr. Canon made the motion to table this resolution and was seconded by Mr. Gray. The following vote was recorded:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None

## RESOLUTION TABLED

To authorize a demolition at 418 Raintree Street. Designated item no. 16. Mr. Canon made the motion to table this resolution and was seconded by Mr. Smith T. The following vote was recorded:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None

## RESOLUTION TABLED

To authorize a demolition at 1701 Old Columbus Road. Designated item no. 17. Ms. Jones made the motion to table this resolution and was seconded by Mr. Gray. The following vote was recorded:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None

## RESOLUTION No. 103-15

To accept the MWPP annual reports from the P/W dept. Designated item no. 18. Mr. Smith T made a motion to approve and was seconded by Mr. Canon. After the council had discussed the resolution in full, the question being put as to the passage of said motion and adoption of said resolution, the roll was called with the following results:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None

## RESOLUTION NO. 104-15

A license agreement for a Fireworks Exhibition and Display. Designated item no. 19. Ms. Jones made the motion to approve and was seconded by Mr. Gray. After the council had discussed the resolution in full, the question being put as to the passage of said motion and the adoption of said resolution, the roll was called with the following results:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None

## RESOLUTION NO. 105-15

A budget adjustment to fund administering the Police Lieutenant examinations. Designated item no. 20. Mr. Canon made the motion to approve and was seconded by Mr. Smith T. After the council had discussed the resolution in full, the question being put as to the passage of said motion and the adoption of said resolution, the roll was called with the following results:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None

## RESOLUTION NO. 106-15

A sales contract with West Fraser Inc. for the City to purchase land for a new sub-station. Designated item no. 21. Mr. Smith T made the motion to approve and was seconded by Mr. Gray. After the council had discussed the resolution in full, the question being put as to the passage of said motion and the adoption of said resolution, the roll was called with the following results:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None

## RESOLUTION NO. 107-15

A sales contract with William Davis Unitrust for the City to purchase land for a new sub-station. Designated item no. 22. Ms. Jones made the motion to approve and was seconded by Mr. Smith T. After the council had discussed the resolution in full, the question being put as to the passage of said motion and the adoption of said resolution, the roll was called with the following results:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith

VOTING NAY: None



RESOLUTION NO. 108-15  
To retain the law firm of Samford & Denson to handle demolitions that are appealed. Designated item no. 23. Mr. Canon made the motion to approve and was seconded by Mr. Smith T. After the council had discussed the resolution in full, the question being put as to the passage of said motion and the adoption of said resolution, the roll was called with the following results:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith  
VOTING NAY: None

**ORDINANCES –**

The following ordinances were on this agenda for a First Reading.

ORDINANCE  
To amend the City Code of Ordinances, Chapter 16, add Article IX, skateboard, roller skates, coasters, etc. Mr. Gray introduced this ordinance.

ORDINANCE  
To annex the Gallahan property at 1070 Lee Road 389. Mr. Canon introduced this ordinance.

ORDINANCE NO. 111-15  
To convey City property to William Davis Unitrust as part of the contracts for sale to create a new sub-station. Designated item no. 24. Mr. Smith T introduced this ordinance.

Then Mr. Canon made the motion to suspend the rules and consider this ordinance for approval. Mr. Gray provided the second. The following vote was recorded:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith  
VOTING NAY: None

Then Mr. Canon made the motion to approve this ordinance and was seconded by Mr. Gray. After the council had discussed the ordinance in full, the question being put as to the passage of said motion and the adoption of said ordinance, the roll was called with the following results:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith  
VOTING NAY: None.

**APPOINTMENTS –**

- 1. To reappoint Patsy Parker to the Public P&R Board. Mr. Gray made the motion to approve and was seconded by Mr. Smith T. The following vote was recorded:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith  
VOTING NAY: None..

**ADJOURN –**  
At approximately 7:55 pm since there was no further City business to be considered, Mr. Smith T made the motion to adjourn with a second provided by Ms. Jones. The following vote was recorded:

VOTING AYE: Jones, Gray, Smith T, Canon, Smith  
VOTING NAY: None

These City Council meeting minutes are hereby adopted and approved this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
President of the City Council  
City of Opelika, Alabama

ATTEST:

\_\_\_\_\_  
R.G. “Bob” Shuman, CMC  
City Clerk – Treasurer

Attachment: CM 5-19-15, minutes from 5-5-5 CM, 5-14-15 (1108 : Council Minutes for 5-05-15)



**City Council**  
204 South 7Th Street  
Opelika, AL

**SCHEDULED**

Meeting: 05/19/15 07:00 PM  
Department: Accounting  
Category: Report  
Prepared By: Mitch Price  
Initiator: Mitch Price  
Sponsors:

**MAYOR'S REMARKS (ID # 1105)**

DOC ID: 1105

## Financial Report - April 2015

City of Opelika  
Combined Balance Sheet - All Funds and Account Groups  
April 30, 2015

|                                                                | Governmental Fund Types |                       |                     |                              |                        |                       | Account Groups       |                        |                       |
|----------------------------------------------------------------|-------------------------|-----------------------|---------------------|------------------------------|------------------------|-----------------------|----------------------|------------------------|-----------------------|
|                                                                | Proprietary Funds       |                       |                     | Trust and Agency Funds Total |                        |                       | General Fixed Assets | General Long Term Debt | Memo Total            |
|                                                                | General                 | Special Revenue Funds | Debt Service Funds  | *Capital Projects Funds      | Internal Service Funds | Enterprise Funds      |                      |                        |                       |
| Cash                                                           | 36,008,916.57           | 4,478,619.81          | 42,538.22           | 5,420,394.08                 | 2,350,172.49           | 19,239,310.99         | -                    | -                      | 67,539,952.16         |
| Investments at cost or amortized cost                          | -                       | -                     | -                   | -                            | -                      | -                     | -                    | -                      | -                     |
| Receivables:                                                   | -                       | -                     | -                   | -                            | -                      | -                     | -                    | -                      | -                     |
| Taxes                                                          | 7,736,800.02            | 5,803,220.16          | -                   | -                            | -                      | -                     | -                    | -                      | 13,540,020.18         |
| Accounts and unbilled service                                  | 157,797.51              | 69,044.84             | -                   | 1,633,500.00                 | 19,228.72              | 4,287,165.38          | -                    | -                      | 6,166,736.45          |
| Assessments                                                    | 66,582.21               | -                     | -                   | -                            | -                      | -                     | -                    | -                      | 66,582.21             |
| Notes                                                          | -                       | -                     | -                   | -                            | -                      | -                     | -                    | -                      | -                     |
| Accrued interest                                               | 20,684.55               | -                     | -                   | 7,065.21                     | -                      | 26,679.45             | -                    | -                      | 54,429.21             |
| Due from other funds                                           | 621,772.23              | -                     | -                   | -                            | 55,283.22              | 322,235.57            | -                    | -                      | 999,291.02            |
| Due from other governments                                     | 22,243.06               | 42,755.02             | -                   | -                            | -                      | 276,560.75            | -                    | -                      | 341,558.83            |
| Advances to other governments                                  | -                       | -                     | -                   | -                            | -                      | -                     | -                    | -                      | -                     |
| Inventory of supplies, at cost                                 | 145,722.25              | -                     | -                   | -                            | -                      | 3,228,619.44          | -                    | -                      | 3,374,341.69          |
| Prepaid expenses                                               | -                       | -                     | -                   | -                            | -                      | 142,835.52            | -                    | -                      | 142,835.52            |
| Restricted assets:                                             | -                       | -                     | -                   | -                            | -                      | -                     | -                    | -                      | -                     |
| Cash                                                           | -                       | -                     | -                   | -                            | -                      | 4,868.12              | -                    | -                      | 4,868.12              |
| Investments at cost or amortized cost                          | -                       | -                     | 1,593,364.63        | 10,013,132.17                | -                      | 2,751,644.80          | 939,109.48           | -                      | 15,297,251.08         |
| Accrued interest receivable                                    | -                       | -                     | -                   | -                            | -                      | -                     | 1,135.23             | -                      | 1,135.23              |
| Due from other funds                                           | -                       | -                     | -                   | -                            | -                      | -                     | 4,062.50             | -                      | 4,062.50              |
| Unamortized bond and issue costs                               | -                       | -                     | -                   | -                            | -                      | 388,719.40            | -                    | -                      | 388,719.40            |
| Land                                                           | -                       | -                     | -                   | -                            | -                      | 2,423,070.99          | 9,783,123.79         | -                      | 12,206,194.78         |
| Buildings and utility systems                                  | -                       | -                     | -                   | -                            | -                      | 128,802,143.90        | 42,592,098.50        | -                      | 171,394,242.40        |
| Improvements other than buildings and systems                  | -                       | -                     | -                   | -                            | -                      | 17,540.00             | 5,244,679.05         | -                      | 5,262,219.05          |
| Equipment                                                      | -                       | -                     | -                   | -                            | -                      | 8,695,090.71          | 91,757,371.95        | -                      | 100,452,462.66        |
| Construction in progress                                       | -                       | -                     | -                   | -                            | -                      | 4,949,674.92          | 8,204,944.13         | -                      | 13,154,619.05         |
| Accumulated depreciation                                       | -                       | -                     | -                   | -                            | -                      | (56,137,288.53)       | -                    | -                      | (56,137,288.53)       |
| Other Assets                                                   | -                       | -                     | -                   | -                            | -                      | 602,430.86            | -                    | -                      | 602,430.86            |
| Amount available in debt service funds                         | -                       | -                     | -                   | -                            | -                      | -                     | -                    | 105.32                 | 105.32                |
| Amount to be provided for retirement of general long term debt | -                       | -                     | -                   | -                            | -                      | -                     | -                    | 99,536,792.64          | 99,536,792.64         |
| <b>Total assets</b>                                            | <b>44,780,518.40</b>    | <b>10,393,639.83</b>  | <b>1,635,902.85</b> | <b>17,074,091.46</b>         | <b>2,424,684.43</b>    | <b>120,021,302.27</b> | <b>944,307.21</b>    | <b>157,582,217.42</b>  | <b>454,393,561.83</b> |

Sportsplex Fund Cash Balance is \$5,764,200.08

City of Opelika  
Combined Balance Sheet - All Funds and Account Groups  
April 30, 2015

|                                                           |               | Account Groups          |                       |                    |                         |                        |                        |                      |                        |                |
|-----------------------------------------------------------|---------------|-------------------------|-----------------------|--------------------|-------------------------|------------------------|------------------------|----------------------|------------------------|----------------|
|                                                           |               | Governmental Fund Types |                       |                    | Proprietary Funds       |                        | Trust and Agency Funds | General Fixed Assets | General Long Term Debt | Memo Total     |
|                                                           |               | General Funds           | Special Revenue Funds | Debt Service Funds | *Capital Projects Funds | Internal Service Funds | Enterprise Funds       | Total                |                        |                |
| Liabilities                                               |               |                         |                       |                    |                         |                        |                        |                      |                        |                |
| Accounts payable                                          | 368,660.11    | -                       | -                     | -                  | -                       | 301,557.51             | 4,313,706.43           | -                    | -                      | 4,983,924.05   |
| Retainage payable                                         | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | -              |
| Current portion of bonds and notes payable                | 413,050.00    | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | 413,050.00     |
| Liability for unpaid claims, current                      | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | -              |
| Accrued payroll and benefits                              | 537,505.64    | 1,167.56                | -                     | -                  | -                       | -                      | 308,491.59             | -                    | -                      | 847,164.79     |
| Interest payable                                          | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | -              |
| Payable from restricted assets:                           | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | -              |
| Accounts payable                                          | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | -              |
| Current portion of bonds payable                          | -             | -                       | -                     | -                  | -                       | -                      | 525,000.00             | -                    | -                      | 525,000.00     |
| Interest payable                                          | -             | -                       | -                     | -                  | -                       | -                      | 309,349.54             | -                    | -                      | 309,349.54     |
| Due to other funds                                        | 264,779.62    | 2.37                    | -                     | -                  | -                       | -                      | 737,561.05             | 1,010.48             | -                      | 1,003,353.52   |
| Due to other governments                                  | 613.49        | 100.00                  | -                     | -                  | -                       | -                      | -                      | -                    | -                      | 713.49         |
| Deferred revenue                                          | 3,288,742.69  | 5,711,261.39            | -                     | 1,633,500.00       | 177,112.48              | 403,390.74             | -                      | -                    | -                      | 11,214,007.30  |
| Customer deposits                                         | -             | -                       | -                     | -                  | -                       | 2,541,265.00           | -                      | -                    | -                      | 2,541,265.00   |
| Accrued employee benefits                                 | -             | -                       | -                     | -                  | -                       | 359,661.66             | -                      | -                    | -                      | 359,661.66     |
| Matured bonds and interest payable                        | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | -              |
| Deferred compensation benefits payable                    | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | -              |
| Liability for unpaid claims, long term                    | -             | -                       | -                     | -                  | 263,304.00              | -                      | -                      | -                    | -                      | 263,304.00     |
| General obligation debt payable                           | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | 99,536,897.96          | 99,536,897.96  |
| Bonds, warrants and notes payable, net of current portion | -             | -                       | -                     | -                  | -                       | 49,214,250.67          | -                      | -                    | -                      | 49,214,250.67  |
| Total liabilities                                         | 4,873,351.55  | 5,712,531.32            | -                     | 1,633,500.00       | 741,973.99              | 58,712,676.68          | 1,010.48               | -                    | 99,536,897.96          | 171,211,941.98 |
| Fund Equity                                               |               |                         |                       |                    |                         |                        |                        |                      |                        |                |
| Contributed capital                                       | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | -              |
| Investment in general fixed assets                        | -             | -                       | -                     | -                  | -                       | -                      | -                      | 157,582,217.42       | -                      | 157,582,217.42 |
| Retained earnings:                                        |               |                         |                       |                    |                         |                        |                        |                      |                        |                |
| Reserved for replacement and extension                    | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | -              |
| Reserved for debt service                                 | -             | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | -              |
| Unreserved                                                | -             | -                       | -                     | -                  | 1,682,701.92            | 57,432,954.66          | 40,377.18              | -                    | -                      | 59,156,033.76  |
| Fund balances:                                            |               |                         |                       |                    |                         |                        |                        |                      |                        |                |
| Nonspendable                                              | 145,722.25    | 69,044.84               | -                     | -                  | -                       | -                      | 891,908.13             | -                    | -                      | 1,106,675.22   |
| Restricted                                                | 58,979.10     | 2,059,906.99            | 1,635,902.85          | 10,423,747.26      | -                       | -                      | -                      | -                    | -                      | 14,178,536.20  |
| Committed                                                 | 111,833.37    | -                       | -                     | -                  | -                       | -                      | -                      | -                    | -                      | 111,833.37     |
| Encumbrances                                              | 4,866,755.16  | 1,007,894.49            | -                     | 937,058.33         | 8.52                    | 3,875,670.93           | -                      | -                    | -                      | 10,687,387.43  |
| Assigned                                                  | 11,680,406.83 | 2,208,697.27            | -                     | 4,079,785.87       | -                       | -                      | 11,011.42              | -                    | -                      | 17,979,901.39  |
| Unassigned                                                | 23,043,470.14 | (664,435.08)            | -                     | -                  | -                       | -                      | -                      | -                    | -                      | 22,379,035.06  |
| Total fund equity                                         | 39,907,166.85 | 4,681,108.51            | 1,635,902.85          | 15,440,591.46      | 1,682,710.44            | 61,308,625.59          | 943,296.73             | 157,582,217.42       | -                      | 283,181,619.85 |
| Total liabilities and fund equity                         | 44,780,518.40 | 10,393,639.83           | 1,635,902.85          | 17,074,091.46      | 2,424,684.43            | 120,021,302.27         | 944,307.21             | 157,582,217.42       | 99,536,897.96          | 454,393,561.83 |

Sportsplex Fund Cash Balance is \$5,764,200.08

City of Opelika  
 Combined Statement of Revenues, Expenditures and Changes in fund balance  
 All Governmental Fund Types  
 For Seven Months Ending April 30, 2015

|                                                                                          | General                | Special<br>Revenue<br>Funds | Debt<br>Service<br>Funds<br>Total | *Capital<br>Projects<br>Funds | Library<br>Trust<br>Fund | Memo<br>Total          |
|------------------------------------------------------------------------------------------|------------------------|-----------------------------|-----------------------------------|-------------------------------|--------------------------|------------------------|
| <b>Revenues:</b>                                                                         |                        |                             |                                   |                               |                          |                        |
| Taxes                                                                                    | 19,350,115.96          | 5,868,741.28                | -                                 | -                             | -                        | 25,218,857.24          |
| Special Assessments                                                                      | 7,321.63               | -                           | -                                 | -                             | -                        | 7,321.63               |
| Licenses and permits                                                                     | 10,129,922.28          | 204,855.33                  | -                                 | -                             | -                        | 10,334,777.61          |
| Intergovernmental revenues                                                               | 201,706.70             | 464,934.95                  | -                                 | -                             | -                        | 666,641.65             |
| Charges for services                                                                     | 981,397.36             | -                           | -                                 | -                             | -                        | 981,397.36             |
| Fines and forfeits                                                                       | 402,460.89             | 80,295.29                   | -                                 | -                             | -                        | 482,756.18             |
| Miscellaneous revenues                                                                   | 244,757.18             | 56,326.12                   | 63.78                             | 86,794.57                     | 54.65                    | 387,996.30             |
| <b>Total revenues</b>                                                                    | <b>31,317,682.00</b>   | <b>6,675,152.97</b>         | <b>63.78</b>                      | <b>86,794.57</b>              | <b>54.65</b>             | <b>38,079,747.97</b>   |
| <b>Expenditures:</b>                                                                     |                        |                             |                                   |                               |                          |                        |
| <b>Current:</b>                                                                          |                        |                             |                                   |                               |                          |                        |
| General Government                                                                       | 2,930,606.35           | 120,931.13                  | -                                 | -                             | -                        | 3,051,537.48           |
| Public safety                                                                            | 7,828,084.56           | 11,709.04                   | -                                 | 69,739.94                     | -                        | 7,909,533.54           |
| Public works                                                                             | 2,185,139.05           | 84,249.03                   | -                                 | 1,120,289.79                  | -                        | 3,389,677.87           |
| Health, Education and Welfare                                                            | 2,002,800.88           | 4,928,527.00                | -                                 | -                             | -                        | 6,931,327.88           |
| Culture and Recreation                                                                   | 3,278,518.80           | -                           | -                                 | 58,239.91                     | -                        | 3,336,758.71           |
| Economic development                                                                     | 912,285.23             | 253,974.66                  | -                                 | -                             | -                        | 1,166,259.89           |
| Capital outlay                                                                           | 736,333.46             | 14,810.00                   | -                                 | -                             | -                        | 751,143.46             |
| Debt service:                                                                            | -                      | -                           | -                                 | -                             | -                        | -                      |
| Principal retirement                                                                     | 324,336.60             | -                           | 2,630,000.00                      | -                             | -                        | 2,954,336.60           |
| Interest                                                                                 | 110,489.82             | -                           | 1,929,931.18                      | -                             | -                        | 2,040,421.00           |
| Bond issue cost                                                                          | -                      | -                           | 147,351.70                        | -                             | -                        | 147,351.70             |
| Payment to escrow agent                                                                  | -                      | -                           | 5,395.50                          | -                             | -                        | 5,395.50               |
| <b>Total expenditures</b>                                                                | <b>20,308,594.75</b>   | <b>5,414,200.86</b>         | <b>4,712,678.38</b>               | <b>1,248,269.64</b>           | <b>-</b>                 | <b>31,683,743.63</b>   |
| <b>Excess of revenues over<br/>(under) expenditures</b>                                  | <b>11,009,087.25</b>   | <b>1,260,952.11</b>         | <b>(4,712,614.60)</b>             | <b>(1,161,475.07)</b>         | <b>54.65</b>             | <b>6,396,004.34</b>    |
| <b>Other financing sources:</b>                                                          |                        |                             |                                   |                               |                          |                        |
| Proceeds form General Long Term Debt                                                     | 45,588.90              | -                           | 9,944,000.05                      | -                             | -                        | 9,989,588.95           |
| Sale of fixed assets                                                                     | 56,950.20              | -                           | -                                 | -                             | -                        | 56,950.20              |
| Operating transfers in                                                                   | 2,137,006.55           | 50,124.67                   | 5,405,754.27                      | 1,500,951.56                  | -                        | 9,093,837.05           |
| Operating transfers out                                                                  | (5,582,286.46)         | (516,268.19)                | (10,046,956.88)                   | (1,091,837.44)                | -                        | (17,237,348.97)        |
| <b>Total other financing sources (uses)</b>                                              | <b>(3,342,740.81)</b>  | <b>(466,143.52)</b>         | <b>5,302,797.44</b>               | <b>409,114.12</b>             | <b>-</b>                 | <b>1,903,027.23</b>    |
| <b>Excess of revenues and other sources<br/>over (under) expenditures and other uses</b> | <b>7,666,346.44</b>    | <b>794,808.59</b>           | <b>590,182.84</b>                 | <b>(752,360.95)</b>           | <b>54.65</b>             | <b>8,299,031.57</b>    |
| <b>Fund balances, beginning of year</b>                                                  | <b>32,240,820.41</b>   | <b>3,886,299.92</b>         | <b>1,045,720.01</b>               | <b>16,192,952.41</b>          | <b>10,956.77</b>         | <b>53,376,749.52</b>   |
| <b>Fund balances, end of year</b>                                                        | <b>39,907,166.85</b>   | <b>4,681,108.51</b>         | <b>1,635,902.85</b>               | <b>15,440,591.46</b>          | <b>11,011.42</b>         | <b>61,675,781.09</b>   |
| <b>Assigned, Committed, Restricted, ect.</b>                                             | <b>(16,863,696.71)</b> | <b>(5,345,543.59)</b>       | <b>(1,635,902.85)</b>             | <b>(15,440,591.46)</b>        | <b>(11,011.42)</b>       | <b>(39,296,746.03)</b> |
| <b>Fund balances, Unassigned</b>                                                         | <b>23,043,470.14</b>   | <b>(664,435.08)</b>         | <b>0.00</b>                       | <b>(0.00)</b>                 | <b>0.00</b>              | <b>22,379,035.06</b>   |



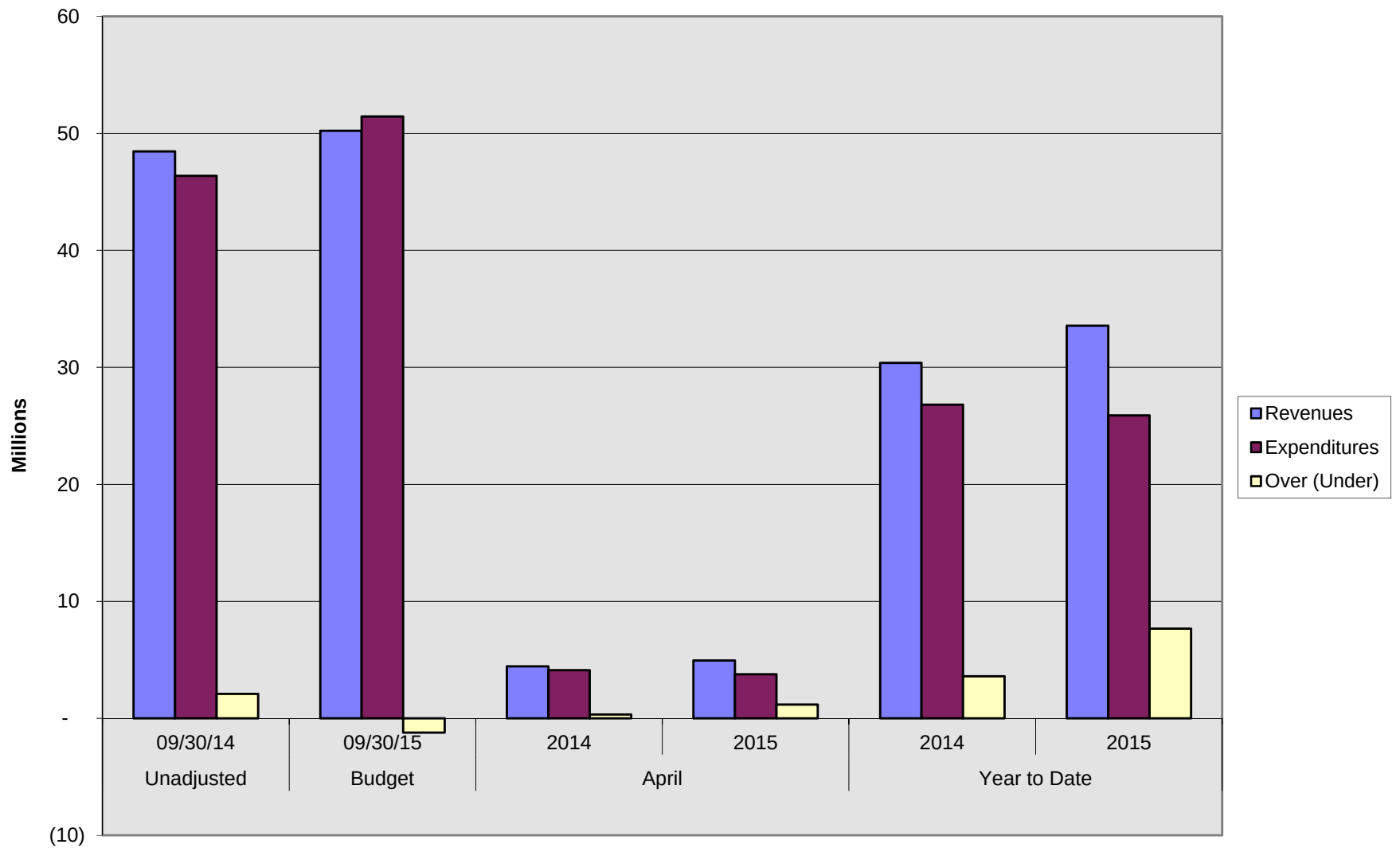
5/13/2015

City of Opelika  
 Combined Statement of Revenues, Expenses and Changes in Retained Earnings/  
 Fund Balances - All Proprietary Fund Types and Similar Trust Funds  
 For Seven Months Ending April 30, 2015

|                                                       | Proprietary Fund Types |                             |                      |                           |                           |                     | Fiduciary                | Memo           |
|-------------------------------------------------------|------------------------|-----------------------------|----------------------|---------------------------|---------------------------|---------------------|--------------------------|----------------|
|                                                       | Enterprise Funds       |                             |                      |                           |                           | Internal Service    | Fund Types               |                |
|                                                       | Electric<br>Utility    | Telecommunication<br>System | 1965 Sewer<br>System | Solid Waste<br>Collection | Workman's<br>Compensation | Health<br>Insurance | Non-Expendable<br>Trust  |                |
|                                                       |                        |                             |                      |                           |                           |                     | Garden Hills<br>Cemetery | Total          |
| Operating revenues:                                   |                        |                             |                      |                           |                           |                     |                          |                |
| Charges for services                                  | 20,574,062.63          | 2,102,165.31                | 2,391,150.44         | 1,497,805.00              | 289,718.34                | 1,250,991.63        | -                        | 28,105,893.35  |
| Interest                                              | -                      | -                           | -                    | -                         | 3,746.80                  | 93.68               | 30,403.60                | 34,244.08      |
| Total operating revenues                              | 20,574,062.63          | 2,102,165.31                | 2,391,150.44         | 1,497,805.00              | 293,465.14                | 1,251,085.31        | 30,403.60                | 28,140,137.43  |
| Operating expenses:                                   |                        |                             |                      |                           |                           |                     |                          |                |
| Purchases                                             | 15,100,741.55          | 1,253,599.65                | -                    | 188,192.44                | -                         | -                   | -                        | 16,542,533.64  |
| Depreciation                                          | 1,627,959.48           | 637,078.19                  | 599,090.59           | 102,321.59                | -                         | -                   | -                        | 2,966,449.85   |
| Personal services                                     | 1,721,758.51           | 288,233.13                  | 2,184.00             | 675,135.72                | -                         | -                   | -                        | 2,687,311.36   |
| Other                                                 | 1,197,586.49           | 563,432.01                  | 1,202,424.08         | 303,110.96                | 138,892.07                | 2,114,260.65        | 3,699.51                 | 5,523,405.77   |
| Total operating expenses                              | 19,648,046.03          | 2,742,342.98                | 1,803,698.67         | 1,268,760.71              | 138,892.07                | 2,114,260.65        | 3,699.51                 | 27,719,700.62  |
| Operating income                                      | 926,016.60             | (640,177.67)                | 587,451.77           | 229,044.29                | 154,573.07                | (863,175.34)        | 26,704.09                | 420,436.81     |
| Nonoperating revenue (expenses):                      |                        |                             |                      |                           |                           |                     |                          |                |
| Interest revenue                                      | 27,256.86              | 446.60                      | 2,771.20             | 855.77                    | -                         | -                   | -                        | 31,330.43      |
| Miscellaneous revenue                                 | 765,471.51             | 19,197.74                   | 2,510.85             | 20,402.20                 | -                         | -                   | -                        | 807,582.30     |
| Interest expense and fiscal charges                   | (838,695.42)           | (217,108.89)                | (184,906.19)         | -                         | -                         | -                   | -                        | (1,240,710.50) |
| Other expenses                                        | -                      | -                           | -                    | -                         | -                         | -                   | -                        | -              |
| Total nonoperating revenues(expenses)                 | (45,967.05)            | (197,464.55)                | (179,624.14)         | 21,257.97                 | -                         | -                   | -                        | (401,797.77)   |
| Income before operating transfers                     | 880,049.55             | (837,642.22)                | 407,827.63           | 250,302.26                | 154,573.07                | (863,175.34)        | 26,704.09                | 18,639.04      |
| Operating transfers in/Contributed Capital Developers | 122,493.78             | -                           | 38,819.45            | -                         | -                         | -                   | 20,962.50                | 182,275.73     |
| Operating transfers out                               | (1,707,043.59)         | -                           | -                    | -                         | -                         | -                   | (7,289.41)               | (1,714,333.00) |
| Total operating transfers                             | (1,584,549.81)         | -                           | 38,819.45            | -                         | -                         | -                   | 13,673.09                | (1,532,057.27) |
| Net income (loss)                                     | (704,500.26)           | (837,642.22)                | 446,647.08           | 250,302.26                | 154,573.07                | (863,175.34)        | 40,377.18                | (1,513,418.23) |
| Retained earnings, Fund balances, beginning of year   | 38,950,966.70          | (3,462,047.97)              | 25,833,964.98        | 830,935.02                | 2,391,312.71              | -                   | 891,908.13               | 65,437,039.57  |
| Retained earnings, Fund balances, end of year         | 38,246,466.44          | (4,299,690.19)              | 26,280,612.06        | 1,081,237.28              | 2,545,885.78              | (863,175.34)        | 932,285.31               | 63,923,621.34  |
| Encumbrances                                          | 3,481,300.44           | (655,107.40)                | 663,067.66           | 386,410.23                | -                         | 8.52                | -                        | 3,875,679.45   |
| Retained earnings, Fund balances, less encumbrances   | 34,765,166.00          | (3,644,582.79)              | 25,617,544.40        | 694,827.05                | 2,545,885.78              | (863,183.86)        | 932,285.31               | 60,047,941.89  |
| Cash Flows:                                           |                        |                             |                      |                           |                           |                     |                          |                |
| Add: Net Income (Loss)                                | (704,500.26)           | (837,642.22)                | 446,647.08           | 250,302.26                | 154,573.07                | (863,175.34)        | 40,377.18                | (1,513,418.23) |
| Add: Depreciation                                     | 1,627,959.48           | 637,078.19                  | 599,090.59           | 102,321.59                | -                         | -                   | -                        | 2,966,449.85   |
| Subtract: Capital Outlay                              | (1,731,727.28)         | (344,755.44)                | (17,401.00)          | 0.00                      | -                         | -                   | -                        | (2,093,883.72) |
| Decrease (Increase) in Receivables                    | 316,022.63             | (72,325.62)                 | 982,596.95           | (10,264.54)               | -                         | -                   | -                        | 1,216,029.42   |
| Decrease (Increase) in Inventory                      | (426,545.02)           | -                           | -                    | -                         | -                         | -                   | -                        | (426,545.02)   |
| Decrease (Increase) in Prepaid                        | (5,696.63)             | (1,889.30)                  | (1,758.43)           | (13,035.39)               | -                         | -                   | -                        | (22,379.75)    |
| Decrease (Increase) in Restricted Assets              | (118,684.82)           | -                           | 73,309.35            | -                         | -                         | -                   | -                        | (45,375.47)    |
| Decrease (Increase) in Deferred charges               | 4,293.03               | -                           | 0.00                 | -                         | -                         | -                   | -                        | 4,293.03       |
| Increase (Decrease) in Liabilities                    | (1,606,474.15)         | (201,413.08)                | (589,716.57)         | (58,710.30)               | (27,715.91)               | (94,648.15)         | (335.84)                 | (2,579,014.00) |
| Add: Book Value of Disposed Assets                    | 23,950.00              | -                           | -                    | -                         | -                         | -                   | -                        | 23,950.00      |
| Change in Cash                                        | (2,621,403.02)         | (820,947.47)                | 1,492,767.97         | 270,613.62                | 126,857.16                | (957,823.49)        | 40,041.34                | (2,469,893.89) |
| Cash Balance September 30, 2014                       | 17,075,176.46          | 816,728.39                  | 2,521,838.54         | 504,536.50                | 2,765,774.19              | 415,364.63          | 893,254.45               | 24,992,673.16  |
| Cash Balance April 30, 2015                           | 14,453,773.44          | (4,219.08)                  | 4,014,606.51         | 775,150.12                | 2,892,631.35              | (542,458.86)        | 933,295.79               | 22,522,779.27  |

Attachment: April 2015 Reports (1105 : Financial Report April 2015)

## General Fund Revenue & Expenditure Summary



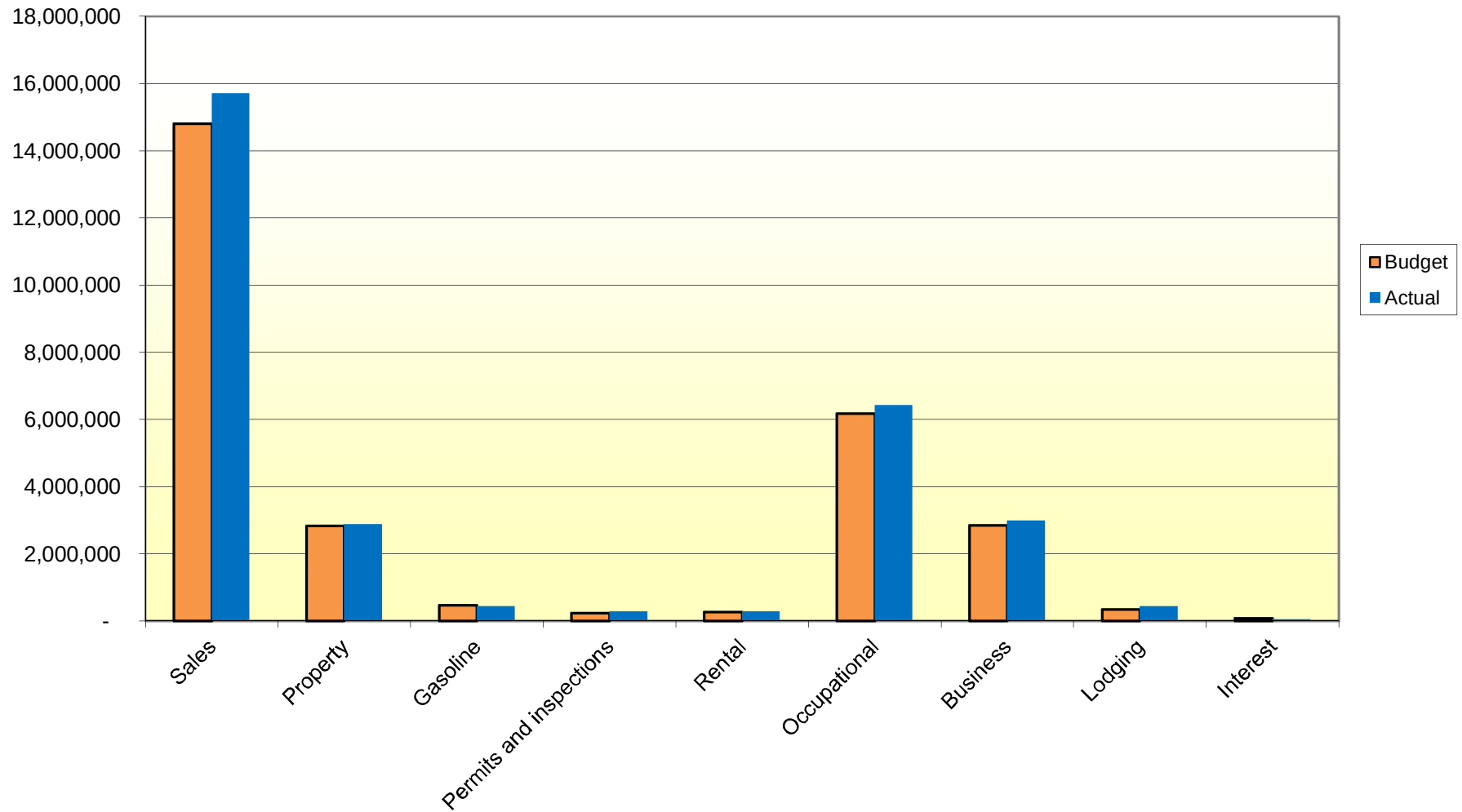
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City of Opelika  
General Fund  
Revenue and Expenditure Summary

|                                                                                     | Unadjusted<br>09/30/14 | Budget<br>09/30/15 | April             |                    | Year to Date       |                    | %<br>Chg    |
|-------------------------------------------------------------------------------------|------------------------|--------------------|-------------------|--------------------|--------------------|--------------------|-------------|
|                                                                                     |                        |                    | 2014              | 2015               | 2014               | 2015               |             |
| <b>Revenues:</b>                                                                    |                        |                    |                   |                    |                    |                    |             |
| Taxes                                                                               | 29,957,518             | 30,161,000         | 2,319,828         | 2,550,200          | 18,178,231         | 19,350,116         | 6           |
| Special assessments                                                                 | 8,382                  | 10,000             | 35                | -                  | 3,488              | 7,322              | 110         |
| Licenses and permits                                                                | 13,239,339             | 13,311,000         | 1,743,497         | 1,868,729          | 9,492,803          | 10,129,922         | 7           |
| Intergovernmental revenues                                                          | 520,395                | 455,567            | 29,588            | 33,178             | 169,327            | 201,707            | 19          |
| Charges for services                                                                | 1,846,646              | 1,647,944          | 135,724           | 141,336            | 1,047,390          | 981,397            | (6)         |
| Fines and forfeits                                                                  | 849,347                | 775,000            | 76,314            | 65,240             | 474,118            | 402,461            | (15)        |
| Miscellaneous                                                                       | 598,702                | 327,154            | 68,850            | 49,566             | 373,729            | 244,757            | (35)        |
| <b>Total revenues</b>                                                               | <b>47,020,330</b>      | <b>46,687,665</b>  | <b>4,373,837</b>  | <b>4,708,249</b>   | <b>29,739,086</b>  | <b>31,317,682</b>  | <b>5</b>    |
| <b>Expenditures:</b>                                                                |                        |                    |                   |                    |                    |                    |             |
| <b>Current:</b>                                                                     |                        |                    |                   |                    |                    |                    |             |
| General government                                                                  | 4,936,820              | 5,659,106          | 307,669           | 347,735            | 2,657,361          | 2,930,606          | 10          |
| Public safety                                                                       | 13,477,869             | 14,565,051         | 956,273           | 989,839            | 7,534,081          | 7,828,085          | 4           |
| Public works                                                                        | 3,729,815              | 3,919,295          | 303,139           | 310,963            | 2,144,933          | 2,185,139          | 2           |
| Health, Education and Welfare                                                       | 3,411,871              | 3,445,178          | 267,645           | 11,966             | 1,978,696          | 2,002,801          | 1           |
| Culture and recreation                                                              | 5,935,316              | 6,581,090          | 459,774           | 467,550            | 3,237,881          | 3,278,519          | 1           |
| Economic Development                                                                | 1,641,699              | 1,610,547          | 97,590            | 116,813            | 754,129            | 912,285            | 21          |
| Capital outlay                                                                      | 1,932,105              | 3,645,932          | 215,004           | 85,689             | 1,168,493          | 736,333            | (37)        |
| <b>Debt service:</b>                                                                |                        |                    |                   |                    |                    |                    |             |
| Principal retirement                                                                | 1,786,555              | 561,984            | 1,297,103         | 46,927             | 1,560,722          | 324,337            | (79)        |
| Interest                                                                            | 211,371                | 183,433            | 17,525            | 15,192             | 126,614            | 110,490            | (13)        |
| Bond issue cost                                                                     | -                      | -                  | -                 | -                  | -                  | -                  | -           |
| Payment to escrow agent                                                             | -                      | -                  | -                 | -                  | -                  | -                  | -           |
| <b>Total expenditures</b>                                                           | <b>37,063,421</b>      | <b>40,171,616</b>  | <b>3,921,722</b>  | <b>2,392,674</b>   | <b>21,162,910</b>  | <b>20,308,595</b>  | <b>(4)</b>  |
| <b>Excess of revenues over(under) expenditures</b>                                  | <b>9,956,909</b>       | <b>6,516,049</b>   | <b>452,115</b>    | <b>2,315,575</b>   | <b>8,576,176</b>   | <b>11,009,087</b>  | <b>28</b>   |
| <b>Other financing sources(uses):</b>                                               |                        |                    |                   |                    |                    |                    |             |
| Proceeds form General Long Term Debt                                                | 327,939                | -                  | -                 | (0)                | -                  | 45,589             |             |
| Sale of fixed assets                                                                | 80,165                 | 42,153             | (64)              | (1,950)            | 57,497             | 56,950             | (1)         |
| Other financing sources                                                             | 1,035,603              | 3,492,507          | 75,830            | 246,203            | 589,162            | 2,137,007          | 263         |
| Operating transfers out                                                             | (9,304,331)            | (11,274,437)       | (203,146)         | (1,378,407)        | (5,635,385)        | (5,582,286)        | (1)         |
| <b>Total other financing sources(uses)</b>                                          | <b>(7,860,624)</b>     | <b>(7,739,777)</b> | <b>(127,379)</b>  | <b>(1,134,154)</b> | <b>(4,988,726)</b> | <b>(3,342,740)</b> | <b>(33)</b> |
| <b>Excess of revenues and other sources over(under) expenditures and other uses</b> | <b>2,096,285</b>       | <b>(1,223,728)</b> | <b>324,736</b>    | <b>1,181,421</b>   | <b>3,587,449</b>   | <b>7,666,347</b>   | <b>114</b>  |
| <b>Fund balances, beginning</b>                                                     | <b>30,144,535</b>      | <b>32,240,820</b>  | <b>33,407,249</b> | <b>38,725,746</b>  | <b>30,144,535</b>  | <b>32,240,820</b>  | <b>7</b>    |
| <b>Fund balances, ending</b>                                                        | <b>32,240,820</b>      | <b>31,017,092</b>  | <b>33,731,984</b> | <b>39,907,166</b>  | <b>33,731,984</b>  | <b>39,907,166</b>  | <b>18</b>   |
| <b>Less:</b>                                                                        |                        |                    |                   |                    |                    |                    |             |
| <b>Restricted, Committed, Assigned, nonspendable and encumbered Fund Balance:</b>   |                        |                    |                   |                    |                    |                    |             |
| Nonspendable Reserved for inventory                                                 | 146,057                | 145,722            | 166,131           | 145,722            | 166,131            | 145,722            | (12)        |
| Train Restoration                                                                   | 26,315                 | 26,315             |                   | 26,315             |                    | 26,315             |             |
| Restricted for Law Enforcement                                                      | 21,600                 | 32,644             | 17,794            | 32,644             | 17,794             | 32,664             | 84          |
| Committed for Ward I - Misc Projects                                                | 7,278                  | 438                | 1,378             | 438                | 1,378              | 438                | (68)        |
| Committed for Ward II - Misc Projects                                               | 2,144                  | 494                | 144               | 494                | 144                | 494                | 243         |
| Committed for Ward III - Misc Projects                                              | 1,736                  | 86                 | 236               | 86                 | 236                | 86                 | (64)        |
| Committed for Ward IV - Misc Projects                                               | 10,735                 | 3,395              | 4,835             | 3,395              | 4,835              | 3,395              | (30)        |
| Committed for Ward V - Misc Projects                                                | 5,215                  | 175                | 315               | 175                | 315                | 175                | (44)        |
| Assigned for 1994 Warrants and Road Imp                                             | 2,949,888              | 3,829,606          | 2,524,954         | 3,829,606          | 2,524,954          | 3,829,606          | 52          |
| Assigned for 2011 1% Sales Tax                                                      | 7,664,672              | 7,850,879          | 5,615,220         | 7,850,879          | 5,615,220          | 7,850,801          | 40          |
| Committed for Farrish Street Drainage                                               | 13,410                 | 13,410             | 13,410            | 13,410             | 13,410             | 13,410             | -           |
| Committed for Southside Park                                                        | 25,000                 | 25,000             | 25,000            | 25,000             | 25,000             | 25,000             | -           |
| Committed for Facilities                                                            | -                      | -                  | -                 | -                  | -                  | -                  | -           |
| Committed for Veterans Memorial                                                     | 54,835                 | 54,835             | 54,835            | 54,835             | 54,835             | 54,835             | -           |
| Committed for Drainage - Brannon/Jeter                                              | 14,000                 | 14,000             | 14,000            | 14,000             | 14,000             | 14,000             | -           |
| Encumbrances                                                                        | 1,233,120              | -                  | 4,973,343         | 4,866,755          | 4,973,343          | 4,866,755          | (2)         |
|                                                                                     | <b>12,176,005</b>      | <b>11,996,999</b>  | <b>13,411,595</b> | <b>16,863,754</b>  | <b>13,411,595</b>  | <b>16,863,696</b>  | <b>26</b>   |
| <b>Unassigned Fund Balance</b>                                                      | <b>20,064,815</b>      | <b>19,020,093</b>  | <b>20,320,389</b> | <b>23,043,412</b>  | <b>20,320,389</b>  | <b>23,043,470</b>  | <b>13</b>   |
| <b>20% Budgeted Revenues</b>                                                        | <b>9,337,533</b>       |                    |                   |                    | <b>9,337,533</b>   | <b>9,337,533</b>   |             |
| <b>Amount remaining</b>                                                             | <b>10,727,282</b>      |                    |                   |                    | <b>10,982,856</b>  | <b>13,705,937</b>  |             |

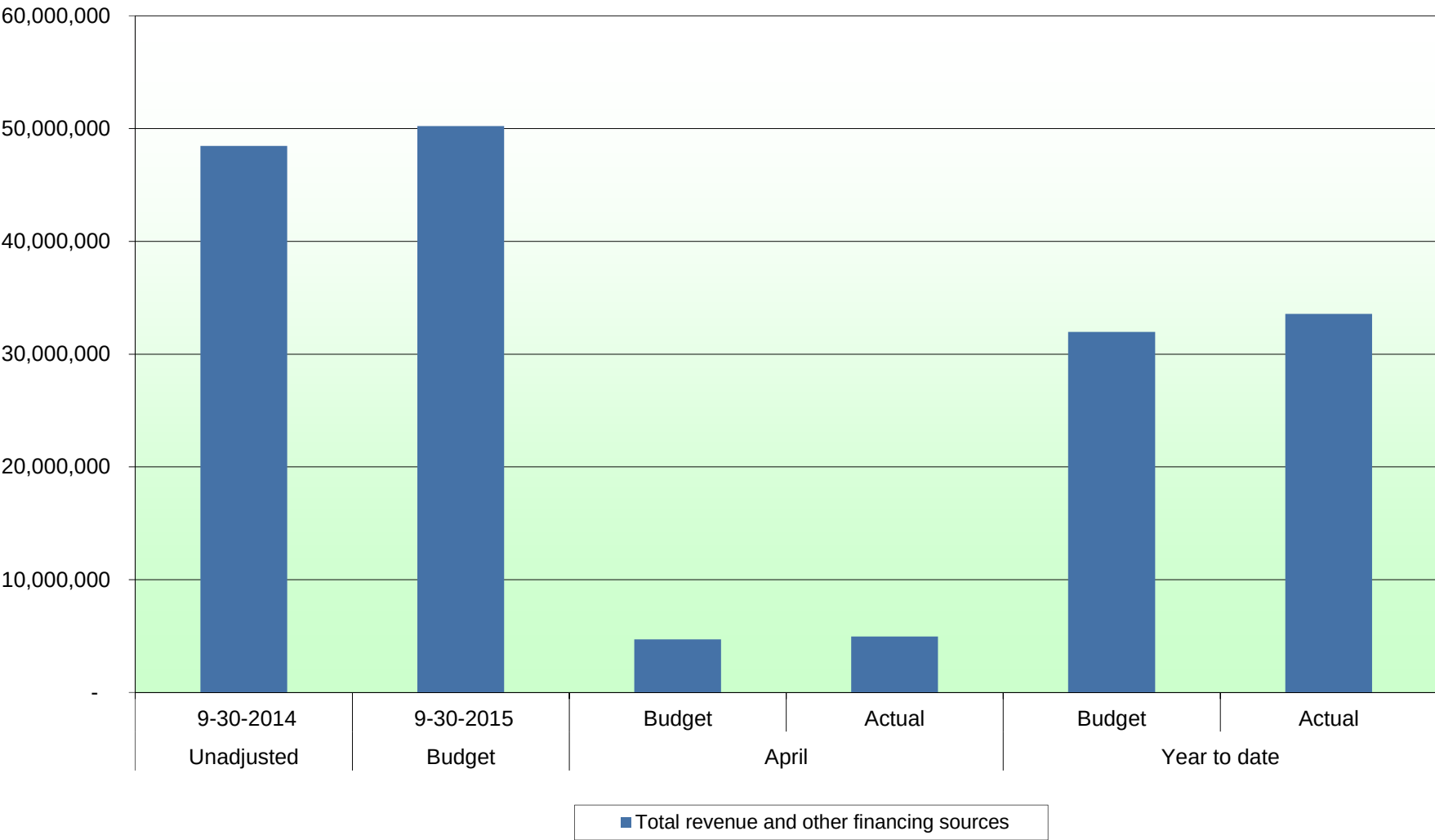
Attachment: April 2015 Reports (1105 : Financial Report April 2015)

### Budget vs Actual



April 2015

Total Revenue





City of Opelika  
General Fund - Revenues  
Comparison of Actual to Budget

|                                           | Unadjusted<br>9-30-2014 | Budget<br>9-30-2015 | April     |           | Year to date |            | %<br>Over<br>(Under) |
|-------------------------------------------|-------------------------|---------------------|-----------|-----------|--------------|------------|----------------------|
|                                           |                         |                     | Budget    | Actual    | Budget       | Actual     |                      |
| Taxes:                                    |                         |                     |           |           |              |            |                      |
| Sales                                     | 25,531,042              | 25,747,000          | 2,222,000 | 2,418,919 | 14,805,000   | 15,699,482 | 6                    |
| Property:                                 |                         |                     |           |           |              |            |                      |
| Property                                  | 3,024,488               | 3,034,000           | 45,000    | 13,970    | 2,833,000    | 2,877,134  | 2                    |
| Payments in lieu of property tax          | 26,002                  | 9,000               | -         | -         | -            | -          | -                    |
| Total property                            | 3,050,490               | 3,043,000           | 45,000    | 13,970    | 2,833,000    | 2,877,134  | 2                    |
| Other:                                    |                         |                     |           |           |              |            |                      |
| Gasoline                                  | 769,258                 | 818,000             | 67,000    | 65,854    | 469,000      | 433,716    | (8)                  |
| Cigarette                                 | 83,243                  | 89,000              | 6,000     | 11,239    | 51,000       | 52,048     | 2                    |
| Wine and liquor                           | 23,319                  | 25,000              | 2,000     | 1,982     | 15,000       | 14,821     | (1)                  |
| Rental                                    | 500,166                 | 439,000             | 39,000    | 38,236    | 270,000      | 272,915    | 1                    |
| Total other                               | 1,375,986               | 1,371,000           | 114,000   | 117,310   | 805,000      | 773,501    | (4)                  |
| Total taxes                               | 29,957,518              | 30,161,000          | 2,381,000 | 2,550,200 | 18,443,000   | 19,350,116 | 5                    |
| Special assessments                       | 8,382                   | 10,000              | -         | -         | 3,000        | 7,322      | 144                  |
| Licenses and permits:                     |                         |                     |           |           |              |            |                      |
| Occupational license fee                  | 8,917,021               | 9,029,000           | 1,596,000 | 1,658,941 | 6,167,000    | 6,421,724  | 4                    |
| Business:                                 |                         |                     |           |           |              |            |                      |
| General                                   | 3,150,917               | 3,148,000           | 76,000    | 91,499    | 2,846,000    | 2,980,087  | 5                    |
| Lodging                                   | 671,296                 | 618,000             | 56,000    | 83,697    | 348,000      | 442,301    | 27                   |
| Franchise fee                             | 79,861                  | 67,000              | -         | 0         | 67,000       | 2,737      | (96)                 |
| Total business                            | 3,902,074               | 3,833,000           | 132,000   | 175,195   | 3,261,000    | 3,425,126  | 5                    |
| Telecommunications permits and fees       | 11,000                  | 9,000               | 2,000     | -         | 5,000        | 7,000      | 40                   |
| Permits and inspections                   | 409,244                 | 440,000             | 38,000    | 34,593    | 239,000      | 276,073    | 16                   |
|                                           | 420,244                 | 449,000             | 40,000    | 34,593    | 244,000      | 283,073    | 56                   |
| Total licenses and permits                | 13,239,339              | 13,311,000          | 1,768,000 | 1,868,729 | 9,672,000    | 10,129,922 | 5                    |
| Intergovernmental:                        |                         |                     |           |           |              |            |                      |
| Shared County                             |                         |                     |           |           |              |            |                      |
| Motor vehicle license                     | 103,277                 | 112,000             | 9,000     | 8,587     | 64,000       | 62,608     | (2)                  |
| Shared state:                             |                         |                     |           |           |              |            |                      |
| Bank excise                               | 144,739                 | 119,000             | -         | -         | -            | -          |                      |
| Business privilege tax                    | 71,801                  | 71,000              | (17,000)  | -         | 37,000       | -          | (100)                |
| Liquor tax profits                        | 121,362                 | 118,000             | 18,000    | 18,951    | 75,000       | 80,187     | 7                    |
| State asset forfeiture                    | 15,142                  | 7,479               | 869       | 45        | 3,137        | 15,745     | 402                  |
| Total shared state                        | 353,044                 | 315,479             | 1,869     | 18,996    | 115,137      | 95,932     | (17)                 |
| Other:                                    |                         |                     |           |           |              |            |                      |
| Shared Federal asset forfeiture           | 27,363                  | 28,778              | 2,301     | (0)       | 16,107       | 13,382     | (17)                 |
| State and county grants                   | 36,709                  | (690)               | (1,809)   | 5,595     | 8,359        | 29,785     | 256                  |
| Total other                               | 64,072                  | 28,088              | 492       | 5,595     | 24,466       | 43,167     | 76                   |
| Total intergovernmental                   | 520,393                 | 455,567             | 11,361    | 33,178    | 203,603      | 201,707    | (1)                  |
| Charge for service:                       |                         |                     |           |           |              |            |                      |
| General government:                       |                         |                     |           |           |              |            |                      |
| Other                                     | 13,012                  | 23,000              | 1,000     | 941       | 12,000       | 6,313      | (47)                 |
| Public safety:                            |                         |                     |           |           |              |            |                      |
| Towing                                    | 2,301                   | -                   | (23)      | -         | 117          | 1,178      |                      |
| Fire training                             | -                       | -                   | -         | -         | -            | -          |                      |
| Highway Safety Program                    | 1,444                   | -                   | -         | -         | -            | -          |                      |
| City Schools                              | 12,000                  | 11,000              | -         | -         | -            | -          |                      |
| Housing Authority                         | 35,000                  | -                   | -         | -         | -            | -          |                      |
| E911                                      | 102,000                 | 40,000              | 2,000     | -         | 23,000       | -          | (100)                |
| Auburn University                         | 64,608                  | 61,444              | 2,202     | 6,375     | 36,442       | 40,226     | 10                   |
| Health:                                   |                         |                     |           |           |              |            |                      |
| Graves and monuments                      | 124,275                 | 113,000             | 12,000    | 18,400    | 68,000       | 89,375     | 31                   |
| Public Works:                             |                         |                     |           |           |              |            |                      |
| Paving/Plan review fees                   | 67,842                  | 27,000              | 3,000     | 3,500     | 15,000       | 33,547     | 124                  |
| Culture and recreation:                   |                         |                     |           |           |              |            |                      |
| Entry fees and concessions                | 1,424,165               | 1,372,500           | 114,550   | 112,120   | 798,682      | 810,758    | 2                    |
| Total charges for service                 | 1,846,647               | 1,647,944           | 134,729   | 141,336   | 953,241      | 981,397    | 3                    |
| Fines and forfeits:                       |                         |                     |           |           |              |            |                      |
| Fines and costs                           | 849,347                 | 775,000             | 67,000    | 65,240    | 451,000      | 402,461    | (11)                 |
| Miscellaneous:                            |                         |                     |           |           |              |            |                      |
| Interest                                  | 86,412                  | 92,000              | 13,000    | 23,055    | 73,000       | 47,763     | (35)                 |
| Other                                     | 512,290                 | 235,154             | 16,283    | 26,511    | 94,172       | 196,994    | 109                  |
| Total miscellaneous                       | 598,702                 | 327,154             | 29,283    | 49,566    | 167,172      | 244,757    | 46                   |
| Total revenue                             | 47,020,328              | 46,687,665          | 4,391,373 | 4,708,249 | 29,893,016   | 31,317,682 | 5                    |
| Other Financing Sources:                  |                         |                     |           |           |              |            |                      |
| Proceeds of General Obligation Debt       | 327,939                 | -                   | -         | (0)       | -            | 45,589     | -                    |
| Operating transfers-in:                   |                         |                     |           |           |              |            |                      |
| Electric fund                             | 922,140                 | 2,924,112           | 243,763   | 243,414   | 1,705,291    | 1,707,044  | -                    |
| Sale of Fixed Assets                      | 80,165                  | 42,153              | 4,446     | (1,950)   | 19,919       | 56,950     | 186                  |
| Other transfers                           | 113,463                 | 568,395             | 47,365    | 2,789     | 331,555      | 429,963    | 30                   |
| Total operating transfers-in              | 1,115,768               | 3,534,660           | 295,574   | 244,253   | 2,056,765    | 2,193,957  | 7                    |
| Total other financing sources             | 1,443,707               | 3,534,660           | 295,574   | 244,253   | 2,056,765    | 2,239,546  | 9                    |
| Total revenue and other financing sources | 48,464,035              | 50,222,325          | 4,686,947 | 4,952,502 | 31,949,781   | 33,557,228 | 5                    |

City of Opelika  
General Fund - Revenues  
Comparison to Last Year

|                                           | Unadjusted<br>9-30-2014 | Budget<br>9-30-2015 | April     |           | Year to date |            | %<br>Over<br>(Under) |
|-------------------------------------------|-------------------------|---------------------|-----------|-----------|--------------|------------|----------------------|
|                                           |                         |                     | 2014      | 2015      | 2014         | 2015       |                      |
| Taxes:                                    |                         |                     |           |           |              |            |                      |
| Sales                                     | 25,531,042              | 25,747,000          | 2,117,686 | 2,418,919 | 14,507,497   | 15,699,482 | 8                    |
| Property:                                 |                         |                     |           |           |              |            |                      |
| Property                                  | 3,024,488               | 3,034,000           | 64,369    | 13,970    | 2,860,570    | 2,877,134  | 1                    |
| Payments in lieu of property tax          | 26,002                  | 9,000               | -         | -         | -            | -          | -                    |
| Total property                            | 3,050,490               | 3,043,000           | 64,369    | 13,970    | 2,860,570    | 2,877,134  | 1                    |
| Other:                                    |                         |                     |           |           |              |            |                      |
| Gasoline                                  | 769,258                 | 818,000             | 65,012    | 65,854    | 453,743      | 433,716    | (4)                  |
| Cigarette                                 | 83,243                  | 89,000              | 3,233     | 11,239    | 49,516       | 52,048     | 5                    |
| Wine and liquor                           | 23,319                  | 25,000              | 1,829     | 1,982     | 14,536       | 14,821     | 2                    |
| Rental                                    | 500,166                 | 439,000             | 67,699    | 38,236    | 292,369      | 272,915    | (7)                  |
| Total other                               | 1,375,986               | 1,371,000           | 137,773   | 117,310   | 810,164      | 773,501    | (5)                  |
| Total taxes                               | 29,957,518              | 30,161,000          | 2,319,828 | 2,550,200 | 18,178,231   | 19,350,116 | 6                    |
| Special assessments                       | 8,382                   | 10,000              | 35        | -         | 3,488        | 7,322      | 110                  |
| Licenses and permits:                     |                         |                     |           |           |              |            |                      |
| Occupational license fee                  | 8,917,021               | 9,029,000           | 1,550,317 | 1,658,941 | 6,004,543    | 6,421,724  | 7                    |
| Business:                                 |                         |                     |           |           |              |            |                      |
| General                                   | 3,150,917               | 3,148,000           | 95,872    | 91,499    | 2,796,062    | 2,980,087  | 7                    |
| Lodging                                   | 671,296                 | 618,000             | 60,914    | 83,697    | 359,425      | 442,301    | 23                   |
| Franchise fee                             | 79,861                  | 67,000              | 0         | 0         | 79,861       | 2,737      | (97)                 |
| Total business                            | 3,902,074               | 3,833,000           | 156,786   | 175,195   | 3,235,348    | 3,425,126  | 6                    |
| Telecommunications permits and fees       | 11,000                  | 9,000               | -         | -         | 11,000       | 7,000      | (36)                 |
| Permits and inspections                   | 409,244                 | 440,000             | 36,394    | 34,593    | 241,912      | 276,073    | 14                   |
|                                           | 420,244                 | 449,000             | 36,394    | 34,593    | 252,912      | 283,073    | 12                   |
| Total licenses and permits                | 13,239,339              | 13,311,000          | 1,743,497 | 1,868,729 | 9,492,803    | 10,129,922 | 7                    |
| Intergovernmental:                        |                         |                     |           |           |              |            |                      |
| Shared County                             |                         |                     |           |           |              |            |                      |
| Motor vehicle license                     | 103,277                 | 112,000             | 8,613     | 8,587     | 59,865       | 62,608     | 5                    |
| Shared state:                             |                         |                     |           |           |              |            |                      |
| Bank excise                               | 144,739                 | 119,000             | -         | -         | -            | -          |                      |
| Business privilege tax                    | 71,801                  | 71,000              | -         | -         | -            | -          |                      |
| Liquor tax profits                        | 121,362                 | 118,000             | 12,467    | 18,951    | 69,875       | 80,187     | 15                   |
| State asset forfeiture                    | 15,142                  | 7,479               | 3,059     | 45        | 9,841        | 15,745     | 60                   |
| Total shared state                        | 353,044                 | 315,479             | 15,525    | 18,996    | 79,716       | 95,932     | 20                   |
| Other:                                    |                         |                     |           |           |              |            |                      |
| Shared Federal asset forfeiture           | 27,363                  | 28,778              | -         | (0)       | 13,397       | 13,382     | -                    |
| State and county grants                   | 36,709                  | (690)               | 5,450     | 5,595     | 16,349       | 29,785     | 82                   |
|                                           | 64,072                  | 28,088              | 5,450     | 5,595     | 29,746       | 43,167     | 45                   |
| Total intergovernmental                   | 520,393                 | 455,567             | 29,588    | 33,178    | 169,327      | 201,707    | 19                   |
| Charge for service:                       |                         |                     |           |           |              |            |                      |
| General government:                       |                         |                     |           |           |              |            |                      |
| Other                                     | 13,012                  | 23,000              | 813       | 941       | 8,172        | 6,313      | (23)                 |
| Public safety:                            |                         |                     |           |           |              |            |                      |
| Towing                                    | 2,301                   | -                   | -         | -         | 1,542        | 1,178      | (24)                 |
| Fire training                             | -                       | -                   | -         | -         | -            | -          |                      |
| Highway Safety Program                    | 1,444                   | -                   | (0)       | -         | 1,444        | -          |                      |
| City Schools                              | 12,000                  | 11,000              | -         | -         | -            | -          |                      |
| Housing Authority                         | 35,000                  | -                   | -         | -         | 35,000       | -          | (100)                |
| E911                                      | 102,000                 | 40,000              | 10,000    | -         | 92,000       | -          | (100)                |
| Auburn University                         | 64,608                  | 61,444              | (0)       | 6,375     | 36,685       | 40,226     | 10                   |
| Health:                                   |                         |                     |           |           |              |            |                      |
| Graves and monuments                      | 124,275                 | 113,000             | 12,525    | 18,400    | 65,825       | 89,375     | 36                   |
| Public Works:                             |                         |                     |           |           |              |            |                      |
| Paving/Plan review fees                   | 67,842                  | 27,000              | 4,389     | 3,500     | 41,953       | 33,547     | (20)                 |
| Culture and recreation:                   |                         |                     |           |           |              |            |                      |
| Entry fees and concessions                | 1,424,165               | 1,372,500           | 107,998   | 112,120   | 764,769      | 810,758    | 6                    |
| Total charges for service                 | 1,846,647               | 1,647,944           | 135,724   | 141,336   | 1,047,390    | 981,397    | (6)                  |
| Fines and forfeits:                       |                         |                     |           |           |              |            |                      |
| Fines and costs                           | 849,347                 | 775,000             | 76,314    | 65,240    | 474,118      | 402,461    | (15)                 |
| Miscellaneous:                            |                         |                     |           |           |              |            |                      |
| Interest                                  | 86,412                  | 92,000              | 33,827    | 23,055    | 60,978       | 47,763     | (22)                 |
| Other                                     | 512,290                 | 235,154             | 35,023    | 26,511    | 312,751      | 196,994    | (37)                 |
| Total miscellaneous                       | 598,702                 | 327,154             | 68,850    | 49,566    | 373,729      | 244,757    | (35)                 |
| Total revenue                             | 47,020,328              | 46,687,665          | 4,373,837 | 4,708,249 | 29,739,086   | 31,317,682 | 5                    |
| Other Financing Sources:                  |                         |                     |           |           |              |            |                      |
| Proceeds of General Obligation Debt       | 327,939                 | -                   | -         | (0)       | -            | 45,589     | -                    |
| Operating transfers-in:                   |                         |                     |           |           |              |            |                      |
| Electric fund                             | 922,140                 | 2,924,112           | 75,830    | 243,414   | 542,988      | 1,707,044  | 214                  |
| Sale of Fixed Assets                      | 80,165                  | 42,153              | (64)      | (1,950)   | 57,497       | 56,950     | (1)                  |
| Other transfers                           | 113,463                 | 568,395             | -         | 2,789     | 46,174       | 429,963    | 831                  |
| Total operating transfers-in              | 1,115,768               | 3,534,660           | 75,767    | 244,253   | 646,659      | 2,193,957  | 239                  |
| Total other financing sources             | 1,443,707               | 3,534,660           | 75,767    | 244,253   | 646,659      | 2,239,546  | 246                  |
| Total revenue and other financing sources | 48,464,035              | 50,222,325          | 4,449,604 | 4,952,502 | 30,385,744   | 33,557,228 | 10                   |

City of Opelika  
General Fund  
Comparison of Budget and Actual

|                                        | Unadjusted<br>9-30-2014 | Budget<br>9-30-2015 | April<br>Budget | Actual    | Year to date<br>Budget | Actual     | %<br>YTD<br>Budget |
|----------------------------------------|-------------------------|---------------------|-----------------|-----------|------------------------|------------|--------------------|
| General Government:                    |                         |                     |                 |           |                        |            |                    |
| Legislative                            | 333,084                 | 414,416             | 30,908          | 37,276    | 259,756                | 203,733    | (22)               |
| Executive                              | 210,899                 | 404,055             | 34,254          | 18,473    | 232,694                | 115,906    | (50)               |
| Legal                                  | 95,949                  | 140,696             | 11,715          | 9,483     | 82,045                 | 70,384     | (14)               |
| Other:                                 |                         |                     |                 |           |                        |            |                    |
| Administration                         | 577,075                 | 441,285             | 28,756          | 30,274    | 297,412                | 266,332    | (10)               |
| Accounting                             | 332,122                 | 370,246             | 30,849          | 23,549    | 215,943                | 207,901    | (4)                |
| Human Resources                        | 328,028                 | 468,340             | 40,284          | 24,041    | 261,770                | 209,135    | (20)               |
| Information Technology                 | 959,011                 | 1,309,713           | 107,234         | 87,225    | 733,957                | 824,745    | 12                 |
| Revenue                                | 253,646                 | 241,077             | 20,054          | 17,265    | 140,688                | 132,915    | (6)                |
| Municipal court                        | 646,862                 | 621,003             | 51,736          | 52,578    | 362,212                | 312,252    | (14)               |
| Purchasing                             | 225,343                 | 205,842             | 17,134          | 13,978    | 120,108                | 111,573    | (7)                |
| Community Development                  | 126,582                 | 142,552             | 11,890          | 7,764     | 83,062                 | 65,026     | (22)               |
| Planning                               | 316,620                 | 353,024             | 29,293          | 24,328    | 206,491                | 183,887    | (11)               |
| Total other                            | 3,765,289               | 4,153,082           | 337,230         | 281,002   | 2,421,643              | 2,313,766  | (4)                |
| Nondepartmental                        | 531,598                 | 546,857             | 45,841          | 1,500     | 317,623                | 226,817    | (29)               |
| Total general government               | 4,936,819               | 5,659,106           | 459,948         | 347,734   | 3,313,761              | 2,930,606  | (12)               |
| Public safety:                         |                         |                     |                 |           |                        |            |                    |
| Police:                                |                         |                     |                 |           |                        |            |                    |
| Total police                           | 7,924,438               | 9,042,791           | 755,685         | 617,251   | 5,262,949              | 4,721,578  | (10)               |
| Fire:                                  |                         |                     |                 |           |                        |            |                    |
| Total fire                             | 5,218,955               | 5,190,784           | 430,409         | 372,587   | 3,038,609              | 2,940,768  | (3)                |
| Nondepartmental                        | 334,476                 | 331,476             | 27,622          | -         | 193,354                | 165,738    | (14)               |
| Total public safety                    | 13,477,869              | 14,565,051          | 1,213,716       | 989,838   | 8,494,912              | 7,828,084  | (8)                |
| Public Works:                          |                         |                     |                 |           |                        |            |                    |
| Streets                                | 1,068,506               | 1,126,646           | 94,955          | 95,591    | 651,855                | 631,693    | (3)                |
| Engineering                            | 403,517                 | 555,524             | 46,019          | 39,149    | 325,303                | 267,807    | (18)               |
| Other:                                 |                         |                     |                 |           |                        |            |                    |
| Administration                         | 335,004                 | 342,724             | 28,519          | 29,492    | 200,113                | 206,646    | 3                  |
| Cemetery                               | 206,968                 | 191,986             | 15,925          | 16,431    | 112,345                | 115,005    | 2                  |
| Auto shop                              | 340,480                 | 347,660             | 28,789          | 28,252    | 203,703                | 201,067    | (1)                |
| Building maintenance                   | 331,330                 | 322,201             | 26,685          | 26,613    | 188,775                | 186,599    | (1)                |
| Inspection                             | 477,869                 | 488,560             | 40,554          | 29,798    | 285,728                | 262,614    | (8)                |
| Grounds maintenance                    | 566,141                 | 543,994             | 45,123          | 45,637    | 318,371                | 313,709    | (1)                |
| Total other                            | 2,257,792               | 2,237,125           | 185,595         | 176,223   | 1,309,035              | 1,285,640  | (2)                |
| Total public works                     | 3,729,815               | 3,919,295           | 326,569         | 310,963   | 2,286,193              | 2,185,140  | (4)                |
| Health, Education and Welfare          |                         |                     |                 |           |                        |            |                    |
| Animal control                         | 59,445                  | 63,489              | 5,258           | 4,466     | 37,126                 | 33,566     | (10)               |
| Nondepartmental                        | 3,352,427               | 3,381,689           | 282,945         | 7,500     | 1,966,900              | 1,969,235  | -                  |
| Total health, education and welfare    | 3,411,872               | 3,445,178           | 288,203         | 11,966    | 2,004,026              | 2,002,801  | -                  |
| Culture and recreation                 |                         |                     |                 |           |                        |            |                    |
| Parks and recreation                   | 5,091,594               | 5,564,911           | 460,696         | 403,158   | 3,255,452              | 2,794,615  | (14)               |
| Library                                | 751,222                 | 914,007             | 91,685          | 61,892    | 455,511                | 405,454    | (11)               |
| Nondepartmental                        | 92,500                  | 102,172             | 9,113           | 2,500     | 56,604                 | 78,450     | 39                 |
| Total culture and recreation           | 5,935,316               | 6,581,090           | 561,494         | 467,550   | 3,767,567              | 3,278,519  | (13)               |
| Economic Development                   |                         |                     |                 |           |                        |            |                    |
| Economic Development                   | 385,622                 | 546,797             | 45,558          | 33,156    | 318,906                | 232,192    | (27)               |
| Nondepartmental                        | 1,256,076               | 1,063,750           | 88,642          | 83,656    | 620,494                | 680,093    | 10                 |
| Total economic development             | 1,641,698               | 1,610,547           | 134,200         | 116,812   | 939,400                | 912,285    | (3)                |
| Capital outlay                         | 1,932,105               | 3,645,932           | 315,182         | 85,689    | 2,109,510              | 736,333    | (65)               |
| Total expenditures                     | 35,065,493              | 39,426,199          | 3,299,312       | 2,330,552 | 22,915,369             | 19,873,768 | (13)               |
| Transfers - out:                       |                         |                     |                 |           |                        |            |                    |
| Transfer to PR/Jail Construction Fund  | 2,402,131               | 2,418,375           | 201,531         | 234,246   | 1,410,717              | 1,500,952  | 6                  |
| Transfers to other funds               | 84,538                  | 117,652             | 10,126          | 4,063     | 20,252                 | 22,472     | 11                 |
| Debt service                           | 8,815,588               | 9,483,827           | 790,317         | 1,202,217 | 5,532,219              | 4,493,689  | (19)               |
| Total transfers - out                  | 11,302,257              | 12,019,854          | 1,001,974       | 1,440,526 | 6,963,188              | 6,017,113  | (14)               |
| Total expenditures and transfers - out | 46,367,750              | 51,446,053          | 4,301,286       | 3,771,078 | 29,878,557             | 25,890,881 | (13)               |

Attachment: April 2015 Reports (1105 : Financial Report April 2015)

City of Opelika  
General Fund  
Expenditures

|                                        | Unadjusted<br>9-30-2014 | Budget<br>9-30-2015 | April<br>2014 | 2015      | Year to date<br>2014 | 2015       | %<br>Last<br>Year |
|----------------------------------------|-------------------------|---------------------|---------------|-----------|----------------------|------------|-------------------|
| General Government:                    |                         |                     |               |           |                      |            |                   |
| Legislative                            | 333,084                 | 414,416             | 19,680        | 37,276    | 209,217              | 203,733    | (3)               |
| Executive                              | 210,899                 | 404,055             | 12,261        | 18,473    | 87,526               | 115,906    | 32                |
| Legal                                  | 95,949                  | 140,696             | 9,250         | 9,483     | 39,432               | 70,384     | 78                |
| Other:                                 |                         |                     |               |           |                      |            |                   |
| Administration                         | 577,075                 | 441,285             | 18,909        | 30,274    | 240,527              | 266,332    | 11                |
| Accounting                             | 332,122                 | 370,246             | 22,255        | 23,549    | 202,936              | 207,901    | 2                 |
| Human Resources                        | 328,028                 | 468,340             | 38,195        | 24,041    | 179,430              | 209,135    | 17                |
| Information Technology                 | 959,011                 | 1,309,713           | 60,155        | 87,225    | 625,488              | 824,745    | 32                |
| Revenue                                | 253,646                 | 241,077             | 16,728        | 17,265    | 160,240              | 132,915    | (17)              |
| Municipal court                        | 646,862                 | 621,003             | 47,161        | 52,578    | 321,594              | 312,252    | (3)               |
| Purchasing                             | 225,343                 | 205,842             | 16,982        | 13,978    | 126,279              | 111,573    | (12)              |
| Community Development                  | 126,582                 | 142,552             | 5,366         | 7,764     | 69,017               | 65,026     | (6)               |
| Planning                               | 316,620                 | 353,024             | 24,477        | 24,328    | 179,228              | 183,887    | 3                 |
| Total other                            | 3,765,289               | 4,153,082           | 250,228       | 281,002   | 2,104,739            | 2,313,766  | 10                |
| Nondepartmental                        | 531,598                 | 546,857             | 16,250        | 1,500     | 216,446              | 226,817    | 5                 |
| Total general government               | 4,936,819               | 5,659,106           | 307,669       | 347,734   | 2,657,360            | 2,930,606  | 10                |
| Public safety:                         |                         |                     |               |           |                      |            |                   |
| Police:                                |                         |                     |               |           |                      |            |                   |
| Total police                           | 7,924,438               | 9,042,791           | 573,456       | 617,251   | 4,522,013            | 4,721,578  | 4                 |
| Fire:                                  |                         |                     |               |           |                      |            |                   |
| Total fire                             | 5,218,955               | 5,190,784           | 382,817       | 372,587   | 2,844,830            | 2,940,768  | 3                 |
| Nondepartmental                        | 334,476                 | 331,476             | -             | -         | 167,238              | 165,738    | (1)               |
| Total public safety                    | 13,477,869              | 14,565,051          | 956,273       | 989,838   | 7,534,081            | 7,828,084  | 4                 |
| Public Works:                          |                         |                     |               |           |                      |            |                   |
| Streets                                | 1,068,506               | 1,126,646           | 86,053        | 95,591    | 622,629              | 631,693    | 1                 |
| Engineering                            | 403,517                 | 555,524             | 39,683        | 39,149    | 233,974              | 267,807    | 14                |
| Other:                                 |                         |                     |               |           |                      |            |                   |
| Administration                         | 335,004                 | 342,724             | 28,204        | 29,492    | 196,927              | 206,646    | 5                 |
| Cemetery                               | 206,968                 | 191,986             | 16,408        | 16,431    | 119,500              | 115,005    | (4)               |
| Auto shop                              | 340,480                 | 347,660             | 27,881        | 28,252    | 200,399              | 201,067    | -                 |
| Building maintenance                   | 331,330                 | 322,201             | 26,229        | 26,613    | 184,001              | 186,599    | 1                 |
| Inspection                             | 477,869                 | 488,560             | 34,198        | 29,798    | 268,486              | 262,614    | (2)               |
| Grounds maintenance                    | 566,141                 | 543,994             | 44,481        | 45,637    | 319,016              | 313,709    | (2)               |
| Total other                            | 2,257,792               | 2,237,125           | 177,401       | 176,223   | 1,288,329            | 1,285,640  | -                 |
| Total public works                     | 3,729,815               | 3,919,295           | 303,137       | 310,963   | 2,144,932            | 2,185,140  | 2                 |
| Health, Education and Welfare          |                         |                     |               |           |                      |            |                   |
| Animal control                         | 59,445                  | 63,489              | 4,401         | 4,466     | 33,239               | 33,566     | 1                 |
| Nondepartmental                        | 3,352,427               | 3,381,689           | 263,244       | 7,500     | 1,945,457            | 1,969,235  | 1                 |
| Total health, education and welfare    | 3,411,872               | 3,445,178           | 267,645       | 11,966    | 1,978,696            | 2,002,801  | 1                 |
| Culture and recreation                 |                         |                     |               |           |                      |            |                   |
| Parks and recreation                   | 5,091,594               | 5,564,911           | 400,784       | 403,158   | 2,730,434            | 2,794,615  | 2                 |
| Library                                | 751,222                 | 914,007             | 56,491        | 61,892    | 426,197              | 405,454    | (5)               |
| Nondepartmental                        | 92,500                  | 102,172             | 2,500         | 2,500     | 81,250               | 78,450     | (3)               |
| Total culture and recreation           | 5,935,316               | 6,581,090           | 459,775       | 467,550   | 3,237,881            | 3,278,519  | 1                 |
| Economic Development                   |                         |                     |               |           |                      |            |                   |
| Economic Development                   | 385,622                 | 546,797             | 35,108        | 33,156    | 210,309              | 232,192    | 10                |
| Nondepartmental                        | 1,256,076               | 1,063,750           | 62,482        | 83,656    | 543,820              | 680,093    | 25                |
| Total economic development             | 1,641,698               | 1,610,547           | 97,590        | 116,812   | 754,129              | 912,285    | 21                |
| Capital outlay                         | 1,932,105               | 3,645,932           | 215,004       | 85,690    | 1,168,493            | 736,333    | (37)              |
| Total expenditures                     | 35,065,493              | 39,426,199          | 2,607,093     | 2,330,553 | 19,475,572           | 19,873,768 | 2                 |
| Transfers - out:                       |                         |                     |               |           |                      |            |                   |
| Transfer to PR/Jail Construction Fund  | 2,402,131               | 2,418,375           | 200,521       | 234,246   | 1,341,875            | 1,500,952  | 12                |
| Transfers to other funds               | 84,538                  | 117,652             | 2,625         | 4,063     | 11,313               | 22,472     | 99                |
| Debt service                           | 8,815,588               | 9,483,827           | 1,314,627     | 1,202,217 | 5,969,532            | 4,493,689  | (25)              |
| Total transfers - out                  | 11,302,257              | 12,019,854          | 1,517,773     | 1,440,526 | 7,322,720            | 6,017,113  | (18)              |
| Total expenditures and transfers - out | 46,367,750              | 51,446,053          | 4,124,866     | 3,771,079 | 26,798,292           | 25,890,881 | (3)               |

Attachment: April 2015 Reports (1105 : Financial Report April 2015)

City of Opelika  
General Fund  
Capital Outlay

|                                        | Unadjusted<br>9-30-2014 | Budget<br>9-30-2015 | April<br>2014 | 2015   | Year to date<br>2014 | 2015    | %<br>Annual<br>Year |
|----------------------------------------|-------------------------|---------------------|---------------|--------|----------------------|---------|---------------------|
| General Government:                    |                         |                     |               |        |                      |         |                     |
| Legislative                            | -                       | -                   | -             | -      | -                    | -       | -                   |
| Executive                              | -                       | 55,000              | -             | -      | -                    | 50,279  | -                   |
| Legal                                  | -                       | -                   | -             | -      | -                    | -       | -                   |
| Other:                                 |                         |                     |               |        |                      |         |                     |
| Administration                         | -                       | -                   | -             | -      | -                    | -       | -                   |
| Accounting                             | -                       | -                   | -             | -      | -                    | -       | -                   |
| Human Resources                        | -                       | -                   | -             | -      | -                    | -       | -                   |
| Information Technology                 | 354,163                 | 671,183             | 32,368        | 4,125  | 306,233              | 143,874 | 21                  |
| Revenue                                | -                       | -                   | -             | -      | -                    | -       | -                   |
| Municipal court                        | -                       | -                   | -             | -      | -                    | -       | -                   |
| Purchasing                             | -                       | -                   | -             | -      | -                    | -       | -                   |
| Community Development                  | -                       | -                   | -             | -      | -                    | -       | -                   |
| Planning                               | -                       | -                   | -             | -      | -                    | -       | -                   |
| Total other                            | 354,163                 | 671,183             | 32,368        | 4,125  | 306,233              | 143,874 | 21                  |
| Nondepartmental                        | -                       | -                   | -             | -      | -                    | -       | -                   |
| Total general government               | 354,163                 | 726,183             | 32,368        | 4,125  | 306,233              | 194,153 | 27                  |
| Public safety:                         |                         |                     |               |        |                      |         |                     |
| Police:                                |                         |                     |               |        |                      |         |                     |
| Total police                           | 605,129                 | 244,411             | 151,268       | 22,733 | 424,420              | 230,669 | 94                  |
| Fire:                                  |                         |                     |               |        |                      |         |                     |
| Total fire                             | 53,909                  | 805,160             | -             | 58,831 | 18,389               | 201,256 | 25                  |
| Nondepartmental                        | -                       | -                   | -             | -      | -                    | -       | -                   |
| Total public safety                    | 659,038                 | 1,049,571           | 151,268       | 81,564 | 442,809              | 431,925 | 41                  |
| Public Works:                          |                         |                     |               |        |                      |         |                     |
| Streets                                | 214,967                 | 24,323              | -             | -      | -                    | 18,573  | 76                  |
| Engineering                            | 487,630                 | 1,570,429           | 7,476         | -      | 376,656              | 25,277  | 2                   |
| Other:                                 |                         |                     |               |        |                      |         |                     |
| Administration                         | 78,541                  | 194,935             | 5,950         | -      | 44,643               | 53,426  | 27                  |
| Cemetery                               | -                       | -                   | -             | -      | -                    | -       | -                   |
| Auto shop                              | -                       | -                   | -             | -      | -                    | -       | -                   |
| Building maintenance                   | -                       | -                   | -             | -      | -                    | -       | -                   |
| Inspection                             | -                       | -                   | -             | -      | -                    | -       | -                   |
| Grounds maintenance                    | -                       | -                   | -             | -      | -                    | -       | -                   |
| Total other                            | 78,541                  | 194,935             | 5,950         | -      | 44,643               | 53,426  | 27                  |
| Total public works                     | 781,138                 | 1,789,687           | 13,426        | -      | 421,299              | 97,276  | 5                   |
| Health, Education and Welfare          |                         |                     |               |        |                      |         |                     |
| Animal control                         | -                       | -                   | -             | -      | -                    | -       | -                   |
| Nondepartmental                        | -                       | -                   | -             | -      | -                    | -       | -                   |
| Total health, education and welfare    | -                       | -                   | -             | -      | -                    | -       | -                   |
| Culture and recreation                 |                         |                     |               |        |                      |         |                     |
| Parks and recreation                   | 123,532                 | 80,491              | 17,941        | -      | (1,848)              | 12,980  | 16                  |
| Library                                | 14,235                  | -                   | -             | -      | -                    | -       | -                   |
| Nondepartmental                        | -                       | -                   | -             | -      | -                    | -       | -                   |
| Total culture and recreation           | 137,767                 | 80,491              | 17,941        | -      | (1,848)              | 12,980  | 16                  |
| Economic Development                   | -                       | -                   | -             | -      | -                    | -       | -                   |
| Conference Center                      | -                       | -                   | -             | -      | -                    | -       | -                   |
| Total expenditures                     | 1,932,106               | 3,645,932           | 215,003       | 85,689 | 1,168,493            | 736,334 | 89                  |
| Transfers - out:                       |                         |                     |               |        |                      |         |                     |
| Transfers to other funds               |                         |                     |               |        |                      |         |                     |
| Debt service                           |                         |                     |               |        |                      |         |                     |
| Total transfers - out                  | -                       | -                   | -             | -      | -                    | -       | -                   |
| Total expenditures and transfers - out | 1,932,106               | 3,645,932           | 215,003       | 85,689 | 1,168,493            | 736,334 | 20                  |

Attachment: April 2015 Reports (1105 : Financial Report April 2015)



**City Council**  
204 South 7Th Street  
Opelika, AL

**SCHEDULED**

Meeting: 05/19/15 07:00 PM

Department: Planning

Category: Report

Prepared By: William Ott

Initiator: Gerald (Jerry) Kelley

Sponsors: William Ott

**MAYOR'S REMARKS (ID # 1072)**

DOC ID: 1072

## **Building Permit Detail Report - April, 2015**



CITY OF OPELIKA - PLANNING DEPARTMENT  
BUILDING INSPECTION DIVISION  
APRIL, 2015 - MONTHLY BUILDING PERMIT DETAIL REPORT

| PERMIT DATE | CONTRACTOR                    | STREET NUMBER | STREET NAME         | OWNER                            | JOB DESCRIPTION                    | JOB COST     |
|-------------|-------------------------------|---------------|---------------------|----------------------------------|------------------------------------|--------------|
| 04/01/15    | Willie G. Vines & Sons Const. | 206           | Morris Avenue       | Mary Gunn                        | Residential New Single Family      | \$175,300.00 |
| 04/01/15    | Gold Hill Construction        | 1711          | 1ST Avenue          | Daisy Heard                      | Residential Emergency Repairs      | \$3,630.00   |
| 04/02/15    | Heartland Homes               | 601           | Columbus Parkway    | Mike Thrower                     | Commercial New Accessory Building  | \$48,000.00  |
| 04/03/15    | ARS                           | 206           | Vaughn Avenue       | Gladys Mayfield                  | Residential Roof Replacement       | \$4,900.00   |
| 04/03/15    | Bill Lynn Construction        | 800           | Lake Condy Road     | James Stringfellow               | Residential Addition               | \$25,112.00  |
| 04/03/15    | Sita Williams                 | 408           | Westwood Street     | Sita Williams                    | Residential Interior Renovation    | \$20,000.00  |
| 04/03/15    | Edgar Hugheston Builder       | 2508          | Anderson Lake Drive | June Scob Shin                   | Residential New Single Family      | \$180,000.00 |
| 04/03/15    | Chad Burns                    | 1601          | Blackhawk Drive     | Chad Burns                       | Residential New Accessory Building | \$1,200.00   |
| 04/06/15    | Alan Yates                    | 4811          | Pebble Shore Drive  | Morris Smith                     | Residential New Single Family      | \$250,000.00 |
| 04/06/15    | Perry Patel                   | 1705          | Columbus Parkway    | Perry Patel                      | Residential Demolition             | \$2,700.00   |
| 04/06/15    | Gold Hill Construction        | 403           | Springhill Avenue   | Bernice Coleman                  | Residential Emergency Repairs      | \$6,165.00   |
| 04/06/15    | Darryl Johnson                | 1200          | Catherine Drive     | Darryl Johnson                   | Residential Addition               | \$15,000.00  |
| 04/06/15    | The Infinity Group            | 3784          | Pepperell Parkway   | Fimioni Realty                   | Commercial Interior Renovation     | \$10,000.00  |
| 04/06/15    | KTKF                          | 1416          | Finchley Court      | Gu-Do Lee                        | Residential New Single Family      | \$244,100.00 |
| 04/07/15    | Marcus Fuller                 | 707           | Herndon Street      | Marcus Fuller                    | Residential New Accessory Building | \$3,837.00   |
| 04/07/15    | Jessica Daley                 | 101           | Southridge Court    | Jessica Daley                    | Residential New Accessory Building | \$1,000.00   |
| 04/07/15    | Marco's Pizza                 | 1459          | Fox Run Parkway     | Marco's Pizza                    | Commercial New Accessory Building  | \$1,500.00   |
| 04/07/15    | Effective Signs               | 2450          | Enterprise Drive    | Starbuck's                       | Commercial Signage                 | \$1,000.00   |
| 04/08/15    | Lawn Master Outdoor Living    | 3218          | Turkey Trot Way     | Blaine Tharpe                    | Residential New Pergula            | \$5,500.00   |
| 04/08/15    | Conner Bro's Construction     | 3410          | Quail Cove          | Retirement Systems Of Alabama    | Residential New Single Family      | \$227,349.00 |
| 04/08/15    | Conner Bro's Construction     | 3312          | Double Eagle Lane   | Retirement Systems Of Alabama    | Residential New Single Family      | \$172,969.00 |
| 04/08/15    | Lannie Stanford               | 309           | Ballard Avenue      | Lannie Stanford                  | Residential New Accessory Building | \$1,200.00   |
| 04/09/15    | Advanced Building Corporation | 3200          | Hi-Pac Drive        | Packaging Corporation Of America | Commercial Interior Renovation     | \$105,000.00 |
| 04/09/15    | Lindsay Tan                   | 309           | Autumn Way          | Lindsay Tan                      | Residential New Accessory Building | \$1,500.00   |
| 04/13/15    | Mike Keel Construction        | 1001          | Andrews Road        | City Of Opelika - Sportsplex     | Commercial New Building            | \$44,032.00  |
| 04/13/15    | Calvin Ogletree               | 609           | Grove Avenue        | Calvin Ogletree                  | Residential New Accessory Building | \$2,632.00   |
| 04/13/15    | Murph Mart                    | 1001          | Frederick Avenue    | Murph Mart                       | Commercial Renovation              | \$15,000.00  |
| 04/14/15    | Affordable Roofing            | 503           | Birch Circle        | Shirley Carter                   | Residential Roof Replacement       | \$4,500.00   |
| 04/14/15    | Grahams Total Restoration     | 914           | Lakeshore Avenue    | Jimmy Sharp                      | Residential Deck Replacement       | \$8,400.00   |
| 04/14/15    | Dack Homes West               | 2206          | Winding Oak Drive   | DRI Fieldstone                   | Residential New Single Family      | \$152,603.00 |
| 04/14/15    | Dack Homes West               | 2208          | Cobblestone Drive   | DRI Fieldstone                   | Residential New Single Family      | \$161,209.00 |
| 04/14/15    | Dack Homes West               | 2302          | Cobblestone Drive   | DRI Fieldstone                   | Residential New Single Family      | \$163,325.00 |
| 04/14/15    | Dack Homes West               | 3714          | Riverstone Drive    | DRI Fieldstone                   | Residential New Single Family      | \$187,782.00 |
| 04/15/15    | Whatley Construction          | 2111          | Marvyn Parkway      | Tailgate Guys                    | Commercial Renovation              | \$239,000.00 |



| PERMIT DATE | CONTRACTOR                    | STREET NUMBER | STREET NAME              | OWNER                         | JOB DESCRIPTION                     | JOB COST     |
|-------------|-------------------------------|---------------|--------------------------|-------------------------------|-------------------------------------|--------------|
| 04/16/15    | David Erchak                  | 308           | 5TH Avenue               | David Erchak                  | Residential New Accessory Building  | \$2,000.00   |
| 04/17/15    | Long Builders                 | 1001          | Andrews Road             | City Of Opelika - Sportsplex  | Commercial New Accessory Building   | \$12,742.00  |
| 04/21/15    | Columbus 4 Seasons Sunroom    | 305           | Guinevere Court          | Pat Donald / Bob Stacks       | Residential New Sunroom Addition    | \$52,639.00  |
| 04/21/15    | Conner Brothers Construction  | 2810          | National Village Parkway | Retirement Systems Of Alabama | Commercial New Post Office Pavilion | \$48,500.00  |
| 04/21/15    | W. J. Cash Construction       | 3411          | Pepperell Parkway        | Bruce Forehand                | Residential Demolition              | \$1,640.00   |
| 04/22/15    | Opelika Fire Department       | 1018          | Alabama Avenue           | City Of Opelika               | Residential Demolition By Fire      | \$4,000.00   |
| 04/23/15    | Superior Roofing Company      | 1722          | 1ST Avenue               | Michael Giles                 | Residential Roof Replacement        | \$6,300.00   |
| 04/23/15    | Builders Professional Group   | 2927          | Stillwood Way            | Builders Professional Group   | Residential New Single Family       | \$313,474.00 |
| 04/23/15    | Builders Professional Group   | 3010          | Stillwood Way            | Builders Professional Group   | Residential New Single Family       | \$415,279.00 |
| 04/23/15    | Herring Enterprises           | 1001          | N 10TH Street            | Stone Martin                  | Residential New In-Ground Pool      | \$25,000.00  |
| 04/23/15    | Alan Yates General Contractor | 107           | 18TH Street              | Tim McLain                    | Commercial Renovation               | \$10,500.00  |
| 04/23/15    | Terea Jackson                 | 1901          | Archer Way               | Terea Jackson                 | Residential New Accessory Building  | \$2,199.00   |
| 04/23/15    | Channing Wood                 | 505           | Morris Avenue            | Channing Wood                 | Residential New Accessory Building  | \$1,278.00   |
| 04/24/15    | Lawn Master Outdoor Living    | 3310          | Society Hill Road        | William Palmer                | Residential New Pavilion            | \$5,500.00   |
| 04/23/15    | Builders Professional Group   | 2710          | Samantha Lane            | Builders Professional Group   | Residential New Single Family       | \$244,023.00 |
| 04/23/15    | Builders Professional Group   | 3018          | McKinley Drive           | Builders Professional Group   | Residential New Single Family       | \$415,279.00 |
| 04/27/15    | THD @ Home Services           | 1303          | Harper Street            | Danny Barrow                  | Residential Gutter Replacement      | \$1,100.00   |
| 04/27/15    | Jackco Contractors            | 610           | Clanton Street           | Christ Temple Holyness Church | Commercial Roof Replacement         | \$10,900.00  |
| 04/27/15    | Conner Brothers Construction  | 3505          | Double Eagle Lane        | Retirement Systems Of Alabama | Residential New Single Family       | \$189,660.00 |
| 04/27/15    | Conner Brothers Construction  | 3311          | Double Eagle Lane        | Retirement Systems Of Alabama | Residential New Single Family       | \$172,969.00 |
| 04/27/15    | Preferred Contractor          | 2105          | Austell Street           | Mike Perry                    | Residential Roof Replacement        | \$6,300.00   |
| 04/27/15    | GTR Contractors               | 1002          | N 1ST Street             | John Shadow                   | Residential Roof Replacement        | \$6,800.00   |
| 04/28/15    | Riverchase Homes              | 1207          | Live Oak Circle          | Anthony D. White              | Residential New Single Family       | \$289,900.00 |
| 04/30/15    | C. N. Bailey & Company        | 2254          | Tiger Town Parkway       | Olive Garden                  | Commercial Renovation               | \$87,500.00  |

Total \$4,810,927.00

TAKEN FROM THE RECORDS OF THE BUILDING INSPECTOR

  
JEFF KAPPELMAN  
Chief Building Inspector



**City Council**  
204 South 7Th Street  
Opelika, AL

**SCHEDULED**

Meeting: 05/19/15 07:00 PM  
Department: Planning  
Category: Presentation  
Prepared By: William Ott

Initiator: Gerald (Jerry) Kelley  
Sponsors: William Ott

**MAYOR'S REMARKS (ID # 1071)**

DOC ID: 1071

## **YTD & Monthly Council Report - April, 2015**



*Rich in heritage,  
with a vision  
for the future*

Planning Department - Building Inspections Division

Telephone 334-705-5420  
Fax 334-705-5159

### Monthly Permits For April, 2015

#### Work & Repair On Buildings:

| Building Repairs                        | Commercial | Residential |
|-----------------------------------------|------------|-------------|
| Buildings Condemned                     | 0          | 1           |
| Buildings Demolished                    | 0          | 3           |
| Building Repairs                        | 6          | 4           |
| Plumbing Upgrades                       | 1          | 5           |
| Electrical Upgrades                     | 4          | 8           |
| Mechanical Upgrades                     | 4          | 2           |
| Reroofs And Roof Repairs                | 1          | 5           |
| Mobile Home Services                    | 0          | 0           |
| Building Additions/Accessory Structures | 0          | 17          |

#### Monthly Totals For April 2006-2015

|      |                 |
|------|-----------------|
| 2006 | \$10,323,633.00 |
| 2007 | \$18,668,628.00 |
| 2008 | \$9,420,828.00  |
| 2009 | \$4,032,422.00  |
| 2010 | \$9,923,496.00  |
| 2011 | \$2,171,251.00  |
| 2012 | \$46,450,172.00 |
| 2013 | \$4,083,358.00  |
| 2014 | \$8,706,142.00  |
| 2015 | \$18,667,811.00 |

#### INSPECTION REQUEST TOTAL

450

#### Total Permits Issued:

|    |                                     |                |
|----|-------------------------------------|----------------|
| 4  | New Buildings: Commercial           | \$142,032.00   |
| 7  | Commercial Renovations And Repairs  | \$477,900.00   |
| 1  | Signs                               | \$1,000.00     |
| 17 | New Single Family Homes             | \$3,955,221.00 |
| 29 | Residential Repairs And Renovations | \$234,774.00   |
| 0  | New Apartment Units                 | \$0.00         |
| 0  | New Duplex Residences               | \$0.00         |
| 58 | Total Building Permits Issued       | \$4,810,927.00 |
| 35 | Electrical Permits                  | \$5,984,190.00 |
| 15 | Plumbing Permits                    | \$87,146.00    |
| 16 | HVAC Permits                        | \$7,785,548.00 |

124

Total Permits Issued For April, 2015

\$18,667,811.00

TAKEN FROM THE RECORDS OF THE  
BUILDING INSPECTOR

*Jeff Kappelman*  
Jeff Kappelman  
Chief Building Inspector

Attachment: YTD & Monthly Reports To City Council - April, 2015 (1071 : YTD & Monthly Council Report - April, 2015)





*Rich in heritage,  
with a vision  
for the future*

Planning Department - Building Inspections Division

Telephone 334-705-5420

Fax 334-705-5159

## Year To Date Report - 2015

| Building Repairs                        | Commercial | Residential |
|-----------------------------------------|------------|-------------|
| Buildings Condemned                     | 0          | 3           |
| Buildings Demolished                    | 1          | 13          |
| Building Repairs                        | 26         | 30          |
| Plumbing Upgrades                       | 14         | 32          |
| Electrical Upgrades                     | 25         | 61          |
| Mechanical Upgrades                     | 17         | 10          |
| Reroofs And Roof Repairs                | 7          | 15          |
| Mobile Home Services                    | 0          | 1           |
| Building Additions/Accessory Structures | 0          | 42          |

| Yearly Totals For Oct. 1st - Sept. 30th |                  |
|-----------------------------------------|------------------|
| 2006                                    | \$156,630,888.00 |
| 2007                                    | \$129,263,598.00 |
| 2008                                    | \$127,407,288.00 |
| 2009                                    | \$67,359,271.00  |
| 2010                                    | \$96,662,342.00  |
| 2011                                    | \$45,352,237.00  |
| 2012                                    | \$178,221,004.00 |
| 2013                                    | \$61,881,917.00  |
| 2014                                    | \$79,409,560.00  |
| 2015                                    | \$140,370,053.00 |

|                          |       |
|--------------------------|-------|
| INSPECTION REQUEST TOTAL | 2,492 |
|--------------------------|-------|

|     |                                     |                  |
|-----|-------------------------------------|------------------|
| 18  | New Buildings: Commercial           | \$92,417,372.00  |
| 45  | Commercial Renovations And Repairs  | \$5,469,257.00   |
| 19  | Signs                               | \$112,693.00     |
| 87  | New Single Family Homes             | \$20,534,415.00  |
| 116 | Residential Repairs And Renovations | \$1,587,963.00   |
| 0   | New Apartment Units                 | \$0.00           |
| 0   | New Duplex Residences               | \$0.00           |
| 285 | Total Building Permits Issued       | \$120,121,700.00 |

|     |                    |                |
|-----|--------------------|----------------|
| 186 | Electrical Permits | \$8,128,788.00 |
| 140 | Plumbing Permits   | \$2,149,769.00 |
| 113 | HVAC Permits       | \$9,969,796.00 |

|     |                          |                  |
|-----|--------------------------|------------------|
| 724 | Total Issued for FY 2015 | \$140,370,053.00 |
|-----|--------------------------|------------------|

*Jeff Kappelman*  
JEFF KAPPELMAN  
Chief Building Inspector



**City Council**  
204 South 7Th Street  
Opelika, AL

**SCHEDULED**

**GENERAL BUSINESS (ID # 1082)**

Meeting: 05/19/15 07:00 PM  
Department: City Clerk  
Category: Request for Permit  
Prepared By: Robert Shuman  
Initiator: Robert Shuman  
Sponsors:  
DOC ID: 1082

## **City Fireworks Display, Request for Permit by P&R Board**

## APPLICATION FOR FIREWORKS DISPLAY

To: City Council of the City of Opelika, Alabama

From The Parks and Recreation Board of the City of Opelika, Alabama

Pursuant to Section 19-586(c) of the *Code of Ordinances* of the City of Opelika,

Alabama, the Parks and Recreation Board of the City of Opelika hereby applies for a permit to display fireworks at the Opelika Freedom Celebration on Friday, July 3, 2015. This event will be held on the campus of Opelika High School.

DATED this the 7<sup>th</sup> day of May, 2015

THE PARKS AND RECREATION BOARD  
OF THE CITY OF OPELIKA, ALABAMA

By:   
RUSSELL MELNICK, CHAIRMAN

Attachment: CM 5-19-15, fireworks display, 5-07-15 (1082 : City Fireworks Display, Request for Permit by P&R Board)





**City Council**  
204 South 7Th Street  
Opelika, AL

**SCHEDULED**

**GENERAL BUSINESS (ID # 1087)**

Meeting: 05/19/15 07:00 PM  
Department: City Clerk  
Category: Request / Temp Street Closure  
Prepared By: Robert Shuman  
Initiator: Robert Shuman  
Sponsors:

DOC ID: 1087

---

## **Request Temporary St Closure, Run to Read on 10-24-15**

**Shuman, Robert**

---

**From:** richatau <richatau@aol.com>  
**Sent:** Thursday, April 30, 2015 2:33 PM  
**To:** Shuman, Robert  
**Cc:** jeandeanrif@gmail.com  
**Subject:** Run to Read 2015

To: Opelika City Council

From: Rich Bailey, Race Director Jean Dean RIF Run to Read Event

Subject: Request Approval for 8<sup>th</sup> Annual Run to Read, Oct 24, 2015

On behalf of Cathy Gafford and the Jean Dean RIF (Reading is Fundamental) Project I would like to thank Mayor Fuller and the Opelika City Council for their past support of the Run to Read Benefiting Jean Dean RIF. With the help of some great sponsors, over \$6000 was raised to help Executive Director Cathy Gafford purchase books for Alabama's at risk preschool children. Special thanks to Mike Hilyer and all of ESG for their continued support of our requests. We also appreciate the support of Sam Bailey, Reid Pope and the Parks and Recreation Department of Opelika for their help.

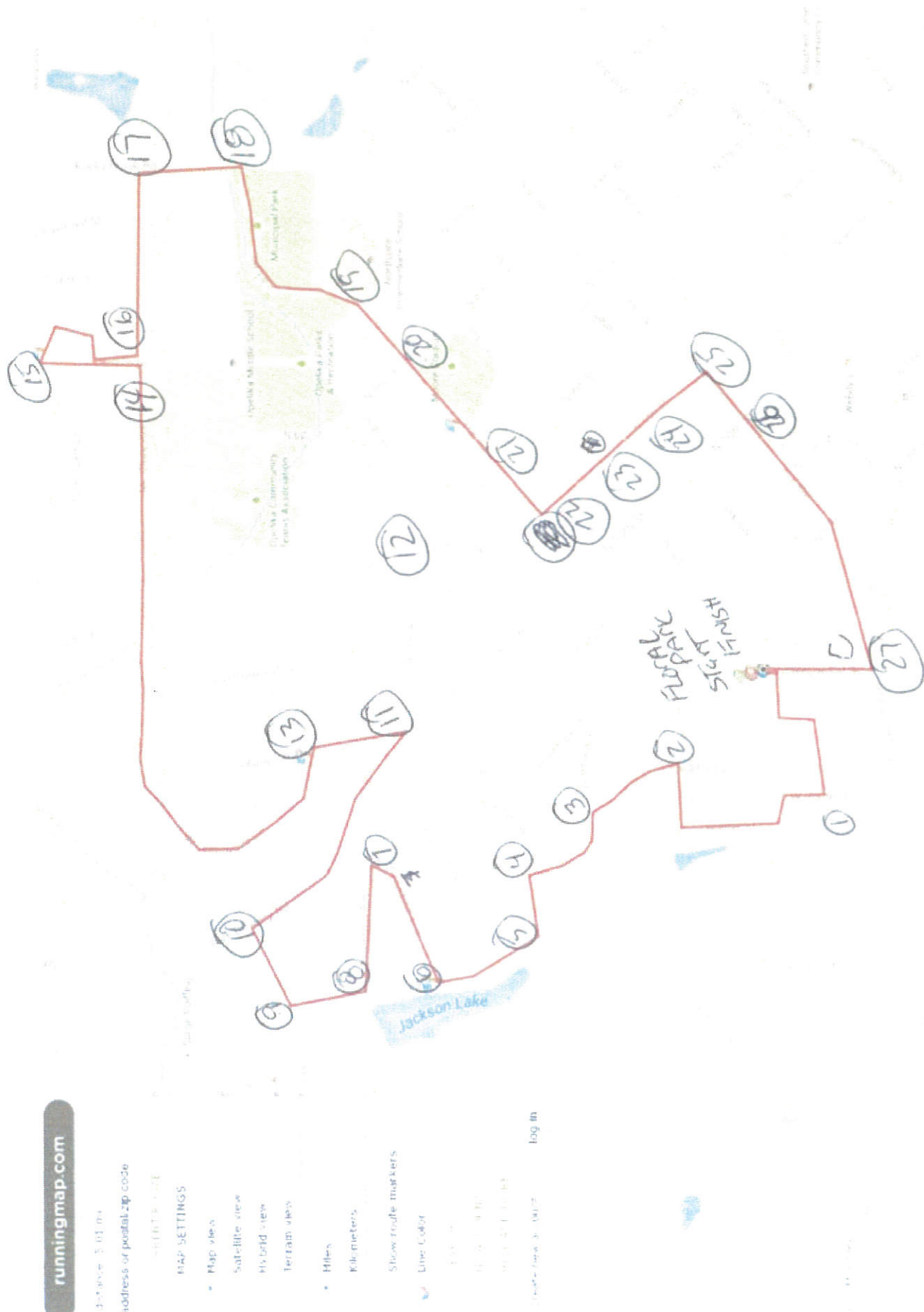
The Run to Read committee appreciates being allowed to use Floral Park as our race day event activity and registration site. It has been a perfect venue for our annual event. The race committee would like to request the City Council approve Saturday Oct 24th for our 8th Annual race and walk. With the approval of Opelika City Police Chief McEachern we have slightly modified our route from the past and increased our distance from a 5k to an 8k Race. The majority of the route remains as in the past, but in effort to support participant requests we added some distance and modified slightly the route with start and finish remaining at the Park. As in the past we provide safety signs along the route as well as 40 volunteers monitoring the intersections and 2 safety drivers leading and following our runners.

Our request includes the need for a police officer to support our safety efforts and the use of barriers, cones and safety vests supplied by ESG as we have for past 7 races. Because of the growth of the event we would appreciate any help from the City EMT on site however we understand if resources are short this option may not be available. We also wish to continue to use the facilities available at Floral Park for our Race morning activities which takes place from 6:00 AM through about 10:00 AM.

We would request the approval for us to once again use campaign size signs to mark the route with direction arrows and safety information such as "Race in Progress" "Caution Runners ahead". No sponsors will be on signs used to mark our race route. The signs will be placed out the morning of race and immediately picked up following the event. Thank you for considering this request of Saturday Oct 24th, 2015 for the 8<sup>th</sup> Annual Run to Read Benefiting Jean Dean RIF.

Sincerely,

Attachment: CM 5-19-15, Request temp st closure, Run to Read on 10-24-15, 5-11-15 (1087 : Request Temporary St Closure, Run to Read on 10-

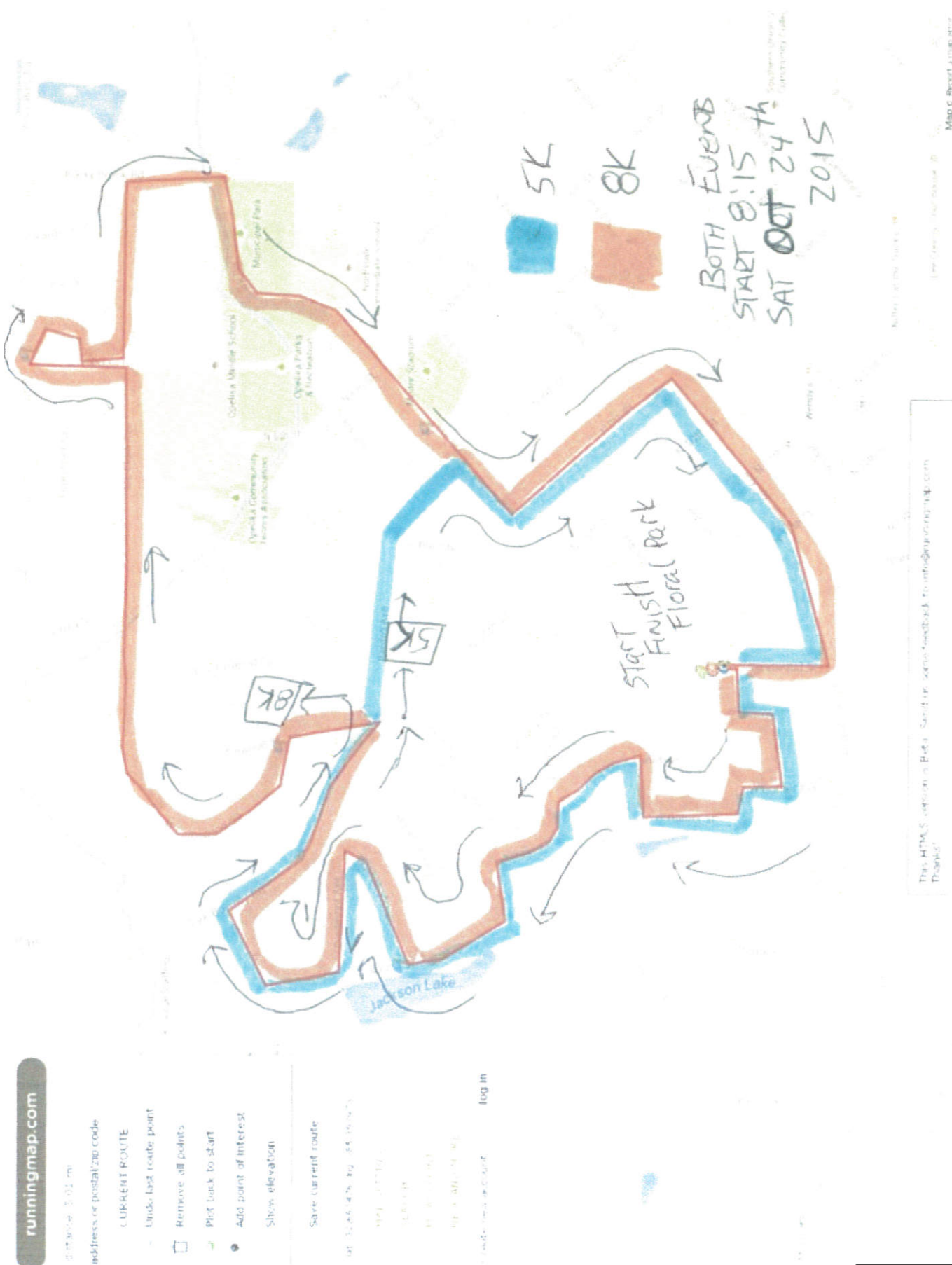




5K NEW ROUTE FOR 2015

Attachment: CM 5-19-15, Request temp st closure, Run to Read on 10-24-15, 5-11-15 (1087 : Request Temporary St Closure, Run to Read on 10-





8K NEW ROUTE FOR 2015



**City Council**

204 South 7Th Street  
Opelika, AL

**SCHEDULED****GENERAL BUSINESS (ID # 1088)**

Meeting: 05/19/15 07:00 PM

Department: City Clerk

Category: Request / Temp Street Closure

Prepared By: Robert Shuman

Initiator: Robert Shuman

Sponsors:

DOC ID: 1088

---

## **Request Temporary St Closure, Memorial Day Service on 5-25-15**

**Shuman, Robert**

---

**From:** Gunter, Jan  
**Sent:** Monday, May 11, 2015 1:43 PM  
**To:** Shuman, Robert  
**Subject:** Street Closure on May 25, 2015

Dear Mr. Shuman –

Memorial Day for 2015 is on Monday, May 25, 2015. As with every year, I am preparing a Memorial Day Program to take place here at City Hall that morning. As such, I would like to get the City Council's permission to block off 7<sup>th</sup> Street in front of City Hall – between Avenues A and B – starting at 8:30 a.m. and lasting until around noon. That will give us time to “set up” for the event, and then disassemble everything after the program is over.

We will be honoring Alabama's national Guard for their service to our country throughout the years.

This year's guest speaker is Brigadier General Sylvester Cannon, who is the *Commanding General – 135<sup>th</sup> Sustainment Command (expeditionary) Deputy Commanding General – combined arms support command*.

The Amazing thing is, he lives right here in Opelika! He's one of our own!

The Memorial Day services will include:

10 a.m. Services at City Hall  
 11 a.m. Reception at the Museum of East Alabama

ALSO: there will be a contingency of military vehicles set up in the parking lot area at Courthouse Square (Close to Avenue A) for the public to come see during the morning hours.

Thank you for your help in getting this before the City Council on May 19, 2015.

**Jan H. Gunter**  
 Community Relations Specialist  
 City of Opelika, Alabama  
 204 South 7th Street  
 Opelika, AL 36801

(334) 705-5136 (Office)  
 (334) 705-5153 (FAX)

[jgunter@opelika-al.gov](mailto:jgunter@opelika-al.gov)  
[www.opelika.org](http://www.opelika.org)

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Attachment: CM 5-19-15, Request temp st closure, Memorial Day Service on May 25, 5-11-15 (1088 : Request Temporary St Closure, Memorial



**City Council**  
204 South 7Th Street  
Opelika, AL

**SCHEDULED**

**GENERAL BUSINESS (ID # 1086)**

Meeting: 05/19/15 07:00 PM  
Department: City Clerk  
Category: Request / Temp Street Closure  
Prepared By: Robert Shuman  
Initiator: Robert Shuman  
Sponsors:

DOC ID: 1086

---

## **Request Temporary Blocking of Parking Spaces, N RR Ave. on 6-5-15**

**Shuman, Robert**

---

**From:** Shuman, Robert  
**Sent:** Monday, May 11, 2015 11:24 AM  
**To:** Hilyer, Michael J, McEachern, John, Prather, Byron  
**Cc:** Fuller, Gary, Motley, Joey, Eddie Smith, President City Council, Ward 4 (esmith@auburnbank.com), Opelika Main Street, Pam Powers-Smith (director@opelikamainstreet.org)  
**Subject:** Class of 1985 - Block party on 6/5/2015

FYI, see email below. The Mayor in working with Pam Powers-Smith of Main Street has amended the request below to include just the blocking of the parallel parking spaces on the street in front of Smith T Hardware. The street in front of Smith T Hardware will not be blocked off. Unless I hear objections, I will schedule this request on the 5/19 CM agenda.

Thanks to all,

R. G. 'Bob' Shuman, CMC  
 Opelika City Clerk – Treasurer

-----Original Message-----

From: Jerry Haynes [mailto:jerryhaynes2@gmail.com]  
 Sent: Monday, May 04, 2015 1:57 PM  
 To: Shuman, Robert  
 Cc: Dozier Smith T  
 Subject: Class of 1985 - Block party on 6/5/2015

Mr. Shuman,

I spoke to Councilman Dozier Smith T about this, and he asked that I direct the request to you.

The Opelika High Class of 1985 is planning an evening in downtown Opelika on Friday night, June 5, 2015 starting at 6:30pm. Dozier is also a member of our class.

We'd like to block off some space in front of Smith T Hardware to put a registration table and maybe block off part of the street so we'd have a place to congregate before heading across the tracks to the local establishments for food and drink.

We are not providing any entertainment or beverages. We'd just like a place to meet.

We are not charging for this event, and we expect anywhere from 80-120 people from our class (including spouses). In addition, we've invited the Class of 1984 and 1986 to join us.

I'm hopeful that the city would be receptive to our request so that we can welcome back the Class of '85.

Thanks for your help.

--  
 Jerry Haynes  
 334 332 9806

Attachment: CM 5-19-15, Request temp st closure, N RR Ave, 5-11-15 (1086 : Request Temporary Blocking of Parking Spaces, N RR Ave. on 6-

**City Council**

204 South 7Th Street  
Opelika, AL

**SCHEDULED****BIDS (ID # 1094)**

Meeting: 05/19/15 07:00 PM  
Department: Purchasing and Revenue  
Category: Bid  
Prepared By: Angela Norrell  
Initiator: Angela Norrell  
Sponsors:  
DOC ID: 1094

## **2Nd Avenue and North 6Th Street Intersection Improvements B15-018 - Oral Recommendation**

Council Meeting 5/19/15

### **FACT SHEET**

**SUBJECT: Sealed Bids - Bid #B15-018 - 2<sup>nd</sup> Avenue and North 6<sup>th</sup> Street Intersection Improvements**

---

#### **FACTS:**

- Bid opening date - 5/18/15
- User Department - Engineering

#### **RECOMMENDATION:**

- **Due to the lateness of the bid opening, I request to make an oral recommendation at the May 19, 2015 Council Meeting.**



Bids (ID # 1094)

Meeting of May 19, 2015

Lillie Finley

1

5/13/15

## RESOLUTION NO. (ID # 1075)

Tabled, Order Demolition at 303 Byrd Avenue**RESOLUTION ORDERING THE DEMOLITION OF THE  
BUILDINGS LOCATED AT 303 BYRD AVENUE**

WHEREAS, any incorporated municipality of the State of Alabama may, after notice as provided in Section 11-40-31, demolish building and structure, or parts of buildings and structures, party walls, and foundations when found by the governing body of the municipality to be unsafe to the extent of being a public nuisance from any cause; and

WHEREAS, on March 10, 2015, the Building Official of the City of Opelika gave notice to remedy the unsafe or dangerous condition of the building or structure located at 303 Byrd Avenue, Opelika, Alabama, to the person or persons, firm, association, or corporation last assessing said property for state taxes, by certified mail, as provided in Section 11-40-31, *Code of Alabama*; and

WHEREAS, on April 8, 2015, the owner of the building filed a written request for a hearing before the governing body of the municipality; and

WHEREAS, Tuesday, May 5, 2015 at 7:00 p.m. in the City Council Chambers of the Municipal Building, 204 South 7<sup>th</sup> Street, Opelika, Lee County, Alabama, was fixed as the time and place when and where the City Council will meet to determine whether or not the building located at 303 Byrd Avenue is unsafe to the extent that it creates a public nuisance; and

WHEREAS, the City Council of the City of Opelika met on Tuesday, May 5, 2015, at the aforesaid time and place for the purpose of conducting said public hearing; and

WHEREAS, the President of the City Council of the City of Opelika presided over said

public hearing and opened the floor for comments from the public and any persons interested in the real property located at 303 Byrd Avenue, Opelika, Alabama; and

WHEREAS, the City Council has considered all of the evidence and other matters in relation to said alleged public nuisance.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Opelika, as follows:

1. The City Council finds and declares that the building or structure at 303 Byrd Avenue, Opelika, Alabama, is unsafe to the extent that it creates a public nuisance, and it is advisable and in the public interest that said building or structure should be demolished and removed at the owner's expense. The property referred to above is more particularly described as follows:

Commence at the Northeast corner of Section 7, Township 19 North, Range 27 East, in Lee County, Alabama; run thence West for 893.4 feet; run thence South for 1911.2 feet to the Southerly corner of the intersection of Byrd Street and 3<sup>rd</sup> Street; run thence South 48 degrees 31 minutes West for 71.6 feet along the Southeasterly margin of Byrd Street to the point of beginning of the parcel of land to be here described and conveyed; from said point of beginning, run thence South 41 degrees 29 minutes East for 144.5 feet; run thence South 48 degrees 31 minutes West for 66.4 feet; run thence North 41 degrees 29 minutes West 144.5 feet to the Southeasterly margin of Byrd Street; run thence North 48 degrees 31 minutes East for 66.4 feet along the Southeasterly margin of Byrd Street to the said point of beginning; together with all improvements thereon and all appurtenances thereunto belonging.

Being further described as Parcel No. 43-10-03-07-1-001-088.000, according to records maintained in the Lee County Revenue Commissioner's Office.

2. The Mayor is hereby authorized and directed to cause said building or structure to be demolished and removed after the expiration of ten (10) days from the

date of this resolution. Demolition may be accomplished by the municipality by the use of its own forces, or it may be provided by contract for the demolition. The municipality may sell or otherwise dispose of salvaged materials resulting from the demolition. All employees, contractors and duly authorized agents of the City are authorized to enter upon said property for said purpose.

3. Any person aggrieved by the decision of the City Council may, within ten (10) days hereafter, appeal to the Circuit Court upon filing with the Clerk of the Court notice of appeal and a bond for security of cost in the form and amount approved by the Circuit Clerk.

4. Upon the demolition and removal of said building or structure, the Building Official shall make a report to the City Council of the cost. The City Council shall thereafter adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition and removal of said building or structure and assess the costs against said property. The proceeds of any monies received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition and removal. The fixing of costs by the City Council shall constitute a special assessment against the lot or lots, parcel, or parcels of land upon which the building or structure was located and shall constitute a lien on the property for the amount of the assessment.

5. The City Clerk is hereby directed to mail, by certified mail, a copy of this resolution to the owners and lien holders of the property as the information appears on the records of the office of the Tax Assessor and in the Office of the Judge of Probate of Lee County, Alabama.

ADOPTED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_ 2015.

---

PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

---

CITY CLERK

Cc: Sirco, Inc.  
206 South 8<sup>th</sup> Street  
Opelika, Alabama



RESOLUTION NO. (ID # 1076)

Tabled, Order Demolition at 122 & 124 Plum and 18 & 20 Easy St

**RESOLUTION ORDERING THE DEMOLITION OF THE  
BUILDINGS LOCATED AT 122 PLUM AVENUE, 124 PLUM  
AVENUE, 18 EASY STREET AND 20 EASY STREET**

WHEREAS, any incorporated municipality of the State of Alabama may, after notice as provided in Section 11-40-31, demolish buildings and structures, or parts of buildings and structures, party walls, and foundations when found by the governing body of the municipality to be unsafe to the extent of being a public nuisance from any cause; and

WHEREAS, on March 10, 2015, the Building Official of the City of Opelika gave notice to remedy the unsafe or dangerous condition of the buildings or structures located at 122 Plum Avenue, 124 Plum Avenue, 18 Easy Street and 20 Easy Street Opelika, Alabama, to the person or persons, firm, association, or corporation last assessing said property for state taxes, by certified mail, as provided in Section 11-40-31, *Code of Alabama*; and

WHEREAS, on April 8, 2015, the owner of the buildings filed a written request for a hearing before the governing body of the municipality; and

WHEREAS, Tuesday, May 5, 2015 at 7:00 p.m. in the City Council Chambers of the Municipal Building, 204 South 7<sup>th</sup> Street, Opelika, Lee County, Alabama, was fixed as the time and place when and where the City Council will meet to determine whether or not the buildings located at 122 Plum Avenue, 124 Plum Avenue, 18 Easy Street and 20 Easy Street are unsafe to the extent that they create a public nuisance; and

WHEREAS, the City Council of the City of Opelika met on Tuesday, March 4, 2014, at

the aforesaid time and place for the purpose of conducting said public hearing; and

WHEREAS, the President of the City Council of the City of Opelika presided over said public hearing and opened the floor for comments from the public and any persons interested in the real properties located at 122 Plum Avenue, 124 Plum Avenue, 18 Easy Street and 20 Easy Street, Opelika, Alabama; and

WHEREAS, the City Council has considered all of the evidence and other matters in relation to said alleged public nuisance.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Opelika, as follows:

1. The City Council finds and declares that the buildings or structures at 122 Plum Avenue, 124 Plum Avenue, 18 Easy Street and 20 Easy Street, Opelika, Alabama, are unsafe to the extent that they create a public nuisance, and it is advisable and in the public interest that said buildings or structures should be demolished and removed at the owner's expense. The properties referred to above are more particularly described as follows:

Certain lots in the City of Opelika, Lee County, Alabama, described as lot numbers Eight (8) and Nine (9) in Block One (1) of the Byrd Lands as shown by "Totten's Official Real Estate Map of Opelika, Alabama, 1930", which is of record in Town Plat Book 2, Page 9 in the Office of the Judge of Probate of Lee County, Alabama, said lots fronting 200 feet along the North margin of Plum Street in the City of Opelika and running back Northerly therefrom at right angles and of uniform width a distance of 185 feet; the house thereon being Numbered 7 Plum Street, and being situated in the City of Opelika, Lee County, Alabama.

Also being further described as Parcel Number 43-10-03-08-2-002-050.000, according to records maintained in the Lee County Revenue Commissioner's Office.

2. The Mayor is hereby authorized and directed to cause said buildings or structures to be demolished and removed after the expiration of ten (10) days from the date of this resolution. Demolition may be accomplished by the municipality by the use of its own forces, or it may be provided by contract for the demolition. The municipality may sell or otherwise dispose of salvaged materials resulting from the demolition. All employees, contractors and duly authorized agents of the City are authorized to enter upon said properties for said purpose.

3. Any person aggrieved by the decision of the City Council may, within ten (10) days hereafter, appeal to the Circuit Court upon filing with the Clerk of the Court notice of appeal and a bond for security of cost in the form and amount approved by the Circuit Clerk.

4. Upon the demolition and removal of said buildings or structures, the Building Official shall make a report to the City Council of the cost. The City Council shall thereafter adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition and removal of said buildings or structures and assess the costs against said properties. The proceeds of any monies received from the sale of salvaged materials from the buildings or structures shall be used or applied against the cost of the demolition and removal. The fixing of costs by the City Council shall constitute a special assessment against the lot or lots, parcel, or parcels of land upon which the buildings or structures were located and shall constitute a lien on the properties for the amount of the assessment.

5. The City Clerk is hereby directed to mail, by certified mail, a copy of this resolution to the owners and lien holders of the property as the information appears on the records of the office of the Tax Assessor and in the Office of the Judge of Probate of Lee County, Alabama.

ADOPTED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_ 2015.

---

PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

---

CITY CLERK

Cc: Sirco, Inc.  
206 South 8<sup>th</sup> Street  
Opelika, AL 36801

RESOLUTION NO. (ID # 1078)

Tabled, Order Demolition at 410 Raintree St.

**RESOLUTION ORDERING THE DEMOLITION OF THE  
BUILDINGS LOCATED AT 410 RAINTREE STREET**

WHEREAS, any incorporated municipality of the State of Alabama may, after notice as provided in Section 11-40-31, demolish building and structure, or parts of buildings and structures, party walls, and foundations when found by the governing body of the municipality to be unsafe to the extent of being a public nuisance from any cause; and

WHEREAS, on March 10, 2015, the Building Official of the City of Opelika gave notice to remedy the unsafe or dangerous condition of the building or structure located at 410 Raintree Street, Opelika, Alabama, to the person or persons, firm, association, or corporation last assessing said property for state taxes, by certified mail, as provided in Section 11-40-31, *Code of Alabama*; and

WHEREAS, on April 8, 2015, the owner of the building filed a written request for a hearing before the governing body of the municipality; and

WHEREAS, Tuesday, May 5, 2015 at 7:00 p.m. in the City Council Chambers of the Municipal Building, 204 South 7<sup>th</sup> Street, Opelika, Lee County, Alabama, was fixed as the time and place when and where the City Council will meet to determine whether or not the building located at 410 Raintree Street is unsafe to the extent that it creates a public nuisance; and

WHEREAS, the City Council of the City of Opelika met on Tuesday, May 5, 2015, at the aforesaid time and place for the purpose of conducting said public hearing; and

WHEREAS, the President of the City Council of the City of Opelika presided over said

public hearing and opened the floor for comments from the public and any persons interested in the real property located at 410 Raintree Street, Opelika, Alabama; and

WHEREAS, the City Council has considered all of the evidence and other matters in relation to said alleged public nuisance.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Opelika, as follows:

1. The City Council finds and declares that the building or structure at 410 Raintree Street, Opelika, Alabama, is unsafe to the extent that it creates a public nuisance, and it is advisable and in the public interest that said building or structure should be demolished and removed at the owner's expense. The property referred to above is more particularly described as follows:

South half of Lot 3, Block 8 of the Palmer Subdivision, as shown by plat of Palmer Property made by T.B. Chambers, Surveyor, said plat being of record at Page 11 of Plat Book 2, in the Office of the Judge of Probate of Lee County, Alabama.

Also being further described as Parcel Number 43-10-03-08-2-001-093.000, according to records maintained in the Lee County Revenue Commissioner's Office.

2. The Mayor is hereby authorized and directed to cause said building or structure to be demolished and removed after the expiration of ten (10) days from the date of this resolution. Demolition may be accomplished by the municipality by the use of its own forces, or it may be provided by contract for the demolition. The municipality may sell or otherwise dispose of salvaged materials resulting from the demolition. All employees, contractors and duly



authorized agents of the City are authorized to enter upon said property for said purpose.

3. Any person aggrieved by the decision of the City Council may, within ten (10) days hereafter, appeal to the Circuit Court upon filing with the Clerk of the Court notice of appeal and a bond for security of cost in the form and amount approved by the Circuit Clerk.

4. Upon the demolition and removal of said building or structure, the Building Official shall make a report to the City Council of the cost. The City Council shall thereafter adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition and removal of said building or structure and assess the costs against said property. The proceeds of any monies received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition and removal. The fixing of costs by the City Council shall constitute a special assessment against the lot or lots, parcel, or parcels of land upon which the building or structure was located and shall constitute a lien on the property for the amount of the assessment.

5. The City Clerk is hereby directed to mail, by certified mail, a copy of this resolution to the owners and lien holders of the property as the information appears on the records of the office of the Tax Assessor and in the Office of the Judge of Probate of Lee County, Alabama.

ADOPTED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_ 2015.

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PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

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CITY CLERK

Cc: Sirco, Inc.

206 South 8<sup>th</sup> Street

Opelika, AL 36801

## RESOLUTION NO. (ID # 1077)

Tabled, Order Demolition at 418 Raintree Street**RESOLUTION ORDERING THE DEMOLITION OF THE  
BUILDINGS LOCATED AT 418 RAINTREE STREET**

WHEREAS, any incorporated municipality of the State of Alabama may, after notice as provided in Section 11-40-31, demolish building and structure, or parts of buildings and structures, party walls, and foundations when found by the governing body of the municipality to be unsafe to the extent of being a public nuisance from any cause; and

WHEREAS, on March 10, 2015, the Building Official of the City of Opelika gave notice to remedy the unsafe or dangerous condition of the building or structure located at 418 Raintree Street, Opelika, Alabama, to the person or persons, firm, association, or corporation last assessing said property for state taxes, by certified mail, as provided in Section 11-40-31, *Code of Alabama*; and

WHEREAS, on April 8, 2015, the owner of the building filed a written request for a hearing before the governing body of the municipality; and

WHEREAS, Tuesday, May 5, 2015 at 7:00 p.m. in the City Council Chambers of the Municipal Building, 204 South 7<sup>th</sup> Street, Opelika, Lee County, Alabama, was fixed as the time and place when and where the City Council will meet to determine whether or not the building located at 418 Raintree Street is unsafe to the extent that it creates a public nuisance; and

WHEREAS, the City Council of the City of Opelika met on Tuesday, May 5, 2015, at the aforesaid time and place for the purpose of conducting said public hearing; and

WHEREAS, the President of the City Council of the City of Opelika presided over said

public hearing and opened the floor for comments from the public and any persons interested in the real property located at 418 Raintree Street, Opelika, Alabama; and

WHEREAS, the City Council has considered all of the evidence and other matters in relation to said alleged public nuisance.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Opelika, as follows:

1. The City Council finds and declares that the building or structure at 418 Raintree Street, Opelika, Alabama, is unsafe to the extent that it creates a public nuisance, and it is advisable and in the public interest that said building or structure should be demolished and removed at the owner's expense. The property referred to above is more particularly described as follows:

Lot 5 in Block 8 of the Palmer Subdivision, as shown by map of plat of said Subdivision of record in Town Plat Book 2 at Page 11 in the Office of the Judge of Probate of Lee County, Alabama.

Also being further described as Parcel Number 43-10-03-08-2-001-088.000, according to records maintained in the Lee County Revenue Commissioner's Office.

2. The Mayor is hereby authorized and directed to cause said building or structure to be demolished and removed after the expiration of ten (10) days from the date of this resolution. Demolition may be accomplished by the municipality by the use of its own forces, or it may be provided by contract for the demolition. The municipality may sell or otherwise dispose of salvaged materials resulting from the demolition. All employees, contractors and duly authorized agents of the City are authorized to enter upon said property for said purpose.

3. Any person aggrieved by the decision of the City Council may, within ten (10) days hereafter, appeal to the Circuit Court upon filing with the Clerk of the Court notice of appeal and a bond for security of cost in the form and amount approved by the Circuit Clerk.

4. Upon the demolition and removal of said building or structure, the Building Official shall make a report to the City Council of the cost. The City Council shall thereafter adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition and removal of said building or structure and assess the costs against said property. The proceeds of any monies received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition and removal. The fixing of costs by the City Council shall constitute a special assessment against the lot or lots, parcel, or parcels of land upon which the building or structure was located and shall constitute a lien on the property for the amount of the assessment.

5. The City Clerk is hereby directed to mail, by certified mail, a copy of this resolution to the owners and lien holders of the property as the information appears on the records of the office of the Tax Assessor and in the Office of the Judge of Probate of Lee County, Alabama.

ADOPTED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_ 2015.

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PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

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CITY CLERK

Cc: Sirco, Inc.  
206 South 8<sup>th</sup> Street  
Opelika, AL 36801

## RESOLUTION NO. (ID # 1079)

Tabled, Order Demolition at 1701 Old Columbus Rd.**RESOLUTION ORDERING THE DEMOLITION OF THE  
BUILDINGS LOCATED AT 1701 OLD COLUMBUS ROAD**

WHEREAS, any incorporated municipality of the State of Alabama may, after notice as provided in Section 11-40-31, demolish building and structure, or parts of buildings and structures, party walls, and foundations when found by the governing body of the municipality to be unsafe to the extent of being a public nuisance from any cause; and

WHEREAS, on March 10, 2015, the Building Official of the City of Opelika gave notice to remedy the unsafe or dangerous condition of the building or structure located at 1701 Old Columbus Road, Opelika, Alabama, to the person or persons, firm, association, or corporation last assessing said property for state taxes, by certified mail, as provided in Section 11-40-31, *Code of Alabama*; and

WHEREAS, Tuesday, May 5, 2015 at 7:00 p.m. in the City Council Chambers of the Municipal Building, 204 South 7<sup>th</sup> Street, Opelika, Lee County, Alabama, was fixed as the time and place when and where the City Council will meet to determine whether or not the buildings located at 1701 Old Columbus Road is unsafe to the extent that it creates a public nuisance; and

WHEREAS, the City Council of the City of Opelika met on Tuesday, May 5, 2015, at the aforesaid time and place for the purpose of conducting said public hearing; and

WHEREAS, the President of the City Council of the City of Opelika presided over said public hearing and opened the floor for comments from the public and any persons interested in the real property located at 1701 Old Columbus Road, Opelika, Alabama; and



WHEREAS, the City Council has considered all of the evidence and other matters in relation to said alleged public nuisance.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Opelika, as follows:

1. The City Council finds and declares that the building or structure at 1701 Old Columbus Road, Opelika, Alabama, is unsafe to the extent that it creates a public nuisance, and it is advisable and in the public interest that said building or structure should be demolished and removed at the owner's expense. The property referred to above is more particularly described as follows:

Commencing at the Southwest Corner of the Southeast Quarter of Section 21, Township 19 North, Range 27 East, Lee County, Alabama; run thence East, for a distance of 809.8; run thence North, for a distance of 578.10 feet to an iron pin and the POINT OF BEGINNING of the parcel of land herein described and conveyed; From said point of beginning, run thence North 37°15'39" East, for a distance of 340.20 feet to an iron pin located on the Southwesterly margin of Old Columbus Road; following said road, run thence North 45°45'00" West, for a distance of 141.04 feet to a point, which is the point of a curve being concave Southwesterly with a chord bearing of North 48°38'21" East, a chord of 224.55 feet, and a radius of 2227.59 feet to an iron pin, being the intersection of the Southerly margin of Old Columbus Road and the Easterly margin of a spur track of Norfolk Southern Railway; following the railway, run thence South 02°29'40" East, for a distance of 486.90 feet to an iron pin; thence leaving said railway, run South 53°43'22" East, for a distance of 52.60 feet to the POINT OF BEGINNING. Said parcel containing 1.669 acres ± and being further described on that certain Boundary Survey for Sizemore prepared on 12/21/07 by Mark S. Hauessler, Ala. Reg. Land Surveyor No. 23002.

Also being further described as Parcel Number 43-10-05-21-0-000-069.000, according to records maintained in the Lee County Revenue Commissioner's Office.

2. The Mayor is hereby authorized and directed to cause said building or structure

to be demolished and removed after the expiration of ten (10) days from the date of this resolution. Demolition may be accomplished by the municipality by the use of its own forces, or it may be provided by contract for the demolition. The municipality may sell or otherwise dispose of salvaged materials resulting from the demolition. All employees, contractors and duly authorized agents of the City are authorized to enter upon said property for said purpose.

3. Any person aggrieved by the decision of the City Council may, within ten (10) days hereafter, appeal to the Circuit Court upon filing with the Clerk of the Court notice of appeal and a bond for security of cost in the form and amount approved by the Circuit Clerk.

4. Upon the demolition and removal of said building or structure, the Building Official shall make a report to the City Council of the cost. The City Council shall thereafter adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition and removal of said building or structure and assess the costs against said property. The proceeds of any monies received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition and removal. The fixing of costs by the City Council shall constitute a special assessment against the lot or lots, parcel, or parcels of land upon which the building or structure was located and shall constitute a lien on the property for the amount of the assessment.

5. The City Clerk is hereby directed to mail, by certified mail, a copy of this resolution to the owners and lien holders of the property as the information appears on the records of the office of the Tax Assessor and in the Office of the Judge of Probate of Lee County, Alabama.

ADOPTED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_ 2015.

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PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

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CITY CLERK

Cc: Mark A. Boddie  
3780 Lee Road 391 Lot 23  
Opelika, AL 36804  
CITY OF OPELIKA, ALABAMA

## RESOLUTION NO. (ID # 1106)

Employee Expense Reports

**BE IT RESOLVED**, by the City Council of the City of Opelika, Alabama, as follows:

- ) That the following employees were required by the City of Opelika to travel on City business and/or attend a training session, meeting or conference.

| Employee        | Department      | \$ Amount |
|-----------------|-----------------|-----------|
| -----           | -----           | -----     |
| Gary Fuller     | Mayor's Office  | 7,918.10  |
| Lori Huguley    | ED              | 7,048.60  |
| Lori Huguley    | ED              | 795.60    |
| Tara Young      | IT              | 149.39    |
| Laura Chesser   | P&R             | 332.35    |
| Denise Rogers   | Municipal Court | 264.50    |
| Trudeana Curtis | P&R             | 56.35     |
| Robert Noles    | IT              | 265.03    |
| Tony Aycock     | IT              | 53.66     |
| Mary Kuhn       | P&R             | 342.13    |
| Kelly Smith     | Accounting      | 181.70    |

- ) That attached is an expense report(s) prepared, dated and signed by the City employee or official covering the various expenses incurred on said trip and reviewed/approved by the City's accounting department and City official(s).
- 3) That the Opelika City Council hereby approves the attached expense reports for reimbursement to said City employee or official.
- 4) That the Mayor and/or appropriate City official is hereby directed and authorized to take the necessary steps so a check can be prepared covering the attached expense reports.
- 5) That the City Treasurer is authorized to sign said check so it can be delivered to

the appropriate City employee or official.

**ADOPTED and APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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C. E. "Eddie" Smith, Jr.

President City Council

City of Opelika, Alabama

ATTEST:

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Robert G. Shuman, CMC

City Clerk - City Treasurer

F20995

# EXPENSE REPORT

13.6.a

## NAME

Name Gary Fuller

## DEPARTMENT

Department 5105

## PERIOD ENDING

| DAY                       | CITY AND STATE                       | LODGING | TRANSPORTATION |                      |                                    |                                | BUSINESS MEALS |       |        | ENTERTAINMENT<br>Itemize Below | MISC. EXPENSES<br>Itemize Below | DAILY TOTAL |
|---------------------------|--------------------------------------|---------|----------------|----------------------|------------------------------------|--------------------------------|----------------|-------|--------|--------------------------------|---------------------------------|-------------|
|                           |                                      |         | AIR RAIL, ETC  | RENTAL CAR LIMO ETC. | LOCAL TAXI, TOLLS & PUBLIC TRANSIT | AUTO EXPENSES<br>Itemize Below | BREAKFAST      | LUNCH | DINNER |                                |                                 |             |
| SUN                       |                                      |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
| MON                       |                                      |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
| TUE                       |                                      |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
| WED                       |                                      |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
| THU                       |                                      |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
| FRI 9/11/15               | Atlanta to Paris-Defaulle (Toulouse) |         | 7,918.10       |                      |                                    |                                |                |       |        |                                |                                 | 7,918.10    |
| SAT                       |                                      |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
| WEEKLY CATEGORY TOTALS \$ |                                      | 0.00    | 7,918.10       | 0.00                 | 0.00                               | 0.00                           | 0.00           | 0.00  | 0.00   | 0.00                           | 0.00                            | 7,918.10    |

WEEKLY TOTAL EXPENSES

| DATE | NAME OF PERSON(S) ENTERTAINED;<br>COMPANY, TITLE | TIME & PLACE | NATURE & PUPOSE OF ENTERTAINMENT | AMOUNT | % OR \$ ALLOCATED TO BUSINESS |
|------|--------------------------------------------------|--------------|----------------------------------|--------|-------------------------------|
|      |                                                  |              |                                  |        |                               |
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NUMBER OF DAYS AWAY FROM HOME

10

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

0

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

100%

NATURE OR PURPOSE OF TRAVEL

Speed News Conference Toulouse, France  
Economic Development Trip

METHOD OF REIMBURSEMENT

☐ DEDUCT FROM MY ADVANCE

☒ MAIL TO

### ITEMIZED AUTOMOBILE EXPENSES

| DATE | MILEAGE, GAS, PARKING REPAIRS, ETC. | AMOUNT |
|------|-------------------------------------|--------|
|      |                                     |        |
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### ITEMIZED MISCELLANEOUS EXPENSES

| DATE | ITEMS | AMOUNT |
|------|-------|--------|
|      |       |        |
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|      |       |        |
|      |       |        |

Employee Gary Fuller

Department Administration

SIGNATURE

APPROVED BY

Name

Department

## Expense Report

**Lori Huguley**

## ECONOMIC DEVELOPMENT

Period Ending

5/15/2015

ITEMIZE ALL REIMBURSABLE EXPENSE IN APPROPRIATE BLANKS - ITEMIZE ANY NON-REIMBURSABLE EXPENSES ON REVERSE OF LAST COPY

|           |     |                |         | TRANSPORTATION     |                           |                                       |    | BUSINESS MEALS<br>Itemize Below |           |       | ENTERTAINMENT | MISC.<br>EXPENSES | DAILY TOTAL   |        |
|-----------|-----|----------------|---------|--------------------|---------------------------|---------------------------------------|----|---------------------------------|-----------|-------|---------------|-------------------|---------------|--------|
| Date      | Day | CITY AND STATE | LODGING | AIR, RAIL,<br>ETC. | RENTAL CAR,<br>LIMO, ETC. | LOCAL TAXI, TOLLS &<br>PUBLIC TRANSIT |    | AUTO<br>EXPENSES                | BREAKFAST | LUNCH | DINNER        | Itemize Below     | Itemize Below |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
| 5/11/2015 | Mon | Atlanta, GA    |         | 7048.6             |                           |                                       |    |                                 |           |       |               |                   |               | 7048.6 |
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|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       |    |                                 |           |       |               |                   |               |        |
|           |     |                |         |                    |                           |                                       | </ |                                 |           |       |               |                   |               |        |

WEEKLY CATEGORY TOTALS\$

**WEEKLY TOTAL OF EXPENSES**

[illegible]



Name

Department

## Expense Report

Lori Huguley

## ECONOMIC DEVELOPMENT

Period Ending

ITEMIZE ALL REIMBURSABLE EXPENSE IN APPROPRIATE BLANKS - ITEMIZE ANY NON-REIMBURSABLE EXPENSES ON REVERSE OF LAST COPY

|           |      |                |         | TRANSPORTATION     |                           |                                       |  | BUSINESS MEALS<br>Itemize Below |           |       | ENTERTAINMENT | MISC.<br>EXPENSES | DAILY TOTAL   |       |
|-----------|------|----------------|---------|--------------------|---------------------------|---------------------------------------|--|---------------------------------|-----------|-------|---------------|-------------------|---------------|-------|
| Date      | Day  | CITY AND STATE | LODGING | AIR, RAIL,<br>ETC. | RENTAL CAR,<br>LIMO, ETC. | LOCAL TAXI, TOLLS &<br>PUBLIC TRANSIT |  | AUTO<br>EXPENSES                | BREAKFAST | LUNCH | DINNER        | Itemize Below     | Itemize Below |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
| 4/28/2015 | Tues | Atlanta, GA    |         | 304.2              |                           |                                       |  |                                 |           |       |               |                   |               | 304.2 |
| 4/28/2015 | Tues | Atlanta, GA    |         | 265.2              |                           |                                       |  |                                 |           |       |               |                   |               | 265.2 |
| 4/28/2015 | Tues | Atlanta, GA    |         | 226.2              |                           |                                       |  |                                 |           |       |               |                   |               | 226.2 |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                |         |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |
|           |      |                | </      |                    |                           |                                       |  |                                 |           |       |               |                   |               |       |

WEEKLY CATEGORY TOTALS\$

WEEKLY TOTAL OF EXPENSES

| ITEMIZED ENTERTAINMENT AND BUSINESS MEAL |                                                   |              |                                      |        |                                 | NUMBER OF DAYS AWAY FROM HOME                         |
|------------------------------------------|---------------------------------------------------|--------------|--------------------------------------|--------|---------------------------------|-------------------------------------------------------|
| DATE                                     | NAME AND PERSON(S) ENTERTAINED;<br>COMPANY, TITLE | TIME & PLACE | NATURE & PURPOSE<br>OF ENTERTAINMENT | AMOUNT | %OR \$ ALLOCATED<br>TO BUSINESS |                                                       |
|                                          |                                                   |              |                                      |        | <b>100%</b>                     | NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS<br><b>0</b>   |
|                                          |                                                   |              |                                      |        | <b>100%</b>                     | % OF TOTAL DAYS AWAY FRO PERSONAL AFFAIRS<br><b>0</b> |
|                                          |                                                   |              |                                      |        | <b>100%</b>                     | NATURE OR PURPOSE OF TRAVEL                           |
|                                          |                                                   |              |                                      |        | <b>100%</b>                     | Conference                                            |
|                                          |                                                   |              |                                      |        | <b>100%</b>                     | METHOD OF REIMBURSEMENT<br><input type="checkbox"/>   |
|                                          |                                                   |              |                                      |        | <b>100%</b>                     | DEDUCT FROM M OR                                      |

| ITEMIZED AUTOMOBILE EXPENSES |                                      |        | ITEMIZED MISCELLANEOUS EXPENSES |       |        |
|------------------------------|--------------------------------------|--------|---------------------------------|-------|--------|
| DATE                         | MILEAGE, GAS, PARKING, REPAIRS, TEC. | AMOUNT | DATE                            | ITEMS | AMOUNT |
|                              |                                      |        |                                 |       |        |

SIGNATURE

APPROVED BY



## NAME

Tara Young

## DEPARTMENT

IT

## PERIOD ENDING

5/5/2015

| DAY                       | CITY AND STATE | LODGING | TRANSPORTATION   |                         |                                            |                                | BUSINESS MEALS<br>Itemize Below |       |        | ENTERTAIN-<br>MENT<br>Itemize Below | MISC.<br>EXPENSES<br>Itemize Below | DAILY TOTAL |
|---------------------------|----------------|---------|------------------|-------------------------|--------------------------------------------|--------------------------------|---------------------------------|-------|--------|-------------------------------------|------------------------------------|-------------|
|                           |                |         | AIR<br>RAIL, ETC | RENTAL CAR<br>LIMO ETC. | LOCAL TAXI,<br>TOLLS & PUB-<br>LIC TRANSIT | AUTO EXPENSES<br>Itemize Below | BREAKFAST                       | LUNCH | DINNER |                                     |                                    |             |
| SUN                       |                |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| MON                       |                |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| TUE                       | Atlanta, GA    |         |                  |                         |                                            | 149.39                         |                                 |       |        |                                     |                                    | 149.39      |
| WED                       |                |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| THU                       |                |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| FRI                       |                |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| SAT                       |                |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| WEEKLY CATEGORY TOTALS \$ |                | 0.00    | 0.00             | 0.00                    | 0.00                                       | 149.39                         | 0.00                            | 0.00  | 0.00   | 0.00                                | 0.00                               | 149.39      |

WEEKLY TOTAL EXPENSES ↑

| DATE | NAME OF PERSON(S) ENTERTAINED;<br>COMPANY, TITLE | TIME & PLACE | NATURE & PUPOSE OF<br>ENTERTAINMENT | AMOUNT | % OR \$<br>ALLOCATED TO<br>BUSINESS |
|------|--------------------------------------------------|--------------|-------------------------------------|--------|-------------------------------------|
|      |                                                  |              |                                     |        |                                     |
|      |                                                  |              |                                     |        |                                     |
|      |                                                  |              | Agree To P.O. _____                 |        |                                     |
|      |                                                  |              | Ex's Verified _____                 |        |                                     |
|      |                                                  |              | Presing Verified _____              |        |                                     |
|      |                                                  |              | Inv. Price / No Price _____         |        |                                     |
|      |                                                  |              | Ch To Pay _____                     |        |                                     |
|      |                                                  |              | A/C # Verified _____                |        |                                     |
|      |                                                  |              |                                     |        |                                     |

NUMBER OF DAYS AWAY FROM HOME

1

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

NATURE OR PURPOSE OF TRAVEL

Munis Training

METHOD OF REIMBURSEMENT

DEDUCT FROM  
MY ADVANCE

MAIL TO

Tara Young IT

SIGNATURE

APPROVED BY

## ITEMIZED AUTOMOBILE EXPENSES

| DATE | MILEAGE, GAS, PARKING REPAIRS, ETC. | AMOUNT |
|------|-------------------------------------|--------|
| 5/5  | 204.16 miles @ .575                 | 117.39 |
| 5/5  | Parking                             | 32.00  |
|      |                                     |        |
|      |                                     |        |

## ITEMIZED MISCELLANEOUS EXPENSES

| DATE | ITEMS | AMOUNT |
|------|-------|--------|
|      |       |        |
|      |       |        |
|      |       |        |
|      |       |        |

FPO 2/26/19

## EXPENSE REPORT

13.6.a

## NAME

Laura Leigh Chesser

## DEPARTMENT

Parks and Recreation

## PERIOD ENDING

| DAY                       | CITY AND STATE | LODGING | TRANSPORTATION    |                         |                                            |                                | BUSINESS MEALS<br>Itemize Below |       |        | ENTERTAIN-<br>MENT<br>Itemize Below | MISC.<br>EXPENSES<br>Itemize Below | DAILY TOTAL |
|---------------------------|----------------|---------|-------------------|-------------------------|--------------------------------------------|--------------------------------|---------------------------------|-------|--------|-------------------------------------|------------------------------------|-------------|
|                           |                |         | AIR<br>RAIL, ETC. | RENTAL CAR<br>LIMO ETC. | LOCAL TAXI,<br>TOLLS & PUB-<br>LIC TRANSIT | AUTO EXPENSES<br>Itemize Below | BREAKFAST                       | LUNCH | DINNER |                                     |                                    |             |
| SUN                       |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| MON                       |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| TUE                       |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| WED                       | 4/29/2015      |         |                   |                         |                                            | 332.35                         |                                 |       |        |                                     |                                    | 332.35      |
| THU                       |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| FRI                       |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| SAT                       |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| WEEKLY CATEGORY TOTALS \$ |                | 0.00    | 0.00              | 0.00                    | 0.00                                       | 332.35                         | 0.00                            | 0.00  | 0.00   | 0.00                                | 0.00                               | 332.35      |

WEEKLY TOTAL EXPENSES

| DATE | NAME OF PERSON(S) ENTERTAINED;<br>COMPANY, TITLE | TIME & PLACE | NATURE & PUPOSE OF<br>ENTERTAINMENT | AMOUNT | % OR \$<br>ALLOCATED TO<br>BUSINESS |
|------|--------------------------------------------------|--------------|-------------------------------------|--------|-------------------------------------|
|      |                                                  |              |                                     |        |                                     |
|      |                                                  |              |                                     |        |                                     |
|      |                                                  |              |                                     |        |                                     |
|      |                                                  |              |                                     |        |                                     |
|      |                                                  |              |                                     |        |                                     |
|      |                                                  |              |                                     |        |                                     |
|      |                                                  |              |                                     |        |                                     |

NUMBER OF DAYS AWAY FROM HOME

2

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

0

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

0%

NATURE OR PURPOSE OF TRAVEL

ARPA Conference Education, Marketing and  
Creative Camp

METHOD OF REIMBURSEMENT

DEDUCT FROM  
MY ADVANCE

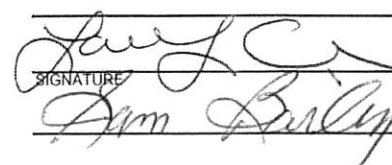
MAIL TO

Laura Leigh Chesser

| ITEMIZED AUTOMOBILE EXPENSES |                                     |        |
|------------------------------|-------------------------------------|--------|
| DATE                         | MILEAGE, GAS, PARKING REPAIRS, ETC. | AMOUNT |
| 4/1                          | mileage-122                         | 70.15  |
| 4/22                         | mileage-122                         | 70.15  |
| 4/28-4/29                    | mileage-334                         | 192.05 |
|                              |                                     |        |
|                              |                                     |        |

| ITEMIZED MISCELLANEOUS EXPENSES |       |        |
|---------------------------------|-------|--------|
| DATE                            | ITEMS | AMOUNT |
|                                 |       |        |
|                                 |       |        |
|                                 |       |        |
|                                 |       |        |
|                                 |       |        |

SIGNATURE





NAME Denise P. RogersDEPARTMENT Municipal Court  
Department

## EXPENSE REPORT

PERIOD ENDING  
05-15-15

| DAY                       | CITY AND STATE | LODGING | TRANSPORTATION  |                        |                                          |                          | BUSINESS MEALS |       |        | ENTERTAINMENT<br>Itemize Below | MISC<br>EXPENSES<br>Itemize Below | DAILY TOTAL |
|---------------------------|----------------|---------|-----------------|------------------------|------------------------------------------|--------------------------|----------------|-------|--------|--------------------------------|-----------------------------------|-------------|
|                           |                |         | AIR<br>RAIL ETC | RENTAL CAR<br>LIMO ETC | LOCAL TAXI<br>TOLLS & PUB<br>LIC TRANSIT | Mileage<br>Itemize Below | BREAKFAST      | LUNCH | DINNER |                                |                                   |             |
| SUN                       |                |         |                 |                        |                                          |                          |                |       |        |                                |                                   | 0.00        |
| MON                       |                |         |                 |                        |                                          |                          |                |       |        |                                |                                   | 0.00        |
| TUE                       |                |         |                 |                        |                                          |                          |                |       |        |                                |                                   | 0.00        |
| WED                       | Mobile AL      |         |                 |                        |                                          | ✓                        |                |       |        |                                |                                   | ✓           |
| THU                       | Mobile AL      |         |                 |                        |                                          | ✓                        |                |       |        |                                |                                   | ✓           |
| FRI                       | Mobile, AL     |         |                 |                        |                                          | ✓                        |                |       |        |                                |                                   | ✓           |
| SAT                       |                |         |                 |                        |                                          |                          |                |       |        |                                |                                   |             |
| WEEKLY CATEGORY TOTALS \$ |                | 0.00    | 0.00            | 0.00                   | 0.00                                     | 264.50                   | 0.00           | 0.00  | 0.00   | 0.00                           | 0.00                              | 264.50      |

WEEKLY TOTAL EXPENSES

| DATE | NAME OF PERSON(S) ENTERTAINED<br>COMPANY TITLE | TIME & PLACE | NATURE & PURPOSE OF<br>ENTERTAINMENT                                                                                                          | AMOUNT | % OR \$<br>ALLOCATED TO<br>BUSINESS |
|------|------------------------------------------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------|--------|-------------------------------------|
|      |                                                |              | Agree To P.O. _____<br>Exit Verified _____<br>Feeling Verified _____<br>Inv. Price Dis Price _____<br>Ok To Pay _____<br>A/C # Verified _____ |        |                                     |
|      |                                                |              |                                                                                                                                               |        |                                     |
|      |                                                |              |                                                                                                                                               |        |                                     |
|      |                                                |              |                                                                                                                                               |        |                                     |
|      |                                                |              |                                                                                                                                               |        |                                     |
|      |                                                |              |                                                                                                                                               |        |                                     |
|      |                                                |              |                                                                                                                                               |        |                                     |

NUMBER OF DAYS AWAY FROM HOME

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

NATURE OR PURPOSE OF TRAVEL

Training And Maintenance Hours Magistrate

METHOD OF REIMBURSEMENT

☐ DEDUCT FROM  
MY ADVANCE☒ Snail  
MAIL TO Denise  
at Municipal Court

## ITEMIZED AUTOMOBILE EXPENSES

| DATE   | MILEAGE, GAS, PARKING REPAIRS ETC | AMOUNT |
|--------|-----------------------------------|--------|
| 5-6-15 | Mileage From 501 S. 10th St       |        |
| 5-8-15 | to 3101 Airport Blvd              |        |
|        | Mobile, AL 36606                  |        |
|        | And back home                     |        |
|        | 230 X 2 = 460 X .575 =            | 264.50 |

## ITEMIZED MISCELLANEOUS EXPENSES

| DATE | ITEMS | AMOUNT |
|------|-------|--------|
|      |       |        |
|      |       |        |
|      |       |        |
|      |       |        |
|      |       |        |

Acct # 00151904423001

SIGNATURE

APPROVED BY

FPD 27719

EXPENSE REPORT 13.6.a

## NAME

## DEPARTMENT

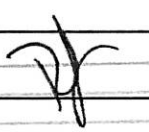
## PERIOD ENDING

Trudeana Curtis

Department Parks &amp; Recreation

| DAY                       | CITY AND STATE | LODGING | TRANSPORTATION    |                         |                                            |                                | BUSINESS MEALS<br>Itemize Below |       |        | ENTERTAIN-<br>MENT<br>Itemize Below | MISC.<br>EXPENSES<br>Itemize Below | DAILY TOTAL |
|---------------------------|----------------|---------|-------------------|-------------------------|--------------------------------------------|--------------------------------|---------------------------------|-------|--------|-------------------------------------|------------------------------------|-------------|
|                           |                |         | AIR<br>RAIL, ETC. | RENTAL CAR<br>LIMO ETC. | LOCAL TAXI,<br>TOLLS & PUB-<br>LIC TRANSIT | AUTO EXPENSES<br>Itemize Below | BREAKFAST                       | LUNCH | DINNER |                                     |                                    |             |
| 6-May                     | Columbus, GA   |         |                   |                         |                                            | 56.35                          |                                 |       |        |                                     |                                    | 56.35       |
|                           |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
|                           |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
|                           |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
|                           |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
|                           |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
|                           |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
|                           |                |         |                   |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| WEEKLY CATEGORY TOTALS \$ |                | 0.00    | 0.00              | 0.00                    | 0.00                                       | 56.35                          | 0.00                            | 0.00  | 0.00   | 0.00                                | 0.00                               | 56.35       |

WEEKLY TOTAL EXPENSES

| DATE | NAME OF PERSON(S) ENTERTAINED;<br>COMPANY, TITLE | TIME & PLACE                                         | NATURE & PURPOSE OF<br>ENTERTAINMENT                                                | AMOUNT | % OR \$<br>ALLOCATED TO<br>BUSINESS |
|------|--------------------------------------------------|------------------------------------------------------|-------------------------------------------------------------------------------------|--------|-------------------------------------|
|      |                                                  |                                                      |                                                                                     |        | 100%                                |
|      |                                                  | Agree To P.O. _____<br>Exls Verified _____           |  |        | 100%                                |
|      |                                                  | Fooding Verified _____<br>Inv. Price Dis Price _____ |                                                                                     |        | 100%                                |
|      |                                                  | Ok To Pay _____<br>A/C # Verified _____              |                                                                                     |        | 100%                                |
|      |                                                  |                                                      |                                                                                     |        | 100%                                |
|      |                                                  |                                                      |                                                                                     |        | 100%                                |

NUMBER OF DAYS AWAY FROM HOME

1

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

0

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

0%

NATURE OR PURPOSE OF TRAVEL

Workshop Conference

METHOD OF REIMBURSEMENT

DEDUCT FROM  
MY ADVANCE

MAIL: TO

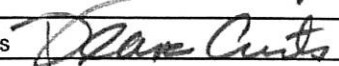
## ITEMIZED AUTOMOBILE EXPENSES

| DATE |                    | AMOUNT |
|------|--------------------|--------|
| 5/6  | Mileage - 98 miles | 56.35  |
|      |                    |        |
|      |                    |        |
|      |                    |        |
|      |                    |        |

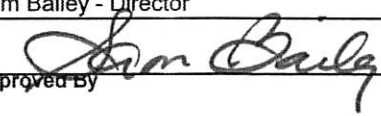
## ITEMIZED MISCELLANEOUS EXPENSES

| DATE | ITEMS | AMOUNT |
|------|-------|--------|
|      |       |        |
|      |       |        |
|      |       |        |
|      |       |        |
|      |       |        |

Regions

Trudeana Curtis 

Sam Bailey - Director

Approved By 



NAME

Robert Noles

DEPARTMENT

Information Technologies

PERIOD ENDING

| DAY                       | CITY AND STATE         | LODGING | TRANSPORTATION   |                         |                                            |                                | BUSINESS MEALS<br>Itemize Below |       |        | ENTERTAIN-<br>MENT<br>Itemize Below | MISC.<br>EXPENSES<br>Itemize Below | DAILY TOTAL |
|---------------------------|------------------------|---------|------------------|-------------------------|--------------------------------------------|--------------------------------|---------------------------------|-------|--------|-------------------------------------|------------------------------------|-------------|
|                           |                        |         | AIR<br>RAIL, ETC | RENTAL CAR<br>LIMO ETC. | LOCAL TAXI,<br>TOLLS & PUB-<br>LIC TRANSIT | AUTO EXPENSES<br>Itemize Below | BREAKFAST                       | LUNCH | DINNER |                                     |                                    |             |
| SUN<br>5/3                | Atlanta GA             |         |                  |                         |                                            | 90.66                          |                                 |       | 7.55   |                                     |                                    | 98.21       |
| MON<br>5/4                | Atlanta GA             |         |                  |                         |                                            | 32.00                          |                                 |       | 34.16  |                                     |                                    | 66.16       |
| TUE<br>5/5                | Atlanta GA             |         |                  |                         |                                            | 32.00                          |                                 |       |        |                                     |                                    | 32.00       |
| WED<br>5/6                | Atlanta GA/LaGrange GA |         |                  |                         |                                            | 58.66                          |                                 | 10.00 |        |                                     |                                    | 68.66       |
| THU<br>5/7                |                        |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| FRI<br>5/8                |                        |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| SAT<br>5/9                |                        |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| WEEKLY CATEGORY TOTALS \$ |                        | 0.00    | 0.00             | 0.00                    | 0.00                                       | 213.32                         | 0.00                            | 10.00 | 41.71  | 0.00                                | 0.00                               | 265.03      |

WEEKLY TOTAL EXPENSES

| DATE | NAME OF PERSON(S) ENTERTAINED;<br>COMPANY, TITLE | TIME & PLACE       | NATURE & PUPOSE OF<br>ENTERTAINMENT | AMOUNT | % OR \$<br>ALLOCATED TO<br>BUSINESS |
|------|--------------------------------------------------|--------------------|-------------------------------------|--------|-------------------------------------|
| 5/3  | Robert Noles                                     | 7:04PM Dairy Queen | Travel                              | 7.55   | 100%                                |
| 5/4  | Robert Noles                                     | 8:54PM Pitty Pat's | Travel                              | 34.16  | 100%                                |
| 5/6  | Robert Noles                                     | 1:28PM Applebees   | Travel                              | 10.00  | 100%                                |
|      |                                                  |                    | Agree To P.O. _____                 |        |                                     |
|      |                                                  |                    | Exp. Verified _____                 |        |                                     |
|      |                                                  |                    | Parking Vc. _____                   |        |                                     |
|      |                                                  |                    | Int. Price Bld Price _____          |        |                                     |
|      |                                                  |                    | Or To Pay _____                     |        |                                     |
|      |                                                  |                    | A/C # Verified _____                |        |                                     |

NUMBER OF DAYS AWAY FROM HOME

4

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

0

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

NATURE OR PURPOSE OF TRAVEL

2015 Tyler Tecknology Conference

METHOD OF REIMBURSEMENT

☐ DEDUCT FROM  
MY ADVANCE

☒ MAIL TO

I T Dept

| ITEMIZED AUTOMOBILE EXPENSES |                                     |        |
|------------------------------|-------------------------------------|--------|
| DATE                         | MILEAGE, GAS, PARKING REPAIRS, ETC. | AMOUNT |
| 5/3                          | 102.01 X .575                       | 58.66  |
| 5/6                          | 102.01X.575                         | 58.66  |
| 5/3                          | Parking                             | 32.00  |
| 5/4                          | Parking                             | 32.00  |
| 5/5                          | Parking                             | 32.00  |

| ITEMIZED MISCELLANEOUS EXPENSES |       |        |
|---------------------------------|-------|--------|
| DATE                            | ITEMS | AMOUNT |
|                                 |       |        |
|                                 |       |        |
|                                 |       |        |
|                                 |       |        |
|                                 |       |        |

SIGNATURE

APPROVED BY

## NAME

Tony Aycock

## DEPARTMENT

Information Technology

## PERIOD ENDING

05/03/2015 thru 05/06/2015

| DAY                       | CITY AND STATE | LODGING | TRANSPORTATION   |                         |                                            |                                | BUSINESS MEALS<br>Itemize Below |       |        | ENTERTAIN-<br>MENT<br>Itemize Below | MISC.<br>EXPENSES<br>Itemize Below | DAILY TOTAL |
|---------------------------|----------------|---------|------------------|-------------------------|--------------------------------------------|--------------------------------|---------------------------------|-------|--------|-------------------------------------|------------------------------------|-------------|
|                           |                |         | AIR<br>RAIL, ETC | RENTAL CAR<br>LIMO ETC. | LOCAL TAXI,<br>TOLLS & PUB-<br>LIC TRANSIT | AUTO EXPENSES<br>Itemize Below | BREAKFAST                       | LUNCH | DINNER |                                     |                                    |             |
| SUN                       | Atlanta, GA    |         |                  |                         |                                            |                                |                                 |       | 8.63   |                                     |                                    | 8.63        |
| MON                       | Atlanta, GA    |         |                  |                         |                                            |                                |                                 |       | 29.16  |                                     | 4.00                               | 33.16       |
| TUE                       | Atlanta, GA    |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| WED                       | LaGrange, GA   |         |                  |                         |                                            |                                |                                 | 10.37 |        |                                     | 1.50                               | 11.87       |
| THU                       |                |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| FRI                       |                |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| SAT                       |                |         |                  |                         |                                            |                                |                                 |       |        |                                     |                                    | 0.00        |
| WEEKLY CATEGORY TOTALS \$ |                | 0.00    | 0.00             | 0.00                    | 0.00                                       | 0.00                           | 0.00                            | 10.37 | 37.79  | 0.00                                | 5.50                               | 53.66       |

WEEKLY TOTAL EXPENSES

| DATE     | NAME OF PERSON(S) ENTERTAINED;<br>COMPANY, TITLE | TIME & PLACE         | NATURE & PUPOSE OF<br>ENTERTAINMENT | AMOUNT | % OR \$<br>ALLOCATED TO<br>BUSINESS |
|----------|--------------------------------------------------|----------------------|-------------------------------------|--------|-------------------------------------|
| 5/3/2015 | Tony Aycock                                      | 7:04 pm Atlanta, GA  | Dinner                              | 8.63   | 100%                                |
| 5/4/2015 | Tony Aycock                                      | 8:53 pm Atlanta, GA  | Dinner                              | 29.16  | 100%                                |
| 5/5/2015 | Tony Aycock                                      |                      |                                     |        |                                     |
| 5/6/2015 | Tony Aycock                                      | 1:21 pm LaGrange, GA | Lunch                               | 10.37  | 100%                                |
|          |                                                  |                      | Agree To P.O.                       |        |                                     |
|          |                                                  |                      | Fee Verified                        |        |                                     |
|          |                                                  |                      | Inv. Price Bio Price                |        |                                     |

## ITEMIZED AUTOMOBILE EXPENSES

| DATE | MILEAGE, GAS, PARKING REPAIRS, ETC. | AMOUNT |
|------|-------------------------------------|--------|
|      |                                     |        |
|      |                                     |        |
|      |                                     |        |
|      |                                     |        |
|      |                                     |        |

## ITEMIZED MISCELLANEOUS EXPENSES

| DATE | ITEMS | AMOUNT |
|------|-------|--------|
| 5/4  | Tip   | 4.00   |
| 5/6  | Tip   | 1.50   |
|      |       |        |
|      |       |        |
|      |       |        |

NUMBER OF DAYS AWAY FROM HOME

4

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

0

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

0%

NATURE OR PURPOSE OF TRAVEL

Tyler Connect Conference

METHOD OF REIMBURSEMENT

☐ DEDUCT FROM  
MY ADVANCE

☒ MAIL TO

Tony Aycock

Information Technology

SIGNATURE

APPROVED BY

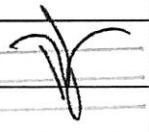


FPO 27680

NAME Mary Kuhn DEPARTMENT Department Opelika Parks & Recreation PERIOD ENDING

| DAY                       | CITY AND STATE   | LODGING | TRANSPORTATION |                      |                                    |                                | BUSINESS MEALS |       |        | ENTERTAINMENT<br>Itemize Below | MISC. EXPENSES<br>Itemize Below | DAILY TOTAL |
|---------------------------|------------------|---------|----------------|----------------------|------------------------------------|--------------------------------|----------------|-------|--------|--------------------------------|---------------------------------|-------------|
|                           |                  |         | AIR RAIL, ETC  | RENTAL CAR LIMO ETC. | LOCAL TAXI, TOLLS & PUBLIC TRANSIT | AUTO EXPENSES<br>Itemize Below | BREAKFAST      | LUNCH | DINNER |                                |                                 |             |
| 4/26-4/29                 | Orange Beach, AL |         |                |                      |                                    | 342.13                         |                |       |        |                                |                                 | 342.13      |
|                           |                  |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
|                           |                  |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
|                           |                  |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
|                           |                  |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
|                           |                  |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
|                           |                  |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
|                           |                  |         |                |                      |                                    |                                |                |       |        |                                |                                 | 0.00        |
| WEEKLY CATEGORY TOTALS \$ |                  | 0.00    | 0.00           | 0.00                 | 0.00                               | 342.13                         | 0.00           | 0.00  | 0.00   | 0.00                           | 0.00                            | 342.13      |

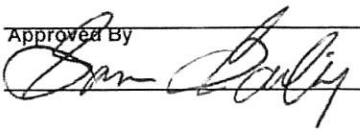
WEEKLY TOTAL EXPENSES

| DATE | NAME OF PERSON(S) ENTERTAINED;<br>COMPANY, TITLE | TIME & PLACE                                         | NATURE & PUPOSE OF ENTERTAINMENT                                                    | AMOUNT | % OR \$ ALLOCATED TO BUSINESS |
|------|--------------------------------------------------|------------------------------------------------------|-------------------------------------------------------------------------------------|--------|-------------------------------|
|      |                                                  |                                                      |                                                                                     |        | 100%                          |
|      |                                                  | Agree To P.O. _____<br>Extra Verified _____          |  |        | 100%                          |
|      |                                                  | Fasting Verified _____<br>Inv. Price Cio Price _____ |                                                                                     |        | 100%                          |
|      |                                                  | OK To Pay _____<br>A/C # Verified _____              |                                                                                     |        | 100%                          |
|      |                                                  |                                                      |                                                                                     |        | 100%                          |
|      |                                                  |                                                      |                                                                                     |        | 100%                          |

NUMBER OF DAYS AWAY FROM HOME  
NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS  
0  
% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS  
0%  
NATURE OR PURPOSE OF TRAVEL  
**Social Work Conference**  
METHOD OF REIMBURSEMENT  
☐ DEDUCT FROM MY ADVANCE ☒ MAIL TO

| ITEMIZED AUTOMOBILE EXPENSES |                                     |        |
|------------------------------|-------------------------------------|--------|
| DATE                         | MILEAGE, GAS, PARKING REPAIRS, ETC. | AMOUNT |
| 4/26-4/29                    | 595 - x mileage .575                | 342.13 |
|                              |                                     |        |
|                              |                                     |        |
|                              |                                     |        |

| ITEMIZED MISCELLANEOUS EXPENSES |       |        |
|---------------------------------|-------|--------|
| DATE                            | ITEMS | AMOUNT |
|                                 |       |        |
|                                 |       |        |
|                                 |       |        |
|                                 |       |        |

Signature Mary Kuhn  
Approved By 

Attachment: CM 5-19-15, expense rprts, 5-14-15 (1106 : Employee Expense Reports)



## EXPENSE REPORT

NAME Smith, Kelly DEPARTMENT Accounting PERIOD ENDING 4/22-4/23 2015

ITEMIZE ALL REIMBURSABLE EXPENSES IN APPROPRIATE BLANKS - ITEMIZE ANY NON-REIMBURSABLE EXPENSES ON REVERSE OF LAST COPY.

| DATE                      | DAY | CITY AND STATE           | LODGING | TRANSPORTATION    |                           |                                              |                                   | BUSINESS MEALS<br>Itemize Below |       |        | ENTERTAINMENT<br>Itemize Below | MISC EXPENSES<br>Itemize Below | DAILY TOTAL |
|---------------------------|-----|--------------------------|---------|-------------------|---------------------------|----------------------------------------------|-----------------------------------|---------------------------------|-------|--------|--------------------------------|--------------------------------|-------------|
|                           |     |                          |         | AIR, RAIL,<br>ETC | RENTAL CAR,<br>LIMO, ETC. | LOCAL TAXI,<br>TOLLS, &<br>PUBLIC<br>TRANSIT | AUTO<br>EXPENSES<br>Itemize Below | BREAKFAST                       | LUNCH | DINNER |                                |                                |             |
|                           | SUN |                          |         |                   |                           |                                              |                                   |                                 |       |        |                                |                                | \$ -        |
|                           | MON |                          |         |                   |                           |                                              |                                   |                                 |       |        |                                |                                | \$ -        |
|                           | TUE |                          |         |                   |                           |                                              |                                   |                                 |       |        |                                |                                | \$ -        |
|                           | WED | Opelika to<br>Tuscaloosa |         |                   |                           |                                              | \$ 90.85                          |                                 |       |        |                                |                                | \$ 90.85    |
|                           | THU | Tuscaloosa to<br>Opelika |         |                   |                           |                                              | \$ 90.85                          |                                 |       |        |                                |                                | \$ 90.85    |
|                           | FRI |                          |         |                   |                           |                                              |                                   |                                 |       |        |                                |                                | \$ -        |
|                           | SAT |                          |         |                   |                           |                                              |                                   |                                 |       |        |                                |                                | \$ -        |
| WEEKLY CATEGORY TOTALS \$ |     |                          | \$ -    | \$ -              | \$ -                      | \$ -                                         | \$ 181.70                         | \$ -                            | \$ -  | \$ -   | \$ -                           | \$ -                           | \$ 181.70   |

WEEKLY TOTAL OF EXPENSES ↑

| ITEMIZED ENTERTAINMENT AND BUSINESS MEALS |                                                  |              |                                      |        |                          |
|-------------------------------------------|--------------------------------------------------|--------------|--------------------------------------|--------|--------------------------|
| DATE                                      | NAME OF PERSON(S) ENTERTAINED;<br>COMPANY, TITLE | TIME & PLACE | NATURE & PURPOSE<br>OF ENTERTAINMENT | AMOUNT | ALLOCATED<br>TO BUSINESS |
|                                           |                                                  |              | Agree To P.O.                        |        |                          |
|                                           |                                                  |              | Elis Verified                        |        |                          |
|                                           |                                                  |              | Posting Verified                     |        |                          |
|                                           |                                                  |              | Int. Price Bio Price                 |        |                          |
|                                           |                                                  |              | Out To Pay                           |        |                          |
|                                           |                                                  |              | Agree To P.O.                        |        |                          |

NUMBER OR DAYS AWAY FROM HOME

1

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

NATURE OR PURPOSE OF TRAVEL

CGAT Training on Budgeting

METHOD OF REIMBURSEMENT

MAIL TO:

Kelly Smith

Accounting Dept

SIGNATURE

APPROVED BY

| ITEMIZED AUTOMOBILE EXPENSES |                                          |          |
|------------------------------|------------------------------------------|----------|
| DATE                         | MILEAGE, GAS, PARKING, REPAIRS, ETC      | AMOUNT   |
| 22-Apr                       | Opelika to Tuscaloosa (158 miles x .575) | \$ 90.85 |
| 23-Apr                       | Tuscaloosa to Opelika (158 miles x .575) | \$ 90.85 |

| ITEMIZED MISCELLANEOUS EXPENSES |       |        |
|---------------------------------|-------|--------|
| DATE                            | ITEMS | AMOUNT |

## RESOLUTION NO. (ID # 1095)

Designate City Personal Property Surplus & Authorize Disposal

**WHEREAS**, the City of Opelika, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

**WHEREAS**, Section 11-43-56 of the Alabama Code of 1975 authorizes the Municipal Governing body to dispose of unneeded personal property;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama as follows:

**SECTION 1.** That the following personal property owned by the City of Opelika, Alabama, is no longer needed for public or municipal purposes:

| No. | Qty. | Unit | Item Description                           | Fixed Asset # |
|-----|------|------|--------------------------------------------|---------------|
| 1.  | 1    | Ea   | 1994 Mazda Protege JM1BG2269R0726132       | N/A           |
| 2.  | 1    | Ea   | 2010 Ford Crown Victoria 2FABP7BV2AX116122 | 87002668      |
| 3.  | 1    | Ea   | 2011 Ford Crown Victoria 2FABP7BV1BX122396 | 87002734      |

**SECTION 2.** That the Mayor is hereby authorized and directed to dispose of the personal property owned by the City of Opelika, Alabama, described in Section 1 above. If any such property has marketable value, the Mayor shall receive bids or quotations for such property and shall sell the same to the highest bidder. If the property has no marketable value, the Mayor may dispose of such property in the most economical and feasible manner available to him.

**APPROVED AND ADOPTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
C. E. "Eddie" Smith, Jr.

President of the City Council  
City of Opelika, Alabama

ATTEST:

---

Robert G. Shuman  
City Clerk - Treasurer

## RESOLUTION NO. (ID # 1096)

Emergency Repair SW Truck #844

**WHEREAS**, the Solid Waste Department Truck #844 is in need of emergency repairs and requires engine replacement; and

**WHEREAS**, the three vendors that were contacted were Kenworth of Montgomery, Inc., Four Star Freightliner, Inc., and Thompson Tractor Co. Kenworth of Montgomery, Inc. gave the lowest quote to replace the engine; and

**WHEREAS**, the cost of the repairs are estimated to be \$19,049.43; and

**WHEREAS**, the cost of the repairs are to come from the Solid Waste Repairs & Maintenance account;

**NOW, THEREFORE, BE IT RESOLVED** by the City of Opelika, Alabama as follows:

1. That the Purchasing-Revenue Manager be authorized to issue a purchase order to Kenworth of Montgomery, Inc. in an estimated amount of \$19,049.43
2. That the Mayor be authorized to issue a change order for unforeseen repairs not to exceed 10% of the estimated costs
3. That the Controller be authorized to adjust the budget as necessary for the repairs

**APPROVED AND ADOPTED** this the \_\_\_\_ day of \_\_\_\_\_ 2015.

---

C. E. "Eddie" Smith, Jr.

President of the City Council  
City of Opelika, Alabama

ATTEST:

---

Robert G. Shuman  
City Clerk - Treasurer

# Kenworth of Montgomery, Inc.

3401 Industrial Drive  
Montgomery, AL 36108  
Phone: (334) 263-3101  
Fax: (334) 263-3108

\*\*\* Customer Review \*\*\*

13.8.a

Date / Time: 4/22/2015 8:18:03AM  
Repair Order: 10401  
Customer: 22083  
Branch: 3  
Invoice Total: \$ 19,049.43

\*\*\*Billing Service\*\*\*

Page 1 of 1

**Bill To:** The City of Opelika  
P O BOX 390  
OPELIKA, AL 36803  
Shop: 334-705-5413

**Ship To:** The City of Opelika  
700 FOX TRAIL  
OPELIKA, AL 36801

|                     |                       |                             |                  |
|---------------------|-----------------------|-----------------------------|------------------|
| Customer P/O:       | timp                  | 305                         | Completion Date: |
| Unit Number: V57373 | Model Year: 2007      | Make/Model: Freightliner M2 |                  |
| Type: Service Truck | VIN: 1FVACXD47HV57373 |                             |                  |

**Task: 1** 046-000000 Caterpillar engine  
**Complaint:** ESTIMATE TO REPLACE ENGINE WITH LONG BLOCK.

**Department:** Service HD

| Supp. Part    | Description / Ref Number | U/M      | Quantity | Price    | Extended Price |
|---------------|--------------------------|----------|----------|----------|----------------|
| 149           | Shop Supplies - HD       | Misc     | 1.00     | 250.00   | 250.00         |
| 112           | HOSES ETC.               | Misc     | 1.00     | 250.00   | 250.00         |
| CT 10R4144    | BLOCK GP CYL             | Part EA  | 1.00     | 9,161.26 | 9,161.26       |
| CT 10R4144-C1 | BLOCK GP CYL             | Inherent | 1.00     | 2,681.91 | 2,681.91       |
| CT 10R4144-C1 | BLOCK GP CYL             | Part EA  | (1.00)   | 2,681.91 | (2,681.91)     |
| CT 2690064    | KIT-GASKET-T             | Part EA  | 1.00     | 25.84    | 25.84          |
| CT 3085804    | KIT-GASKET               | Part EA  | 1.00     | 50.15    | 50.15          |
| CT 3134408    | KIT-GASKET               | Part EA  | 1.00     | 25.32    | 25.32          |
| CT 2974841    | KIT-GASKET-S             | Part EA  | 1.00     | 30.94    | 30.94          |
| CT 10R4763    | REMAN INJECTOR GRP       | Part EA  | 6.00     | 584.32   | 3,505.92       |
| CT 10R4763-C1 | INJECTOR GRP CORE        | Inherent | 6.00     | 164.93   | 989.58         |
| CT 10R4763-C1 | INJECTOR GRP CORE        | Part EA  | (6.00)   | 164.93   | (989.58)       |

## Totals

Total Parts: \$12,799.43  
Total Core Chg: \$3,671.49  
Total Core Ret: (\$3,671.49)  
Total EHC: \$0.00  
Total Labor: \$5,750.00  
Total Miscellaneous: \$500.00  
Invoice Subtotal: \$19,049.43  
Total Tax: \$0.00  
Invoiced Total: \$19,049.43

Payment Method

Billing Service

Attachment: 5-19-15 - EMERGENCY REPAIR SW TRUCK #844 - COUNCIL PKT (1096 : Emergency Repair, SW Truck No. 844)



# Kenworth of Montgomery, Inc.

401 Industrial Drive  
Montgomery, AL 36108  
Phone: (334) 263-3101  
Fax: (334) 263-3108

\*\*\* Customer Review \*\*\*

13.8.a

Date / Time: 4/22/2015 8:19:10AM  
Repair Order: 10400  
Customer: 22083  
Branch: 3  
Invoice Total: \$ 18,379.98

\*\*\*Billing Service\*\*\*

Page 1 of 1

**Bill To:** The City of Opelika  
P O BOX 390  
OPELIKA, AL 36803  
Shop: 334-705-5413

**Ship To:** The City of Opelika  
700 FOX TRAIL  
OPELIKA, AL 36801

|                     |                        |                             |
|---------------------|------------------------|-----------------------------|
| Customer P/O:       | 305                    | Completion Date:            |
| Unit Number: V57373 | Model Year: 2007       | Make/Model: Freightliner M2 |
| Type: Service Truck | VIN: 1FVACXDC47HV57373 |                             |

Work Order: 1 046-000000 Caterpillar engine Department: Service HD  
Complaint: ESTIMATE TO REMOVE AND REPLACE ENGINE WITH SHORT BLOCK, HEAD, INJECTORS  
NECESSARY GASKETS FOR REBUILD. MISC HOSES. CLAMPS ETC. ALL

| p. Part    | Description / Ref Number | U/M      | Quantity | Price    | Extended Price |
|------------|--------------------------|----------|----------|----------|----------------|
| 149        | Shop Supplies - HD       | Misc     | 1.00     | 250.00   | 250.00         |
| 112        | MISC HOSES ETS           | Misc     | 1.00     | 250.00   | 250.00         |
| 10R8881    | HEAD GP CYL              | Part     | EA       | 2,076.22 | 2,076.22       |
| 10R8881-C1 | HEAD GP CYL              | Inherent | 1.00     | 1,203.42 | 1,203.42       |
| 10R8881-C1 | HEAD GP CYL              | Part     | EA       | (1.00)   | (1,203.42)     |
| 10R4134    | BLOCK GP CYL             | Part     | EA       | 5,563.89 | 5,563.89       |
| 10R4134-C1 | BLOCK GP CYL             | Inherent | 1.00     | 1,560.52 | 1,560.52       |
| 10R4134-C1 | BLOCK GP CYL             | Part     | EA       | (1.00)   | (1,560.52)     |
| 2690064    | KIT-GASKET-T             | Part     | EA       | 25.84    | 25.84          |
| 3133975    | KIT-GASKET-T             | Part     | EA       | 112.77   | 112.77         |
| 3085804    | KIT-GASKET               | Part     | EA       | 50.15    | 50.15          |
| 2908676    | KIT-GASKET-R             | Part     | EA       | 52.20    | 52.20          |
| 2712910    | KIT-GASKET-W             | Part     | EA       | 12.84    | 12.84          |
| 3134406    | KIT-GASKET               | Part     | EA       | 25.32    | 25.32          |
| 3086327    | KIT-GASKET(C             | Part     | EA       | 90.19    | 90.19          |
| 2974841    | KIT-GASKET-S             | Part     | EA       | 30.94    | 30.94          |
| 10R4763    | REMAN INJECTOR GRP       | Part     | EA       | 584.32   | 3,505.92       |
| 10R4763-C1 | INJECTOR GRP CORE        | Inherent | 6.00     | 164.93   | 989.58         |
| 10R4763-C1 | INJECTOR GRP CORE        | Part     | EA       | (6.00)   | (989.58)       |
| 4373085    | KIT GASKET               | Part     | EA       | 583.70   | 583.70         |

## Totals

|                      |              |
|----------------------|--------------|
| Total Parts:         | \$12,129.98  |
| Total Core Chg:      | \$3,753.52   |
| Total Core Ret:      | (\$3,753.52) |
| Total EHC:           | \$0.00       |
| Total Labor:         | \$5,750.00   |
| Total Miscellaneous: | \$500.00     |
| Invoice Subtotal:    | \$18,379.98  |
| Total Tax:           | \$0.00       |
| Invoiced Total:      |              |

Packet Pg. 79

Payment Method

Payment Service

Attachment: 5-19-15 - EMERGENCY REPAIR SW TRUCK #844 - COUNCIL PKT (1096 : Emergency Repair, SW Truck No. 844)

# Four Star Freightliner, Inc.

REMIT TO: P.O. BOX 6569

DOTHAN, AL 36302

800-239-8785

3140 Hayneville Rd  
Montgomery, AL 36108  
(334) 263-1085

1527 Madison Hwy.  
Valdosta, GA 31601  
(229) 316-4948

4765 Capital Circle NW  
Tallahassee, FL 32303  
(850) 701-0163

1507 Reeves Street (36303)  
P.O. Box 6569 (36302)  
Dothan, AL  
(334) 793-4455

3346 Highway 41 South  
Tifton, GA 31794  
(229) 382-2822

NO REFUND WITHOUT THIS INVOICE.  
NO RETURNED PARTS WILL BE ACCEPTED AFTER 30 DAYS.  
20% RESTOCKING CHARGE ON ALL RETURNS.  
NO REFUNDS ON ELECTRICAL OR SPECIAL ORDER PARTS.

1803 West Oakridge Drive  
Albany, GA 31707-5263  
(229) 888-1923

THANK YOU FOR YOUR BUSINESS.  
ALL CORES MUST BE RETURNED WITHIN 30  
DAYS TO RECEIVE A FULL CORE REFUND!!

Payment Terms: Net 10

| DATE ENTERED | YOUR ORDER NO. | DATE SHIPPED | INVOICE DATE | INVOICE NUMBER |
|--------------|----------------|--------------|--------------|----------------|
| 15 APR 15    |                | 15 APR 15    |              | Q83829         |

\*\*QUOTE\*\*

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ACCOUNT NO. 477117

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PAGE 1 OF 1

CITY OF OPELIKA  
PO BOX 390  
OPELIKA, AL 36801

CITY OF OPELIKA  
PO BOX 390  
OPELIKA, AL 36801

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| SHIP V A             |      |      | SLSM.    | B/L NO.     | TERMS          | F.O.B. POINT  |           |
|                      |      |      | JSS      |             | CHARGE NON-TAX | MONTGOMERY AL |           |
| QTY                  | UNIT | UNIT | PART NO. | DESCRIPTION | LIST           | NET           | AMOUNT    |
| 1                    | 1    | 0    | DROPIN   | REVIVA      | 8420.50        | 8420.50       | 18,420.50 |
| **** INVOICE QUOTE - |      |      |          |             | DO NOT         | PAY           | ***       |
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LATE FEES ADDED TO DELINQUENT ACCOUNTS MONTHLY AT  
1/2% EQUIVALENT ANNUAL RATE 18%.

Any warranties on the products sold hereby are those made by the manufacturer. The Seller, Four Star Freightliner, Inc. Herein expressly disclaims all warranties, either express or implied, including warranty of merchantability, or fitness for a particular purpose, and neither assumes or authorizes any other person to assume for it any liability in connection with the sale. Should legal action be necessary, the customer shall be responsible for all costs associated with the collections of invoice, included, but not limited to, all court costs and attorney's fees.

Star Freightliner, Inc.

CUSTOMER COPY

Packet Pg. 80

Attachment: 5-19-15 - EMERGENCY REPAIR SW TRUCK #844 - COUNCIL PKT (1096 : Emergency Repair, SW Truck No. 844)

## Caterpillar®: 6 Cylinder 3116, 3126, and C7



### ENGINE IDENTIFICATION

ISSUE: 3126-E

Reviva's 6 Cylinder Caterpillar diesel engines are available for many class 6-8 truck, bus, vocational, and industrial applications. Reviva's long block engines are available for years 1994 and up for the 3116, 3126, and C7 families. To determine correct part number and configurations available, please gather the following information from the engine data tag on the valve cover:

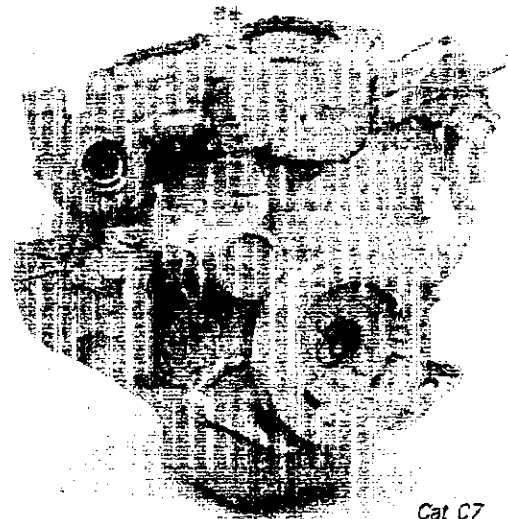
- Engine Serial Number (Format 7AS OR WAX.....)
- Engine Arrangement Number (Format 108-5291)
- Engine Model Year
- Vehicle: Year, Make, Model

### CONFIGURATIONS:

- 3126: Long Block, Long Block Supreme, Complete Drop-In
- 3116: Long Block & Complete Drop In
- C7: Long Block, Long Block Supreme & Complete Drop In

### ABOUT REVIVA'S CATERPILLAR ENGINES

- Reviva replaces 100% of pistons, rings, bearings, bushings, gaskets and seals.
- Reviva matched OEM requirements for piston type depending upon HP and application.
- All heads get new valves and are vacuum tested to ensure the quality of the valve job. All heads are pressure tested and upgraded to the latest style valve seal.
- Cylinder head seats replaced 100% new.
- Reviva grinds 100% of camshafts' lobes.
- All connecting rods are de-magnetized.
- Core plugs are 100% stainless steel to avoid corrosion.
- Blocks, heads and crankshafts are 100% magnaflux tested to avoid cracked components.
- Connecting rods have new bushings installed and both large and small end are remachined to OEM specifications.
- Crankshaft is checked for size, reground, if necessary, and micro-polished to OEM specifications.



Cat C7

### LONG BLOCK INCLUDES:

- Block
- Rods
- Piston assemblies
- Cylinder Head
- Gear housing & front seal
- Oil cooler
- Crankshaft
- Valve train
- Camshaft
- Gasket set
- Oil pump

### LONG BLOCK SUPRME INCLUDES:

- Long Block Plus: Injectors

### COMPLETE DROP-IN INCLUDES:

- Long Block Supreme Plus:

- Intake Manifold
- Front Cover
- Damper
- Injection Pump & Lines
- Exhaust Manifolds
- Valve Cover
- Water Pump & Pulley
- Injectors
- Turbocharger
- Fuel Transfer Pump

### Electronic Complete Engines will also include:

- Injection Pressure Sensor
- Boost Pressure Sensor
- Engine Timing & Speed Sensor
- Coolant Temperature Sensor
- Air Temperature Sensor
- Oil Pressure Sensor
- Atmospheric Sensor

### Warranty Coverage

On-Road Drop-In configurations: 2yr/unlimited miles. 2nd yr. long block only.

On-Road Long Block configuraion: 1yr/unlimited miles.

Off-Road all configurations: 1yr/2,000 hours.

Some restrictions apply, see limited warranty details or call for more information.

©2005 Reviva All Rights Reserved. January 2010. 'TD'

877-357-7634 [www.reviva.com](http://www.reviva.com)

Reviva is an independent manufacturer and is not affiliated with Caterpillar.



Thompson Tractor Company  
Thompson Power Systems  
Thompson Lift Truck Company

April 21, 2015

City of Opelika  
Attn: Donna  
Opelika, AL

Re: 2007 Freightliner with a Cat engine serial# 0WAX59502

Thank you for the opportunity to quote to replace the engine with a reman. The price includes all parts to Remove & Install engine – reman engine, belts, hoses, oil, coolant, and to clean the radiator. Prices are as follows:

|                                               |                    |
|-----------------------------------------------|--------------------|
| Engine                                        | \$19,088.88        |
| Parts (hoses, belts, oils, motor mounts, etc) | \$ 2,250.00        |
| Labor (remove & Install)                      | <u>\$ 3,700.00</u> |
| Total Quote                                   | \$25,048.88        |

The engine will have a 2 year reman warranty depending on the transmission type automatic/manual. When we get it torn down, it may need a clutch at an additional charge. This price does not include any applicable taxes, towing, or environmental fees. If you have any questions, please contact me at 334-215-5307.

Thank you,

John Ryser  
Montgomery Industrial Engine/Truck Shop Supervisor

JR/kcs

Attachment: 5-19-15 - EMERGENCY REPAIR SW TRUCK #844 - COUNCIL PKT (1096 : Emergency Repair, SW Truck No. 844)

**Purchasing Department**

Telephone 334-705-5120  
Fax 334-705-5128

*Rich in heritage,  
with a vision  
for the future*

May 13, 2015

RE: Emergency Repair SW Truck #844

Truck 844 is experiencing engine problems. It was determined by the Garage that the engine needed replacing. This is one of the front line scow body trucks that's used in the route every day to service the citizens of Opelika. Based on that fact, I am declaring the scow body an emergency repair so the truck repairs can be completed soon as possible and put back into the route so the citizens of Opelika will continue to receive garbage service without any interruption.

Sincerely,

Lillie Finley  
Purchasing-Revenue Manager  
City of Opelika

Attachment: 5-19-15 - EMERGENCY REPAIR SW TRUCK #844 - EMERGENCY DECLARED LTR (1096 : Emergency Repair, SW Truck No. 844)

## RESOLUTION NO. (ID # 1107)

Sole Source Purchase, OPS, Underground Cable

## Okonite Primary Underground Cable

**WHEREAS**, the Opelika Power Services Department desires to purchase Okonite primary underground cable; and

**WHEREAS**, this is a sole source purchase; and

**WHEREAS**, T & C Specialty Distributors, Inc. is the sole vendor; and

**WHEREAS**, this is a budgeted purchase

**NOW, THEREFORE, BE IT RESOLVED** by the City of Opelika, Alabama as follows:

1. That the purchase be awarded to T & C Specialty Distributors, Inc.
2. That the Purchasing-Revenue Manager be authorized to issue a purchase order to T & C Specialty Distributors, Inc. not to exceed the amount of \$29,000.00 as a sole source purchase
3. The Controller is authorized to adjust the budget as necessary for this purchase

**APPROVED AND ADOPTED** this the \_\_\_\_ day of \_\_\_\_\_ 2015.

---

C. E. "Eddie" Smith, Jr.

President of the City Council

City of Opelika, Alabama



ATTEST:

---

Robert G. Shuman

City Clerk - Treasurer

**CITY OF OPELIKA**  
**Sole Source Justification**

DEPARTMENT Power Services

REQUISITION NUMBER 47182

NAME OF REQUESTING EMPLOYEE Brian Kriel

VENDOR T & C SPECIALTY DISTRIBUTORS INC

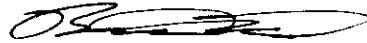
PRODUCT/SERVICE Okonite Primary Underground Cable

Estimated annual expenditure for the commodity or service \$ 29,000.00

Initial all entries below that apply to the proposed purchase: Attach a detailed explanation containing complete justification and support documents. (More than one entry will apply to most sole source products/services requested).

1. Sole Source Request is for the original manufacturer or provider of item(s) or services, and there are no regional distributors. (Attach the manufacturer's witness certification that no regional distributors exist. Item no.4 also must be completed). \_\_\_\_\_
2. Sole Source Request is for the only the vendor who supplies this product/services within the State of Alabama (Franchised Protected Area). X
3. The Parts/Equipment are not interchangeable with similar parts of another manufacturer. (Explain in separate memorandum) \_\_\_\_\_
4. This is the only known item or service that will meet the specialized needs of the Power Services Department or perform the intended function. (Attach memorandum with details of specialized function(s) or application.) X
5. The Parts/Equipment are required from this sole source to permit standardization. (Attach memorandum describing basis for standardizing request.) X
6. None of the above apply. A detailed explanation and justification for this sole source request is contained in the attached memorandum. \_\_\_\_\_

**The undersigned requests that the State of Alabama Bid Law Title 41 Article 3 Competitive Bidding Requirements be waived and that the vendor identified as the supplier of the service or material described in this sole source justification be authorized as a sole source for the service or material. I further certify that the item(s) requested is of an indispensable nature, all other viable alternatives have been explored and it has been determined that only this product or service will fulfill the function for which the product is needed.**

DEPARTMENT HEAD SIGNATURE   
 DEPARTMENT/DIVISION/DATE Power Services May 13, 2015

**PURCHASING DEPARTMENT USE ONLY**

PURCHASING AGENT APPROVAL  
 (SIGNATURE/DATE) \_\_\_\_\_

DISAPPROVAL/DATE \_\_\_\_\_

COMMENTS T & C SPECIALTY DISTRIBUTORS is the sole authorized distributor of  
Okonite cable which is to be installed at the Baxter facility expansion.  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

COUNCIL ACTION/DATE \_\_\_\_\_

Attachment: 5-19-15 - UNDERGROUND CABLE - COUNCIL PKT (1107 : Sole Source Purchase, OPS, Underground Cable)

## Quote

T & C SPECIALTY DISTRIBUTORS INC  
 P O BOX 111  
 148 RUSSELL DRIVE  
 WAYNESBORO MS 39367  
 6017359040

Order Number: 0009790  
 Order Date: 5/12/2015

Salesperson: WJON  
 Customer Number: 00-OPECIT

Sold To:  
 CITY OF OPELIKA  
 1010 AVENUE C  
 OPELIKA, AL 36801  
 (334) 705-5379

Ship To:  
 CITY OF OPELIKA  
 OPELIKA POWER SERVICES  
 600 FOX RUN PARKWAY  
 334-671-4190  
 OPELIKA, AL 36801

Confirm To:  
 SALLY 334-705-5379

| Customer P.O.                 | Ship VIA | F.O.B.   | Terms       |            |        |        |
|-------------------------------|----------|----------|-------------|------------|--------|--------|
|                               |          |          | NET 30 DAYS |            |        |        |
| Item Number                   | Unit     | Ordered  | Shipped     | Back Order | Price  | Amount |
| 162-23-4099                   | FOOT     | 3,000.00 | 0.00        | 0.00       | 8.7077 |        |
| 1/C 1000 61X AL FILLED STRAND |          |          |             |            |        |        |
| SS - 260 OKOGUARD EPR         |          |          |             |            |        |        |
| 040 SC EPR - 1/3 BC NEUTRAL   |          |          |             |            |        |        |
| 080 OKOLENE PE - W/3 RED      |          |          |             |            |        |        |
| STRIPES - SEQ PRINT - 25KV    |          |          |             |            |        |        |
| 3 - 1000' ON HOLD             |          |          |             |            |        |        |

Whse: 000

Attachment: 5-19-15 - UNDERGROUND CABLE - COUNCIL PKT (1107 : Sole Source Purchase, OPS, Underground Cable)

## RESOLUTION NO. (ID # 1080)

Temporary Position of Economic Development Intern**RESOLUTION AUTHORIZING THE TEMPORARY  
POSITION OF ECONOMIC DEVELOPMENT INTERN**

**WHEREAS**, it is the desire of the Economic Development Department to hire an intern for the period of time beginning June 1, 2015 and ending August 30, 2015; and

**WHEREAS**, additional temporary help is required to accommodate the workload of the Economic Development Department; and

**WHEREAS**, adequate funds are available in the budget to pay the compensation of the intern.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. That the Director of the Economic Development Department is hereby authorized to hire a temporary intern in the Economic Development Department at \$12.50 per hour with no benefits, for the period of time beginning June 1, 2015 and concluding on August 30, 2015.
2. That the job description of Economic Development Intern, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, is hereby approved and ratified.
3. That the individual employed in the position of Economic Development Intern shall be classified as a temporary service employee pursuant to the provisions of Section 3.4 of the Personnel Policies and Procedures Manual. The intern shall normally be scheduled to work forty (40) hours per week.
4. That this Resolution shall take effect upon its passage and adoption by the City Council.

**ADOPTED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

\_\_\_\_\_  
CITY CLERK

**“EXHIBIT A”**

**CITY OF OPELIKA  
POSITION DESCRIPTION**

**TITLE: ECONOMIC DEVELOPMENT INTERN**

**GENERAL DESCRIPTION**

The essential function of the position within the organization is to provide support to the Economic Development Project Manager function of the Department. Duties may include assisting in planning, coordinating, research, analyzing, and implementing economic development strategies and projects to improve, expand and diversify the economic base of the City of Opelika. The Intern may be responsible or have exposure to industrial recruitment, job, community and commercial development, business retention, assisting in the development of economic development strategy, developing marketing strategies and materials, public relations, and reporting to City officials. The position works independently, reporting to the Economic Development Director.

**PRIMARY DUTIES:** *This list represents the essential tasks performed by this position. Employees may be assigned additional duties by management as required.*

Responds to proposals and inquiries by companies, consultants and state ED allies looking for available land and/or buildings in Opelika as directed.

As directed, prepares for and meets directly with corporate executives and consultants to showcase Opelika and available opportunities for new development and expansion.

Assists new companies in Opelika by providing support and serving as liaison between the company and various local and state agencies, as well as assisting their executives with personal relocation matters.

Assists Director in coordinating construction, infrastructure and other on-going development activities within the City Industrial Park, working directly with vendors, utility providers, engineers, City officials and OIDA board members.

As directed, oversees the creation of press releases and media-related materials; works with local, regional, and national trade media; develops and maintains relationships with local and state economic development allies, elected officials, consultants, and other site location professionals; develops and coordinates special events.

Responds to local requests for small business assistance and support; works with members of the Opelika Industrial Development Authority and assists in preparation for monthly meetings.

As directed, designs, creates, researches and prepares marketing materials, including a comprehensive community profile, demographic profiles, labor market analysis and other marketing/research/information-related materials and plans.

As Directed, maintains current inventory of available commercial and industrial buildings and sites in Opelika; creates, maintains and updates economic development-related information on the City’s web site; provides guidance and support to other departments on use of software to create and publish web pages.

Assists in performing market feasibility analyses; prepares recruitment packages for retail attraction and recruitment activities and in response to inquiries by local, regional and national retailers investigating the market.

## ECONOMIC DEVELOPMENT INTERN

Assists and supports Economic Development Director with retention and workforce development strategies to assist existing industries and local businesses.

**DATA RESPONSIBILITY:** *Data refers to information, knowledge, and conceptions obtained by observation, investigation, interpretation, visualization, and mental creation. Data are intangible and include numbers, words, symbols, ideas, concepts, and oral verbalizations.*

Coordinates or determines time, place, or sequence of operations or activities based on analysis of data and possibly executes determinations or reports on events.

**PEOPLE RESPONSIBILITY:** *People refers to individuals who have contact with or are influenced by the position.*

Instructs or trains others through explanation, demonstration, and supervised practice, or by making recommendations on the basis of technical disciplines.

**INVOLVEMENT WITH THINGS:** *Things refers to inanimate objects such as substances, materials, machines, tools, equipment, work aids, or products. A thing is tangible and has shape, form, and other physical characteristics.*

Handles or uses machines, tools, equipment or work aids involving some latitude for judgment regarding attainment of a standard or in selecting appropriate items, such as computers, peripherals, or software programs such as word processing, spreadsheets or custom applications.

**ASSETS RESPONSIBILITY:** *Assets responsibility refers to the responsibility for achieving economies or preventing loss within the organization.*

Requires responsibility and opportunity for achieving considerable economies and/or preventing considerable losses through the management of a large division or minor department, and/or handling of very large amounts of money.

**MATHEMATICAL REQUIREMENTS:** *Mathematics deals with quantities, magnitudes, and forms and their relationships and attributes by the use of numbers and symbols.*

Uses practical application of fractions, percentages, ratios and proportions, measurements, or logarithms; may use algebraic solutions of equations and equalities, deductive geometry, and/or descriptive statistics.

**COMMUNICATIONS REQUIREMENTS:** *Communications involves the ability to read, write, and speak.*

Reads scientific and technical journals, abstracts, financial reports, and legal documents; writes complex articles and reports; makes presentations to professional groups.

**COMPLEXITY OF WORK:** *Complexity of work addresses the analysis, initiative, ingenuity, creativity, and concentration required by the position and the presence of any unusual pressures.*

Performs supervisory work involving policy and guidelines, solving both people and work related problems; requires continuous, close attention for accurate results and frequent exposure to unusual pressure.

**JUDGMENT REQUIREMENTS:** *Judgment requirements refers to the frequency and complexity of judgments and decisions given the stability of the work environment, the nature and type of guidance, and the breadth of impact of the judgments and decisions.*



## ECONOMIC DEVELOPMENT INTERN

Requires decision-making as a significant part of the job, affecting a large segment of the organization and the general public; works in a dynamic environment with responsibility for developing policies and practices.

**IMPACT OF ERRORS:** *Impact of decisions refers to consequences such as damage to property, loss of data or property, exposure of the organization to legal liability, or injury or death for individuals.*

Makes decisions with moderate impact - affects those in work unit.

**EDUCATION REQUIREMENTS:** *Education requirements refers to job specific training and education required for entry into the position.*

Requires bachelor's degree in economic development or a closely related field.

**LICENSES, CERTIFICATIONS, AND REGISTRATIONS REQUIRED:** *Licenses, certifications, and registrations refers to professional, state, or federal licenses, certifications, or registrations required to enter the position.*

Requires State of Alabama Driver's License.

**EXPERIENCE REQUIREMENTS:** *Experience refers to the amount of work experience that is required for entry into the position that would result in reasonable expectation that the person can perform the tasks required by the position.*

This is an entry level Intern Position. The candidate will be in a "Experience Gaining" environment and will learn Economic Development Practices.

**PHYSICAL DEMANDS:** *Physical demands refers to the requirements for physical exertion and coordination of limb and body movement.*

Requires sedentary work involving standing or walking for brief periods, exerting up to 10 pounds of force on a regular basis, and moderate dexterity in operating office equipment.

**SAFETY OF OTHERS:** *Safety of others refers to the responsibility for the safety of others, either inherent in the job or to assure the safety of the general public.*

Requires no responsibility for the safety and health of others.

**UNAVOIDABLE HAZARDS:** *Unavoidable hazards refers to unusual conditions in the work environment that may cause illness or injury.*

The position is exposed to extreme heat and/or cold, wet/humid conditions, bright and/or dim light, dust or pollen, and traffic.

**SENSORY (ADA) REQUIREMENTS:** *Sensory requirements refers to hearing, sight, touch, taste, and smell necessary to perform the tasks required by the position efficiently.*

The position requires normal visual acuity and field of vision, hearing, speaking, color perception, and depth perception.

### **AMERICANS WITH DISABILITIES ACT COMPLIANCE**

The City of Opelika is an Equal Opportunity Employer. ADA requires the City to provide adequate accommodations to qualified persons with disabilities. Prospective and current employees are encouraged to discuss ADA accommodations with management.

Created May 4, 2015

## RESOLUTION NO. (ID # 1093)

Approving and Authorizing the Execution of a Merchant Services Application and Agreement by and Between the City of Opelika, Alabama, and Electronic Clearinghouse, Inc.

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A  
MERCHANT SERVICES APPLICATION AND AGREEMENT**

**BY AND BETWEEN THE CITY OF OPELIKA, ALABAMA, AND  
ELECTRONIC CLEARINGHOUSE, INC.**

**WHEREAS**, Electronic Clearinghouse, Inc. (“ECH”) provides payment processing solutions, including automated check processing services; and

**WHEREAS**, the City of Opelika, Alabama (the “City”), acting by and through the Opelika Power Services Department, desires to provide electronic check payments services for its utility customers; and

**WHEREAS**, a proposed Merchant Services Application and Agreement (the “Application”) has been prepared by ECH and submitted to the City Council for approval, and the City Council has determined that it is now in the best interest of the City and its citizens to approve said Application.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. That the proposed Application between the City and ECH, a copy of which is attached hereto and marked as Exhibit “A”, is hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve which approval shall be conclusively evidenced by execution and delivery of said Application.

2. That the Mayor is hereby authorized and directed to execute said Application in the name and on behalf of the City.

3. That the officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances, agreements, applications or other communications under the seal of the City or otherwise, as they or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Application.

4. That this Resolution shall take effect upon its passage and adoption by the City Council.

**ADOPTED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

---

CITY CLERK

# Electronic Clearing House, Inc.

## Merchant Agreement

**Registered Agent of**  
**Westamerica Bank, Santa Rosa, CA**  
**and**  
**National Bank of California, Los Angeles, CA**  
  
**FDIC Insured**

Attachment: ECH Agreement (1093 : ECH Merchant Supplies Agreement)

## MERCHANT AGREEMENT

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## MERCHANT AGREEMENT

### PRELIMINARY MATTERS

#### Parties to Agreement:

- "Merchant" The Merchant identified on the Merchant Application that applied for ECHO services.
- "Guarantor(s)" The Guarantor(s) of Merchant's obligations under the Agreement, as set forth in the Merchant Application.
- "ECHO" ECHO offerings are delivered by Electronic Clearing House, Inc. an Independent Sales Organization and Merchant Services Provider for Bank, with headquarters in Woodland Hills, California and its subsidiaries.
- "Bank" The Member FDIC insured Bank designated by ECHO that settles your transactions under this Agreement.
- "ODFI" The Originating Depository Financial Institution designated by ECHO on behalf of which debit and credit transactions are submitted to the Federal Reserve or other check and ACH settlement systems.

#### Acceptance of Terms by Merchant and Guarantor(s):

Merchant and Guarantor(s), as applicable, have completed and submitted to ECHO and Bank an application for services that provides information about Merchant's business and processing needs (the "Merchant Application"). As part of the Merchant Application, Merchant and Guarantor(s) have certified that they have read, understand and agree that the terms of this Agreement (the "Agreement") will be binding upon them when and if ECHO and Bank approve Merchant's application to receive requested services.

### ARTICLE I. GENERAL PROVISIONS.

The General Provisions set out in Article I govern the relationship between ECHO, Bank and Merchant for all services provided by ECHO. The subsequent sections of the Agreement define the terms of service for different ECHO service offerings and shall apply to Merchant at such time that the Merchant commences receiving such services. All Capitalized Terms not defined within the body of the Agreement have the meanings set forth on Exhibit A to this Agreement.

#### 1.01 Compliance with Laws, Rules and ECHO Guidelines.

- (a) Compliance with Law. Merchant agrees to comply with all laws, rules and regulations applicable to Merchant, Merchant's business and the transactions and services contemplated under this Agreement, including without limitation, state and federal banking laws, payments systems laws, OFAC and Bank Secrecy laws, consumer protection laws, uniform commercial codes, foreign exchange regulation, postal regulations.
- (b) Rules. Merchant agrees to comply with and be subject to all applicable rules, regulations and guidelines of any third party, as they may exist from time to time and as applicable to the services under this Agreement, including without limitation: MasterCard International, Inc., ("MasterCard"), Visa U.S.A., Inc. ("VISA"), JCB, International ("JCB"), Discover® Network ("Discover Network"), American Express OnePoint<sup>SM</sup> program (AXP), the national and regional automated clearing house networks ("NACHA") and any other network or clearing system through which transactions hereunder may be processed.
- (c) ECHO Guidelines. Merchant agrees to comply with all rules, guidelines, policies and procedures applicable to the services provided under this Agreement provided to Merchant by ECHO from time to time. Merchant understands and agrees that ECHO may change these rules, guidelines, policies and procedures at any time, with or without notice to

Merchant. Merchant agrees to check ECHO's website periodically for any such changes.

- (d) Links to Information. Additional information and links to locations where Merchant can see or obtain copies of the Rules and ECHO guidelines is located at <http://usa.visa.com/merchants/index.html> and <http://www.mastercard.com/us/merchant/support/rules.html>, <http://nacha.org> and at <http://www.echo-inc.com/terms>.
- (e) Verification Obligation. Upon request, Merchant will provide ECHO and Bank with information necessary to verify Merchant's compliance with its obligations.

**1.02 Enforcement of Bank Rights by ECHO.** To the maximum degree permitted by law and by the rules and regulations of MasterCard, VISA, AXP, JCB, Discover Network, and NACHA, it is the intention of the parties that the rights of Bank set forth in this Agreement or arising from this Agreement, may be exercised by ECHO.

**1.03 Warranties of Merchant.** Merchant hereby represents and warrants to ECHO and Bank at the time of submission of the Merchant Application and during the term of this Agreement that:

- (a) All information contained in the Merchant Application or any other documents delivered to ECHO and/or its Bank in connection therewith is true and complete and accurately reflects Merchant's business, financial condition and principal partners, owners or officers.
- (b) Merchant is duly organized and in good standing under the laws of the jurisdiction of its organization, and is duly qualified to conduct business in each jurisdiction where failure to do so would have a material adverse effect on the business.
- (c) Merchant has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, constitutes a valid and binding obligation of Merchant and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject.
- (d) Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so.
- (e) There is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations.
- (f) Unless Merchant notifies ECHO in writing and is approved (either on the Merchant Application or otherwise) and is approved by ECHO, no other processing relationship for any of the services offered by ECHO under this Agreement may exist between Merchant and another Card processing institution, for any business run or owned by Merchant.

**1.04 Notifications Regarding Changes in Merchant's Business or Application Information.**

- (a) **Change of business or ownership:** The approval of Merchant's application is based upon the information supplied by Merchant in the application process. If the nature, ownership, or volume of Merchant's business will change substantially, Merchant must notify us in advance of that fact, and, in such an event, Company reserves the right to discontinue the relationship and terminate the contract, or to require that Merchant submit a new application and enter into a new and different contract. A failure to provide Company with at least thirty (30) days' advance written notice of (i) any transfer, sale, or liquidation of any substantial part of Merchant's total assets; (ii) any change in the basic nature of Merchant's business, including selling different products or services not related to its current business; (iii) any change in ownership or transfer of control of Merchant's business; (iv) Merchant's forming any joint venture, partnership or similar business arrangement whereby

any person or entity not a party to this Agreement assumes any substantial interest in Merchant's business; or (v) a change in business operations that will likely cause account activity to exceed Merchant's approved monthly volume, is grounds for immediate termination for cause.

- (b) Merchant must immediately notify ECHO of any Bankruptcy, receivership, insolvency, levy or similar action initiated by or against Merchant or any of its principals. Merchant will include ECHO and/or its Bank on the list of creditors filed with the Bankruptcy Court, whether or not a claim exists at the time of filing.
- (c) Merchant must notify ECHO in writing of any changes to the information in the Merchant Application, including but not limited to a material change to Merchant's financial condition (within three days of such occurrence), any additional location or new business, a change in the business location or contact information, both physical and email addresses, the identity of principals and/or owners, the form of business organization, type of goods and services provided, and how sales are completed. Merchant must also notify ECHO in writing if Merchant sells or closes its business. Except for a change to the financial condition, all such notices must be received by ECHO seven days before the change. Merchant will also provide updated information to ECHO upon request.
- (d) Merchant must immediately notify ECHO in writing if Merchant is threatened with or becomes party to any action, suit or proceeding at law or in equity that could substantially impair its right to carry on its business or adversely affect its financial condition or operations.
- (e) Merchant must provide separate notification regarding changes to service providers used by Merchant in connection with ECHO-provided services, including but not limited to American Express, and equipment leasing companies.

#### **1.05 Credit and Financial Inquiries: Additional Locations: Inspections.**

- (a) Merchant authorizes Bank and ECHO to make, at any time during which Merchant owes any obligation to ECHO and/or Bank, any credit inquiries which, in their discretion, may be necessary or prudent. Such inquiries shall include, but are not limited to, a credit check of the business including its proprietor, principal owners or officers. If requested to do so by Bank or ECHO, Merchant shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Bank or ECHO may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices.
- (b) Merchant agrees to permit Bank or ECHO at any time from time to time, to inspect locations to confirm that Merchant has adhered or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and licenses or permits (where necessary) to conduct its business. However, nothing in this paragraph shall be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement.
- (c) Merchant may process transactions only at locations and websites approved by ECHO. Additional locations may be added, subject to ECHO's approval. Either Merchant or ECHO may delete any location by providing notice as provided in this Agreement.
- (d) Representatives of ECHO and/or its Bank may, during normal business hours, inspect, audit and make copies of Merchant's books, accounts, records and files pertaining to any payment transactions processed by ECHO.

#### **1.06 Guarantor Notifications and Authorizations.** The decision of ECHO to enter into and continue processing payment transactions for Merchant is based on the financial condition of

Guarantor and the ability of Guarantor to guarantee Merchant's obligations. Accordingly, Guarantor must provide ECHO with information regarding changes in his or her contact information and financial circumstances. Guarantor agrees to take the actions required under Section 1.04(b) through (e). Guarantor also authorizes ECHO to make ongoing inquiries about Guarantor as detailed in Section 1.5. For purposes of understanding Guarantors obligations and authorizations under this Section, Guarantor will apply the provisions of Section 1.04 and 1.05 to Guarantor by substituting the term Guarantor in place of Merchant where it appears in such sections.

#### 1.07 Account.

- (a) Merchant will establish and maintain an Account at a depository institution approved by ECHO and/or Bank. Merchant will maintain sufficient funds in the Account to satisfy all obligations, including the fees, Chargebacks and Returns contemplated by this Agreement. Merchant irrevocably authorizes ECHO and/or its Bank to debit the Account for fees, Chargebacks, Returns, fines and any other penalties or amounts owed under this Agreement. In the event the Account lacks sufficient funds Merchant and Guarantors authorize ECHO and/or Bank, without notice, to debit any bank account in their name(s) or the name of any affiliated entity. Merchant must obtain prior consent from ECHO and/or its Bank to change the Account. If Merchant does not obtain such consent, ECHO and/or its Bank may immediately terminate this Agreement and may take other action necessary to protect their interests.
- (b) ECHO and/or its Bank will settle all transactions to the Account subject to the terms of this Agreement. Merchant authorizes ECHO and/or its Bank to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry.
- (c) ECHO or Bank, in its sole discretion shall grant Merchant provisional credit for Transaction amounts, subject to receipt of final payment by ECHO and/or its Bank and subject to all Chargebacks and other amounts owed to ECHO and/or its Bank under this Agreement.
- (d) Merchant will promptly examine all merchant statements relating to the Account and immediately notify ECHO and/or its Bank in writing of any errors. The standard delivery method for Monthly Statements is in an electronic, online version. A hard copy version is available upon request for which additional fees may apply. 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 an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by ECHO within 30 days after Merchant received the periodic statement containing the asserted error. Merchant may not make any claim against ECHO and/or its Bank for any loss or expense relating to any asserted error for 60 days immediately following receipt of Merchant's written notice. During that 60 day period, ECHO and/or its Bank will be entitled to investigate the asserted error and Merchant will not incur any cost or expense in connection with the asserted error without notifying ECHO.
- (e) Merchant authorizes ECHO and/or Bank to initiate debit/credit entries to the Account, as the Account may be changed from time to time and to any other account maintained by Merchant at any institution that is a receiving Bank of ACH, all in accordance with this Agreement. In the event Merchant changes the Account, this authorization will apply to the new Account. This authorization will be effective until both: (i) ECHO has received written notification from Merchant terminating this authorization, and (ii) all obligations of Merchant to ECHO and/or Bank have been paid in full. Merchant will provide to ECHO and its Bank a voided Account check and will fill in the Account numbers on the Merchant's ACH Business Application.
- (f) If the Account is closed or is otherwise unavailable to ECHO and/or Bank for ACH debit, Merchant and/or Guarantors consent to ECHO locating additional deposit accounts or assets

by using any means legally available. In this event Merchant and/or Guarantors waive all rights to their privacy in favor of ECHO and/or Bank until such time as all unpaid Chargebacks and fees owed to ECHO and/or Bank have been paid in full.

**1.08 Reserve Account.** In addition to any other rights granted to ECHO and/or Bank under this Agreement, Merchant hereby authorizes ECHO and/or Bank to establish a Reserve Account, with or without prior notice to Merchant, at any time prior to, or after termination of this Agreement, to ensure the recovery of any liabilities owed them or reasonably anticipated by ECHO and/or Bank in their sole discretion to be owed by Merchant pursuant to this Agreement. ECHO or Bank may also require as a condition of providing continued Services, that Merchant fund and maintain an interest bearing account with Bank (hereinafter called "Bank Reserve Account") as security against any costs, losses or expenses incurred by Bank or ECHO in connection with the provision of Services to Merchant. Merchant's obligation to maintain such Bank Reserve Account shall survive the termination of this Agreement by a period of 270 days (or longer depending on Merchant's product and business practices) during which time Bank's or ECHO's security interest shall continue. Unless the context clearly indicates otherwise, all references in this Agreement to "Reserve Account" apply to both the "Reserve Account" and "Bank Reserve Account." In addition Merchant further agrees:

- (a) Liabilities to be paid from the Reserve Account include, but are not limited to those arising out of actual and/or potential post termination Chargebacks, as well as any and all post-termination fees, charges and expenses due or anticipated to be due ECHO and/or Bank from Merchant.
- (b) The Reserve Account shall be in such amount ECHO and/or Bank deem reasonable under the circumstances. The Reserve Account may be funded and/or replenished by ECHO and/or Bank by withholding or withdrawing from, or freezing all or any part of, the Account and/or any other deposit accounts maintained by Merchant and/or Guarantor at any Bank wherever found by any means available. Unless ECHO and/or Bank agree(s) otherwise in writing with Merchant, the Reserve Account shall not bear interest.
- (c) ECHO and/or Bank may enforce its security interest in the Reserve Account without notice or demand being first made to Merchant. ECHO's and/or Banks right to sums owed it by Merchant pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Account. ECHO's rights with respect to the Reserve Account, as well as the security interest granted ECHO and/or Bank under this Agreement, shall survive the termination of this Agreement.
- (d) ECHO and/or Bank may exercise their rights under this Agreement to collect any amounts due to ECHO and/or Bank including, without limitation, rights of set-off and recoupment. Merchant shall have no right to withdraw funds or debit the Reserve Account.
- (e) It is stipulated and agreed that the funds placed in the Account, or the Reserve Account are trust fund monies held and "earmarked" for the benefit of ECHO and/or Bank as that term has been defined by case law as applied within the United States Bankruptcy Courts. In the event of Bankruptcy proceedings ECHO and/or Bank may exercise their rights under this Agreement to debit the Account or the Reserve Account for amounts due ECHO and/or Bank regardless of the pre-petition or post petition nature of the amount due ECHO and/or Bank. In the event of a Bankruptcy proceeding Merchant also agrees that it will not contest any Motion For Relief From the Automatic Stay which ECHO and/or Bank may file to debit the Account and/or Reserve Account.
- (f) ECHO and/or Bank may retain funds in the Reserve Account for as long as Merchant may be liable to make payments under the Agreement. Funds are typically retained in the Reserve Account for a minimum of 270 days from the date of the oldest transaction in question or the date of termination, whichever is longer, and may be retained longer depending on the nature of the Merchant's transaction activity. ECHO and/or Bank will have sole control of the Reserve Account. In the event of a Bankruptcy proceeding ECHO and/or Bank do not

consent to the assumption of this Agreement. Nevertheless if this Agreement is assumed Merchant agrees that in order to establish assurance of future performance within the meaning of 11 U.S.C. Sec 365, as amended from time to time, Merchant must establish a Reserve Account in an amount satisfactory to ECHO and/or Bank.

- 1.09 Recoupment and Set-Off.** ECHO and/or Bank have the right of recoupment and set-off. This means that they may offset any outstanding/uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the Account, and (ii) any other amounts merchant may owe Bank and/or ECHO under this Agreement or any reporting, or any other agreement.
- 1.10 Security Interest.** To secure Merchant's performance under this Agreement, including without limitation Merchant's obligations arising out of Chargebacks or Returns, Merchant hereby grants pursuant to the California Uniform Commercial Code, to ECHO and Bank a security interest in Merchant's electronic terminal, printer, imprinter and imprinter plate. Further, Merchant and/or Guarantor(s) grants to ECHO and/or Bank, a security interest in all Sales Drafts, ACH deposits, credit drafts, and in all deposit accounts and Reserve Accounts, regardless of source, wherever found, standing in the name of Merchant and/or Guarantor(s), including any affiliated companies of Merchant and/or Guarantor, whether established or designated and maintained pursuant to this Agreement or not, as well as in the proceeds of those deposits. In the event of Merchant's default in payment of Chargebacks or Returns, Merchant and Guarantor(s) stipulate: (i) that all personal Bank accounts standing in their names shall be subject to this Agreement and ACH debit, and (ii) all ACH debits, whether made against Merchant's Account or a Guarantor's personal account shall bear a commercial account code designation (CCD) for purposes of electronic collection via the ACH system, and (iii) Merchant and/or Guarantor irrevocably consent to ECHO and/or Bank's using any means available to locate such deposit accounts until such time as all amounts due have been paid. ECHO and/or Bank may enforce this security interest as applicable by:
- (a) Making an immediate debit/charge via the ACH system to any deposit account standing in the name or names of Merchant and/or Guarantor(s), without notice or demand of any kind; and/or interrupting the electronic transmission of funds to any account through the Automated Clearing House (ACH) system;
  - (b) Freezing the entire Account, without notice or demand of any kind, upon ECHO and/or Bank's and ECHO's determination that Merchant has breached any term of this Agreement;
  - (c) Taking possession of any or all of Merchant's Sales Drafts, verification and confirmation of Transactions;
  - (d) Taking possession of any and/or all of Merchant's electronic terminals, printers, imprinters and imprinter plates.
  - (e) By placing a receiver within Merchant's place of business without notice or bond to intercept and collect all income derived from Merchant's operations until such time as any indebtedness owed to ECHO and/or Bank arising under this Agreement has been satisfied in full;
  - (f) By obtaining either a writ of attachment or a writ of possession without bond pertaining to Merchant and/or Guarantor's personal property upon a showing of a presumption that Merchant has committed an act of fraud or is about to misappropriate funds to which it is not entitled. Merchant shall provide any statement or notice that ECHO and/or Bank determine to be necessary to preserve and protect this security interest. Merchants and/or Guarantor are granting of this security interest in no way limits Merchant's liabilities to ECHO and/or Bank under this Agreement.
- 1.11 Fiduciary Relationship.** As provided in California Financial Code Section 952 as it now exists and as it may be amended from time to time, whenever Merchant and/or Guarantor has a



deposit held with any Bank that arose from or is subject to this Agreement, to which, pursuant to this Agreement, Merchant is not entitled, Merchant's entitlement to such deposit shall be as a fiduciary of ECHO and/or Bank until any claim by ECHO and/or Bank against Merchant has been resolved. Merchant agrees that its failure to repay, within five (5) calendar days of notification by ECHO and/or Bank, funds to which Merchant is not entitled to, shall result in a presumption that Merchant intends to misappropriate such funds. Merchant further agrees that in the event ECHO and/or Bank seeks to enforce its rights herein in a court of competent jurisdiction, that any Receivership, Temporary Restraining Order, Preliminary Injunction, Writ of Attachment or Writ of Possession may be issued against Merchant without bond.

- 1.12 Guarantors.** As a primary inducement to ECHO and its Bank to enter into this Agreement with Principal and/or the signed Guarantor(s), whether by signing the Merchant Application Agreement form or by acknowledging consent by electronic means, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to ECHO and its Bank pursuant to this Agreement, as it now exists or is amended from time to time, with or without notice. Guarantor(s) understands further that ECHO and its Bank may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by ECHO, its Bank or Merchant. This guarantee will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of ECHO and/or Bank. Guarantor(s) understand that the inducement to ECHO and its Bank to enter into this Agreement is consideration for this guaranty, and that this guarantee remains in full force and affect even if the Guarantor(s) receives no additional benefit from the guaranty.

**1.13 Payment of Fees and Other Amounts Owed.**

- (a) Merchant shall pay to ECHO and/or Bank the fees and charges set forth on the Merchant Application, Schedule of Fees and fee provisions of this Agreement. Merchant agrees that ECHO may collect its fees and other amounts owed under this Agreement by netting against the proceeds of Merchant's processing activity. The Account will be debited through ACH for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with processing services. Merchant is obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement. ECHO and/or Bank have the right to change fees as set forth in this Agreement.
- (b) Merchant will immediately pay ECHO and/or Bank any amount incurred by ECHO attributable to this Agreement or any other agreement between Merchant and ECHO or any subsidiary or affiliate of ECHO, including but not limited to equipment fees, Chargebacks, Returns, fines imposed by a third party, non-sufficient fund fees and ACH debits that overdraw the Account, Reserve Account, or are otherwise dishonored. Merchant authorizes ECHO and/or Bank to debit via ACH the Account, the Reserve Account any other Account Merchant has with ECHO, an affiliate or subsidiary of ECHO, its Bank or at any other financial institution for any amount Merchant owes under this Agreement or under any other contract, note, guaranty, or dealing of any kind now existing or later entered into between Merchant and ECHO or any subsidiary or affiliate, whether Merchant's obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event such ACH does not fully reimburse ECHO and/or Bank for the amount owed, Merchant will immediately pay ECHO and/or Bank such amount.
- (c) In addition to ECHO and Bank's other remedies under this Agreement, if any amounts owed by Merchant under this Agreement and not paid when due, Merchant shall pay ECHO and Bank a Late Payment Fee, as set forth in the Merchant Application or Schedule of Fees, plus a finance charge equal to one and one-half percent (1.5%) per month on the unpaid amount, or the highest rate allowable by law, whichever is less, determined and compounded daily from the date due until the date paid. Payment of such Late Payment Fee and finance charges will not excuse or cure any breach or default for late payment.



- 1.14 General Fees.** If fees are not listed on the Merchant Application or Schedule of Fees to the contrary, the following fees are applicable. Additional fees specific to each service offering are set forth in the Fee sections of the Article of this Agreement defining the terms of that service offering. For your convenience Exhibit B of this Agreement contains a cross reference to fees and charges applicable to services provided under this Agreement.

|                                         |                    |
|-----------------------------------------|--------------------|
| Providing Any Documentation             | \$2.00 per page    |
| Checking Account (DDA) Change           | \$25.00 per change |
| Business Name Change Fee                | \$75.00 each       |
| Chargeback/Retrieval                    | \$20.00 each       |
| Bank Return Fee                         | \$25.00 per item   |
| Third Party Payment Admin Fee           | \$150*             |
| Voice Authorizations                    | \$0.95 each        |
| Voice Authorizations (w/ live operator) | \$1.75 each        |
| Referral Authorizations                 | \$2.00 each        |

\* ECHO may charge a fee to implement legally enforceable requests for payment of Merchant funds to parties other than Merchant, such as tax levies, payments to secured parties or other legally enforceable payment requests of a similar nature.

As set forth above, ECHO may modify all fees payable by Merchant under the Agreement, including those detailed in the Merchant Application, Schedule of Fees or the body of the Agreement, by providing notice to Merchant of changes to such fees.

**1.15 Term: Termination.**

- (a) *Termination Generally.* This Agreement shall become effective upon acceptance by ECHO and Bank. Any party may terminate this Agreement or one or more services delivered under this Agreement at any time with or without cause by providing written notice to the other parties and such termination will become effective on the date specified by such notice. If Merchant terminates this Agreement, Bank and ECHO shall have thirty (30) days from date of receipt of the notice to close Merchant's account. ECHO or Bank may terminate this Agreement immediately without prior notice if Bank's Merchant Acceptance Criteria changes. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination of this Agreement.
- (b) *Termination for Merchant Misconduct.* ECHO or Bank may also terminate this Agreement immediately without prior notice if (i) they have reason to believe that fraudulent Card Transactions or other activity prohibited by this Agreement is occurring at any Merchant location; (ii) such action is taken to prevent loss to Bank, ECHO or Card Issuers, (iii) Merchant appears on any Card Association's or Payment Network's security reporting. **An administrative account closure fee of \$500 will be charged to Merchants who are terminated for the reasons set forth in this subsection.**
- (c) ECHO or Bank may terminate this Agreement immediately without prior notice if (i) they have reason to believe that fraudulent Card Transactions or other activity prohibited by this Agreement is occurring at any Merchant location; (ii) such action is taken to prevent loss to Bank, ECHO or Card Issuers, (iii) Merchant appears on any Card Association's or Payment Network's security reporting, or (iv) Bank's Merchant Acceptance Criteria changes. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination of this Agreement. An administrative account closure fee of \$500 will be charged to Merchants who are terminated for the reasons set forth in subparts (i) through (iii) of this section.
- (d) Merchant will be assessed a software recovery fee if it: (i) received a free promotional copy of QuickBooks or Quicken software upon entering in this Agreement, and (ii) terminated this Agreement, in its sole discretion, within two years of acceptance by Bank. Such software recovery fee shall be determined by ECHO in its sole discretion, but will be no greater than

the then current direct price charged by Intuit to the public to purchase the QuickBooks or Quicken software. This software recovery fee shall be in addition to any termination fee set forth in the Merchant Application.

- (e) If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, Bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Bank and ECHO under this Agreement shall become immediately due and payable, without the necessity of any notice, declaration or other act by Bank or ECHO. Notwithstanding such termination, Bank at its sole discretion, may determine that consent to Merchant's subsequent assumption of this Agreement is in Bank's and ECHO's best interests. In such event, the assumption will be made under terms and conditions that are acceptable to Bank and comply with the applicable federal or state laws governing such assumption.

**1.16 Effect of Termination:** All of Merchant's obligations under this Agreement which arise or are incurred prior to the effective date of termination, shall survive the expiration or termination of this Agreement.

**1.17 Third Parties.**

- (a) Merchant may be using special services or software provided by a third party to assist Merchant in processing transactions, including authorizations and settlements, or accounting functions. Merchant is responsible for insuring compliance with the requirements of any third party in using their products. This includes making sure Merchant has and complies with any software updates and ensuring that such software satisfies all security standards required under the Rules (including PA DSS and PCI DSS), as set forth more fully below. ECHO has no responsibility for any transaction until that point in time ECHO receives data about the transaction.
- (b) Merchant will notify ECHO prior to the use of any electronic authorization or data capture terminal or software provided by any entity other than ECHO or its authorized designee ("third party terminals") to process transactions. If Merchant elects to use such third party terminals, Merchant agrees that the third party provider of the terminal is Merchant's agent and Merchant is liable for the acts and omission of its agent and the terminals for failing to comply with the Rules, this Agreement and any applicable federal and state law.
- (c) ECHO may provide Merchant with reference links to websites operated by third parties ("Third Party Websites"). These links are provided as a convenience only. Such Third Party Websites are not under the control of ECHO. ECHO is not responsible for the content of any Third Party Website or any link contained in a Third Party Website. ECHO does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third Party Websites, and the inclusion of any link is not and does not imply an affiliation, sponsorship, endorsement, approval, investigation, verification or monitoring by ECHO of any information contained in any Third Party Website. Access to any Third Party Website is at Merchant's own risk, and Merchant acknowledges and understands that linked Third Party Websites may contain terms and privacy policies that are different from those of ECHO. ECHO is not responsible for such provisions, and expressly disclaims any liability for them.

**1.18 Limitation of Liability.**

- (a) MERCHANT AGREES AND ACKNOWLEDGES THAT NEITHER ECHO, BANK NOR THE ODFI, AS APPLICABLE SHALL HAVE LIABILITY, EITHER IN TORT, CONTRACT OR IN COMBINATION THEREOF, FOR CLAIMS ARISING FROM TRANSACTIONS PROCESSED UNDER THIS AGREEMENT EXCEPT IN THE CASE OF GROSS OR WILLFUL MISCONDUCT ON THE PART OF ECHO, BANK OR ODFI. ANY SUCH CLAIMS ARE SUBJECT TO LIMITATIONS SET FORTH BELOW AND IN NO EVENT SHALL ECHO, BANK OR ODFI BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES OR LOST BUSINESS OPPORTUNITIES.

- (b) THE LIABILITY, IF ANY, OF ECHO AND/OR BANK, UNDER THIS AGREEMENT WHETHER TO MERCHANT OR TO ANY OTHER PARTY, WHATEVER THE BASIS OF LIABILITY, SHALL NOT EXCEED IN THE AGGREGATE THE DIFFERENCE BETWEEN (I) THE AMOUNT OF FEES PAID BY MERCHANT TO ECHO AND/OR BANK DURING THE MONTH IN WHICH THE TRANSACTION OUT OF WHICH THE LIABILITY AROSE OCCURRED, AND (II) ASSESSMENTS, CHARGEBACKS, RETURNS AND ANY OFFSETS AUTHORIZED UNDER THIS AGREEMENT AGAINST SUCH FEES WHICH AROSE DURING SUCH MONTH. IN THE EVENT MORE THAN ONE MONTH WAS INVOLVED, THE AGGREGATE AMOUNT OF ECHO AND/OR BANK'S LIABILITY SHALL NOT EXCEED THE LOWEST AMOUNT DETERMINED IN ACCORD WITH THE FOREGOING CALCULATION FOR ANY ONE MONTH INVOLVED. IN NO EVENT WILL THE LIABILITY OF ECHO AND OR BANK UNDER THE AGREEMENT EXCEED \$50,000.
- (c) EXCEPT AS EXPRESSLY PROVIDED HEREIN, ECHO MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE AND SERVICES, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. ECHO DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. ECHO FURTHER DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. ECHO FURTHER EXPRESSLY DISCLAIMS ANY LIABILITY FOR UNAUTHORIZED ACCESS OF FACILITIES OR TO MERCHANT'S DATA OR PROGRAMS DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND ECHO'S REASONABLE CONTROL.

**1.19 Indemnification by Merchant.** Merchant agrees to indemnify and hold harmless ECHO and/or Bank and ODFI, as applicable, and their affiliates, employees, agents, representatives, members, or stockholders, from and against any and all claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) arising out of or relating to:

- (a) any dispute between Merchant and a Cardholder or Checkwriter or customer, or any Sales Draft or ACH deposit paid for by Bank or ODFI;
- (b) any actual or alleged action or omission by Merchant that would constitute a breach of any representation, warranty, or obligation of Merchant set forth in this Agreement;
- (c) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by Merchant or any of its employees, agents or customers;
- (d) the reliability, accuracy, or legitimacy of payment data submitted by Merchant;
- (e) any alleged infringement of another party's intellectual property rights by Merchant;
- (f) a failure of Merchant to maintain the confidentiality of Cardholder or Checkwriter information;
- (g) any action ECHO or Bank takes against the Account under the Agreement. Merchant will also indemnify and hold harmless the institution at which Merchant maintains the Account for acting in accordance with any instruction from ECHO and/or Bank regarding the Account.

If Merchant is an agency or instrumentality of a state of the United States and is precluded by the law of Merchant's state from entering into indemnification obligations, then the obligations under this Section shall apply only to the extent permitted by such state law. This section will survive termination of this Agreement.

**1.20 Confidential Information.**

- (a) Obligations of ECHO: ECHO shall comply with the Rules in how it treats Merchant transaction

information. ECHO may disclose information relating to Merchant's sales to financial institutions, Networks and third parties that need the information for a purpose relating to this Agreement and to the ECHO agent or referral source, if any, that played a role in establishing Merchant's relationship with ECHO solely for the purpose of computing payment due to such persons. ECHO may also disclose information regarding the Merchant as part of an investigation by ECHO into Merchant's compliance with its obligations under this Agreement if ECHO determines there is cause to make such an inquiry, or to the extent required by a court or governmental authority, or otherwise as required by law.

- (b) Obligations of Merchant: Except to the extent specifically permitted by the Rules, the operating rules of NACHA or this Agreement, Merchant shall not disclose any information relating to any Card or POS Transaction, or any Cardholder or Checkwriter, to any person or entity other than ECHO, ECHO's employees, agents and independent contractors, and those of Merchant's employees who have a specific need to know such information except to complete the transaction or as otherwise required or authorized under this Agreement or by law. Merchant shall treat all documents provided by ECHO relating to this Agreement as confidential and proprietary and protect them with the same degree of care as Merchant would protect its own confidential and proprietary information, and not less than reasonable care.
- (c) Proprietary ECHO Information. Merchant agrees that this Agreement, and all other user information provided by ECHO, the process utilized by ECHO for providing services, and all written communications concerning services hereunder are confidential and proprietary information of ECHO. Merchant agrees that neither it nor any of its employees, agents, representatives, or independent contractors will disclose any such confidential, proprietary information to any person or entity that is not a party to this Agreement without the express written consent of ECHO.

#### 1.21 Safeguarding of Information.

- (a) Merchant shall be in full compliance with rules, regulations, guidelines and procedures adopted by any Card Association or Payment Network relating to the privacy and security of Cardholder and Card transaction data, including without limitation PA DSS and the PCI DSS, as they may be amended from time to time. Information pertaining to such requirements may be found at <https://www.pcisecuritystandards.org>. Additional information regarding security requirements is located at <http://www.echo-inc.com/pci/>.
- (b) **Merchant shall be liable for all fines, charges and penalties that may be assessed by any Card Association or Payment Network as a result of Transactions made by Merchant or Merchant's noncompliance with the preceding requirements.** Merchant also acknowledges that it may be prohibited from participating in payment network programs if it is determined that Merchant is non-compliant. Merchant acknowledges that it may be subject to, and ECHO and/or Bank retain the right, to conduct or cause to be conducted an audit to verify Merchant's compliance with the foregoing security requirements. Merchant must notify ECHO and/or Bank within twenty-four (24) hours after becoming aware of (i) any suspected or actual data security breach or (ii) any noncompliance by Merchant with the security requirements set forth herein. Merchant shall, at its own expense, (i) perform or cause to be performed an independent investigation of any data security breach of Card or Transaction data by an authorized assessor acceptable to ECHO and Bank; (ii) take all such remedial actions recommended by such investigation or by ECHO, Bank or Visa or MasterCard; and (iii) cooperate with ECHO and Bank in the investigation and resolution of any security breach.
- (c) Merchant will not, under any circumstances, disclose any Cardholder's account number nor any information relating to any Cardholder's account number or any Sales Drafts or Credit Vouchers which may have been imprinted with any Card to any person other than ECHO or its Bank, or as required by law. Merchant agrees not to store, distribute, copy or otherwise manipulate card account numbers or PINs that appear, are encoded or are otherwise

associated with Cards. All electronic commerce Merchants must provide Cardholders with a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. Further, Merchant agrees to store any material containing Cardholder account information in a secure manner or destroy such information at the proper time in a fashion that renders the data unreadable, and unrecoverable. Neither Merchant nor any of its agents shall retain or store the full contents of any track on the Magnetic-Stripe, or equivalent data on the Contactless Payment chip, subsequent to Authorization of a Transaction.

- (d) Merchant must notify ECHO of any third party agent of Merchant that will have any access to Cardholder data.
- (e) Merchant understands and agrees that due to requirements of law, Card receipts may not contain (i) more than the last five digits of the credit card account number; and (ii) that the Card receipt may not contain the expiration date.
- (f) If Merchant sells goods or services on the Internet, Merchant's web site must contain Merchant's consumer privacy policy and a description of Merchant's method of safeguarding consumer transaction data.

#### 1.22 Account Access Password.

- (a) If Merchant receives a user identification name or password from ECHO to access ECHO's database or use services offered by ECHO, Merchant will: (i) keep the user identification name and password confidential; (ii) not allow any other entity or person to use the user identification name or password or gain access to ECHO's database; (iii) be liable for all action taken by any user of the user identification name or password; and (iv) promptly notify ECHO if Merchant believes the user identification name or password have been used inappropriately or the confidentiality of the information made available through their use has been compromised.
- (b) Merchant agrees that any loss incurred as a result of any party gaining access to Merchant's bank account or ECHO's website using information which that party was not authorized to obtain or using such information in a manner not permitted by this Agreement (including but not limited to improper or unauthorized use of the Merchant's ID number and PIN) shall be the responsibility of Merchant.

**1.23 Privacy.** ECHO and its parent company, Intuit Inc., will have access to the data associated with your use of the service. ECHO and Intuit will handle this information in accordance with their privacy policies. For details about ECHO's privacy policies, please refer to the ECHO Privacy Statement, accessible via [www.innovativemerchant.com](http://www.innovativemerchant.com).

**1.24 Feedback.** ECHO may provide you with a mechanism to provide feedback, suggestions and ideas about ECHO products and services ("Feedback"). Merchant agrees that ECHO may, in its sole discretion, use the Feedback in any way, including in future modifications of the products and services and any related advertising and promotional materials. Merchant grants ECHO a perpetual, worldwide, fully transferable, non-revocable, royalty free license to use, reproduce, modify, create derivative works from, perform, distribute and display for any purpose any information Merchant provides to ECHO in the Feedback.

#### 1.25 Equipment.

- (a) Sale of Equipment by ECHO. ECHO may sell equipment to Merchant or provide equipment to Merchant as part of promotional offers that require Merchant to process merchant services for a specified period of time. Merchant agrees to pay the purchase price and related sales tax for any equipment supplied by ECHO as provided under the terms of the offer made by ECHO to Merchant. If Merchant accepts a promotional offer from ECHO that includes free or discounted processing equipment conditioned upon Merchant maintaining services with ECHO for a specified period, and Merchant terminates its services with ECHO

prior to the stated time, Merchant will pay to ECHO the full purchase price of the equipment provided by ECHO together with all applicable shipping, handling and sales taxes.

- (b) Leased Equipment. ECHO does not lease equipment. Any equipment lease entered into by Merchant is between the Merchant and an independent leasing company. However, Merchant is required to verify with ECHO the terms of any equipment lease it has entered into in connection with equipment it has obtained for processing transactions under this Agreement. ECHO will make reasonable attempts to contact the Merchant and complete the verification. If the lease cannot be successfully verified after these attempts, ECHO will debit via ACH the Merchant's Account for the purchase price of the equipment along with shipping and handling fees and sales tax.
- (c) Equipment Returns. Merchant may return equipment for a period of 30 days from the date of receipt. Equipment returns may be subject to a 20% restocking fee.
- (d) Equipment Support. From time to time at Merchant's request ECHO may provide assistance to Merchant to facilitate the exchange of inoperable equipment. ECHO may charge shipping or other fees for such services. Merchant is responsible for any repair or equipment replacement costs for the equipment being serviced.
- (e) Disclaimer of Equipment Warranties. Merchant understands that ECHO is not manufacturer of equipment used to process electronic payment transactions. Merchant agrees that any representations or warranties regarding such equipment are between Merchant and the manufacturer of such equipment. ECHO EXPRESSLY DISCLAIMS ANY WARRANTIES REGARDING SUCH EQUIPMENT.
- (f) Equipment Swaps. Occasionally to meet specific programming requirements, especially in the case of debit card processing, ECHO will be required to swap a Merchant's pre-existing piece of equipment with one provided by ECHO. In return for the ECHO equipment, Merchant must send to ECHO Merchant's existing equipment of same type and function. This swap must be completed within 30 calendar days from the date Merchant receives ECHO's equipment or the price of equipment, shipping and handling will be debited from Merchant Account. Equipment cannot be returned for a refund after 90 days from date of this debit. Returns after 90 days will be refused.
- (g) Loaner Equipment. Merchant may be offered equipment as a loan from ECHO, to use exclusively while processing with ECHO. Merchant agrees to return the equipment in good and working condition upon termination. This return must be completed within 14 business days from the date Merchant terminates the account or the price of equipment, shipping and handling will be debited from Merchant Account. Equipment cannot be returned for a refund after 90 days from date of this debit. Returns after 90 days will be refused.

**1.26 Modifications to Agreement.** ECHO or Bank may from time-to-time amend any provision of this Agreement, including those relating discount rates or other fees and charges payable by Merchant, whether such amounts are set forth in the Merchant Application, Schedule of Fees or Fee sections of the Agreement. ECHO will provide notice to Merchant of the amendment, and unless specified otherwise, the amended agreement shall become effective at the start of the first billing cycle after ECHO has provided notice. Amendments due to changes in either a Card Association's or Payment Network's fees, interchange, assessments, Rules, gift card systems or any law or judicial decision will become effective at such time that ECHO may specify, which may be sooner than the beginning of the next billing cycle following the date of notice.

**1.27 Additional Services Offered by ECHO.** From time to time, ECHO may offer to Merchant additional products and services which may or may not be related to the processing of credit card Transactions. In the event of such offers, Merchant shall indicate its desire to ECHO to decline such offers or be deemed to have accepted the offers and be liable for payment therefore.



- 1.28 Merchant Dispute Notification.** Merchant is responsible for the timely reconciliation of all issues related to Services provided under this Agreement. Merchant must submit any dispute to ECHO in writing within 60 days of the initial posting of the disputed item to the Merchant Account or appearance of the disputed item on the Merchant's statement.
- 1.29 Notices; Consent to Electronic Communications.** By applying for services and confirming that it has read the Merchant Agreement, Merchant is confirming to ECHO that it has the means to access the internet through its own service provider and download or print electronic communications. Merchant agrees to the receipt of electronic communications by email or by the posting of such information by ECHO at one or more of ECHO's sponsored websites, such as <https://www.echo-inc.com/>. Such communications may pertain to the services delivered by ECHO, the use of information Merchant may submit to ECHO, changes in laws or Rules impacting the service or other reasons, such as amendment of the Merchant Agreement. In addition, all notices and other communications required or permitted under this Agreement by ECHO or Bank to Merchant may also be delivered by ECHO or its Bank to Merchant either by FAX, overnight carrier or first class mail, postage or other charges prepaid, addressed and transmitted as set forth below. All notices and other communications required or permitted under this Agreement by Merchant to ECHO and/or Bank shall be delivered by Merchant to ECHO by overnight carrier or certified mail, postage or other charges prepaid, addressed and transmitted as set forth below. Notice by FAX or e-mail shall be deemed delivered when transmitted. Notice by mail or overnight carrier shall be deemed delivered on the first business day after mailing or delivery to the carrier. Following are the addresses for the purposes of notices and other communications hereunder, which may be changed by written notice in accordance with this section:
- (a) If to ECHO and/or Bank, addressed and transmitted as follows:
- Electronic Clearing House, Inc.  
21215 Burbank Blvd., Suite 100  
Woodland Hills, CA 91367  
Attn: Merchant Services
- (b) If to Merchant, at the address provided as the billing address, or the FAX number or e-mail address and to the contact listed on the Merchant Application.
- 1.30 Further Assurances.** At any time or from time to time upon the request of Bank or ECHO, Merchant will execute and deliver such further documents and do such other on, acts as Bank or ECHO may reasonably request in order to effectuate fully the purposes of this Agreement.
- 1.31 Force Majeure.** Any delay in or failure of performance by ECHO or Bank under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond their reasonable control, including, but not limited to, acts of God, power outages, failures of the Internet, failures of banking or ACH networks.
- 1.32 Choice of Law, Jurisdiction.** The parties agree that all performances and transactions under this Agreement will be deemed to have occurred in California and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of California. This Agreement will be governed by California law, without regard to its conflicts-of-law principles, and applicable federal law. The parties hereby consent to the exclusive jurisdiction and venue for any action relating to the subject matter of this Agreement in California Superior Court in Santa Clara County, California and/or United States District Court for the Northern District of California. The parties consent to the jurisdiction of such courts and agree that process may be served in the manner allowed by the laws of the State of California or United States federal law.
- 1.33 Jury Waiver.** In the event any controversy or claim between or among the parties, their agents, employees, representatives, or affiliates shall arise in any judicial or legal proceeding, each party hereby waives its respective right to trial by jury of such controversy or claim.



- 1.34 Costs.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, or any part thereof, the prevailing party shall be entitled to recover its reasonable attorneys' and experts' fees and costs in addition to any other legal and/or equitable remedies to which it is entitled.
- 1.35 Publicity.** Merchant agrees that ECHO may issue a press release or similar public announcement referencing Merchant as a customer of ECHO. Merchant also grants to ECHO a limited license to use Merchant's and its affiliates' names, logos, trademarks, service marks or copyrights in any advertising, promotional or instructional materials for ECHO or its affiliates' services.
- 1.36 Intellectual Property.** ECHO retains all right, title and interest in and to the services and any related technology utilized by it under or in connection with this Agreement, including but not limited to all associated intellectual property rights. No title to or ownership of any of the foregoing is granted to Merchant or any other entity or person under this Agreement. Merchant will not reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or trade secrets for any of the ECHO services or related technology.
- 1.37 Taxes.** Merchant shall promptly pay when due any and all liability or expense relating to the payment of federal, state, and local taxes (other than taxes based in whole or in part upon income attributable to ECHO).
- 1.38 Rights Cumulative.** All rights and remedies existing in this Agreement are cumulative to, and not exclusive of, any other rights or remedies available under contract or applicable law.
- 1.39 Headings.** The headings listed after each section number in this Agreement are inserted for convenience only and do not constitute a part of this Agreement and are not to be considered in connection with the interpretation or enforcement of this Agreement.
- 1.40 Waiver.** Failure by Bank or ECHO to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same or other provision in the future. All waivers must be signed by the waiving party.
- 1.41 Entire Agreement.** This Agreement, including the Merchant Application, the Schedule of Fees, the Rules, and Exhibits to this Agreement expresses the entire understanding of the parties with respect to its subject matter and except as provided herein. Reference to "this Agreement" also includes all documents incorporated into this Agreement by reference.
- 1.42 Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.
- 1.43 Assignment.** This Agreement may be assigned by ECHO, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of ECHO and/or Bank. If Merchant nevertheless assigns this Agreement without such consent, the Agreement will be binding upon the assignee. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, and personal representatives for an individual, otherwise its permitted successors and assigns. If Merchant sells its business and the new owners incur Chargebacks or Returns, absent notification and consent by ECHO, both the new owner and the original owner and all Guarantors will be held personally liable for all liabilities of the Merchant before and after the sale of the business.
- 1.44 Authorization of Agreement.** Merchant represents and warrants that the person signing or electronically authorizing the Agreement is duly authorized to bind Merchant to all provisions of this Agreement and that such person is authorized to execute any documents and to take any action on behalf of Merchant which may be required by ECHO now or in the future. Merchant will execute a separate Entity Certification if requested to do so by ECHO. Merchant, by its signature, upon its first transmission of Transactions, or first payment of fees acknowledges that

it agrees to be bound by this Merchant Agreement as it may be modified from time to time.

- 1.45 Relationship of the Parties.** The parties are independent contractors and nothing in this Agreement shall make them joint ventures, partners, employees, agents or other representatives of the other party.
- 1.46 Export Restrictions.** Merchant acknowledges that any software provided to it by ECHO in connection with delivering services is subject to the U.S. Export Administration Regulations (15 CFR, Chapter VII). These laws include restrictions on destinations, end users and end use.
- 1.47 Counterparts.** If copies of this Agreement or any amendments are to be physically signed, this Agreement may be executed and delivered in several counterparts and transmitted by facsimile, a copy of which will constitute an original and all of which taken together will constitute a single agreement.
- 1.48 General.** Merchant is responsible for its employee's actions while in its employ. The parties do not intend to confer any benefits on any person or entity other than Merchant, ECHO and/or Bank. Merchant is also responsible for procuring, maintaining and servicing all equipment and software necessary to allow it to engage with ECHO systems to process transactions through ECHO, as well as for all related Internet, telecommunication, mobile phone (including sms charges and mobile data plan fees) and other similar fees.
- 1.49 Survival.** All Sections of this Agreement that by their nature should survive termination or expiration will survive, including, without limitation, accrued rights to payment, indemnification obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.

## ARTICLE II. CARD TRANSACTION SERVICES.

The following terms and conditions govern card processing services provided by ECHO to Merchant.

### 2.01 Advertising.

- (a) Merchant will prominently display the promotional materials provided by ECHO and its Bank in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with Card(s) shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the direction of ECHO and its Bank.
- (b) Merchant may use promotional materials and Marks during the term of this Agreement and shall immediately cease their use and return any inventory to ECHO and its Bank upon termination of this Agreement.
- (c) Merchant shall not use any promotional materials or Marks associated with Visa, MasterCard, AXP, Discover Network or JCB in any way which implies that Visa, MasterCard, AXP, Discover Network or JCB endorses any goods or services other than Card services.

### 2.02 Warranties of Merchant Regarding Card Transactions.

Merchant hereby represents and warrants to ECHO and Bank at the time of execution and during the term of this Agreement that:

- (a) Each Sales Draft presented to ECHO's Bank for collection is genuine and is not the result of any fraudulent transaction and is not being deposited on behalf of any business other than Merchant. Further, Merchant warrants that each Sales Draft is the result of a Card Transaction for the bona fide purchase of goods or services by the Cardholder in the total amount stated on the Sales Draft.

- (b) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby.
- (c) Merchant has complied with ECHO and its Bank's procedures accepting Cards, and the Card Transaction itself shall not involve any element of credit for any other purposes other than as set forth in this Agreement and shall not be subject to any defense, dispute, offset or counter claim which may be raised by any Cardholder under the Rules, the Consumer Credit Protection Act (15 USC 1601), or other relevant state or federal statutes or regulations.
- (d) Any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted.

### 2.03 Honoring Cards.

- (a) If Merchant elects to accept Card payments, Merchant will accept without discrimination, all valid Cards properly presented by Cardholders for payment for goods or services.
- (b) Merchant may establish a minimum transaction size for accepting Card transactions so long as such amount does not exceed \$10, or such other amount established by law, and such minimum transaction size requirement does not discriminate between card issuers or between payment card networks.
- (c) Merchant may offer discounts or in-kind incentives for payment by the use of cash, checks, debit cards, or credit cards, provided that the terms of the discount or in-kind incentives do not differentiate on the basis of the issuer of the card or payment network.
- (d) Merchant shall not accept a Card as payment (other than for a mail order, telephone order, or preauthorized sale to the extent permitted under this Agreement), if the person seeking to use the Card does not present the Card to permit Merchant to examine it and obtain an imprint or otherwise use the physical Card to complete the Transaction.

### 2.04 Card Acceptance. When accepting a Card, Merchant will follow the steps provided by ECHO and its Bank for accepting Cards and will:

- (a) Determine in good faith and to the best of its ability that the Card is valid on its face.
- (b) Obtain Authorization before completing any Transaction. Where Authorization is obtained, Merchant will be deemed to warrant the true identity of the customer as the Cardholder.
- (c) Obtain an Imprint of the Card unless the Sales Draft is electronically generated from a swiped transaction or is the result of an Internet, mail, phone or preauthorized order.
- (d) If your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the cardholder's signature on the imprinted draft before processing the sales draft.
- (e) Enter a description of the goods or services sold and the price thereof (including any applicable taxes).
- (f) Obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card.
- (g) Deliver a true and completed copy of the Sales Draft to the Cardholder at the time of delivery of the goods or performance of the services, or if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale.
- (h) Offer the Sales Draft to ECHO's Bank for purchase according to the Bank's procedures and

the terms of this Agreement.

- (i) Legibly reproduce without alteration of the original transaction receipt, the Cardholder's name, account number, expiration date and the Merchant's name and place of business if that information is not legibly imprinted on the Sales Draft. Also, for MasterCard transactions, Merchant will legibly reproduce the name of the Card Issuer as it appears on the face of the Card.

## 2.05 Authorization.

- (a) Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization, Merchant will request a Voice Authorization from the designated authorization center, and will legibly print the authorization number on the Sales Draft. Fees for voice authorizations are as set forth in the schedule of fees.
- (b) Merchant shall not request Authorization for a Transaction unless Merchant intends to submit a Transaction for the authorized amount.
- (c) Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee of payment.
- (d) Merchant will not attempt to obtain Authorization on an expired Card. Transactions will be deemed invalid on Cards that are expired, whether or not Authorization has been obtained.

## 2.06 Unusual and Suspicious Transactions; Account Monitoring.

- (a) Merchant acknowledges that ECHO and/or Bank will monitor Merchant's daily deposit activity for purposes of monitoring compliance with this Agreement. Merchant agrees that Merchant's deposit activity will remain consistent with the "approved" monthly volume and average ticket amount approved on the Merchant Application and/or by ECHO. ECHO may require additional documentation if the Merchant should exceed "approved" monthly volume or average ticket, and Merchant agrees promptly to provide such documentation upon request. Merchant agrees that ECHO may, in its sole discretion, elect not to process volumes over the approved monthly volume or overlimit transactions, and/or to close the account for cause in the event of overlimit or excessive activity. Merchant further agrees that ECHO may, in its sole discretion suspend the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity and that such suspension may subject Merchant to additional suspension fees as set forth herein. ECHO and/or Bank will make good faith efforts to notify Merchant as promptly as is commercially reasonable. **ECHO and/or Bank shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.**
- (b) **In the event of suspension arising from a suspicious or unusual Transaction, Merchant agrees that Merchant's account may be charged a Security Processing Fee of \$100 per suspended Transaction, and, if the suspended Transaction or unusual or suspicious activity exceeds \$3,000, an additional \$100 Investigative Fee may be assessed for each such event.**
- (c) If a batch is suspended by ECHO, Merchant acknowledges that the consumer's product or service must be delivered just as if the Merchant has been paid. Further, if a batch or a transaction is suspended, Merchant acknowledges that fees associated with the transactions will be charged including security fees.
- (d) Merchant's presentation to ECHO of Excessive Activity will be a breach of the Agreement and a cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period and for any one of Merchant's terminal identification numbers or merchant identification numbers, Chargebacks and/or retrieval requests in excess of 1% of

the average monthly dollar amount of Transactions or returns in excess of 3% of the average monthly dollar amount of Transactions or (ii) processing an Average Ticket above the amount approved by ECHO.. Merchant authorizes, upon the occurrence of Excessive Activity, ECHO and/or Bank to take additional actions as either of them may deem necessary, including, but not limited to, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

- 2.07 Forms.** Merchant shall use only such forms or modes of transmission of Sales Drafts and Credit Vouchers as are provided or approved in advance by ECHO.
- 2.08 Retention and Retrieval of Cards.** Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card when receiving such instructions upon making a request for Authorization. In carrying out such obligation Merchant will not breach the peace or cause any injury to any person or property.
- 2.09 Personal Information.** Merchant may not require Cardholders to provide any personal information as a condition of honoring a Card unless such information is required for delivery of the goods or services or Merchant has reason to believe that the person presenting the Card may not be the actual Cardholder.
- 2.10 Records; Requests for Copies.** Merchant shall retain a paper or microfilm copy of all Sales Drafts and Credit Vouchers and if a mail, phone order or preauthorized order is involved, the Cardholder's signed Authorization for the Transaction for at least three (3) years after the date of the Transaction. Within three (3) business days of receipt of any written or verbal request by ECHO and/or Bank, Merchant shall provide either the actual paper Sales Draft or a legible copy thereof and any other documentary evidence reasonably requested by ECHO and/or Bank. A failure of Merchant to deliver the requested documentation in the required time frame may result in the transaction in question being charged back to the Merchant Account and the Merchant losing further representation rights.
- 2.11 Multiple Transaction Records; Partial Payments:** Merchant shall include all goods and services purchased in a single Transaction at one time on a single Sales Draft, except: (i) for purchases in separate departments of a multiple department store; (ii) for installment payment; or (iii) for delayed or amended charges governed by rules for travel and entertainment merchants and transactions.
- 2.12 Telephone Orders "TO", Mail Orders "MO", Preauthorized Orders "PO" and Installment Orders "IO".**
- (a) Unless Merchant has been approved by ECHO or its Bank to accept Internet, mail and phone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place. If Merchant is found to be accepting mail orders, telephone orders, or Internet Transactions without such consent, such charges are subject to chargeback, as provided in this Agreement. When allowed, telephone and Internet orders are permitted only to the extent that the contact is initiated by the Cardholder.
  - (b) If authorized to accept payment by Internet, mail, phone or pre- authorized order, the Sales Draft may be completed without the Cardholder's signature or an imprint, but in such case Merchant shall create a Sales Draft containing Cardholder account number, expiration date, transaction date, an authorization number, the sale amount and the letters "MO", "TO", "PO", or "IO" as appropriate. In addition, the Merchant's business name, city and state must be included. Receiving an Authorization shall not relieve the Merchant of liability for Chargeback on any Transaction for which the Merchant did not obtain an imprint and the Cardholders signature.
  - (c) For Approved MO, TO, PO, and IO Merchants, the Merchant must use reasonable procedures to verify that each Card sale is made to a purchaser who actually is the Cardholder or the authorized user of the Card. AVS is recommended and in some cases required. AVS is not a

guarantee for payment, and the use of AVS will not waive any provision of this Agreement or otherwise validate a fraudulent transaction.

- (d) Unless approved in writing by ECHO and acknowledged by Bank, Merchant shall not process sales prior to delivery of product or service. If the product is being shipped, the customer must be given the shipping date of the product once the sale is processed.
- (e) Merchant may limit acceptance of returned merchandise or establish a policy to make price adjustments for any transactions. If a Merchant refund policy prohibits returns under certain circumstances, the Merchant may still receive a Chargeback relating to such sales pursuant to Association rules and regulations.
- (f) Merchant must not accept credit card sales via "electronic mail" over the Internet.
- (g) For any recurring transactions, Merchant must obtain a written, or other form of request from Cardholder for such goods and services to be charged to the Cardholder's account, which request must specify the transaction amounts to be charged to the Cardholder's account, the frequency of the recurring charge and the duration of time during which such charges may be made. Merchant shall not complete any recurring transaction after receiving a cancellation notice from the Cardholder, the Bank, or a response to an Authorization request, which indicates that the Card is not to be honored. Merchant shall type or legibly print the words "Recurring Transaction" on the signature line of the Sales Draft. Merchant shall provide a copy of written request to Cardholder's Bank upon request, and shall retain a copy of written request for one year after the agreement between Merchant and Cardholder is terminated. For multi-year agreements, Merchant shall renew written request with Cardholder annually during the 12th month of the current agreement.

#### **2.13 Lodging and Vehicle Rental Transactions.**

- (a) Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Some lodging Merchants are eligible to participate in Visa's Advanced Deposit Service Program. Merchants participating in this service must adhere to the Advanced Deposit Service Program rules as set forth by Visa.
- (b) Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction shall include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of personal property by Merchant to the Cardholder and shall not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.

#### **2.14 Returns and Adjustments: Credit Vouchers.**

- (a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with the Rules. If applicable, Merchant must disclose to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, charges, or other noncredit terms).
- (b) Disclosures must be made on all copies of Sales Drafts in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature on the sales draft and issued at the time of sale.
- (c) If Merchant does not make these disclosures, a full refund in the form of a credit to the



Cardholder's Card account must be given. Merchant will not refund cash to a Cardholder who paid for the item by Card.

- (d) Credits must be made to the same Card account number on which the original sale Transaction was processed.
- (e) If Merchant accepts any goods for return or terminates or cancels any services, in conjunction with each such transaction, Merchant shall have sufficient funds in its account available to ECHO and/or bank to cover the amount of the transaction and any related fees.

**2.15 Cash Payments.** Merchant shall not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of a Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder's Card account.

**2.16 Cash Advances.**

- (a) Merchant shall not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party. Merchant agrees that any such deposit shall be grounds for immediate termination.
- (b) Merchant, shall not under any circumstances obtain Authorization for, nor process a sale on any card that Merchant is not authorized to use. Processing Merchant's own card is grounds for immediate termination.

**2.17 Duplicate Transactions.** Merchant shall not deposit duplicate Transactions. Merchant shall be debited for any duplicate Transactions and shall be liable for any Chargebacks which may result therefrom.

**2.18 Deposit of Fraudulent Transactions.** Merchant shall not accept or deposit any fraudulent Transaction and may not present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source. Merchant shall not deposit Transactions evidencing sales that were solicited by outbound telemarketing activities. If Merchant deposits any such transactions ECHO and/or Bank may hold funds and/or demand a Reserve Account. Perpetrators of fraudulent transactions will be referred to law enforcement officials and may be subject to Card Association penalties.

**2.19 Collection of Pre-Existing Debt.** Merchant shall not present any Transaction representing the refinancing of an existing obligation of a Cardholder including, but not limited to obligations (i) previously owed to Merchant, (ii) arising from the dishonor of a Cardholder's personal check, and/or (iii) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.

**2.20 E-Commerce Address Notification.** Merchant must display the address of its permanent establishment on its Website. This address should include the country of domicile and should be located either on the checkout screen used to present the total purchase amount to the Cardholder, or within the sequence of Web pages the cardholder accesses during the checkout process.

**2.21 Automatic Payment Plan Card Sales.**

- (a) Merchant must be approved by ECHO to charge customers via an Automatic Payment Plan. Any transactions in violation of this provision are subject to Chargeback to Merchant.
- (b) If a Merchant uses the Internet or another electronic process to receive a Cardholder approval of the Automatic Payment Plan, the Merchant must retain all electronic evidence of the Cardholder's approval of the Automatic Payment Plan. The Cardholder's approval,



whether written or electronic, must include all of the following information:

- (i) Cardholder's name, address and Card Number;
  - (ii) Amount of each Automatic Payment Plan Card Sale, unless the amount can vary;
  - (iii) Timing or frequency of payments;
  - (iv) Length of time over which the Cardholder permits the Merchant to bill Automatic Payments to the Card Account;
  - (v) Merchant's Merchant Number;
  - (vi) Card expiration date;
  - (vii) Total amount of Automatic Payments to be billed to Card Account, including taxes and tip(s), if an installation agreement;
  - (viii) A general description of the transaction
  - (ix) Merchant's business name and customer service telephone number that the Cardholder may call to obtain customer assistance from the Merchant or to revoke approval of the Automatic Payment Plan.
- (c) The first Automatic Payment Plan Card Sale must contain a positive response from the Address Verification System (AVS). If the first payment does not contain this information, all subsequent payments are subject to Chargeback to the Merchant.

**2.22 Settlement of Transactions.** Bank shall accept from Merchant all valid Sales Drafts deposited by Merchant under the terms of this Agreement and shall present the same to the appropriate Card issuers for collection against Cardholder accounts. Settlement of all Sales Drafts is subject to this Agreement and the Rules. ECHO and/or Bank shall provisionally credit the value of collected Sales Drafts to Merchant's Account and reserve the right to adjust amounts so credited to reflect the value of Chargebacks, fees, penalties, late submission charges, the difference in currency exchange if the Chargeback amount is greater than the original sale, issuer claims, and items for which Bank did not receive final payment for any reason. ECHO and/or Bank may refuse to accept any Sales Draft or revoke its prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with all the terms and conditions of this Agreement; (b) the Cardholder disputes his liability to ECHO and/or Bank for any reason, including but not limited to those Chargeback rights enumerated in the Rules; (c) the transaction giving rise to the Sales Draft was not directly between Merchant and Cardholder, or (d) the transaction is outside the parameters indicated on the Merchant Application. Merchant will pay ECHO and Bank for any amount previously credited to Merchant for a Sales Draft not accepted or later revoked by them.

**2.23 Processing Limits.** ECHO may limit the dollar amount of Sales Drafts that it will process for Merchant. This limit may be changed by ECHO from time to time with or without notice to Merchant. If Merchant exceeds the limit established by this Agreement, ECHO may suspend processing, charge overlimit fees, hold the funds over the cap and/or return to Merchant all Sales Drafts evidencing funds over the cap.

**2.24 Endorsement.** The presentment of Sales Drafts to Bank for collection and payment is Merchant's agreement to sell and assign its right, title and interest in each Sales Draft completed in conformity with ECHO and/or Bank's acceptance procedures and shall constitute an endorsement by Merchant to ECHO and/or Bank of such Sales Drafts. Merchant hereby authorizes Bank to supply such endorsement on Merchant's behalf. Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of Bankruptcy Code 11

U.S.C. Section 365, as amended from time to time. Merchant acknowledges that its obligation to ECHO and/or Bank for all amounts owed under this Agreement arise out of the same transaction as ECHO Bank's obligation to deposit funds to the Account.

- 2.25 Transmission Method.** If Merchant utilizes electronic authorization and/or data capture services, Merchant will enter data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed. If Merchant provides its own electronic terminal or similar device, such terminals must meet ECHO requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by Merchant to ECHO or its Bank in the form ECHO from time to time specifies or is required under the Rules. The means of transmission indicated in the Merchant Application shall be the exclusive means utilized by Merchant until Merchant has provided ECHO and/or Bank with at least 30 days prior written notice of Merchant's intention to change the means of such delivery or otherwise to alter in any material respect Merchant's medium of transmission of data to ECHO.
- 2.26 Prohibited Payments.** Unless specifically authorized in writing by ECHO and/or Bank, Merchant shall not collect or attempt to collect from a Cardholder amounts owed for any Transaction and shall promptly deliver to Bank any payment Merchant receives, in whole or in part from a Cardholder for any Transaction, together with the Cardholder's name and account number and any correspondence accompanying the payment.
- 2.27 Chargebacks.** All Chargebacks are due upon presentation to Merchant. In the case of a failure to pay a Chargeback upon such presentment, in addition to any other remedies which may be exercised by ECHO and/or Bank, Merchant agrees to pay a late charge of one and one half percent (1.5%) per month or portion thereof, or the highest amount allowable by law, whichever is less, on all unpaid Chargebacks. ECHO and/or Bank are authorized to deduct the amount of any Chargebacks and fees from any settlement amounts due to Merchant or from the Reserve Account, if any, or collect by any other means. Merchant understands and agrees that Sales Transactions are subject to Chargeback for a variety of reasons under the Rules, or if Merchant has breached this Agreement, including without limitation, for the following reasons:
- (a) The Sales Draft is illegible, not signed by the Cardholder or has not been presented to Bank within the required time-frames.
  - (b) The Sales Draft does not contain the Imprint of a valid unexpired Card.
  - (c) A valid Authorization number has not been correctly and legibly recorded on the Sales Draft.
  - (d) The Sales Draft is a duplicate of a prior Transaction or is the result of two or more Transactions generated for a single sale.
  - (e) The Cardholder alleges that he or she did not participate in the sale, authorize the use of the Card, receive goods or services purchased, or receive a required credit adjustment, or disputes the quality of the goods or services purchased.
  - (f) The price of goods or services on the Sales Draft differs from the amount which Merchant presents for payment.
  - (g) The Transaction results from an Internet, mail, phone or preauthorized order and the Cardholder disputes entering into or authorizing the Transaction or the Transaction has been made on an expired or non-existing account number.
  - (h) ECHO reasonably believes in its discretion that Merchant has violated any provision of this Agreement.
  - (i) ECHO reasonably determines that the Transaction is not bona fide or is subject to any claim

of illegality, cancellation, rescission, or offset for any reason whatsoever, including without limitation, negligence, fraud or dishonesty on the part of Merchant or Merchant's agents or employees.

- (j) Merchant fails to provide a Sales Draft or legible copy thereof to ECHO and/or Bank in accordance with this Agreement.
- (k) Merchant shall not initiate a Transaction in an attempt to collect a Chargeback.

## 2.28 American Express; Additional Cards.

- (a) AXP OnePoint Program. If Merchant qualifies and does not request otherwise, ECHO will enroll Merchant in the American Express OnePoint program to accept AXP cards. In accepting AXP cards under this program, Merchant is agreeing to the terms of the AXP Acceptance Agreement (<https://www.echo-inc.com/>) that agreement may be amended from time to time. Under this program ECHO will provide primary support services for AXP transactions and such transactions will be reported to Merchant in a single statement with other transaction information.
- (b) Direct Relationship with AXP. In some situations Merchant's seeking to accept AXP cards may enter into a direct merchant agreement with AXP. In these situations ECHO facilitates the flow of information between Merchant and AXP, but does not provide primary support for AXP transactions.
- (c) Additional Cards. From time to time ECHO may also notify you that you are able to accept other types of payment cards under the relationship with ECHO("Additional Cards"). The terms of this Agreement will apply to Additional Card transactions. ECHO will notify Merchant orally and/or in writing of the fees applicable to Additional Card transactions. Merchant's acceptance of Additional Cards and transmission of Additional Card transactions to ECHO will constitute Merchant's agreement to the terms of this Agreement with regard to Additional Cards.

**2.29 Fees and Discount Percentages.** The Schedule of Fees and/or Merchant Application set forth discount rates and other fees that apply to different types of Card Transactions. This section describes how ECHO determines which transaction types qualify for the different transaction rates. Also, unless stated differently in the Schedule of Fees or the Merchant Application, the fees noted below will apply to Card Transactions. Additional charges that may occur from time to time include chargeback fees, representation fees and retrieval fees. A monthly minimum fee will be deducted unless you have met your minimum processing volume. The standard delivery method for Monthly Statements is in an electronic, online version that will be generated each month. The discount rate will be deducted daily. If Merchant processing is non-face to face and has 2-tiered pricing with Qualified and Non-Qualified Rates only, transactions listed in the Mid-Qualified category will be charged the Qualified rate.

- (a) Qualified Discount Rate. The Qualified Discount Rate will be charged on transactions that have the following attributes: Swiped Consumer Signature credit or debit cards where the full magnetic stripe has been read.
- (b) Mid-Qualified Discount Rate. The Mid-Qualified Discount Rate will be charged on transactions that have the following attributes and have not qualified to be charged the Qualified Rate: Keyed Consumer Signature credit or debit cards with matching AVS response for "card present" transactions; keyed Consumer Signature credit or debit cards with valid AVS response and order number for "card not present" transactions; Discover Network transactions with valid CVV, AVS and order number; swiped Consumer "Added Value" cards where the full magnetic stripe has been read; keyed Consumer "Added Value" cards with matching AVS response for "card present" transactions; keyed Consumer "Added Value" cards with valid AVS response and order number for "card not present" transactions.

- (c) Non-Qualified Discount Rate. The Non-Qualified Discount Rate will be charged on transactions that have the following attributes and have not qualified to be charged the Qualified or Mid-Qualified Rate: Business, Corporate, Purchase, International, or Government cards; keyed Consumer credit and Signature debit cards where AVS is not present or missing any of the required data elements; batches not closed within one calendar day of transaction; all "High End Value", Rewards, World Card, or other such rewards cards as defined by the card issuers; any Pre-Authorized sale that is not processed/captured within 7 business days.
- (d) AVS Fees. Automated AVS responses obtained through a POS or similar device are charged at a rate of \$0.10 each. AVS responses obtained from a live operator are charged at a rate of \$2.00 each.
- (e) Batch Header Fee. A Merchant is billed a batch header fee for each time a batch is transmitted to the Host for settlement. The batch header fee charged is equivalent to the transaction fee indicated on the application. If no transaction fees are indicated the batch header fee is 20¢.
- (f) Transaction Fee. A Merchant is billed a transaction fee each time communication is made with the Host. This fee is assigned by the Agent or sales representative at the time the Merchant applies for an account.
- (g) Visa International Assessment Fee. Visa charges an international service assessment fee of **.4%** for all international transactions. This fee will be passed to your account for all international transactions you process. This fee is in addition to the discount rate.
- (h) MasterCard Cross Border Fee. MasterCard charges a cross border assessment fee of .40% on all cross-border transactions for non-U.S. issued MasterCard, credit or debit card transactions processed. This fee will be passed to your account for all international transactions you process. This fee is in addition to the discount rate.
- (i) MasterCard Acquirer Support Fee. MasterCard charges an acquirer support fee of .55% on all U.S. region acquired transactions for cards issued outside the U.S. region. This fee will be passed to your account for all international transactions you process. This fee is in addition to the discount rate.

### 2.30 Effect of Termination.

- (a) In the event of termination for any reason, Merchant expressly authorizes ECHO and/or Bank to withhold settlement of Transactions and other payment transactions of Merchant in the process of being settled.
- (b) At the discretion of ECHO and/or Bank, collected funds may be placed in a Reserve Account (defined below) until Merchant pays any equipment and processing termination fees and any outstanding charges, losses or amounts for which Merchant is liable under this Agreement. Further, ECHO and/or Bank reserve the right to require Merchant to deposit additional amounts in the Reserve Account based upon Merchant's processing history and/or anticipated risk of loss to Bank into the Reserve Account. The Reserve Account shall be maintained for a minimum of 270 days after the termination date or the date of the oldest transaction, and for a reasonable time thereafter during which Cardholder disputes may remain valid under the Rules. Any balance which remains in the Reserve Account after such period will be returned to Merchant. ECHO and/or Bank may debit the Reserve Account for all amounts owed by Merchant under this Agreement.
- (c) Merchant expressly acknowledges that MATCH (formerly known as the Combined Terminated Merchant Files or "CTMF") is a file maintained by MasterCard and accessed by Visa, and the Consortium Merchant Negative File, maintained by Discover Network, containing the business names and the identification of principals of Merchant which have

been terminated for one or more reasons specified in the Rules. Such reasons include, but are not limited to: fraud, counterfeit paper, unauthorized transactions, excessive Chargebacks/Retrievals or highly suspect activity. Merchant acknowledges and agrees that ECHO and/or Bank are required to report Merchant and the names and identification of its principals to MATCH and the Consortium Merchant Negative File if Merchant is terminated for any such reason. Merchant consents to such reporting to the Card Associations and Payment Networks by ECHO and/or Bank and waives any claims which Merchant may raise against ECHO or Bank as a result of such reporting. Merchant also consents to ECHO reporting incidents of fraud, counterfeit paper, unauthorized transactions, excessive Chargebacks/Retrievals or highly suspect activity to the NCN.

- (d) Upon termination for any reason, Merchant will immediately cease requesting Authorizations and will cease transmitting Sales Drafts to ECHO and/or Bank which are made after the termination date.
- (e) Following termination, Merchant shall upon request provide ECHO and/or Bank with all original and microfilm copies of Sales Drafts and Credit Vouchers to be retained as of the date of termination.
- (f) Effective immediately upon termination whether by Merchant, by Bank or by ECHO, Merchant must cease the use of all Card Association and Payment Network signage which indicates the acceptance of those cards under this Agreement.

### ARTICLE III. DEBIT CARD SERVICES

The following terms and conditions govern debit card processing services provided by ECHO to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application for electronic payment services, or subsequently elects to receive such services from ECHO.

**3.01 Services.** Bank shall sponsor Merchant for membership in the debit card network that Merchant has selected. Merchant acknowledges that sponsorship does not guarantee acceptance. ECHO shall process and settle Merchant's debit card transactions.

**3.02 Debit Fees.** Merchant agrees to pay ECHO the fees for Debit Transactions as set forth in the Merchant Application as well as the following fees. Payment and modification of fees will be handled as set forth in Article I of the Agreement. Merchant acknowledges that in addition to the Debit Transaction Fee set forth on the Merchant Application, each debit transaction will also be charged the Network Fee on a per transaction and per network basis for the Networks accessed and utilized by the Merchant. These fees are subject to change from time to time to conform with the interchange provisions set forth by the Debit Networks. To review the most recent revision of all Network Fees, please refer to [http://payments.intuit.com/support/debit\\_fee\\_sched/](http://payments.intuit.com/support/debit_fee_sched/).

**3.03 Merchant Obligations.**

- (a) Unless otherwise authorized by ECHO, Merchant shall utilize ECHO's compatible terminals, PIN pads or systems capable of processing all Automatic Clearing House (ACH) debit card transactions as well as online debit card transactions.
- (b) In connection with debit card transactions Merchant shall comply with all applicable laws, regulations and rules and regulations of the applicable debit card network.
- (c) Merchant shall be responsible for all paper copies of debit card transactions, in accordance with the applicable debit card network rules. Within one business day of the day of the transaction, Merchant shall balance each location to the system for each business day that such location is open.

- (d) Merchant shall be responsible for all telephone message unit costs, if any, which may be incurred by Merchant for the debit card services as well as expenses related to installation of and training in the use of terminals.
- (e) Merchant shall be responsible for entering data correctly. If an entry is made incorrectly, ECHO shall use its reasonable efforts to assist Merchant in correcting the entry, but cannot guarantee that the effort will be successful.

#### 3.04 PIN Security.

- (a) Merchant is expressly prohibited from requesting PIN numbers verbally or in writing as a condition of a sale. Merchant may not document or retain PIN numbers in any fashion at any time.
- (b) POS terminals must be positioned so as to be reasonably secure from observation by third parties. Merchant's security cameras must not be able to view the PIN pad. Pin Entry Device (PED) shielding will be considered as one of the possible prevention methods.
- (c) The operational placement and use of the Tamper Resistant Security Module (TRSM) must be within its intended physical and logical environment. POS terminals designed for indoor use are not suitable for outside use. The modification of TRSMs from their original manufactured specifications must be restrained.

### ARTICLE IV. ELECTRONIC CHECK SERVICES

The following terms and conditions govern electronic check processing services provided by ECHO to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application or thereafter.

- 4.01 Description of Service.** Under this service, Merchant may submit to ECHO, for collection and payment, checks Merchant receives from its customers in payment of goods or services sold by Merchant. ECHO will submit such checks or electronic images thereof (each an "Item") to a check clearing system for payment, and will deliver the collected proceeds thereof to Merchant via an ACH credit to a bank account designed by Merchant. These payment activities are referred to in this Agreement collectively as "Check Transactions."
- 4.02 Fees.** Merchant agrees to pay ECHO the fees for Check Transactions as set forth in the Merchant Application or Schedule of Fees for the offering that includes these services. Payment of fees and changes to fees are subject to the terms of Article I of this Agreement.
- 4.03 Establishing Service.** Merchant is responsible for obtaining such hardware and software as may be necessary to utilize the service, and will only use such equipment which is approved by ECHO. ECHO will provide Merchant with the programming information necessary to process Check Transactions. Merchant agrees that ECHO is not responsible for any damages which may be incurred by Merchant or any third party as a result of any failure of electronic processing equipment. If Merchant requests programming information for processing equipment not provided by ECHO, ECHO in its sole discretion may elect to fulfill such request and Merchant agrees to pay ECHO a reprogramming charge in an amount determined by ECHO. Merchant must also comply with customer notifications regarding electronic check processing by complying with ECHO Guidelines and directions provided in customer welcome kits, including posting of notification decals, as applicable.
- 4.04 Eligible Checks.** Merchant agrees only to submit "Eligible Checks" to ECHO for processing as Check Transactions. To be an "Eligible Check" the check must:
  - (a) be drawn on the Checkwriter's personal or business account, and must not be drawn on an account of Merchant or an affiliate or principal of Merchant;



- (b) be drawn on a United States financial institution in U.S. currency;
- (c) be a first-party check made payable to Merchant;
- (d) not have been previously negotiated;
- (e) not have been previously voided;
- (f) contain a pre-numbered serial number, except in the case of permitted Checkwriter not present transactions processed via the ACH network in compliance with all other authorization and other requirements;

Merchant acknowledges that credit card convenience checks, starter checks, traveler's checks, payroll checks and third party checks are not "Eligible Checks."

#### 4.05 Additional Requirements:

- (a) Merchant will initiate Check Transactions only for original paper checks in its possession that are Eligible Checks;
- (b) Before scanning a check, Merchant will endorse the check with the legend "For Deposit Only";
- (c) Merchant will only create check images and submit Items from locations in the United States or United States territories, and all checks must be in U.S. dollars and drawn on a bank in the United States;
- (d) For each electronic image of an Item, all information from the front and back of the check, including the MICR information and payment amount, must be accurate and legible and must accurately represent all information on the front and back of the check at the time of conversion to an electronic image. Merchant will use key entry, as necessary, to correct any errors so that the electronic information submitted is accurate;
- (e) Merchant will not redeposit any Item previously transmitted by Merchant with ECHO or any other bank; and
- (f) Merchant will employ commercially reasonable security measures and firewalls sufficient to protect transmissions and storage to ensure no unauthorized access to or duplicate presentment of Items.

Sections (a) through (d) of this section do not apply to permitted Checkwriter not present transactions processed via the ACH network in compliance with all other authorization and other requirements

- 4.06 Settlement.** Subject to its rights under this Section, ECHO shall credit Merchant's account for cleared Items for which it has received payment, generally within two business days of receipt, if the Item is submitted by the applicable cut-off time. Settlement may take longer, for example due to operational and clearing system delays, risk factors and other factors. Settlement activities will be set forth on online reporting tools made available to Merchant. Merchant authorizes ECHO to submit ACH debits against Merchant's Account for any Item that was previously paid and later returned or dishonored, plus any amounts owed by Merchant under this section.

- 4.07 Merchant Account.** Even if a check is an Eligible Check, ECHO may, in its sole discretion, decline to accept the check for processing. ECHO also may require Merchant to establish and fund a Reserve Account, as described further in Article I of this Agreement, to protect ECHO and its banks of risk for Items submitted by Merchant. If funds in the Merchant Account are



insufficient to cover Returns, immediately upon request from ECHO, Merchant will deposit sufficient funds in Merchant Account to cover such Returns.

- 4.08 Transaction Risk Assumed by Merchant.** Merchant acknowledges that Items are subject to risk of non-payment, such as for insufficient funds or fraud. Merchant bears full risk of non-payment of Items, and agrees that ECHO and its agents assume no liability therefore.
- 4.09 Compliance with Laws, Rules and ECHO Guidelines.** Merchant shall comply with the terms of Article I in connection with its activities under this section.
- 4.10 Acknowledgments and Warranties of Merchant.** Merchant further agrees as follows:
- (a) Once an electronic image of an Item is transferred to ECHO, Merchant will no longer have any rights with regard to the Item, provided that if an Item for which Merchant was paid is subsequently dishonored or reversed, Merchant will retain the rights to the original check. Merchant represents and warrants that no person will receive a transfer, presentment, or return of, or otherwise be charged for, the Item (either the original Item, or a paper or electronic representation of the original Item) such that the person will be asked to make payment based on an Item that has already been paid;
  - (b) Merchant waives all rights to bring a claim, including without limitation a claim of conversion, against ECHO, any bank which is an agent of ECHO, and the ODFI, for Items submitted for processing; and
  - (c) Merchant agrees that it has no right, title or interest in any funds or bank account owned or controlled by ECHO, including without limitation, any clearing account into which check proceeds are deposited.
- 4.11 Implied Termination.** If Merchant does not use Check Services for a period of 60 days or more, at ECHO's request, Merchant may be required to requalify for the continuation of Check Services.

## ARTICLE V. CHECK VERIFICATION SERVICES

The following terms and conditions govern Check Verification services provided by ECHO to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application for electronic payment services or thereafter.

- 5.01 Description of Service.** ECHO provides Check Verification services for Merchant's use in assessing risk before accepting Checkwriter checks. These services entail Merchant submitting information about the proposed payment account and Checkwriter to ECHO, which ECHO cross-references against ECHO's National Check Network® database and/or other risk management systems that contain check payment information to help better understand the payment risk.
- 5.02 Fees.** Merchant agrees to pay ECHO the fees for Check Transactions as set forth in the Merchant Application or Schedule of Fees for the offering that includes these services. The payment of such fees, and changes to the fees, are set forth in Article I of this Agreement.
- 5.03 Verification Information.** Merchant seeking Verification Information for a proposed check transaction must present to ECHO the MICR information, and if requested by ECHO, the Checkwriter's Drivers License Information. Merchant agrees to only submit information that it believes in good faith is complete and accurate. ECHO will evaluate the information upon receipt and will provide Merchant with a response based on its analysis of the information submitted. ECHO will provide to Merchant information describing the meaning of the responses provided to Merchant. Merchant may use this information in determining whether to accept the payment in the form presented.

- 5.04 Merchant Bears Payment Risk.** Merchant understands and acknowledges that the Check Verification response provided by ECHO does not guarantee Merchant will receive payment for the check. Merchant understands and agrees that except for payments expressly covered by Check Guarantee Services subscribed to by Merchant, it bears the full risk of non-payment for checks it accepts.
- 5.05 Denial Notices.** If Merchant elects to decline a check based on Verification Service information it receives, Merchant must provide to Checkwriter a Denial Notice in the form approved by ECHO. This notification contains ECHO and/or ECHO affiliate contact information to facilitate Checkwriter's inquiries relative to the nature of the checking account information in the databases used by ECHO for verification.
- 5.06 Use of Verification Information.** Merchant agrees to utilize Verification Services in conjunction with bonafide business transactions directly between Merchant and Checkwriters and that response data received by Merchant shall be used for this service and for no other purpose. Merchant further agrees that it will take all reasonable steps to prevent disclosure of any Checkwriter information to any party other than the Checkwriter and ECHO. Merchant acknowledges that it has received and read the notice information prepared by the Federal Trade Commission that is attached to this Agreement and also located at <http://www.ftc.gov/os/2004/11/041119factaapph.pdf> describing Merchant's obligations under law when using Checkwriter information.
- 5.07 Submission of Checkwriter Information.** To enhance the effectiveness of the Check Verification service, ECHO continuously collects and enhances information regarding checkwriting activity. Merchant authorizes ECHO to update data sources used by ECHO with Checkwriter information obtained by ECHO in conjunction with the Verification Services provided to Merchant. Merchant agrees and acknowledges that such information may be utilized by other merchants. Merchant acknowledges that it has received and read the notice information prepared by the Federal Trade Commission that is attached to this agreement and also located at <http://www.ftc.gov/os/2004/11/041119factaapph.pdf> describing Merchant's obligations under law when supplying Checkwriter information.
- 5.08 Special Indemnification Applicable to Verification Services.** Merchant agrees to indemnify, defend, and hold ECHO and its affiliates harmless from any and all claims, complaints, damages, court costs and related expenses, including attorney's fees, arising out of or related to: (1) inaccurate Checkwriter information provided by Merchant to ECHO; and (2) any acts or omissions of or failure to comply with applicable law by Merchant, its employees and agents in connection with the Verification Services
- 5.09 Posting of NCN Decal.** Merchant agrees to conspicuously post a decal at each of its point of sale locations indicating that it utilizes the NCN database.
- 5.10 Non-guarantee of Accuracy.** Merchant acknowledges and agrees that ECHO does not guarantee the completeness or accuracy of and disclaims all representations and warranties, express or implied, in the information provided Merchant under this service.

## ARTICLE VI. CHECK GUARANTEE SERVICES

The following terms and conditions govern Check Guarantee Services provided by ECHO to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application for electronic payment services thereafter.

- 6.01 Description of Services.** ECHO will assume the risk of payment for certain types of properly processed check transactions for a Merchant who applies and is accepted by ECHO to receive Check Guarantee Services. ECHO has sole discretion to decide the types of transactions that qualify for such services. ECHO will attempt to collect, on Merchant's behalf, checks that were not eligible for guarantee.

- 6.02 Payments by ECHO.** For Check Guarantee Services, ECHO will pay Merchant via an ACH transaction the full amount of Check Transactions that meet the conditions for guarantee as set forth in this Agreement.
- 6.03 Fees.** Merchant agrees to pay ECHO the fees for Check Transactions as set forth in the Merchant Application or Schedule of Fees for the offering that includes these services. The payment for and changes to fees will be governed by Article I of this Agreement.
- 6.04 Guarantee Conditions.** For checks to be eligible for Check Guarantee Services, Merchant must comply with the following obligations:
- (a) Compliance with Electronic Check Services Terms. Merchant must process check transactions electronically and comply with the provisions of the Electronic Check Services portion of this Agreement
  - (b) Compliance with Verification Services Terms. Merchant must submit information regarding check transactions to ECHO for payment risk evaluation and comply with the provisions of the Verification Services portion of this Agreement.
  - (c) All Checks Included in Guarantee Service. Merchant must submit all personal and business checks it receives, that are capable of meeting the Check Guarantee requirements, to ECHO for inclusion in the transactions being processed as part of the Check Guarantee Services.
  - (d) Individual Check Requirements. In addition to the requirements set forth in the Electronic Check Services section of this Agreement, Merchant must ensure that all checks it processes as part of the Check Guarantee Program meet the following conditions:
    - (i) *Preprinting.* Checkwriter's name and complete MICR line information must be preprinted on the check by the check printer.
    - (ii) *Amounts Must Match.* The numerical dollar amount and the written dollar amount on the check must be identical.
    - (iii) *Date.* The date written on the check must be the same as the date on which the Transaction occurred.
    - (iv) *Signature.* Checkwriter must sign the check and the signature in the signature block must not be substantially different from the name imprinted on the check. The signature must reasonably correspond to the signature on Checkwriter's driver's license.
    - (v) *Alterations Initialed.* Any alterations of the check must be initialed by the Checkwriter.
    - (vi) *Address Information.* Checkwriter must have its complete residence address and residence phone number (including area code) preprinted or legibly printed on the check. The residence address must be within the United States. If the preprinted address is a P.O. Box, general delivery, APO, FPO, etc., the street address from the Checkwriter's driver's license must be legibly printed on the check by Merchant
  - (e) Check Presentment Requirements.
    - (i) *Checkwriter Must Present Check to Merchant.* The check must have been presented by the Checkwriter whose name is imprinted on the check. The Checkwriter's physical appearance must reasonably correspond to the image and physical description of Checkwriter on his or her driver's license.
    - (ii) *Date of Presentment.* Merchant must submit the check for approval on the date that

the Transaction occurs. Pre-dated and post-dated checks do not qualify.

- (iii) Driver's License Information. Merchant must collect and submit electronically by either swiping driver's license or accurately hand keying into the current driver's license information during authorization to ECHO.
  - (f) Approval Response by ECHO. The check and required Checkwriter information must be read electronically in a manner approved by ECHO and submitted electronically to ECHO as an electronic Check Guarantee transaction for approval and receive an approved authorization response.
  - (g) Underlying Transaction Disputes. A check transaction that is otherwise eligible for a Check Guarantee payment by ECHO may become ineligible for a number of reasons related to the Transaction. For example, the following matters will disqualify an otherwise eligible check guarantee Transaction:
    - (i) The Checkwriter claims that Merchant did not deliver the goods and services for which the check was issued.
    - (ii) The Checkwriter claims that the goods and services for which the check was issued were returned to the Merchant.
    - (iii) The Checkwriter claims that the goods and services provided by Merchant are defective or otherwise unsatisfactory. This includes but is not limited to a check on which the Checkwriter has placed a stop payment.
    - (iv) The Checkwriter claims that Merchant accepted full or partial payment or some other form of security to secure payment of the check.
    - (v) The Checkwriter claims that the check was negotiated, in full or in part, for (1) cash or cash equivalent (i.e. money order, travelers check, etc.), (2) payment on an open account, (3) as a replacement for a check or debt already owed to the Merchant, or (4) for goods and services substantially different from those generally provided by Merchant as described on the Application.
    - (vi) The Transaction for which the check was issued is determined to be illegal or invalid.
    - (vii) The Checkwriter claims that the Merchant agreed to delay settlement of the Transaction.
- 6.05 No Attempted Circumvention.** Merchant agrees not to take any action to circumvent ECHO's ability to assess the risk of the transaction for Check Guarantee approval. For example, Merchant may not submit multiple smaller amount checks in lieu of a single check with a large dollar volume.
- 6.06 Assignment and Transfer of Ownership of Returns.** Merchant assigns to ECHO all of its rights and interests in all Transactions for which Merchant has received payment of the Guarantee amount from ECHO. Such rights include the right to forward the check to a collection agency or legal service for collection and to collect any Return Check Service Charges. Merchant further agrees to execute all documents reasonably required by ECHO to evidence the transfer of such interests.
- 6.07 Chargeback of Guarantee Amount.** If ECHO determines that it paid to Merchant a guarantee payment for a Transaction that was subsequently shown to be ineligible for a guarantee payment, Merchant agrees that ECHO may initiate a debit to the Merchant Account in the amount of such ineligible payment. In addition to the conditions under which a check may become ineligible for guarantee payment as set forth above, the following additional conditions

may result in a reversal of a guarantee payment:

- (a) Merchant has made an error in processing the check. Such errors include, but are not limited to key-entry error of the check amount or the Checkwriter driver's license information.
- (b) Merchant Account was not current.
- (c) Merchant did not deliver to ECHO a legible copy of the signed Checkwriter receipt within five business days of ECHO's request for evidence of the signed authorization.

**6.08 Merchant Bears Payment Risk for Transactions that are Not Eligible Check Guarantee Transactions.** Merchant understands and agrees that it bears the risk of non-payment for Transactions that are not eligible for guarantee payments initially, or that become ineligible as provided in this Agreement. Response provided by ECHO does not guarantee Merchant will receive payment.

**6.09 Forwarding of Ineligible Returns.** ECHO will automatically provide ACH or Agency Collection Services, as applicable, (together "Collection Services") for Returns that are not eligible for guarantee. These services will be provided in accordance with the Collection Services terms and standard collection service fees will apply to such activities. Merchant agrees to comply with the Collection Services terms, including the obligation to post notice of Returned Check Service Charge.

**6.10 Risk Management Settings.** Merchant acknowledges that ECHO maintains a proprietary risk management system. ECHO is not representing that a check is "good" or "bad" nor is ECHO making a credit decision or assessing a particular Checkwriter's creditworthiness. Merchant hereby acknowledges and agrees that ECHO may make adjustments to the risk management settings, without notice to Merchant, as ECHO deems necessary, and Merchant agrees to indemnify ECHO for any claim by Merchant or a third party as a result of such adjustments.

**6.11 Checkwriter Information.** Merchant agrees that all information relating to Checkwriter obtained by Merchant in connection with Check Guarantee Services will be used only for the business purposes contemplated by this Agreement. Merchant further agrees that it will take all reasonable steps necessary to prevent disclosure of any Checkwriter information to any party other than the Checkwriter and ECHO, in accordance with the terms of this Agreement.

**6.12 Compliance with Guarantee Conditions.** Merchant further acknowledges and agrees that Merchant's strict compliance with all Guarantee Conditions is material to Merchant avoiding Chargebacks under this Agreement.

**6.13 Returned Check Service Charges.** Merchant agrees that in addition to the fees set forth in this Agreement, ECHO shall be entitled to retain all Returned Check Service Charges on Check Guarantee Services.

## **ARTICLE VII. ACH REPRESENTMENT SERVICES**

The following terms and conditions govern ACH Representment Services provided by ECHO to Merchant in connection with other ECHO offerings. Such services may be a component of a larger offering as detailed in offering documentation.

**7.01 Description of Services.** ECHO will resubmit for payment to Merchant all Returns that result from Insufficient Funds or Uncollected Funds. Should ECHO be successful in collecting the re-initiated Check Transaction, ECHO will remit 100% of the face amount of the collected Check Transaction to Merchant within five days of re-initiation. If an ACH Representment Service transaction that ECHO has funded is subsequently reversed, ECHO will reverse the payment made to the Merchant and Merchant will be liable to ECHO for such amount.

- 7.02 Not a Guarantee of Payment.** Merchant understands that payment of Returns does not constitute a guarantee, and that Checkwriter has the right to contest the Check Transaction.

## **ARTICLE VIII. COLLECTION SERVICES**

The following terms and conditions govern Collection Services provided by ECHO and licensed collection agencies acting on behalf of ECHO to Merchant in connection with other ECHO-supplied Electronic Check services. The following terms and conditions will apply when a Merchant who applies to receive such Collection Services in combination with another Electronic Check service offering is accepted by ECHO for Collection Services. ECHO will automatically provide Collection Services for ineligible guarantee returns for Merchants who subscribe to the ECHO Electronic Check Guarantee Services.

- 8.01 Description of Services.** A Merchant that receives Collection Services appoints ECHO as its agent to seek payment on behalf of Merchant for Returns that are not successfully paid through ACH Representment Services as well as Returns that are returned by Checkwriters' banks for reasons other than non-sufficient funds or uncollected funds.
- 8.02 Fees.** Merchant agrees to pay ECHO the fees for Collection Services as set forth in the Merchant Application or Schedule of Fees for the offering that includes these services. The payment of such fees and changes to the fees are subject to the terms of Article I. ECHO will also retain thirty percent (30%) of the face amount of the Returns collected from the Checkwriter as a result of ECHO Agency Collection activities.
- 8.03 Types of Checks Eligible for Collection Services.** ECHO will attempt to collect ineligible Returns received for a reason code other than for stolen or forged checks, or checks for which numeric and written amounts differ. Checks will be automatically submitted for collection by ECHO check systems, without any action by Merchant. Merchant grants to ECHO the right to seek collection of a check submitted to it for collection for a minimum of 90 days from the date of receipt. Such right shall survive termination of the Collection Services, or the entire Merchant Agreement.
- 8.04 Merchant will Not Independently Pursue Collection of Checks Submitted to ECHO for Collection.** Merchant agrees not to seek collection of payments for unpaid checks which have been submitted to ECHO for collection. If the Checkwriter of a check that has been turned over to ECHO for collection makes payments directly to Merchant for a check subject to collection activities, Merchant agrees to promptly pay ECHO the fee to which ECHO would have been entitled if the Checkwriter had made such payment to ECHO.
- 8.05 Merchant Cooperation in Collection Activities.** Merchant agrees to cooperate fully with ECHO in obtaining payment for checks submitted to ECHO for collection, including providing transaction documentation, providing documentation of the products or services rendered, and supplying any other reasonably required information.
- 8.06 Assignment of Collection Activities.** Merchant acknowledges and agrees that ECHO may assign accounts to another collection service or legal service without written consent from the Merchant.
- 8.07 Special Indemnification Applicable to Collection Services.** Merchant agrees to indemnify, defend and hold ECHO and its affiliates harmless from any damages, court costs and related expenses, including attorney's fees if Merchant accepts payment or returned check service charges for an outstanding and unpaid check submitted to ECHO for collection without obtaining instructions or authorization from ECHO for doing so.
- 8.08 Right to Cease Collection Activity.** ECHO retains the right, in its sole discretion, to cease collection activity on any Return for any reason.



## ARTICLE IX. INTERNET GATEWAY SERVICES

The following terms and conditions govern Internet Gateway Services provided by ECHO to Merchant. The following terms and conditions will apply when a Merchant who applies to receive such Internet Gateway Solutions is accepted by ECHO to receive such services.

- 9.01 Description of Services.** ECHO provides Internet Gateway Services for Merchant's use in processing electronic payment transactions over the Internet.
- 9.02 Fees.** Merchant agrees to pay ECHO the fees for Internet Gateway Services as set forth in the Merchant Application or Schedule of Fees. The payment of such fees and any changes to such fees are subject to the General Fees section of this Agreement. If not set forth otherwise in the preceding locations, the following fees will apply for Internet Gateway Services:
- |                             |                         |
|-----------------------------|-------------------------|
| Gateway Access Fee          | \$25.00 per month       |
| Credit Card Transaction Fee | \$ 0.10 per transaction |
| Reject Fee                  | \$15.00                 |
| Service Reactivation Fee    | \$25.00 per occurrence  |
- 9.03 ECHO Obligations.** ECHO will provide the Internet Gateway Services to Merchant, in all material respects, in accordance with the applicable service documentation made available to Merchant by ECHO, and in accordance with applicable laws and regulations and the terms of this Agreement.
- 9.04 Service for Merchant Only.** Merchant agrees that it will only use the Internet Gateway Services for its account as described to ECHO in the Merchant Application, and that it will not submit payment data to ECHO or otherwise process orders on behalf of any other entity or individual.
- 9.05 Information Submitted by Merchant.** Merchant is solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes that are issued to Merchant as further described in Article I of this Agreement. ECHO will rely on information it receives from Merchant and may assume that all such information was transmitted by or on behalf of Merchant. Merchant agrees to upgrade its systems and take reasonable steps to implement recommendations by ECHO that relate to authentication of Merchant's identity at the time of running transactions. Such measures may include, but are not limited to: (a) additional passwords, (b) use of ECHO issued certificates provided to the SSL connection, and (c) registration of Merchant servers used to run transactions.
- 9.06 Data Privacy and Security.** Merchant understands and acknowledges that it must comply with all obligations set forth in Article I for the safeguarding of information when using Internet Gateway services.
- 9.07 License to Use Innovative Gateway Solutions Marks.** So long as Merchant receives Internet Gateway Services from ECHO, ECHO grants to Merchant a limited revocable license to use the Innovative Gateway Solutions Marks on Merchant's web site in connection with Merchant's offering of payment options to Merchant's customers. The preceding license relates only to the Innovative Gateway Solutions Marks, as such marks are made available at [www.innovativegateway.com](http://www.innovativegateway.com), and all such usage must conform to the ECHO trademark usage guidelines located at [www.innovativegateway.com](http://www.innovativegateway.com).
- 9.08 Special Limited Remedy for Internet Gateway Services.** All of the limitations on warranties and liabilities of ECHO set forth in Article I apply to the Internet Gateway Services, however, Merchant's sole remedy for a breach by ECHO of its warranties as they relate to Internet Gateway Services shall be an obligation of ECHO to use commercially reasonable efforts to repair, or at its option replace, the Internet Gateway Services. Merchant acknowledges that ECHO does not warrant that such efforts will be successful. If ECHO's efforts are not successful, Merchant may terminate this Agreement in accordance with its terms. The foregoing shall



constitute Merchant's sole remedy, and ECHO's sole liability, for ECHO's breach of any warranty for Internet Gateway Services.

- 9.09 Third Party Programs.** Merchant acknowledge that the Internet Gateway Services provided by ECHO are designed for use with certain third-party programs, including, without limitation, certain Internet browser software programs. Merchant will look solely to the developers and manufacturers of such programs with regard to warranty, maintenance or other support regarding the same. ECHO makes no warranty, express or implied, with regard to any such third-party software.
- 9.10 Disclaimer.** ECHO ALSO EXPRESSLY DISCLAIMS ANY LIABILITY FOR THE INDIVIDUAL MERIT AND LEGITIMACY OF ORDERS FORWARDED FROM YOU AND FOR ANY AND ALL CLAIMS OF LOSS AND/OR FRAUD INCURRED RESULTING FROM CONCLUSIONS DRAWN FROM THE DATA PROVIDED BY THE FRAUDSCREEN.NET SERVICE.

## ARTICLE X. GIFT CARD SERVICES

The following terms and conditions govern Gift Card Services provided by ECHO to Merchant. The following terms and conditions will apply when a Merchant who applies to receive such Gift Card Services is accepted by ECHO for Gift Card Services.

- 10.01 Description of Services.** ECHO shall provide for the electronic processing of gift card transactions and purchases made by customers of Merchant who hold an approved card ("Gift Card").
- 10.02 Fees.** Merchant agrees to pay ECHO the fees for Gift Card Services as set forth in the Merchant Application or Schedule of Fees. The payment of such fees and any changes to such fees, are subject to the terms of the General Fees section of this Agreement. ECHO will begin charging Gift Card Service fees for Merchants upon the earlier of the date when activity begins under the account, or beginning two months after Merchant has been approved, even if gift cards have not been ordered by Merchant. If an ACH transaction is rejected, Merchant will pay ECHO a per-item reject processing fee of \$25.
- 10.03 ECHO Obligations.** ECHO will provide the following "Gift Card Services" for Merchant:
- (a) ECHO will electronically confirm that the Gift Card presented to Merchant by the presenter of the gift card ("Gift Card Holder") is an active account on the ECHO electronic Gift Card processing system ("Gift Card System") and has sufficient funds that can be reserved or removed to pay for the Gift Card Holder's purchase. Merchant understands and agrees that an authorization by ECHO indicates only the availability of sufficient value on a Gift Card account at the time of authorization and does not warrant that the person presenting the Gift Card is authorized to use such Gift Card;
  - (b) ECHO will provide for the electronic debiting of the Gift Card Holder's account when the Gift Card Holder has made a purchase, and the electronic crediting of the Gift Card Holders account when value is added to the Gift Card Holders account;
  - (c) ECHO will maintain an accessible electronic record of transactions as described above for a period of 60 days; and
  - (d) ECHO will supply to and accept from the Merchant all information and data reasonably required from time to time in connection with the Gift Card Services.
- 10.04 Merchant's Duties.** In addition to satisfying its obligations under other sections of the Agreement, Merchant will do the following as a condition of receiving Gift Card Services:

- (a) Merchant will accept for processing by ECHO any transaction initiated by a customer utilizing Gift Cards without discrimination with regard to the customer who initiated the transaction or the terminal at which a transaction was initiated;
- (b) Merchant may only be used to purchase goods or services of Merchant, except where Merchant is required by law to exchange Gift Cards for cash;
- (c) Merchant must use individual care and discretion to verify the identity of Gift Card Holder;
- (d) Merchant will supply to ECHO all information and data reasonably required from time to time by ECHO to
- (e) perform the Services, including the location of POS terminals and Gift Card Holder data and content as may be agreed upon by the parties from time to time and within such time or times as may be reasonably necessary to perform the Services promptly and in a proficient manner;
- (f) Merchant will maintain all transaction records and other records required by law or regulation to maintain in connection with the operation of the electronic point of sale processors (Card Terminals);
- (g) Merchant will obtain, operate, and maintain at its own expense the Card Terminal; Merchant will be responsible for the accuracy and adequacy of all data transmitted by it or on its behalf for processing by or storage of information on ECHO Gift Card System;
- (h) Merchant will maintain sufficient "back-up" information and data to reconstruct any information or data loss due to any system malfunction and for reconciling its records with reports provided by ECHO and promptly notifying ECHO of any discrepancies;
- (i) Merchant will make both personal and ECHO records available to ECHO, all within such time or times and in such form or manner as may be reasonably necessary to enable ECHO to perform the Services promptly and in a proficient manner;
- (j) Merchant will at its sole cost and expense be responsible for the sale and other distribution of Gift Cards and for associated marketing or advertising;
- (k) Merchant is responsible for obtaining authorizations in advance of each transactions, and for any losses it may incur in conducting transactions when an authorization is not obtained, as well as for any erroneous or fraudulently obtained authorizations;
- (l) Merchant will bear the risk of any loss, theft, alteration or damage to, or fraudulent or improper or unauthorized use of any Gift Card or Card Terminal upon the time of delivery of Gift Cards ordered through ECHO, and at all times if ordered through a third party (with consent of ECHO).

**10.05 No Surcharge.** Merchant agrees not to charge its customers increased fees, surcharges, or any other premium payments for Gift Card transactions, the use of the POS Terminals or the operation of the system unless such surcharges are permitted by applicable laws or regulations.

**10.06 Limit on Gift Card Liabilities.** ECHO may impose a cap on the dollar amount of outstanding Merchant Gift Card liabilities, which ECHO may change from time to time with or without notice. Should Merchant exceed the limit established by ECHO, ECHO may suspend processing, establish a Reserve Account, or take other actions as deemed necessary by ECHO to guarantee the repayment of outstanding gift card liabilities.

**10.07 Termination:**

- (a) Termination by ECHO. ECHO may terminate the Gift Card Services as provided under Article I of the Agreement.
- (b) Termination by Merchant. Merchant may terminate the Gift Card Services if ECHO materially breaches its obligations under the Agreement or if the operation and administration of the Gift Card System, is held to be illegal by any applicable judicial or regulatory authority.
- (c) Effect of Termination. Following the effective date of the termination of the Gift Card Service, neither party shall have any further rights with respect to each other except for those that arose prior to the effective date of the termination, including the mutual confidentiality provisions. Merchant shall not be entitled to a refund of any fees, charges, or other amounts paid to ECHO. Merchant shall remain liable for, and shall continue to be responsible for, meeting all financial and other obligations arising from its participation (including the payment of any and all applicable fees, charges, and other amounts) that may have arisen prior to the termination date. Each party shall cease the use of all materials and properties provided by the other, however the owning party must request in writing within ten days of the termination date that the materials be returned. Merchant shall notify its customers of any balance owed to the customer by the Merchant. Any chargebacks arising from the unused portion of Gift Card after termination are the sole responsibility of Merchant.

**10.08 Gift Card System Downtime.** Merchant understands and agrees that in the event that the Gift Card System is not able to verify transactions, ECHO will not process gift card transactions and the Merchant accepts sole responsibility for any transactions it authorizes under such circumstances. Merchant will indemnify and hold harmless ECHO from and against any and all damages, loss, liability, consequential damage, expense, claim or obligation arising in connection with unauthorized transactions.

**10.09 Merchant Comply with Bankcard Obligations.** Additional rules, policies, procedures, restrictions and laws will apply to those Gift Cards activated through the use of, or purchased by, a bankcard. Each of these provisions have been outlined in a separate bankcard Agreement with your bankcard service provider, but should be considered as relevant and applicable in relation to Gift Card transactions processed through the Gift Card System.

## ARTICLE XI. ACCOUNT UPDATER SERVICE

The following terms and conditions govern the Account Updater Service provided by ECHO to Merchant. The following terms and conditions will apply when a Merchant who applies to receive Account Updater Services is accepted by ECHO and the account updater service provider for such service.

**11.01 Description of Services.** The Account Updater Service enables Merchant to electronically obtain updated account information from participating Card Associations and card Issuers for Customers with whom Merchant has an ongoing business relationship.

**11.02 Fees.** Merchant agrees to pay ECHO the fees for Account Updater Services as set forth in the Merchant Application or Schedule of Fees. Payment and modification of fees will be handled as set forth in General Fees section of this Agreement.

**11.03 ECHO Obligations.** ECHO will provide the Account Updater Services to Merchant, in all material respects, in accordance with the applicable service documentation made available to Merchant by ECHO and in accordance with applicable laws and regulations and the terms of this Agreement. ECHO will provide Merchant with information on file exchange formats and layouts necessary to enable data exchanges under the program. ECHO will transfer Merchant requests to participating Card Associations under the system and provide Merchant with updated account information it receives from participating Card Associations under the program within two business days of its receipt by ECHO. ECHO will also notify Merchant of any error corrections it

receives from Card Associations regarding information requested by Merchant.

**11.04 Merchant Eligibility.** Merchant must meet the following requirements to receive Account Updater Services:

- (a) Merchant must be a U.S. merchant that has not been disqualified from processing with Card Associations and is in compliance with the Rules.;
- (b) Merchant must have a valid business need to receive updated account information, including but not limited to: subscription services, "Express checkout services," Membership (club) services, or recurring payment services;
- (c) Merchant must not be in a high risk business category as defined by participating Card Associations.

**11.05 Merchants Obligations.** In connection with the Account Updater Service, Merchant must:

- (a) Comply with any Card Association account updater terms of use provided by Card Associations from time to time;
- (b) Submit inquiries only for those accounts with which the Merchant has an ongoing customer relationship;
- (c) Request an account update for every eligible customer in its database at least once every 180 calendar days;
- (d) Update its customer account database within 5 business days of receiving an update from ECHO or Card Associations, including any error corrections, and use such updated information in subsequent Card transactions;
- (e) Comply with the ECHO specified account inquiry record and inquiry file layouts to facilitate data interfaces and correct any operational errors within 5 business days of receipt of an error notification from ECHO or a Card Association;
- (f) Not request authorization on accounts that have returned a response of "Closed Account"; and
- (g) Not submit inquiries on behalf of any other entity.

## **ARTICLE XII. ELECTRONIC BENEFITS TRANSFER (EBT) SERVICES**

The following terms and conditions govern Electronic Benefits Transfer (EBT) Services provided by ECHO to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application for electronic payment services, or thereafter.

**12.01 Applicability of Quest Rules.** Merchant acknowledges that it will adhere to the Quest Operating Rules and Regulations as modified by Quest from time to time.

**12.02 EBT Fees.** If fees are not listed on Merchant Application to the contrary, the following fees are applicable. Payment and modification of fees will be handled as set forth in General Fees section of this Agreement.

- (a) Transaction Fee           \$ 0.12 per transaction
- (b) Monthly Fee               \$10.00 per month

## EXHIBIT A

### DEFINITIONS

"Account" means a Bank account maintained by Merchant as set forth in Article I of the Agreement for the crediting of collected funds and the debiting of fees and charges under the terms of this Agreement.

"ACH" means the Automated Clearing House.

"ACH Network" means a funds transfer system that provides for the clearing of electronic entries for participating financial institutions.

"Agreement" means the Terms & Conditions, the Merchant Application, the Rules, the ACH Authorization and any supplementary documents indicated herein, as amended from time to time.

"Authorization" means a request to make a Card Transaction which is transmitted to the Card Issuer.

"AVS" (Address Verification System) means a system to verify the cardholder's Zip code and address.

"Card" means (i) a valid credit card in the form issued under license from MasterCard, Visa, Visa International, Inc., JCB ("Bank Card") or a Payment Network such as Discover Network, or (ii) any other valid credit card accepted by Merchant by agreement with ECHO and Bank.

"Card Association" means MasterCard, Visa, Discover Network, JCB or any other Card Issuers that provides Cards that are accepted by Merchant by agreement with ECHO and its Bank.

"Cardholder" means the person to whom a Card has been issued and whose name is embossed upon the face of the Card.

"Card Issuer" means the financial institution or company which has provided a Card to a Cardholder.

"Chargeback" means the procedure by which and the value of, a Sales Draft (or disputed portion thereof) is returned to the Merchant by the Card Issuer.

"Checkwriter" means a customer who writes a check or authorizes an ACH debit or credit in conjunction with the purchase of goods and services from Merchant.

"Credit Voucher" means a document produced by a Merchant evidencing a refund or price adjustment for the credit to a Cardholder's account.

"Discover Network" means the payment network known as Discover Network.

"Driver's License Information" means: name, ID number and state code either swiped or hand keyed.

"Imprint" means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically printing a Sales Draft.

"JCB" means JCB, International.

"MasterCard" means MasterCard International, Incorporated.

"MICR" means the magnetic ink character recognition which is imprinted on a check.

"NACHA" means National Automated Clearing House Association.

"NCN"- means National Check Network®" -- the national checkwriter database maintained by ECHO affiliates that may be utilized by ECHO or its affiliates in providing services to Merchant.

"ODFI" means the Originating Depository Financial Institution designated by ECHO on behalf of which debit and credit transactions are submitted to the Federal Reserve or other check and ACH settlement systems.

"Password" means unique alphanumeric access code provided to access information, software, database, and other content owned or licensed by ECHO.

"Payment Card Industry Data Security Standard, or "PCI DSS" means the set of security standards relating to security of credit card data adopted by the Card Associations.

"Payment Network" means the procedures and systems used to settle process and certain financial transactions, such as Discover Network.

"Retrieval" means a Card Issuer's or Card Holder's request for a Transaction receipt.

"Return" means a Checkwriter check that was returned unpaid.

"Returned Check Service Charge" means a fee charged to Checkwriter for a transaction that is returned unpaid by the Checkwriter's bank.

"Rules" means the rules and regulations of any Card Association or Payment Network, as amended from time to time.

"Sales Draft" means the paper form, approved in advance by ECHO, whether such form is electronically or manually imprinted, evidencing a sale Transaction.

"Settlement" means the debiting or crediting of funds to the designated bank account of Merchant resulting from Merchant Transactions under this Agreement.

"Transaction" means any retail sale of goods and services, or credit for such, from Merchant for which the customer makes payment through the use of any Card.

"Visa" means Visa U.S.A., Inc. or Visa International, Inc.

"VISA POS" – means the service of providing electronic check conversion using direct bank access for a portion of the check verification and clearing.

"Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction.

**Exhibit B****Index of Fees**

| Section        | Description                                                              |
|----------------|--------------------------------------------------------------------------|
| 1.13 (c)       | <a href="#">Payment of fees and Other Amounts Owed; Late Payment Fee</a> |
| 1.14           | <a href="#">General Fees</a>                                             |
| 1.15 (b)       | <a href="#">Term: Termination; Termination for Merchant Misconduct</a>   |
| 1.15 (d)       | <a href="#">Term: Termination; Software Recovery Fee</a>                 |
| 1.21 (b)       | <a href="#">Safeguarding of Information</a>                              |
| 1.25 (a) – (g) | <a href="#">Equipment</a>                                                |
| 2.06 (b)       | <a href="#">Unusual and Suspicious Transactions; Account Monitoring</a>  |
| 2.27           | <a href="#">Chargebacks</a>                                              |
| 2.29           | <a href="#">Fees and Discount Percentages</a>                            |
| 3.02           | <a href="#">Debit Fees</a>                                               |
| 9.02           | <a href="#">Internet Gateway Services: Fees</a>                          |
| 10.02          | <a href="#">Gift Card Services: Fees</a>                                 |
| 12.02          | <a href="#">EBT Fees</a>                                                 |

Updated 9/13/10





21215 Burbank Blvd.  
Woodland Hills, California 91367  
1-800-262-3246

## Merchant Services Application

### BUSINESS INFORMATION

|                                                                       |                              |                                                                         |                                                                                     |
|-----------------------------------------------------------------------|------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| TYPE OF OWNERSHIP:                                                    |                              |                                                                         |                                                                                     |
| <input type="checkbox"/> Partnership                                  | <input type="checkbox"/> LLC | <input type="checkbox"/> Sole Proprietorship                            | <input type="checkbox"/> Corporation <input checked="" type="checkbox"/> Non-Profit |
| LEGAL BUSINESS OR CORPORATE NAME:<br>City of Opelika                  |                              | SALES I.D.:<br>0256                                                     | SALES ORGANIZATION:<br>NISC                                                         |
| "DOING BUSINESS AS" NAME:<br>Opelika Power Services                   |                              | TYPE OF BUSINESS: (BE SPECIFIC)<br>Telecommunications                   |                                                                                     |
| STOREFRONT ADDRESS:<br>600 Fox Run Pkwy                               |                              | CITY:<br>Opelika                                                        | STATE: AI ZIP CODE: 36801                                                           |
| BILLING ADDRESS:<br>204 S. 7 <sup>th</sup> St.                        |                              | CITY:<br>Opelika                                                        | STATE: AI ZIP CODE: 36801                                                           |
| BUSINESS PHONE NUMBER:<br>(334)705-5170                               | FAX NUMBER:<br>(334)705-5177 | FEDERAL TAX I.D. NUMBER:<br>636001334                                   | WEBSITE URL:<br>www.opelikapower.com                                                |
| CONTACT PERSON/TITLE:<br>/ Rebecca Walls/ Manager of Customer Support |                              | CONTACT PHONE NUMBER:<br>(334)705-5172                                  |                                                                                     |
| AGE OF BUSINESS: (YEARS)<br>161 years                                 |                              | NO. OF LOCATIONS: 1<br>(If multiple, attach 'Additional Location Form') |                                                                                     |
| SWIPED %:<br>%                                                        | INTERNET %:<br>100 %         | PHONE ORDER %:<br>%                                                     |                                                                                     |

### OWNER/OFFICER INFORMATION

|                                        |                  |                              |               |
|----------------------------------------|------------------|------------------------------|---------------|
| CEO/PRESIDENT/OWNER:<br>1. Gary Fuller | TITLE:<br>Mayor  | % EQUITY OWNERSHIP:<br>%     |               |
| SOCIAL SECURITY NUMBER:                | DOB:             | HOME PHONE:<br>(334)749-6780 |               |
| RESIDENCE ADDRESS:                     | CITY:<br>Opelika | STATE:<br>AI                 | ZIP:<br>36801 |
| SECOND OFFICER OR CO-OWNER:<br>2.      | TITLE:           | % EQUITY OWNERSHIP:<br>%     |               |
| SOCIAL SECURITY NUMBER:                | DOB:             | HOME PHONE:<br>( )           |               |
| RESIDENCE ADDRESS:                     | CITY:            | STATE:                       | ZIP:          |

Attachment: ECH Application (1093 : ECH Merchant Supplies Agreement)

## PRODUCT AND FEE SCHEDULE

Merchant hereby subscribes to the *ECHO* Check Services noted below and agrees to pay *ECHO* the applicable fees indicated. Merchant acknowledges such fees may be electronically netted from the proceeds of Merchant's sales or debited from the Merchant Account. Fees not collected within the month of billing will accrue interest at the maximum rate allowed by law per month beginning on the first day of the month following the billing month until all fees and accrued interest are paid in full.

| CHECKS                                        |                                          |                                        |
|-----------------------------------------------|------------------------------------------|----------------------------------------|
| AVERAGE MONTHLY VOLUME:<br>\$ <u>4,060.00</u> | AVERAGE TICKET SIZE:<br>\$ <u>150.00</u> | NUMBER OF CHECKS PER DAY:<br><u>53</u> |

| Please ✓ Services Selected |                                                 | TRANSACTION FEE | DISCOUNT FEE% | CHARGEBACK / RETURN FEE | OTHER FEE | MONTHLY MINIMUM FEE |
|----------------------------|-------------------------------------------------|-----------------|---------------|-------------------------|-----------|---------------------|
| X                          | Electronic Check Conversion                     | \$              | N/A           | \$0.75                  | \$        | \$                  |
|                            | Electronic Check Conversion with Guarantee      | N/A             | N/A           | N/A                     | N/A       | N/A                 |
| X                          | PPD (Prearranged Payment & Deposit entry - ACH) | \$              | N/A           | \$0.75                  | \$        | \$                  |
| X                          | CCD (B2B electronic check - ACH)                | \$              | N/A           | \$0.75                  | \$        | \$                  |
| X                          | ARC (Mail-order/Lockbox - ACH)                  | \$              | N/A           | \$0.75                  | \$        | \$                  |
| X                          | TEL (Telephone ACH authorization)               | \$ .20          | N/A           | \$0.75                  | \$        | \$                  |
| X                          | WEB (Internet ACH authorization)                | \$ .20          | N/A           | \$0.75                  | \$        | \$                  |
|                            | PAPER CHECK GUARANTEE                           | N/A             | N/A           | N/A                     | N/A       | N/A                 |
|                            | RCK (Electronic Check Representment - ACH)      | N/A             | N/A           | N/A                     | N/A       | N/A                 |

**TRADITIONAL COLLECTIONS - MERCHANT OPT-OUT:** Traditional Collection Services are provided as part of the ECC, VISA POP and ACH services. If you wish to "opt-out" please initial here. N/A

GUARANTEE OPTIONS: N/A

☐ Stop Pay Coverage

☐ No Image Coverage

ECHOLINK SERVICE: N/A

☐ YES

☐ NO

INTERNET SERVICES FEE:

\$ N/A

☒ Starter

☐ Professional

☐ Other (indicate below):

☐ Standard

☐ Professional Plus

MONTHLY TECHNICAL SUPPORT FEE:

\$ N/A

SET-UP FEE:

\$ N/A

EARLY TERMINATION FEE:

\$ N/A

TERM: (select one)

☒ 5 years

☐ Other: \_\_\_\_\_

### TRANSACTION SUBMISSION - NON TERMINAL PROCESSING (check applicable service)

|                            |     |                                                          |
|----------------------------|-----|----------------------------------------------------------|
| *INTERNET API              | X   | Merchant software & version: Consumer Self-Serve V.3.6.3 |
| *INTERNET VIRTUAL TERMINAL |     | PERIPHERAL:                                              |
| *INTERNET BATCH            | X   | Merchant software & version: Consumer Self-Serve V.3.6.3 |
| *RECURRING PAYMENT MANAGER | N/A | N/A                                                      |
| FRAME RELAY                | N/A | Merchant software & version: N/A                         |
| PC SOFTWARE                | N/A | TYPE OF PC SOFTWARE: N/A                                 |

\*(Not available for VISA POP, VISA POP with Guarantee or Paper Guarantee)

### THIRD-PARTY CONNECTION/GATEWAYS:

### TRANSACTION SUBMISSION - TERMINAL PROCESSING

| MODEL/TYPE                              | NEW or REPROGRAM                                                  | CONNECTION                                                      |
|-----------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------|
| TYPE OF TERMINAL: <u>N/A</u>            | <input type="checkbox"/> New / <input type="checkbox"/> Reprogram | <input type="checkbox"/> IP / <input type="checkbox"/> DIAL-UP  |
| TYPE OF PRINTER: <u>N/A</u>             | <input type="checkbox"/> New / <input type="checkbox"/> Reprogram | <b>CALL WAITING</b>                                             |
| TYPE OF CHECK READER/IMAGER: <u>N/A</u> | <input type="checkbox"/> New / <input type="checkbox"/> Reprogram | <input type="checkbox"/> YES / <input type="checkbox"/> NO      |
| TELEPHONE PREFIX:                       | <input type="checkbox"/> YES <input type="checkbox"/> NO          | <b>CHECK OPTIONS</b>                                            |
| If YES, what is Prefix Number?: _____   |                                                                   | <input type="checkbox"/> ECC / <input type="checkbox"/> C-Store |



## CHECK

|                                                                       |                               |
|-----------------------------------------------------------------------|-------------------------------|
| <b>ADMIN RTN RESEARCH: (defaults to 'YES' if none selected)</b>       | <b>ECHO IMAGE REPOSITORY:</b> |
| <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO | <u>N/A</u>                    |

|                                                                                                                                    |                                                         |                                 |
|------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|---------------------------------|
| <b>CHECK COLLECTIONS – CHECKS SUBMITTED TO ECHO – (defaults to 'FROM ACH SYSTEM' if none selected) <u>N/A</u></b>                  |                                                         |                                 |
| <input type="checkbox"/> From ACH System                                                                                           | <input type="checkbox"/> Via File From Merchant         | <input type="checkbox"/> Mailed |
| <b>CHECK COLLECTIONS REIMBURSEMENT OPTIONS FOR MULTIPLE LOCATIONS<br/>(Guarantee and/or Collections) – (select one) <u>N/A</u></b> |                                                         | <b>CHECK ROUTE/ACCOUNT</b>      |
| <input type="checkbox"/> Combine All Locations                                                                                     | <input type="checkbox"/> Reimburse Individual Locations |                                 |

## AUTHORIZED SIGNATURES AND DATE OF EXECUTION:

By physically signing or electronically approving this Merchant Application, I acknowledge that I have been able to access, review and print the Merchant Agreement located at <http://www.echo-inc.com/terms/>, a copy of which is also available from Intuit upon request. I have read and understand the Merchant Agreement. I understand that this Merchant Application is incorporated into the Merchant Agreement and that both documents, together with any documents incorporated into them by reference, constitute Merchant's contract with Intuit and Bank. I understand that Intuit may update the terms of the Merchant Agreement from time to time, with or without advanced notice, including making updates to the fees and charges payable by Merchant. I understand that Intuit may advise Merchant of such changes in messages included in monthly statements or other communications. I agree to periodically view the Merchant Agreement at <http://www.echo-inc.com/terms/>, or to request a copy from Intuit, to understand my obligations and to ensure that I am abiding by the most current version of the Merchant Agreement. I understand that this Merchant Application and the Merchant Agreement may only be amended in writing by an authorized officer of Bank and the corporate office of Intuit, and that no other representative of Bank or Intuit has the authority to make verbal or written modifications to the Merchant Application or Merchant Agreement.

I agree that Merchant will pay to Intuit and/or Bank the fees and charges set forth in this Merchant Application, any applicable Schedule of Fees, and the Merchant Agreement. I understand that Intuit will debit Merchant's Account through ACH for fees, charges or adjustments incurred by Merchant under the Merchant Agreement. I understand and agree that Merchant will pay all taxes and other charges imposed by any government authority on the services provided under the Merchant Agreement.

I declare under penalty of perjury that all of the information supplied in and in connection with this Merchant Application is true, correct and complete. As the Principal or Corporate Officer of Merchant, I authorize Intuit and Bank to investigate and verify the information contained in this Merchant Application about Merchant and me. I approve Intuit's and Bank's use of credit reports, and other services offered by reporting agencies and third parties for such verification purposes and to assess Merchant's and my financial condition and credit status. Accordingly, I authorize credit reporting agencies and other sources to release any information they may have pertaining to me and Merchant to Bank and/or Intuit, and consent to receive notices and communications regarding such credit status via the service's website or email.

I understand that the Terms and Conditions for American Express® Card Acceptance, ("Terms and Conditions") will be sent to the business entity indicated above along with the welcome letter upon approval of such business entity to accept the American Express Card by American Express Travel Related Services Company, Inc. By accepting the American Express Card, for the purchase of goods and/or services, Merchant agrees to be bound by the Terms and Conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Application to be executed on the date signed by Bank.

|                                           |                                           |
|-------------------------------------------|-------------------------------------------|
| X _____                                   | X _____                                   |
| Signature, Principal or Corporate Officer | Signature, Principal or Corporate Officer |
| Date                                      | Date                                      |

All business entities must have their obligations guaranteed by a principal or other creditworthy individual. As a primary inducement to Bank and INTUIT to enter into the Merchant Agreement, the undersigned Guarantor(s) jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its current and future duties and obligations to INTUIT and Bank under the Merchant Agreement. The guarantee applies to the Merchant Agreement as it now exists or as it may be amended from time to time, whether or not Guarantor has received notice of any amendment to the Agreement, and applies to all services provided to Merchant, including those added after commencement of the processing relationship. If Merchant breaches the Merchant Agreement, INTUIT and Bank may proceed directly against Guarantor without first exhausting its remedies against any other person or entity, or any security held by Bank. This guarantee will not be discharged or affected by the death of the undersigned and may be enforced by or for the benefit of any successor of INTUIT or Bank. Guarantor understands that this guaranty is a condition of INTUIT providing services to Merchant and remains in full force and effect even if Guarantor receives no additional benefit from the guaranty. Guarantor also agrees to be bound by the provisions of the Merchant Agreement applicable to Guarantor. Guarantor authorizes INTUIT and Bank to use of credit reports, and other services offered by reporting agencies and third parties to verify information provided in the Merchant Application about Guarantor and to assess Guarantor's financial condition and credit status. Guarantor further authorizes credit reporting agencies and other sources to release any information they may have pertaining to Guarantor to INTUIT and Bank, and consents to receive notices and communications regarding such credit status via the service's website or email.

|                          |                          |
|--------------------------|--------------------------|
| X _____                  | X _____                  |
| Signature, an Individual | Signature, an Individual |
| Date                     | Date                     |

Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_

## RESOLUTION NO. (ID # 1092)

Approving and Authorizing the Execution of Merchant Processing Applications and Agreements by and Among the City of Opelika, Alabama, National Information Solutions Cooperative, First Data Merchant Services Corporation and Intuit, Inc.

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF  
MERCHANT PROCESSING APPLICATIONS AND AGREEMENTS  
BY AND AMONG THE CITY OF OPELIKA, ALABAMA, NATIONAL  
INFORMATION SOLUTIONS COOPERATIVE, FIRST DATA  
MERCHANT SERVICES CORPORATION AND INTUIT, INC.**

**WHEREAS**, National Information Solutions Cooperative (“NISC”) is an information technology company that develops and supports software and hardware solutions for member owners; and

**WHEREAS**, the City of Opelika, Alabama (the “City”), acting by and through the Opelika Power Services Department, is a participating member of NISC; and

**WHEREAS**, NISC has partnered with First Data Merchant Services Corporation (“First Data”) and Intuit, Inc, (“Intuit”), to develop and provide payment technology for member owners; and

**WHEREAS**, First Data is a global payment technology solutions company; and

**WHEREAS**, Intuit is a software company that develops financial software, and

**WHEREAS**, it is in the best interest of the City to participate in the NISC payment services program; and

**WHEREAS**, the following merchant processing applications and agreements have been prepared and submitted to the City Council for approval:

- (a) NISC/First Data Gateway Selection Request Form
  - (b) Merchant Processing Application and Agreement for electronic billing (e-bills), which allows the customer to pay through a computer;
  - (c) Merchant Processing Application and Agreement for recurring credit card payments;
  - (d) Merchant Processing Application for Verifone Swipe (magnetic swipe reader software);
  - (e) Merchant Processing Application for interactive voice response (IVR);
  - (f) Merchant Processing Application for “Pay Now” link to the SmartHub Section of [www.opelikapower.com](http://www.opelikapower.com);
  - (g) Merchant Processing Application for payment processing through mobile app provided by NISC; and
  - (h) Amendment One of Merchant Processing Application and Agreement
- (the above Merchant Processing Applications and Agreements (letters “a” thru “h”, inclusive) being hereinafter collectively referred to as “Merchant Applications and Agreements”); and

**WHEREAS**, the City Council has determined that it is now in the best interest of the City and its citizens to approve said Merchant Applications and Agreements.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. That the above Merchant Applications and Agreements, copies of which are attached hereto, be and the same are hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve which approval shall be conclusively evidenced by execution and delivery of said Merchant Applications and Agreements.

2. That the Mayor is hereby authorized and directed to execute said Merchant Applications and Agreements in the name and on behalf of the City.

3. That the officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances, agreements, applications or other communications under the seal of the City or otherwise, as they or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Merchant Applications and Agreements.

4. That this Resolution shall take effect upon its passage and adoption by the City Council.

**ADOPTED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

---

CITY CLERK





Dear Member:

Attached you will find applications which will get you started with our NISC Payment Services program.

Please feel free to contact Jaime White at extension 2763 for assistance in completing the forms

NISC will review all applications to ensure the required information meets the gateway specifications. NISC will then process your application with First Data/Intuit. Once all paperwork has been completed, merchant accounts will be established.

Applications for approval may take up to 45-60 **business days** or approval. NISC will contact you once all merchant accounts are in place to arrange training and transition to the NISC solution.

Our CCB Payment Implementation Team is looking forward to working together during this process. Please contact Jaime White at extension 2763 to assist you with any questions.

Sincerely,

Jaime White

### Merchant Check List

- ☐ On the **Merchant Processing Application and Agreement**, please complete and sign on page 3 where indicated.
  - Include all owner information contained in Section 5, including the owner's social security number, or include a front back copy of their driver's license.
  - The owner of your location must be the person signing all the forms provided.
  - Include the non bankcard merchant ID numbers and EBT FCS# on the application, if applicable.
  - Identify the type of POS equipment you use/require where designated on the application.
- ☐ Upon review of the **Program Guide** (booklet), complete **Part V: Confirmation Page** (46) with a signature.
- ☐ Complete the document titled **About Merchant's Business**
- ☐ Complete the document titled **Merchant Processing Credit Addendum**
- ☐ Complete the document titled **NISC/First Data Gateway Selection**
- ☐ Upon review of **Amendment 1 of the Merchant Processing Application and Agreement**, complete with dates and signature.
- ☐ **Attach a copy of a void check or account information on bank letterhead (no counter check or deposit slips accepted.)**
- ☐ **REQUIRED** – Please attach Financial for two years if the yearly volume is over \$1M in sales.

If you have any questions concerning the attached documentation, please call  
Jaime White at 866.999.6472 x2763.  
You may also contact via email at [jaime.white@nisc.coop](mailto:jaime.white@nisc.coop).



## NISC/FIRST DATA GATEWAY SELECTION

MERCHANT BUSINESS NAME: Opelika Power Services  
 Mailing address: 204 S 7th St.  
 City, State, Zip: Opelika, AL 36801  
 Phone number: 334-705-5170  
 Contact name: Rebecca Walls  
 Title: Manager of Customer Support  
 CR # 2222579 Estimated "Go Live" date: September 28, 2015

New to credit card acceptance? Circle one: YES or **NO**

# of Customers: 2500

**NOTE:** If you process credit cards for multiple payment channels (listed below) you will need a "Multiple Location" form completed for each payment mode. One form is included in the packet. Please make copies for each additional merchant account setup.

Merchant account requested for:

|                                                            |                                             |
|------------------------------------------------------------|---------------------------------------------|
| <input checked="" type="checkbox"/> Recurring Credit Cards | <input checked="" type="checkbox"/> IVR     |
| <input type="checkbox"/> Virtual Terminal                  | <input checked="" type="checkbox"/> Ebill   |
| <input checked="" type="checkbox"/> VeriFone Swipe         | <input checked="" type="checkbox"/> Pay Now |
| <input type="checkbox"/> Cash Register                     | <input checked="" type="checkbox"/> Mobile  |
| <input type="checkbox"/> Kiosk                             | <input type="checkbox"/> AppSuite           |

Credit card (check all that apply):

☒ Visa ☒ MasterCard ☒ Discover ☐ American Express

Select Merchant type: Utility ☐ Telecom ☒ Other ☐

Select ONE Program

☒ **Standard Program** – Interchange Pass through Program.

☐ **Member Billed** Convenience Fee Model – Fee Charged by Utility

☐ **NISC Billed** Convenience Fee Model – Fee Charged by NISC

**NOTE:** Selection of **Member Billed** or **NISC billed** indicates that this merchant will be charging a convenience fee to any members for all transactions except face to face and recurring credit cards. This acknowledges there will be no registration for Visa Utility program.

Selection of **Standard Program** allows Utility Industry membership registration in Utility Program. Registration process is handled by First Data with Card Industry. All registered members are subject to Visa Compliance audits which may occur to confirm no fee is being charged to any end user.

Internal use only:

NISC Contact: \_\_\_\_\_  
 Email address: \_\_\_\_\_  
 Date Received: \_\_\_\_\_  
 Estimated Utility code assignment (45 to 60 days) \_\_\_\_\_

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

(Page 1 of 3)

## COMPLETE SECTIONS (1-7)

Merchant # \_\_\_\_\_ Loc. 1 of \_\_\_\_\_

## (1) TELL US ABOUT YOUR BUSINESS

|                                                                                                                                              |                |                                                                                                    |                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------|----------------|----------------------------------------------------------------------------------------------------|-----------------------------------------|
| Client<br>(Your Business LEGAL Name): <u>City of Opelika</u>                                                                                 |                | Store #:                                                                                           |                                         |
| <input type="checkbox"/> Same as Legal Name or<br>Provide DBA/Outlet Name: <u>Opelika Power Services</u>                                     |                | First/Last<br>Contact Name: <u>Rebecca Walls</u>                                                   |                                         |
| (No R.O. Box)<br>Address: <u>204 S. 7th St.</u>                                                                                              | Suite #: _____ | City: <u>Opelika</u>                                                                               | State: <u>AL</u> Zip Code: <u>36801</u> |
| Your Business Phone: ( <u>334</u> ) <u>705-5170</u>                                                                                          |                | <input type="checkbox"/> Same as Business Phone or<br>Merchant's Customer Service Phone: ( ) _____ |                                         |
| Your Fax Phone: ( <u>334</u> ) <u>705-5177</u>                                                                                               |                | Your Customer Service<br>E-mail Address: _____                                                     |                                         |
| Select One for Retrieval Requests: <input type="checkbox"/> (02) Dedicated 24 Hour Fax <input checked="" type="checkbox"/> (03) No fax; mail |                |                                                                                                    |                                         |

|                                                                         |                                                                                      |
|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| Your Total Cash and Credit Sales: (For All Outlets) \$ <u>2,472</u> 000 | Average Ticket/Sales Amount: \$ <u>125.00</u>                                        |
| Total Annual MC/Visa Volume: (For All Outlets) \$ <u>315</u> 000        | Estimated Discover® Network Average Ticket for this Outlet: \$ <u>120</u>            |
| Total Discover® Network Volume: (For All Outlets) \$ <u>8</u> 000       | Annual MC/Visa Volume for this Outlet: (For Multiple Outlets Only) \$ <u>515</u> 000 |
| Highest Ticket Amount \$ _____                                          | Estimated Discover® Network Annual Sales Vol. for this Outlet: \$ <u>16</u> 000      |

## (2) PROVIDE MORE BUSINESS DATA

State Incorp. AL Month/Yr. Started: 1/1854 Sole Ownership ☐ Partnership ☐ Non Profit/Tax Exempt ☐ Public Corp. ☐ Private Corp. ☐ L.L.C. ☒ Gov't.

Mag Swipe \_\_\_\_\_ % + Keyed Manually \_\_\_\_\_ % = 100% Product/Services You Sell: Telecommunications

POS Card Present (MAG Swipe and/or Manual Imprint) \_\_\_\_\_ % + Mail Order/Direct Marketing \_\_\_\_\_ % + Phone Order \_\_\_\_\_ % + Internet 100 % = 100%

Do you use any third party to store, process or transmit cardholder data? ☒ Yes ☐ No (Examples include, but not limited to web hosting companies, Electronic Data Capture, Loyalty programs)

If yes, give name/address: NISC 1 Innovation Circle Lake St Louis, MO 63367

Please identify any Software used for storing, transmitting, or processing Card Transactions or Authorization Requests: NISC Proprietary

Check one: TIN Type: ☒ EIN (Fed Tax ID #) ☐ SSN No. of Employees: 53

NOTE: Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations (See Part IV Section A.4 of your Program Guide for further information.)

|                                                                          |                                                                                                          |                                                                                                                              |
|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Name (as it appears on your income tax return)<br><u>City of Opelika</u> | <input type="checkbox"/> Federal Tax ID #: (as it appears on your income tax return)<br><u>636001334</u> | <input type="checkbox"/> I certify that I am a foreign entity/nonresident alien.<br>(If checked, please attach IRS Form W-8) |
|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|

## (3) OTHER ENTITLEMENTS

☐ Non-Lic. JCB (EDC) (Existing Acct #) \_\_\_\_\_ or ☐ JCB License 2 8 0 9 0 0 9 9 0 1

☒ Discover® Network Full Processing

☐ Amer. Exp. \_\_\_\_\_ or ☐ "ESA 9 9 9 9 9 9 9 9 9 9 Check one: ☐ Single Settle ☐ EDC ☐ PIP ☐ Reverse PIP

Network: ☐ (206) CARDnet® ☒ ( ) Nashville ☐ ( ) Buypass ☐ Other: \_\_\_\_\_ Specify Security Code: ( ) \_\_\_\_\_

## (4) DESCRIBE EQUIPMENT DETAILS

| Rental • Purchase<br>Customer-Owned<br>Lease (circle one) | QTY | IP                       | Equipment Type<br>(i.e. Terminal/VAR/Internet) | Retail • Restaurant • MOTO/Internet<br>Lodging • Supermarket • Car Rental<br>Quick Service Restaurant • Petr | Model Code and Name | Unit<br>Price<br>w/o Tax | For Customer-Owned<br>Equipment<br>Track / Version / Serial # |
|-----------------------------------------------------------|-----|--------------------------|------------------------------------------------|--------------------------------------------------------------------------------------------------------------|---------------------|--------------------------|---------------------------------------------------------------|
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                               |

NOTE: Any Special Instructions must be included on About Merchant's Business Page.

☐ MAG to Train (or receive training via phone, dial 1-800-558-7101 Opt. #1, M-F 8:00 am - 10:00 pm EST & Sat. 10:00 am - 7:00 pm EST)

☐ Sales Rep. to Train ☐ Installer to Train ☐ No Merchant Training Best Time To Call \_\_\_\_\_ : \_\_\_\_\_ ☐ am ☐ pm

Imprinter Purchase: ☐ Yes ☒ No If Yes, \$ 50.00 x Qty: \_\_\_\_\_ = \$ \_\_\_\_\_ (w/o Tax)

☒ First Data Global Gateway (Please send e-mail setup to: [gblll@NISC.coop](mailto:gblll@NISC.coop)) VAR/Internet/Software: Name: NISC

LEASE COMPANY: (04) First Data Global Leasing Lease Term: \_\_\_\_\_ Months Annual Tax Handling Fee: \$10.20

Total monthly lease charge: \$ \_\_\_\_\_ w/o taxes, late fees, or other charges that may apply — See Lease Agreement for details.

This is a non-cancelable lease for the full term indicated.

GBV(TCK)1505

## (5) PROVIDE YOUR OWNER INFORMATION

CBNISC1511

|                                                   |                         |                     |                      |                        |
|---------------------------------------------------|-------------------------|---------------------|----------------------|------------------------|
| Owner/Partner/Officer Name:<br><u>Gary Fuller</u> | D.O.B:                  | Social Security #:  | Home Phone:          | % of Ownership:        |
| Home Address:                                     | City:<br><u>Opelika</u> | State:<br><u>AL</u> | Zip:<br><u>36801</u> | Country:<br><u>USA</u> |
| Owner/Partner/Officer Name:                       | D.O.B:                  | Social Security #:  | Home Phone:          | % of Ownership:        |
| Home Address:                                     | City:                   | State:              | Zip:                 | Country:               |

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

(Page 2 of 3)

CBV(TCK)1505

(6) FLAT RATE / IC PLUS / TIER PRICING SCHEDULE

CBNISC Fee 1511

DBA Name: **Opelika Power Services**Pricing Type: **020**Interchange  
Schedule Version:

Loc. \_\_\_\_\_ of \_\_\_\_\_

**Start-Up Fees (One-Time Charge)****Non-Taxable Fees:**

Application Fee (32I) \$ **0.00**  
 (Non-Refundable)  
 Reprogramming Fee (31A) \$ **0.00**  
 Debit Set-up Fee (31B) \$ **0.00**  
 Misc. Fee (31J) \$ **0.00**  
 \*\*Equipment Purchase (ACH) \$ \_\_\_\_\_  
 Other: ( ) \$ \_\_\_\_\_  
 Total Amount \$ \_\_\_\_\_ w/o tax

**Billed Monthly Fees (If Applicable)**

Service Fee (335) \$ **0.00**  
 ACH Reject Fee (40I) \$ **25.00**  
 Minimum Processing Fee (954) \$ **0.00**  
 Wireless Access Fee (389)  
 FEE PER TID # OF TIDS TOTAL  
 \$ \_\_\_\_\_ x \_\_\_\_\_ = \$ **0.00**  
 ClientLine\* (32R) \$ **0.00**  
 Paper Statement Fee (323) \$ **0.00**  
 Other: \$ \_\_\_\_\_  
 Supplies: \_\_\_\_\_

**Compliance Service Fees**

Annual Fee (33R) \$ **38.75**  
 PCI Non-Validation Fee (420) \$ **19.95**  
 ((Billed Monthly if PCI Validation  
 is not received within 90 days.))

**PIN Debit**(Must complete only one of the following  
fees if PIN Debit is selected)

Bundled PIN Debit \$ \_\_\_\_\_  
 (191, Key 0-593)  
 OR  
 Unbundled PIN Debit \$ **0.00**  
 (018, Key 0-590, Key 0-593)  
 (plus the applicable network fees)

\*\*You will be charged the applicable State/City/  
Local Sales Tax**Byuypass Fees**

Datalwire Micronode ☐ Yes ☐ No  
 Datalwire Micronode  
 960-AS Monthly Fee (354) \$ **WAIVED** (each)

**Authorization Fees**

Voyager (0DD, 0D1, 0DV) \$ \_\_\_\_\_  
 WEX (0BD, 0B1, 0BV) \$ \_\_\_\_\_

**Other Payment Fees****Voyager:**

Sales Discount Rate (844) \_\_\_\_\_ %  
 Credit Discount Rate (845) \_\_\_\_\_ %

**Discount Fees (Based On Gross Transaction Volume)**

Accept all MasterCard, Visa and Discover\* Network transactions  
 (presumed, unless any selections below are checked)

**MasterCard Acceptance**

- ☐ Accept MC Credit transactions only  
☐ Accept MC Non-PIN Debit transactions only

**Visa Acceptance**

- ☐ Accept Visa Credit transactions only  
☐ Accept Visa Non-PIN Debit transactions only

**Discover Network Acceptance**

- ☐ Accept Discover Network Credit transactions only  
☐ Accept Discover Network Non-PIN Debit transactions only

See Section 1.9 of the Program Guide for details regarding limited acceptance. You are responsible for distinguishing Credit from Non-PIN Debit Cards. Even if you have agreed to limit your acceptance of certain cards as outlined above, you must continue to accept all foreign issued cards, whether Credit or Non-PIN Debit. If you agree to limit your acceptance to a particular type of card and, whether intentionally or in error, accept another type of transaction, the resulting transaction will downgrade to the highest cost interchange plus the applicable Non-Qualified Surcharge (See Section 18.1 of the Program Guide).

**Pricing Method:****MC/Visa/Discover\* Network IC Pass Thru**

You will be charged the applicable interchange rate from MasterCard (564), Visa (549), or Discover\* Network (521) plus a MasterCard Assessment Fee (273) of 0.11% (MC Assessment Tran Amt >=\$1K (237), an additional 0.02% will be charged per MC settled credit card sale when the transaction amount equals \$1,000 or greater), a Visa Assessment Fee (274) of 0.11%, or a Discover\* Network Assessment Fee (234) of 0.105%, plus any other fees indicated on this Service Fee Schedule.

MC/Visa Authorization and Return Transaction Fee (10A, 10D), (002, 006), (131, 135) \$ **0.20**

Discover Network Authorization and Return Transaction Fee (10J, 016, 788) \$ **0.20**

**Internet****Start-Up Fees**

First Data Global Gateway Set-up Fee (31X)

FEE PER TID \$ \_\_\_\_\_ x # OF TIDS \_\_\_\_\_ = TOTAL \$ **0.00**

Internet Set-up Fee (30R)

FEE PER TID \$ \_\_\_\_\_ x # OF TIDS \_\_\_\_\_ = TOTAL \$ **0.00**

**Billed Monthly Fees**

First Data Global Gateway (31Z)

FEE PER TID \$ \_\_\_\_\_ x # OF TIDS \_\_\_\_\_ = TOTAL \$ **0.00**

Internet Service Fee (394)

FEE PER TID \$ \_\_\_\_\_ x # OF TIDS \_\_\_\_\_ = TOTAL \$ **0.00**

**Transaction/Other Fees**

Internet/First Data Global Gateway

MC, V, Amex, Dis, JCB (03R, 04R, 06I, 07I, 08D, 435) \$ **0.00**

**Entitlements**

AUTHORIZATION CAPTURE

Amer. Express (068) \$ **.05**

JCB (10M) \$ **0.00**

**Other Fees**

Chargeback Fee (205, 725) \$ **10.00**  
 MC Cross Border Fee USD (605) **.20** %  
 Visa Foreign Handling Fee (261) **.10** %  
 MC/Visa/Discover\*  
 Network Voice (10B, 10E, 10K) \$ **.75**  
 AVS (405, 406, 407, 408) \$ **.01**  
 Discover AVS (07A, 07B, 07C, 079) \$ **.01**  
 Batch Settlement Fee (227) \$ **0.00**  
 MC/Visa Access Fee (505, 504) \$ **.0075**  
 MC License Volume Fee (818) **0.019** %  
 Other: \$ \_\_\_\_\_

**Other Payment Fees**

JCB License (754) \_\_\_\_\_ %  
 American Express ESA/Pass Through Fees:\*\*  
 \*\*Amex Discount Rate: \_\_\_\_\_ %  
 Amex Transaction Fee: \$ \_\_\_\_\_  
☐ Amex Monthly Fee:\*\*\* \$ **0.00**  
 (Flat Fee)

\*Billed separately by American Express.

\*\*Retail &amp; Restaurant merchants will be charged an additional 0.30% for non-swiped American Express transactions.

\*\*\*Amex Monthly Flat Fee or Discount Rate may apply. An inbound fee of .40% will be applied to any charge made using a card issued by an issuer located outside of the United States.

Note: See Part IV, Section A.3 of the Program Guide for early termination fees.

**Amendment to Part IV, Section A.3 of the Program Guide:** Notwithstanding any provision to the contrary contained in the Agreement, in the event the Agreement is terminated for any reason, prior to the expiration of the then current term, Client shall not be responsible for payment of the liquidated damages amounts contemplated in this Section.



**MERCHANT PROCESSING APPLICATION AND AGREEMENT**

(Page 2 of 3)

DBA Name: **Opelika Power Services**

CBV(TCK)1505

(7) AGREEMENT APPROVAL

CBNISC1511

The statements made in this Merchant Processing Application and Agreement are true. Client acknowledges having received and read a copy of the Interchange Schedule (for card processing services), Program Guide (which includes terms and conditions for each of the services, Operating Procedures, Third Party Agreements and a Confirmation Page), and Merchant Processing Application (consisting of Sections 1-7), as modified from time to time in accordance with the provisions of this Agreement and agrees to be bound by all provisions as printed therein. Client further agrees that Client will not accept more than 20% of its card transactions via mail, telephone and Internet order. However, if Your Application is approved based upon contrary information stated in the Provide More Business Data section above, You are authorized to accept transactions in accordance with the percentages indicated in that Section. This signature page also serves as the signature page to the Equipment Lease Agreement appearing in the Third Party Section of the Program Guide, if selected, the undersigned Client being the "Lessee" for purposes of such Equipment Lease Agreement.

By signing below, I represent that I have read and am authorized to sign and submit this application for the above entity which agrees to be bound by the American Express® Card Acceptance Agreement ("Agreement"), and that all information provided herein is true, complete, and accurate. I authorize First Data Merchant Services Corporation and American Express Travel Related Services Company, Inc. ("AXP") and AXP's agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies, from time to time, and disclose such information to their agent, subcontractors, Affiliates and other parties for any purpose permitted by law. I authorize and direct First Data Merchant Services Corporation and AXP and AXP agents and Affiliates to inform me directly, or inform the entity above, about the contents of reports on me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize AXP to use the reports from consumer reporting agencies for marketing and administrative purposes. I am able to read and understand the English language. I understand that upon AXP's approval of the application, the entity will be provided with the Agreement and materials welcoming it, either to AXP's program for First Data Merchant Services Corporation to perform services for AXP, or to AXP's standard Card acceptance program, which has different servicing terms (e.g., different speeds of pay). I understand that if the entity does not qualify for the First Data Merchant Services Corporation servicing program, that the entity may be enrolled in AXP's standard Card acceptance program, and the entity may terminate the Agreement. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Agreement.

By signing below, each of the undersigned authorizes us, our Affiliates and our third party subcontractors and/or agents to verify the information contained in this Application and to request and obtain from any consumer reporting agency and other sources, including bank references, personal and business consumer reports and other information and to disclose such information amongst each other for any purpose permitted by law. If the Application is approved, each of the undersigned also authorizes us, our Affiliates and our third party subcontractors and/or agents to obtain subsequent consumer reports and other information from other sources, including bank references, in connection with the review, maintenance, updating, renewal or extension of the Agreement or for any other purpose permitted by law and disclose such information amongst each other. Each of the undersigned furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit financial information to us, our Affiliates and our third party subcontractors and/or agents. Each of the undersigned authorizes us, our Affiliates and our third party subcontractors and/or agents to provide amongst each other the information contained in this Merchant Processing Application and Agreement and any information received subsequent thereto from all references, including banks and consumer reporting agencies for any purpose permitted by law. It is our policy to obtain certain information in order to verify your identity while processing your account application.

As part of our approval, processing services, continuing fraud prevention and account review processes, the undersigned consents to the use of information gathered online or that you submit to us, and/or automated electronic computer security screening, by us or our third party vendors.

You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control (OFAC).

Client certifies, under penalties of perjury, that the federal taxpayer identification number and corresponding filing name provided herein are correct.

THIS MERCHANT PROCESSING APPLICATION AND AGREEMENT HAS BEEN EXECUTED ON BEHALF OF AND BY THE AUTHORIZED MANAGEMENT OF CLIENT AS OF THE EFFECTIVE DATE.

Client's Business Principal: (Please sign below)

**X** Signature \_\_\_\_\_

Print Name \_\_\_\_\_ Date: \_\_\_\_\_

Title: ☐ President ☐ Vice President ☐ Member L.L.C. ☐ Owner ☐ Partner☒ Other: \_\_\_\_\_

Service Providers: First Data Merchant Services Corporation (Processor), for itself and, pursuant to limited powers of attorney, both Citicorp Payment Services, Inc. (Bank) and Wells Fargo Bank, N.A. (PIN Debit Sponsor Bank).

**X** Signature \_\_\_\_\_

**MERCHANT PROCESSING APPLICATION MULTIPLE LOCATIONS**

Loc. \_\_\_\_\_ of \_\_\_\_\_

Merchant #: 3 3 4

Tie To # (1st Location): \_\_\_\_\_

Attached: ☐ Service Fee ScheduleMCC: 4814 (If different from original)Pricing Type: 020Statement to: ☐ Outlet ☐ Other: \_\_\_\_\_**TELL US ABOUT YOUR BUSINESS**Client  
(Your Business LEGAL Name): City of Opelika☐ Same as Legal Name or  
Provide DBA/Outlet Name: Opelika Power ServicesFirst/Last Contact Name: Rebecca WallsAddress: (No P.O. Box) 600 Fox Run Pkwy Suite #: \_\_\_\_\_ City: Opelika State: Al Zip Code: 36801Your Business Phone: ( 334 ) 705-5170☐ Same as Business Phone or  
Merchant's Customer Service Phone: ( )Your Fax Phone: ( 334 ) 705-5177Your Customer Service  
E-mail Address: \_\_\_\_\_Select One for Retrieval Requests: ☐ (02) Dedicated 24 Hour Fax ☒ (03) No fax; mailAnnual MC/Visa Volume  
for this Location: \$ 26, 000Average Ticket/Sales Amount: \$ 125☐ ATTACH A COPY OF FUNDING CHECK OR BANK  
LETTERHEAD/LOGO SIGNED BY A BANK OFFICER  
WITH TYPED ABA/DDA. MUST INCLUDE DBA  
NAME, BANK NAME AND ADDRESS.Estimated Discover® Network  
Sales Volume for this Location: \$ 1, 000Annual Discover® Network  
Average Ticket/Sales Amount: \$ 120

WRITE LOC. \_\_\_\_\_ OF \_\_\_\_\_ ON CHECK.

TIN Type: ☐ EIN (Fed Tax ID #) ☐ SSN

NOTE: Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations (See Part IV Section A.4 of your Program Guide for further information.)

Name (as it appears on your income tax return)

City of Opelika☐ Federal Tax ID#: (as it appears on your income tax return)636001334☐ I certify that I am a foreign entity/nonresident alien.  
(If checked, please attach IRS Form W-8.)Mag Swipe \_\_\_\_\_ % + Keyed Manually \_\_\_\_\_ % = 100% Product/Services You Sell: TelecommunicationsPOS Card Present (MAG Swipe and/or Manual Imprint): \_\_\_\_\_ % + Mail Order/Direct Marketing \_\_\_\_\_ % + Phone Order \_\_\_\_\_ % + Internet 100 % = 100%**OTHER ENTITLEMENTS**☐ Non-Lic. JCB (EDC) \_\_\_\_\_  
(Existing Account #)or ☐ JCB License 2 8 0 9 0 0 9 9 0 1☒ Discover® Network Full Processing☐ Amer. Exp. \_\_\_\_\_ or ☐ ESA 9 9 9 9 9 9 9 9 9 9 Check one: ☐ Single Settle ☐ EDC ☐ PIP ☐ Reverse PIPNetwork: ☐ (206) CARDnet® ☒ ( ) Nashville ☐ ( ) Bypass ☐ Other: \_\_\_\_\_ Specify Security Code: ( )**DESCRIBE EQUIPMENT DETAILS**

CBNISCSA1505

| Rental • Purchase<br>Customer-Owned<br>Lease (circle one) | QTY | IP                       | Equipment Type<br>(i.e. Terminal/VAR/Internet) | Retail • Restaurant • MOTO/Internet<br>Lodging • Supermarket • Car Rental<br>Quick Service Restaurant • Pet | Model Code and Name | Unit<br>Price<br>w/o Tax | For Customer-Owned<br>Equipment<br>Track/Version/Serial # |
|-----------------------------------------------------------|-----|--------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------|---------------------|--------------------------|-----------------------------------------------------------|
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                           |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                           |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                           |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                           |

☐ MAG to Train (or receive training via phone, dial 1-800-556-7101 Opt. #1, M-F 8:00 am - 10:00 pm EST & Sat. 10:00 am - 7:00 pm EST)☐ Sales Rep. to Train ☐ Installer to Train ☐ No Merchant Training Best Time To Call \_\_\_\_\_ : \_\_\_\_\_ ☐ am ☐ pmImprinter Purchase: ☐ Yes ☒ No If Yes, \$ 50.00 x Qty: \_\_\_\_\_ = \$ \_\_\_\_\_ (w/o Tax)☒ First Data Global Gateway (Please send e-mail setup to: [gbill@NISC.coop](mailto:gbill@NISC.coop))VAR/Internet/Software: Name: NISCLease Company: ☐ (04) First Data Global Leasing



**MERCHANT PROCESSING APPLICATION MULTIPLE LOCATIONS**

Loc. \_\_\_\_\_ of \_\_\_\_\_

Merchant #: 3 3 4

Tie To # (1st Location): \_\_\_\_\_

Attached: ☐ Service Fee ScheduleMCC: 4814 (If different from original)Pricing Type: 020Statement to: ☐ Outlet ☐ Other: \_\_\_\_\_**TELL US ABOUT YOUR BUSINESS**Client  
(Your Business LEGAL Name): City of Opelika☐ Same as Legal Name or  
Provide DBA/Outlet Name: Opelika Power ServicesFirst/Last Contact Name: Rebecca WallsAddress:  
(No P.O. Box) 600 Fox Run PkwySuite #: \_\_\_\_\_ City: Opelika State: Al Zip Code: 36801Your Business Phone: ( 334 ) 705-5170☐ Same as Business Phone or  
Merchant's Customer Service Phone: ( ) \_\_\_\_\_Your Fax Phone: ( 334 ) 705-5177Your Customer Service  
E-mail Address: \_\_\_\_\_Select One for Retrieval Requests: ☐ (02) Dedicated 24 Hour Fax ☒ (03) No fax; mailAnnual MC/Visa Volume  
for this Location: \$ 140,000Average Ticket/Sales Amount: \$ 125☐ ATTACH A COPY OF FUNDING CHECK OR BANK  
LETTERHEAD/LOGO SIGNED BY A BANK OFFICER  
WITH TYPED ABA/DDA. MUST INCLUDE DBA  
NAME, BANK NAME AND ADDRESS.Estimated Discover® Network  
Sales Volume for this Location: \$ 3,000Annual Discover® Network  
Average Ticket/Sales Amount: \$ 120

WRITE LOC. \_\_\_\_\_ OF \_\_\_\_\_ ON CHECK.

TIN Type: ☐ EIN (Fed Tax ID #) ☐ SSN

NOTE: Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations (See Part IV Section A.4 of your Program Guide for further information.)

Name (as it appears on your income tax return)

City of Opelika☐ Federal Tax ID# (as it appears on your income tax return)636001334☐ I certify that I am a foreign entity/nonresident alien.  
(If checked, please attach IRS Form W-8.)Mag Swipe \_\_\_\_\_ % + Keyed Manually \_\_\_\_\_ % = 100% Product/Services You Sell: TelecommunicationsPOS Card Present (MAG Swipe and/or Manual Imprint): \_\_\_\_\_ % + Mail Order/Direct Marketing \_\_\_\_\_ % + Phone Order \_\_\_\_\_ % + Internet 100 % = 100%**OTHER ENTITLEMENTS**☐ Non-Lic. JCB (EDC) \_\_\_\_\_ or ☐ JCB License 2 8 0 9 0 0 9 9 0 1  
(Existing Account #)☒ Discover® Network Full Processing☐ Amer. Exp. \_\_\_\_\_ or ☐ ESA 9 9 9 9 9 9 9 9 9 9 Check one: ☐ Single Settle ☐ EDC ☐ PIP ☐ Reverse PIPNetwork: ☐ (206) CARDnet® ☒ ( ) Nashville ☐ ( ) Buypass ☐ Other: \_\_\_\_\_ Specify Security Code: ( ) \_\_\_\_\_**DESCRIBE EQUIPMENT DETAILS**

CBNISC5A1505

| Rental • Purchase<br>Customer-Owned<br>Lease (circle one) | QTY | IP                       | Equipment Type<br>(i.e. Terminal/VAR/Internet) | Retail • Restaurant • MOTO/Internet<br>Lodging • Supermarket • Car Rental<br>Quick Service Restaurant • Pet | Model Code and Name | Unit<br>Price<br>w/o Tax | For Customer-Owned<br>Equipment<br>Track / Version / Serial # |
|-----------------------------------------------------------|-----|--------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------|---------------------|--------------------------|---------------------------------------------------------------|
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                               |

☐ MAG to Train (or receive training via phone, dial 1-800-558-7101 Opt. #1, M-F 8:00 am - 10:00 pm EST & Sat. 10:00 am - 7:00 pm EST)☐ Sales Rep. to Train ☐ Installer to Train ☐ No Merchant Training Best Time To Call \_\_\_\_\_ : \_\_\_\_\_ ☐ am ☐ pmImprinter Purchase: ☐ Yes ☒ No If Yes, \$ 50.00 x Qty: \_\_\_\_\_ = \$ \_\_\_\_\_ (w/o Tax)☒ First Data Global Gateway (Please send e-mail setup to: [cb11@NISC.coop](mailto:cb11@NISC.coop))VAR/Internet/Software: Name: NISCLease Company: ☐ (04) First Data Global Leasing

**MERCHANT PROCESSING APPLICATION MULTIPLE LOCATIONS**

Loc. \_\_\_\_\_ of \_\_\_\_\_

Merchant #: 3 3 4

Tie To # (1st Location): \_\_\_\_\_

Attached: ☐ Service Fee ScheduleMCC: 4814 (If different from original)Pricing Type: 020Statement to: ☐ Outlet ☐ Other: \_\_\_\_\_**TELL US ABOUT YOUR BUSINESS**Client  
(Your Business LEGAL Name): City of Opelika☐ Same as Legal Name or  
Provide DBA/Outlet Name: Opelika Power ServicesFirst/Last Contact Name: Rebecca WallsAddress: 600 Fox Run Pkwy Suite #: \_\_\_\_\_ City: Opelika State: Al Zip Code: 36801Your Business Phone: ( 334 ) 705-5170☐ Same as Business Phone or  
Merchant's Customer Service Phone: ( )Your Fax Phone: ( 334 ) 705-5177Your Customer Service  
E-mail Address: \_\_\_\_\_Select One for Retrieval Requests: ☐ (02) Dedicated 24 Hour Fax ☒ (03) No fax; mailAnnual MC/Visa Volume  
for this Location: \$ 60,000Average Ticket/Sales Amount: \$ 125Estimated Discover® Network  
Sales Volume for this Location: \$ 1,000Annual Discover® Network  
Average Ticket/Sales Amount: \$ 120☐ ATTACH A COPY OF FUNDING CHECK OR BANK  
LETTERHEAD/LOGO SIGNED BY A BANK OFFICER  
WITH TYPED ABA/DDA. MUST INCLUDE DBA  
NAME, BANK NAME AND ADDRESS.

WRITE LOC. \_\_\_\_\_ OF \_\_\_\_\_ ON CHECK.

TIN Type: ☐ EIN (Fed Tax ID #) ☐ SSN

NOTE: Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations (See Part IV Section A.4 of your Program Guide for further information.)

Name (as it appears on your income tax return)

City of Opelika☐ Federal Tax ID#: (as it appears on your income tax return)636001334☐ I certify that I am a foreign entity/nonresident alien.  
(If checked, please attach IRS Form W-8)Mag Swipe \_\_\_\_\_ % + Keyed Manually \_\_\_\_\_ % = 100% Product/Services You Sell: TelecommunicationsPOS Card Present (MAG Swipe and/or Manual Imprint): \_\_\_\_\_ % + Mail Order/Direct Marketing \_\_\_\_\_ % + Phone Order \_\_\_\_\_ % + Internet 100 % = 100%**OTHER ENTITLEMENTS**☐ Non-Lic. JCB (EDC) \_\_\_\_\_ or ☐ JCB License 2 8 0 9 0 0 9 9 0 1  
(Existing Account #)☒ Discover® Network Full Processing☐ Amer. Exp. \_\_\_\_\_ or ☐ ESA 9 9 9 9 9 9 9 9 9 9 Check one: ☐ Single Settle ☐ EDC ☐ PIP ☐ Reverse PIPNetwork: ☐ (206) CARDnet® ☒ ( ) Nashville ☐ ( ) Buypass ☐ Other: \_\_\_\_\_ Specify Security Code: ( )**DESCRIBE EQUIPMENT DETAILS**

CBNISCSEA1505

| Rental • Purchase<br>Customer-Owned<br>Lease (circle one) | QTY | IP                       | Equipment Type<br>(i.e. Terminal/VAR/Internet) | Retail • Restaurant • MOTO/Internet<br>Lodging • Supermarket • Car Rental<br>Quick Service Restaurant • Petr | Model Code and Name | Unit<br>Price<br>w/o Tax | For Customer-Owned<br>Equipment<br>Track/Version/Serial # |
|-----------------------------------------------------------|-----|--------------------------|------------------------------------------------|--------------------------------------------------------------------------------------------------------------|---------------------|--------------------------|-----------------------------------------------------------|
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                           |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                           |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                           |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                           |

☐ MAG to Train (or receive training via phone, dial 1-800-558-7101 Opt. #1, M-F 8:00 am - 10:00 pm EST & Sat. 10:00 am - 7:00 pm EST)☐ Sales Rep. to Train ☐ Installer to Train ☐ No Merchant Training Best Time To Call \_\_\_\_\_ : \_\_\_\_\_ ☐ am ☐ pmImprinter Purchase: ☐ Yes ☒ No If Yes, \$ 50.00 x Qty: \_\_\_\_\_ = \$ \_\_\_\_\_ (w/o Tax)☒ First Data Global Gateway (Please send e-mail setup to: [ghill@NISC.coop](mailto:ghill@NISC.coop))VAR/Internet/Software: Name: NISCLease Company: ☐ (04) First Data Global Leasing

**MERCHANT PROCESSING APPLICATION MULTIPLE LOCATIONS**

Loc. \_\_\_\_\_ of \_\_\_\_\_

Merchant #: 3 3 4

Tie To # (1st Location): \_\_\_\_\_

Attached: ☐ Service Fee ScheduleMCC: 4814 (If different from original)Pricing Type: 020Statement to: ☐ Outlet ☐ Other: \_\_\_\_\_**TELL US ABOUT YOUR BUSINESS**Client  
(Your Business LEGAL Name): City of Opelika☐ Same as Legal Name or  
Provide DBA/Outlet Name: Opelika Power ServicesFirst/Last Contact Name: Rebecca WallsAddress: 600 Fox Run Pkwy Suite #: \_\_\_\_\_ City: Opelika State: Al Zip Code: 36801Your Business Phone: ( 334 ) 705-5170☐ Same as Business Phone or  
Merchant's Customer Service Phone: ( )Your Fax Phone: ( 334 ) 705-5177Your Customer Service  
E-mail Address: \_\_\_\_\_Select One for Retrieval Requests: ☐ (02) Dedicated 24 Hour Fax ☒ (03) No fax; mailAnnual MC/Visa Volume  
for this Location: \$ 36,000Average Ticket/Sales Amount: \$ 125☐ ATTACH A COPY OF FUNDING CHECK OR BANK  
LETTERHEAD/LOGO SIGNED BY A BANK OFFICER  
WITH TYPED ABA/DDA. MUST INCLUDE DBA  
NAME, BANK NAME AND ADDRESS.Estimated Discover® Network  
Sales Volume for this Location: \$ 1,000Annual Discover® Network  
Average Ticket/Sales Amount: \$ 120

WRITE LOC. \_\_\_\_\_ OF \_\_\_\_\_ ON CHECK.

TIN Type: ☐ EIN (Fed Tax ID #) ☐ SSN

NOTE: Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations (See Part IV Section A.4 of your Program Guide for further information.)

Name (as it appears on your income tax return)

City of Opelika☐ Federal Tax ID#: (as it appears on your income tax return)636001334☐ I certify that I am a foreign entity/nonresident alien.  
(If checked, please attach IRS Form W-8.)Mag Swipe \_\_\_\_\_ % + Keyed Manually \_\_\_\_\_ % = 100% Product/Services You Sell: TelecommunicationsPOS Card Present (MAG Swipe and/or Manual Imprint): \_\_\_\_\_ % + Mail Order/Direct Marketing \_\_\_\_\_ % + Phone Order \_\_\_\_\_ % + Internet 100 % = 100%**OTHER ENTITLEMENTS**☐ Non-Lic. JCB (EDC) \_\_\_\_\_  
(Existing Account #)or ☐ JCB License 2 8 0 9 0 0 9 9 0 1☒ Discover® Network Full Processing☐ Amer. Exp. \_\_\_\_\_ or ☐ ESA 9 9 9 9 9 9 9 9 9 9 Check one: ☐ Single Settle ☐ EDC ☐ PIP ☐ Reverse PIPNetwork: ☐ (206) CARDnet® ☒ ( ) Nashville ☐ ( ) Buypass ☐ Other: \_\_\_\_\_ Specify Security Code: ( )**DESCRIBE EQUIPMENT DETAILS**

CBNISCSA1505

| Rental • Purchase<br>Customer-Owned<br>Lease (circle one) | QTY | IP                       | Equipment Type<br>(i.e. Terminal/VAR/Internet) | Retail • Restaurant • MOTO/Internet<br>Lodging • Supermarket • Car Rental<br>Quick Service Restaurant • Petr | Model Code and Name | Unit<br>Price<br>w/o Tax | For Customer-Owned<br>Equipment<br>Track / Version / Serial # |
|-----------------------------------------------------------|-----|--------------------------|------------------------------------------------|--------------------------------------------------------------------------------------------------------------|---------------------|--------------------------|---------------------------------------------------------------|
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                      |                     |                          |                                                               |

☐ MAG to Train (or receive training via phone, dial 1-800-558-7101 Opt. #1, M-F 8:00 am - 10:00 pm EST & Sat. 10:00 am - 7:00 pm EST)☐ Sales Rep. to Train ☐ Installer to Train ☐ No Merchant Training Best Time To Call \_\_\_\_\_ : \_\_\_\_\_ ☐ am ☐ pmImprinter Purchase: ☐ Yes ☒ No If Yes, \$ 50.00 x Qty: \_\_\_\_\_ = \$ \_\_\_\_\_ (w/o Tax)☒ First Data Global Gateway (Please send e-mail setup to: [cbill@NISC.coop](mailto:cbill@NISC.coop))VAR/Internet/Software: Name: NISCLease Company: ☐ (04) First Data Global Leasing

**MERCHANT PROCESSING APPLICATION MULTIPLE LOCATIONS**

Loc. \_\_\_\_\_ of \_\_\_\_\_

Merchant #: 3 3 4

Tie To # (1st Location): \_\_\_\_\_

Attached: ☐ Service Fee ScheduleMCC: 4814 (If different from original)Pricing Type: 020Statement to: ☐ Outlet ☐ Other: \_\_\_\_\_**TELL US ABOUT YOUR BUSINESS**Client  
(Your Business LEGAL Name): City of Opelika☐ Same as Legal Name or  
Provide DBA/Outlet Name: Opelika Power ServicesFirst/Last Contact Name: Rebecca WallsAddress: 600 Fox Run Pkwy Suite #: \_\_\_\_\_ City: Opelika State: Al Zip Code: 36801Your Business Phone: ( 334 ) 705-5170☐ Same as Business Phone or  
Merchant's Customer Service Phone: ( )Your Fax Phone: ( 334 ) 705-5177Your Customer Service  
E-mail Address: \_\_\_\_\_Select One for Retrieval Requests: ☐ (02) Dedicated 24 Hour Fax ☒ (03) No fax; mailAnnual MC/Visa Volume  
for this Location: \$ 52 000Average Ticket/Sales Amount: \$ 125Estimated Discover® Network  
Sales Volume for this Location: \$ 2 000Annual Discover® Network  
Average Ticket/Sales Amount: \$ 120☐ ATTACH A COPY OF FUNDING CHECK OR BANK  
LETTERHEAD/LOGO SIGNED BY A BANK OFFICER  
WITH TYPED ABA/DDA. MUST INCLUDE DBA  
NAME, BANK NAME AND ADDRESS.

WRITE LOC. \_\_\_\_\_ OF \_\_\_\_\_ ON CHECK.

TIN Type: ☐ EIN (Fed Tax ID #) ☐ SSN

NOTE: Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations (See Part IV Section A.4 of your Program Guide for further information.)

Name (as it appears on your income tax return)

City of Opelika☐ Federal Tax ID#: (as it appears on your income tax return)636001334☐ I certify that I am a foreign entity/nonresident alien.  
(If checked, please attach IRS Form W-8.)Mag Swipe \_\_\_\_\_ % + Keyed Manually \_\_\_\_\_ % = 100% Product/Services You Sell: TelecommunicationsPOS Card Present (MAG Swipe and/or Manual Imprint): \_\_\_\_\_ % + Mail Order/Direct Marketing \_\_\_\_\_ % + Phone Order \_\_\_\_\_ % + Internet 100 % = 100%**OTHER ENTITLEMENTS**☐ Non-Lio. JCB (EDC) \_\_\_\_\_ or ☐ JCB License 2 8 0 9 0 0 9 9 0 1  
(Existing Account #)☒ Discover® Network Full Processing☐ Amer. Exp. \_\_\_\_\_ or ☐ ESA 9 9 9 9 9 9 9 9 9 9 Check one: ☐ Single Settle ☐ EDC ☐ PIP ☐ Reverse PIPNetwork: ☐ (206) CARDnet® ☒ ( ) Nashville ☐ ( ) Buypass ☐ Other: \_\_\_\_\_ Specify Security Code: ( )**DESCRIBE EQUIPMENT DETAILS**

CBNISC5A1505

| Rental • Purchase<br>Customer-Owned<br>Lease (circle one) | QTY | IP                       | Equipment Type<br>(i.e. Terminal/VAR/Internet) | Retail • Restaurant • MOTO/Internet<br>Lodging • Supermarket • Car Rental<br>Quick Service Restaurant • Pet | Model Code and Name | Unit<br>Price<br>w/o Tax | For Customer-Owned<br>Equipment<br>Track / Version / Serial # |
|-----------------------------------------------------------|-----|--------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------|---------------------|--------------------------|---------------------------------------------------------------|
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                               |
| R P C L                                                   |     | <input type="checkbox"/> |                                                | R Re MOTO/I L S C QSR P                                                                                     |                     |                          |                                                               |

☐ MAG to Train (or receive training via phone, dial 1-800-558-7101 Opt. #1, M-F 8:00 am - 10:00 pm EST & Sat. 10:00 am - 7:00 pm EST)☐ Sales Rep. to Train ☐ Installer to Train ☐ No Merchant Training Best Time To Call \_\_\_\_\_ : \_\_\_\_\_ ☐ am ☐ pmImprinter Purchase: ☐ Yes ☒ No If Yes, \$ 50.00 x Qty: \_\_\_\_\_ = \$ \_\_\_\_\_ (w/o Tax)☒ First Data Global Gateway (Please send e-mail setup to: [obill@NISC.coop](mailto:obill@NISC.coop))VAR/Internet/Software: Name: NISCLease Company: ☐ (04) First Data Global Leasing

## ABOUT MERCHANT'S BUSINESS

Bank Code: 3 3 4 Merchant ID: \_\_\_\_\_ Bypass Merchant #: \_\_\_\_\_  
☐ TR ☐ TU  
 DBA NAME OPELIYA POWER SERVICES (24 characters)

## BANKING INFORMATION

First/Last Contact Name: Stephen Soltau Phone Number: 334 749-8151  
☐ ATTACH A COPY OF FUNDING CHECK OR BANK LETTERHEAD/LOGO SIGNED BY A BANK OFFICER WITH TYPED ABA/OD. MUST INCLUDE BANK NAME AND ADDRESS. Sales Lead Tracking #: \_\_\_\_\_

## CHECKLIST INFORMATION

Regional Office Received Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ MCC: 4014 Merchant Type: 6 0 0 0 RELM: RAS  
 Pricing Grid # \_\_\_\_\_ ☒ Special Pricing Model ☐ Association Grid ☐ Linkback # \_\_\_\_\_ NRPT: \_\_\_\_\_ NCPT: \_\_\_\_\_  
 Sales Support ID: G A L L Rep. # C D P R Print Sales Rep. Name: Sean McMahon Initial: \_\_\_\_\_ Office Admin.: \_\_\_\_\_  
 HIERARCHY: Bank: 3 3 4 9 8 0 0 2 8 8 8 Agent: 3 3 4 9 7 0 1 2 9 8 8 1  
 Corp.: 3 3 4 9 6 0 0 2 4 8 8 6 Chain: \_\_\_\_\_ Bypass FID: \_\_\_\_\_

## CLIENT VISITATION

☐ Visit Not Required (Lic. Professional)  
 1. Zone: ☒ Business District ☐ Industrial ☐ Residential  
 2. Location: ☐ Mail ☐ Shopping Area ☐ Isolated ☒ Office ☐ Apartment ☐ Home ☐ Other: \_\_\_\_\_  
 3. Seasonal: ☒ No ☐ Yes, Mos. In Operation: \_\_\_\_\_ Mos. Open Between \_\_\_\_\_ to \_\_\_\_\_  
 4. External Facility Description (# of Levels/Floors): ☒ 1 ☐ 2-4 ☐ 5-10 ☐ 11 plus  
 5. Merchant Occupies: ☐ Ground Floor ☒ Other: All  
 6. Remaining Floor(s) Occupied by: N/A  
☐ Residential ☐ Commercial ☐ Combination  
 7. Advertising Name Displayed: ☐ Window ☒ Door ☐ Store Front  
 8. Approx. Square Footage: ☐ 0-250 ☐ 251-500 ☒ 501-2,000 ☐ 2,001+  
 9. # of Registers: \_\_\_\_\_  
 10. Return Policy: ☒ Full Refund ☐ Exchange Only ☐ None  
 11. Do you have a refund policy for your MC/Visa/Discover sales? ☒ Yes ☐ No If yes, Check one: ☐ Exchange ☐ Store Credit ☒ MC/Visa Credit  
 If MC/Visa/Discover Credit, within how many days do you submit credit transactions?  
☒ 0-3 ☐ 4-7 ☐ 8-14 ☐ Over 14 days  
 12. Merchant's E-Mail Address: (required for IP or TeleCheck TRS) ebill@NISC.coop  
 13. Proper License Visible (Liquor, Tax ID, etc.): ☐ Yes ☐ No, explain: \_\_\_\_\_  
 14. Your Previous Processor: \_\_\_\_\_  
 15. Your Previous Merchant #: \_\_\_\_\_  
 16. Check Reason for Changing: ☐ Rate ☐ Service ☐ Terminated ☐ Other: \_\_\_\_\_  
 17. Do You Have Previous Processor MC/Visa/Discover Statements? ☐ Yes ☐ No  
 18. Are customers required to leave a deposit? ☐ Yes ☐ No If Yes, % of deposit required: \_\_\_\_\_ %  
 Time Frame for Delivery: \_\_\_\_\_ Days

Comments to Credit Officer/Other Depository/Primary Savings Account Number and Additional Information (40 Characters): \_\_\_\_\_

## MAIL STATEMENTS / DOCUMENTS TO ADDRESS (IF DIFFERENT FROM DBA)

MAIL STATEMENTS TO OUTLET or: (circle one) 02 = Stmt to Bill To/No Recap 07 = Suppress Stmt (No Stmt) 08 = Produce Recap, No Stmt 09 = Bill to Address/Stmt and Recap (If circled, please complete address below)

Your Head Office/ Bill To Name: City of Opelika First/Last Contact Name: Jon Hayes Phone Number: 334 705-5182  
 Address: 204 S. 7th St. Suite #: \_\_\_\_\_ City: Opelika State: Al Zip: 36801

ON YOUR BUSINESS ACCOUNT CHECK  
 CHECKING STATEMENT ROLLUP: (circle one) 0 = Each Transfer ① = Debit/Credit Grouped (By Category) 2 = Net Transfer Amount Only 3 = Net Transfer EOM Fee Combined

## PROCESSING INFORMATION

CBNISC1505

1. Processing mode: ☒ EDC: ☐ Paper Voice ☐ Tape ☐ ECR ☐ Paper Terminal 2. Funding will be processed DAILY via: ☒ ACH ☐ Bankwire  
 3. Bank will fund: ☐ Outlet ☐ Head Office 4. # of Plates: \_\_\_\_\_ Long \_\_\_\_\_ Short 5. Fire Safety Act: ☐ Yes ☐ No  
 6. Ship Equipment and Welcome Packet to (check one): ☐ Outlet ☐ Head Office ☒ Other, give mailing information below ☐ No Welcome Packet and Supplies ☐ No Welcome Packet

Name: \_\_\_\_\_ First/Last Contact Name: Jeannie Tackett  
 Address: One Innovation Circle City: Lake St. Louis State: MO Zip: 63367

7. Debit Bill Payment Transaction Type: ☐ Internet ☐ VRU ☐ Recurring ☐ Call Center Sponsoring Debit Network: ☐ NYCE ☐ Pulse ☐ Star

8. Additional Terminal Features: (Check all that apply to ensure timely terminal programming)

|                                                                                                             |                                                                   |                                                     |                                                                       |                                         |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------------------------|-----------------------------------------|
| <input type="checkbox"/> Auto Settle Time _____ hh ET (military)                                            | <input type="checkbox"/> QSR-CR/SMT (Convenience/Small Ticket)    | <input type="checkbox"/> Retail Gas                 | Balance Inquiry                                                       | Terminal Features: (Cont.)              |
| <input type="checkbox"/> Bar Tab                                                                            | <input type="checkbox"/> QSR Print Option                         | <input type="checkbox"/> Retail With Tip            | <input type="checkbox"/> Amex Prepaid Program Preference (Choose One) | Key Disable or Password Protect         |
| <input type="checkbox"/> Clerk/Server Entry                                                                 | <input type="checkbox"/> Invoice Number                           | <input type="checkbox"/> Ship Method (Overnight)    | <input type="checkbox"/> Partial Auth                                 | Credits <input type="checkbox"/>        |
| <input type="checkbox"/> Debit Cash Back                                                                    | <input type="checkbox"/> Multi-Trans (PC/Registrar/Software only) | <input type="checkbox"/> Tip % Option               | <input type="checkbox"/> Balance Back                                 | Voids <input type="checkbox"/>          |
| Delayed Ship Date: ____/____/____                                                                           | <input type="checkbox"/> No Server/Ticket ID                      | <input type="checkbox"/> Verify Amount Prompt       | <input type="checkbox"/> Other _____                                  | Forces <input type="checkbox"/>         |
| <input type="checkbox"/> Dial Prefix: <input type="checkbox"/> Dial 9 <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Remove Room # Prompt                     | <input type="checkbox"/> Partial Approval           | PINPad:                                                               | Reviews <input type="checkbox"/>        |
| <input type="checkbox"/> Dial Suffix: _____                                                                 | <input type="checkbox"/> Remove Ticket # Prompt                   | <input type="checkbox"/> Purchase w/ Balance Return | <input type="checkbox"/> DES Encryption                               | Set/Settle <input type="checkbox"/>     |
| <input type="checkbox"/> E-Commerce                                                                         |                                                                   | <input type="checkbox"/> Standalone                 | <input type="checkbox"/> DUKPT                                        | Auth Only <input type="checkbox"/>      |
| <input type="checkbox"/> II IP (Let Current Provider)                                                       |                                                                   |                                                     | <input type="checkbox"/> Access Code # _____                          | Reports <input type="checkbox"/>        |
|                                                                                                             |                                                                   |                                                     |                                                                       | Tip Adjustment <input type="checkbox"/> |

Comments: \_\_\_\_\_  
 (NOTE: Completing the Comments field will result in a 48 hour terminal programming delay)

**MERCHANT PROCESSING CREDIT ADDENDUM**Client's DBA Name: Opelika Power Services**OTHER ENCLOSURES (Check)**

1. Financial Statements (2 years most recent) required for: ☐ Low to Moderate Risk \$3MM or greater  
☒ Mail/Telephone Order \$1MM or greater and exceeding percentage requirements  
☐ Business To Business \$1MM or greater  
☒ Internet \$1MM or greater
2. Method of Advertising: ☐ Catalog ☐ Brochure/Direct Mail ☐ TV/Radio ☐ Internet  
 (Attach at least one) ☐ Phone ☐ Newspaper/Journal ☐ Other (specify) \_\_\_\_\_
3. Brochures/Marketing Materials/Advertisement required for: ☐ Mail/Telephone Order (exceeds percentage requirement)  
☐ Business to Business (exceeds percentage requirement)
4. Internet (Required): ☐ Web Page Attached - OR -  
☒ List Web Site Address: www.opelikapower.com
5. Other: ☐ \_\_\_\_\_

**BUSINESS PREMISES**Are Your Business Premises: ☐ Owned ☐ Rented If rented, please complete the following: Renting Since: \_\_\_\_ / \_\_\_\_ Lease Expires: \_\_\_\_ / \_\_\_\_Landlord  
Name: \_\_\_\_\_First / Last  
Contact Name: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

**SUPPLIER REFERENCES**☐ Low to Moderate Risk \$3MM or greater ☐ Business to Business ☐ High Risk ☐ Tier II

1. Business Name: Opelika Bolt Product/Service Purchased: Materials  
 Contact/Account #: Opelika City Phone: ( 800 ) 448-4151 City: Dothan State/Zip: Al 36302
2. Business Name: Glover Tire Product/Service Purchased: Materials  
 Contact/Account #: City of Opelika Phone: ( 334 ) 749-0607 City: Opelika State/Zip: Al 36801
3. Business Name: \_\_\_\_\_ Product/Service Purchased: \_\_\_\_\_  
 Contact/Account #: \_\_\_\_\_ Phone: \_\_\_\_\_ City: \_\_\_\_\_ State/Zip: \_\_\_\_\_

**MAIL/TELEPHONE ORDER / BUSINESS TO BUSINESS / INTERNET INFORMATION [CBNISCSC1505]**

(All Questions Must Be Answered)

1. What % of total sales represent business to business (vs. business to consumer)? Business to Business \_\_\_\_\_ % + Business to Consumer 100 % = 100% (total sales)
2. What % of bankcard sales represent business to business (vs. business to consumer)? Business to Business \_\_\_\_\_ % + Business to Consumer 100 % = 100% (bankcard sales)
3. Time frame from transaction to delivery:  
 % of orders delivered in: 0-7 days 100 % + 8-14 days \_\_\_\_\_ % + 15-30 days \_\_\_\_\_ % + over 30 days \_\_\_\_\_ % = 100%
4. MC/Visa/Discover sales are deposited (check one): ☐ Date of order ☒ Date of delivery ☐ Other (specify): \_\_\_\_\_
5. Who performs product/service fulfillment? Direct ✓ ? Vendor \_\_\_\_\_ ? If Vendor, add name, address, phone. ☐ Other (specify): \_\_\_\_\_

Describe how the transaction works, from order taking to merchant fulfillment (attach add'l sheet, if necessary): \_\_\_\_\_

Cards accepted for payment of Utility Services

6. Does any of your cardholder billing involve automatic renewals or recurring transactions (i.e., cardholder authorizes initial sale only)?
- ☒
- Yes
- ☐
- No

Comments: \_\_\_\_\_



**AMENDMENT 1 OF THE MERCHANT PROCESSING APPLICATION AND AGREEMENT**

This Amendment 1 is made and entered into by and between First Data Merchant Services, Inc., Citicorp Payment Services, Inc., (collectively, "Servicers") and Opelika Power Services and having office located at 600 Fox Run Pkwy Opelika, AL 36801 ("Client") as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to amend and supplement that certain Merchant Processing Application and Agreement between the parties dated \_\_\_\_\_, 20\_\_\_\_ (the "Agreement"). In consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Servicers and Client do hereby agree as follows:

- I. **Amendment of Early Termination Fees.** Section 38.3 or Part IV, Section A.3 of the Agreement, as applicable, is hereby amended as follows:

Notwithstanding any provision to the contrary contained in the Agreement, in the event the Agreement is terminated for any reason, prior to the expiration of the then-current term, Client shall not be responsible for payment of the liquidated damages amounts contemplated in this Section.

- II. **Agreement Confirmation.** Except as otherwise amended hereby, the Agreement is hereby ratified in all respects and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment 1 to be duly executed by their authorized officers, all as of the day and year first written above.

\_\_\_\_\_  
(Client's Business Principal Signature)

For First Data Merchant Services Corporation  
and, pursuant to limited Power of Attorney, for  
Citicorp Payment Services, Inc. (an operating  
subsidiary of Citibank, N.A.):

BY (Print): \_\_\_\_\_

TITLE: Mayor

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



CBV(TCK)1305

**PART V: CONFIRMATION PAGE**

Please read the Program Guide in its entirety. It describes the terms under which we will provide merchant processing Services to you. From time to time you may have questions regarding the contents of your Agreement with Bank and/or Processor or the contents of your Agreement with TeleCheck and/or its affiliate, TRS. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. Your Discount Rates are assessed on transactions that qualify for certain reduced interchange rates imposed by MasterCard and Visa. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 18 of the Program Guide).
2. We may debit your bank account from time to time for amounts owed to us under the Agreement.
3. There are many reasons why a Chargeback may occur. When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks see Section 10 of Card Processing Operating Guide or see the applicable provisions of the TeleCheck Services Agreement.
4. If you dispute any charge or funding, you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing or within 30 days of the date of a TeleCheck transaction.
5. The Agreement limits our liability to you. For a detailed description of the limitation of liability see Section 20 of the Card Processing General Terms; or Sections 1.17 and 1.28 of the TeleCheck/TRS Services Agreement; or Section 6.11 of the TRS Services Agreement.
6. We have assumed certain risks by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card Processing General Terms in Section 23, Term; Events of Default and Section 24, Reserve Account; Security Interest), (see TeleCheck/TRS Services Agreement in Sections 1.1, 1.3.2, 1.3.9, 1.5.2, 1.5.7, 1.7.2, 1.7.10, 1.8.2, 1.8.8, 1.9, and 1.10) (see Section 6.4 of the TRS Services Agreement), under certain circumstances.
7. By executing this Agreement with us you are authorizing us and our Affiliates to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us and our Affiliates are satisfied.
8. The Agreement contains a provision that in the event you terminate the Agreement early, you will be responsible for the payment of an early termination fee as set forth in Part IV, A.3 under "Additional Fee Information" and Section 1.38 of the TeleCheck/TRS Services Agreement.
9. If you lease equipment from Processor, it is important that you review Section 1 in Third Party Agreements. **THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.**

**10. Association Disclosure**

**Visa and MasterCard Member Bank Information: Citicorp Payment Services, Inc.**

The Bank's mailing address is 50 Northwest Point Blvd., Elk Grove Village, IL 60007, and its phone number is 224-222-2000.

**Important Member Bank Responsibilities:**

- a) The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a Merchant.
- b) The Bank must be a principal (signer) to the Merchant Agreement.
- c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard rules with which Merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the Merchant.
- e) The Bank is responsible for all funds held in reserve that are derived from settlement.

**Important Merchant Responsibilities:**

- a) Ensure compliance with Cardholder data security and storage requirements.
- b) Maintain fraud and Chargebacks below Association thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Association rules.

Print Client's Business Legal Name: City of Opelika

By its signature below, Client acknowledges that it has received the Interchange Qualification Matrix (version IQM.MVD.S10.1 or \_\_\_\_\_) and complete Program Guide (version CBV(TCK)1305) consisting of 46 pages (including this confirmation).

Client further acknowledges reading and agreeing to all terms in the Program Guide, which shall be incorporated into Client's Agreement. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

**NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM GUIDE WILL BE ACCEPTED.**

**Client's Business Principal:**

**Signature (Please sign below):**

**X** \_\_\_\_\_

**Mayor** \_\_\_\_\_

Title

Date

Please Print Name of Signer



Citi Merchant Services  
Provided by First Data Merchant Services Corporation



# Program Guide

## PREFACE

Thank you for selecting us for your payment processing needs. Accepting numerous payment options provides a convenience to your customers, increases your customers' ability to make purchases at your establishment, and helps speed payment to your account.

This Program Guide presents terms governing the acceptance of Visa®, MasterCard® and Discover® Network Credit Card and Non-PIN Debit Card payments. The Program Guide also includes provisions applicable to American Express® and Other Services. Other Services include all services related to: JCB® Card, PIN Debit Card, and Electronic Benefits Transfer payments, TeleCheck® check services, TRS® collection services, Equipment purchase and rental, Gift Card Services, and acceptance of Cards from other Non-Bank Card Organizations such as Voyager Fleet Systems, Inc. ("Voyager"), Wright Express Corporation and Wright Express Financial Services Corporation (collectively, "WEX"). Your Merchant Processing Application will indicate the types of payments and Services you have elected to accept.

This Program Guide, your Merchant Processing Application and the schedules thereto (collectively, the "Agreement"), including, without limitation, the Interchange Qualification Matrix and one of the following Interchange Schedules, as applicable to your pricing method as set forth in the Merchant Processing Application, contains the terms and conditions under which Processor and/or Bank and/or other third parties, such as TeleCheck for check services, and TRS for collection services, will provide services to you. We will not accept any alterations or strike-outs to the Program Guide and, if made, any such alterations or strike-outs shall not apply. Please read this Program Guide completely as it contains important information.

You acknowledge that all Services referenced in the Agreement may not be available to you.

### IMPORTANT INFORMATION ABOUT BANK'S RESPONSIBILITIES:

Discover Network Card Transactions, American Express Card Transactions and Other Services are not provided to you by Bank, but are provided by Processor and/or third parties. For PIN Debit transactions, such third parties may include sponsoring or acquiring banks that are not related to Bank ("PIN Debit Sponsor Banks").

The provisions of this Agreement regarding Discover Network Card Transactions, American Express Card Transactions and Other Services constitute an agreement solely between you and Processor and/or third parties. Bank is not a party to this Agreement insofar as it relates to Discover Network Card Transactions, American Express Card Transactions and Other Services, and Bank is not responsible, and shall have no liability, to you in any way with respect to Discover Network Card Transactions, American Express Card Transactions and Other Services.

### OTHER IMPORTANT INFORMATION:

Cards present risks of loss and non-payment that are different than those with other payment systems. In deciding to accept Cards, you should be aware that you are also accepting these risks.

Visa U.S.A., Inc. ("Visa") MasterCard Worldwide ("MasterCard") and DFS Services LLC ("Discover Network") are payment card networks that electronically exchange Sales Drafts and Chargebacks for Card sales and Credits. Sales Drafts are electronically transferred from banks (in the case of MasterCard and Visa transactions) or network acquirers (in the case of Discover Network transactions) that acquire them from merchants such as yourself through the appropriate Card Organization, to the Issuers. These Issuers then bill their Cardholders for the transactions. The Card Organizations charge the Acquirers interchange fees and assessments for submitting transactions into their systems. A substantial portion of the Discount Rate or Transaction Fees that you pay will go toward these fees and assessments.

In order to speed up the payment process, the Issuer transfers the funds back through the Card Organization to the Acquirer at approximately the same time that the Issuer receives the electronic Sales Drafts. Even though the payments under this system are made simultaneously, all payments made through the Card Organizations are conditional and subject to reversals and adjustments.

Each Card Organization has developed Card Organization Rules that govern their Acquirers and Issuers and the procedures, responsibilities and allocation of risk for this process. Merchants are also bound by Card Organization Rules. The Card Organization Rules and applicable laws give Cardholders and Issuers certain rights to dispute transactions, long after payment has been made to the merchant, including Chargeback rights.

We do not decide what transactions are charged back and we do not control the ultimate resolution of the Chargeback. While we can attempt to reverse a Chargeback to the Issuer, we can only do so if the Issuer agrees to accept it or the Card Organization requires the Issuer to do so after a formal appeal process. Sometimes, your customer may be able to successfully charge back a Card transaction even though you have provided your goods or services and are otherwise legally entitled to payment from your customer. While you may still be able to pursue claims directly against that customer, neither we nor the Issuer will be responsible for such transactions.

You will be responsible for all Chargebacks and adjustments associated with the transactions that you submit for processing.

Please refer to the Glossary for capitalized terms used in the Agreement, including this Preface (if not defined above).

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## PART I: CARD SERVICES

## A. OPERATING PROCEDURES

This part of the Program Guide (through Section 13) describes the procedures and methods for submitting Credit Card transactions for payment, obtaining authorizations, responding to Chargebacks and Media Retrieval requests, and other aspects of the operations of our services.

Processor is a full-service financial transaction processor dedicated, among other processing services, to facilitating the passage of your Sales Drafts back to the thousands of institutions who issue the MasterCard®, Visa®, and Discover® Network Cards carried by your customers, as well as to the independent Issuers of American Express®, Optima® and JCB®. The Operating Procedures contained in this part focus primarily on certain of the MasterCard, Visa, and Discover Network Card Organizations Rules, and seek to provide you with the principles for a sound Card program; however, you should consult the Card Organization Rules for complete information and to ensure full compliance with them. They are designed to help you decrease your Chargeback liability and train your employees. (In the event we provide authorization, processing or settlement of transactions involving Cards other than MasterCard, Visa and Discover Network, you should also consult those independent Issuers' proprietary rules and regulations.)

The requirements set forth in these Operating Procedures will apply unless prohibited by law. You are responsible for following any additional or conflicting requirements imposed by your state or local jurisdiction.

### 1. MasterCard, Visa and Discover Network Acceptance

**1.1. Card Descriptions.** At the point of sale, the Card must be carefully examined to determine whether it is a legitimate and valid Card. The name of the Card (e.g., Visa, MasterCard or Discover Network) should appear in bold letters on the Card. For all MasterCard and Visa Cards and for some Discover Network Cards, the Issuer (e.g., XYZ Bank, etc.) should also appear in bold letters on the Card. The following is a description of the authorized Visa, MasterCard and Discover Network Card designs:

**Visa:** Visa Cards have the Visa symbol on the right-hand side of the Card. Above the Visa symbol is the 3-dimensional hologram of the Visa Dove design. The expiration date must be followed by one space and may contain the symbol "V." Visa Cards contain a 16-digit account number embossed across the middle of the Cards and the first digit is always a four (4). In addition, Visa Cards have the first four digits of the account number printed directly below the embossed number. You must always check these numbers carefully to ensure that they are the same. Beginning January 2006, Visa has a new Card design which differs significantly from the previous description. You are required to familiarize yourself with the new design by consulting the document entitled "Card Acceptance and Chargeback Management Guidelines for Visa Merchants" (VRM 08 12.16). You may download the document free of charge from Visa's website at <http://www.visa.com/merchant> or order a hardcopy to be mailed to you for a nominal charge by telephoning Visa Fulfillment at 800-VISA-311. Both the old and new Visa Card designs will be circulating concurrently in the marketplace through the year 2010. Only Visa Cards fitting the old or new descriptions may be accepted.

Beginning May 2008, Visa issued a new Card design for un-embossed Visa cards. Unlike embossed Visa cards with raised numbers, letters and symbols, the un-embossed card has a smooth, flat surface. Because of the un-embossed cards flat surface, it cannot be used for transactions that require a card imprint. Un-embossed cards can only be used by merchants who process with an electronic Point Of Sale Terminal. As a result, the bottom of the card bears the following note, "Electronic Use Only."

**MasterCard:** MasterCard Cards are issued under the following names: MasterCard, EuroCard, Access, Union, Million and Diamond. The MasterCard symbol appears on the front or back of the Card. MasterCard and the Globe designs appear in a 3-dimensional hologram above the symbol. In addition, the words Classic, Preferred, Gold or Business may appear. MasterCard account numbers are sixteen (16) digits, and the first digit is always a five (5). The first four digits of the account must be printed directly below the embossed number. Only MasterCard Cards fitting this description may be accepted. Pursuant to an alliance with MasterCard, Diners Club Cards issued in the United States and Canada are being re-issued with a sixteen (16) digit account number the first two digits of which are now fifty-five (55) and with the MasterCard Mark and hologram on the front of the Diners Club Card. These Diners Club Cards shall be accepted and processed in the same manner as MasterCard transactions. Diners Club International Cards that are issued outside the U.S. and Canada may be re-issued with the MasterCard Mark on the back of the Card. These Diners Club Cards will have account numbers that are fourteen (14) digits, the first two digits of which are thirty-six (36). When these Diners Club Cards are used within the United States, Canada and other designated areas, they will be processed as MasterCard transactions. Beginning January 2006, MasterCard has a new Card design significantly different from the previous description. You are required to familiarize yourself with the new design by consulting a document "MasterCard Card Identification Features." You may download the document free of charge from MasterCard's website at <http://www.mastercardmerchant.com>. Both the old and new MasterCard Card designs will be circulating concurrently in the marketplace through the year 2010. Only MasterCard Cards fitting the old or new descriptions may be accepted.

**Discover Network:** All valid standard rectangular plastic Cards bearing the Discover Network Acceptance Mark or the Discover/NOVUS Acceptance Mark, as indicated below, include the following common characteristics and distinctive features.

- Card Numbers comprising at least 16 digits are displayed on the front of the Card.
- Card Numbers are clear and uniform in size and spacing within groupings.
- Expiration date, if present, appears in mm/yy format and indicates the last month in which the Card is valid.

- Cards manufactured before October 3, 2008 display the Discover Network three-dimensional hologram, bearing a distinct circular shape and images of a globe pierced by an arrow, water, and stars on a repetitive pattern background (the "Discover Network Hologram") on the front of the Card.
- The Discover Network Hologram reflects light and appears to move as the Card is rotated.
- All Cards display a magnetic stripe on the reverse side of the Card. Cards manufactured on or after October 3, 2008 feature a three-dimensional holographic design that is incorporated into the magnetic stripe. A series of distinct circular shapes will be visible across the length of the magnetic stripe, with blue glows between each shape. When the Card is rotated, the holographic design will reflect light and there will be apparent movement and color switching within the circular shape.
- Cards displaying either the Discover Network Hologram or the holographic magnetic stripe are valid after the effective dates indicated above, with the Discover Network Hologram eventually replaced by the holographic magnetic stripe for new Cards. Although both the Discover Network Hologram and the holographic magnetic stripe will each appear on Cards, valid Cards will not display both designs.
- Depending on the issuance date of the Card, the word "DISCOVER" or "DISCOVER NETWORK" will appear in ultraviolet ink on the front of the Card when it is held under an ultraviolet light.
- An underprint of "void" on the signature panel becomes visible if erasure of the signature is attempted.
- The Card Number or the portion of the Card Number displayed on the signature panel on the back of the Card should match the number displayed on the front of the Card and appear in reverse indent printing.
- CID must be printed in a separate box to the right of the signature panel on the back of the Card.
- An overprint on the signature panel reads "Discover Network." On some cards, the overprint may display the name of the Card (i.e., Discover, Discover 2GO, Discover Platinum).
- A Discover Network Zip Indicator may appear on the back of a standard rectangular plastic Card indicating the Card can be used to conduct Contactless Card Transactions.

**NOTE:** Valid Cards may not always be rectangular in shape (e.g., Discover 2GO® Cards) and certain valid Contactless Payment Devices approved by us for use in accessing Card Accounts (e.g., radio frequency (RF) enabled Cards, key fobs, and Mobile Commerce Devices) and to conduct Contactless Card Transactions may not display the features described above.

#### Prepaid Gift Card Security Features

The features described below are found on Prepaid Gift Cards; however, the placement of these features may vary:

- Depending on the issue date of the Card, the Discover Network Acceptance Mark or the Discover/NOVUS Acceptance Mark will appear on the front or back of the Card.
- The embossed, stylized "D" appears on the front of the Card.
- A valid expiration date is embossed on the front of the Card.
- The front of the Card may display "Temporary Card," "Prepaid Card," "Gift Card," or "Electronic Use Only," must be printed on the front or the back of the Card.

**NOTE:** Prepaid Gift Cards accepted at a limited, specific list of Merchants are not required to include the Discover Network Hologram and may, but are not required to, bear the Discover Network Acceptance Mark or the Discover/NOVUS Acceptance Mark on the Card.

You are required to remain familiar with Discover Card designs and may reference the document "Discover Network Security Features." You may download the document free of charge from Discover Network's website at <http://www.discovernetwork.com/fraudsecurity/fraud.html>.

**1.2. Effective/Expiration Dates.** At the point of sale, the Card should be carefully examined for the effective (valid from) (if present) and expiration (valid thru) dates which are located on the face of the Card. The sale date must fall on or between these dates. Do not accept a Card prior to the effective date or after the expiration date. If the Card has expired, you cannot accept it for a Card sale unless you have verified through your Authorization Center that the Card is in good standing, otherwise, you are subject to a Chargeback and could be debited for the transaction.

**1.3. Valid Signature.** Check the back of the Card. Make sure that the signature panel has not been disfigured or tampered with in any fashion (an altered signature panel may appear discolored, glued or painted, or show erasure marks on the surface). The signature on the back of the Card must compare favorably with the signature on the Sales Draft. The Sales Draft must be signed by the Card presenter in the presence of your authorized representative (unless a Card Not Present Sale) and in the same format as the signature panel on the Card; e.g., Harry E. Jones should not be signed H.E. Jones. The signature panels of Visa, MasterCard and Discover Network Cards now have a 3-digit number (CVV2/CVC2/CID) printed on the panel known as the Card Validation Code.

**Visa, MasterCard and Discover Network:** If the signature panel on the Card is blank, in addition to requesting an Authorization, you must do all the following:

- Review positive identification bearing the Cardholder's signature (such as a passport or driver's license that has not expired) to validate the Cardholder's identity.
- Indicate the positive identification, including any serial number and expiration date, on the Credit Draft or Sales Draft; provided that you must effect PAN Truncation, and must not include the expiration date on the copy of the Sales Draft or Credit Draft that you provide to the Cardholder, or as required by applicable law, the Sales Draft or Credit Draft you retain.
- Require the Cardholder to sign the signature panel of the Card prior to completing the Transaction.

**1.4. Users Other Than Cardholders.** A Cardholder may not authorize another individual to use his/her Card for purchases. Be sure the signature on the Card matches with the one on the Sales Draft. Furthermore, any Card having two signatures on the back panel is invalid and any sale made with this Card can result in a Chargeback. For Cards bearing

photograph of the Cardholder, ensure that the Cardholder appears to be the person depicted in the picture which appears on the Card. If you have any questions, call the Voice Authorization Center and request to speak to a Code 10 operator.

**5. Special Terms.** If you limit refund/exchange terms or impose other specific conditions for Card sales, the words "No Exchange, No Refund," etc. must be clearly printed (in 1/4" letters) on the Sales Draft near or above the Cardholder's signature. The Cardholder's copy, as well as your copy, must clearly show this information.

During a liquidation and/or closure of any of your outlets, locations and/or businesses, you must post signs clearly visible to customers stating that "All Sales Are Final," and stamp the Sales Draft with a notice that "All Sales Are Final."

Generally, do not give cash, check or in-store Credit refunds for Card sales. Visa allows for the following exclusions: A cash refund to the Cardholder for a small ticket transaction or a no signature required transaction, a cash refund, Credit, or other appropriate form of Credit to the recipient of a gift purchased as a Mail/Phone Order transaction, or a cash refund or in-store Credit for a Visa prepaid card transaction if the Cardholder states that the Visa prepaid card has been discarded. **NOTE:** A disclosure does not eliminate your liability for a Chargeback. Consumer protection laws and Card Organization Rules frequently allow the Cardholder to dispute these items notwithstanding such disclosures.

**1.6. Delayed Delivery or Deposit Balance.** In a delayed delivery transaction where a Cardholder makes a deposit toward the full amount of the sale, you should execute two separate Sales Drafts (each completed fully as described in Section 3.1), the first for a deposit and the second for payment of the balance upon delivery of the merchandise or the performance of the services.

- Visa:** For Visa transactions, you must obtain an authorization if the cumulative total of both Sales Drafts exceeds the floor limit. You must obtain an authorization for each Sales Draft on each transaction date. You must assign the separate authorization numbers to each Sales Draft, respectively. You must note on such Sales Drafts the words "delayed delivery," "deposit" or "balance," as appropriate, and the authorization dates and approval codes.

- MasterCard:** For MasterCard transactions, you must obtain one authorization. You must note on both Sales Drafts the words "delayed delivery," "deposit" or "balance," as appropriate, and the authorization date and approval code.

- Discover Network:** For Discover Network transactions, you must label one Sales Draft "deposit" and the other "balance," as appropriate. You must obtain the "deposit" authorization before submitting the sales data for the "deposit" or the "balance" to us. If delivery of the merchandise or service purchased will occur more than thirty (30) calendar days after the "deposit" authorization, you must obtain a subsequent authorization for the "balance." In addition, you must complete Address Verification at the time of the "balance" authorization, and you must obtain proof of delivery upon delivery of the services/merchandise purchased. You may not submit sales data relating to the "balance" to us for processing until the merchandise/service purchased has been completely delivered.

**NOTE:** For MasterCard and Visa transactions, if delivery is more than twenty-five (25) days after the original transaction date and the initial authorization request (as opposed to the thirty (30) days in Discover Network transactions), you should reauthorize the unprocessed portion of the transaction prior to delivery. If the transaction is declined, contact the Cardholder and request another form of payment. For example: On January 1, a Cardholder orders \$2,200 worth of furniture and you receive an authorization for the full amount; however, only a \$200 deposit is processed. The above procedures are followed, with a \$2,000 balance remaining on the furniture; the \$2,000 transaction balance should be reauthorized.

**1.7. Recurring Transaction and Preauthorized Order Regulations.** If you process recurring transactions and charge a Cardholder's account periodically for recurring goods or services (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees, etc.), the Cardholder shall complete and deliver to you a Cardholder approval for such goods or services to be charged to his account. The approval must at least specify the Cardholder's name, address, account number and expiration date, the transaction amounts, the timing or frequency of recurring charges and the duration of time for which the Cardholder's permission is granted. For Discover Network transactions, the approval must also include the total amount of recurring charges to be billed to the Cardholder's account, including taxes and tips and your Merchant Number.

If the recurring transaction is renewed, the Cardholder must complete and deliver to you a subsequent written request for the continuation of such goods or services to be charged to the Cardholder's account. You may not complete a recurring transaction after receiving a cancellation notice from the Cardholder or Issuer or after a request for authorization has been denied.

If we or you have terminated this Agreement, you may not submit authorization requests or sales data for recurring transactions that are due after the termination date of this Agreement.

You must obtain an authorization for each transaction and write "Recurring Transaction" (or "P.O." for MasterCard transactions) on the Sales Draft in lieu of the Cardholder's signature. A positive authorization response for one recurring transaction Card Sale is not a guarantee that any future recurring transaction authorization request will be approved or paid.

For all recurring transactions, you should submit the 3-digit Card Validation Code number with the first authorization request, but not subsequent authorization requests. Discover Network Card Organization Rules specifically require that you follow this Card Validation Code procedure for Discover Network recurring transactions.

Also, for Discover Network recurring transactions, the Sales Draft must include a general description of the transaction, your merchant name and a toll-free customer service number that the Cardholder may call to obtain customer assistance from you or to cancel the written approval for the recurring transaction.

All recurring transactions or preauthorized orders may not include partial payments for goods or services purchased in a single transaction.

You may not impose a finance charge in connection with a Recurring Transaction or Preauthorized Order.

If you process recurring payment transactions, the Recurring Payment Indicator must be included in each authorization request. Penalties can be assessed by the Card Organizations for failure to use the Recurring Payment Indicator.

**1.8. Certain Rules and Requirements.** The following rules are requirements strictly enforced by Visa, MasterCard and Discover Network:

- You cannot establish minimum or maximum amounts as a condition for accepting a Card, except that for Discover Network transactions, you may limit the maximum amount a Discover Network Cardholder may spend if, and only if, you have not received a positive authorization response from the Issuer.
- You cannot impose a surcharge or fee for accepting a Card.
- You cannot establish any special conditions for accepting a Card.
- You cannot establish procedures that discourage, favor or discriminate against the use of any particular Card. However, you may choose not to accept either U.S. issued Debit Cards or U.S. issued Credit Cards under the terms described in Section 1.9.
- You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address, or driver's license number) unless instructed by the Authorization Center. The exception to this is for a mail/telephone/Internet order or delivery-required transaction, and zip code for a card-present key-entered transaction in order to obtain an Address Verification. Any information that is supplied by the Cardholder must not be in plain view when mailed.
- Any tax required to be collected must be included in the total transaction amount and not collected in cash.
- You cannot submit any transaction representing the refinance or transfer of an existing Cardholder obligation deemed uncollectible.
- You cannot accept a Visa Consumer Credit Card or Commercial Visa Product, issued by a U.S. Issuer, to collect or refinance an existing debt.
- You cannot submit a transaction or sale that has been previously charged back.
- You must create a Sales Draft or Credit Draft for each Card transaction and deliver at least one copy of the Sales Draft or Credit Draft to the Cardholder.
- You cannot submit a transaction or sale to cover a dishonored check.
- If you accept Card checks, your Card check acceptance policy must treat the acceptance of checks from all payment card brands that you accept equally (e.g., if you accept MasterCard, Visa and Discover Network, your check acceptance policy must treat checks for all three payment card brands equally). You should handle these Card checks like any other personal check drawn upon a bank in the United States.
- Failure to comply with any of the Card Organization Rules may result in fines or penalties.
- You are required to notify the Cardholder that you are responsible for the Card transaction including your goods and services, any related customer service issues, dispute resolution and performance of the terms and conditions of the card transaction.

**1.9. Card Acceptance.** If you have indicated either in the Application or by registering with us at least thirty (30) days in advance that, as between Non-PIN Debit Card transactions and Credit Card transactions, you will limit your acceptance to either (i) only accept Non-PIN Debit transactions; or (ii) only accept Credit Card transactions, then the following terms in this Section 1.9 will apply:

**1.9.1.** You will be authorized to refuse to accept for payment either Non-PIN Debit Cards or Credit Cards that are issued within the United States. You will, however, continue to be obligated to accept all foreign issued Credit Card or Debit Cards issued by MasterCard, Visa or Discover Network so long as you accept any type of MasterCard, Visa or Discover Network branded Card.

**1.9.2.** While many Debit Cards include markings indicating debit (such as "Visa Checkcard, Visa Buxx, Gift Card, DEBIT, or Mastermoney"), many Debit Cards may not include any such markings. It will be your responsibility to determine at the point of sale whether a Card is of a type that you have indicated that you will accept. You agree to institute appropriate systems and controls to limit your acceptance to the Card types indicated. You may purchase a table of ranges of numbers currently associated with Debit Card transactions upon execution of confidentiality/non-disclosure agreements required by the Card Organizations. You will be responsible for updating your systems to utilize such tables and to obtain updated tables.

**1.9.3.** To the extent that you inadvertently or intentionally accept a transaction other than the type anticipated for your account, such transaction will downgrade to a higher cost interchange and you will be billed the difference in interchange (a Non-Qualified Interchange Fee), plus a Non-Qualified Surcharge (see Section 18.1 and Glossary).

**1.9.4.** Based upon your choice to accept only the Card types indicated in the application, you must remove from your premises any existing signage indicating that you accept all Visa, MasterCard or Discover Network Cards and use approved specific signage reflecting your policy of accepting only Non-PIN Debit or Credit Cards.

**1.9.5.** Even if you elect not to accept Non-PIN Debit Card transactions as provided above, you may still accept PIN Debit Card transactions if you have signed up for PIN Debit Card Services. Certain debit networks require that you enter into an agreement with a sponsoring or acquiring bank. With regard to those networks, a separate agreement between you and Processor and a sponsoring or acquiring bank is required. Bank shall not be a party to any such PIN Debit Card Services agreement, and Bank shall not be liable to you in any way with respect to such services.

**1.10. Deposits of Principals.** Owners, partners, officers and employees of your business establishment, and the guarantors who signed the Application, are prohibited from submitting Sales Drafts or Credit Drafts transacted on their own personal Cards, other than transactions arising from bona fide purchases of goods or services in the ordinary course of your business. Such use in violation of this Section 1.10 is deemed a cash advance, and cash advances are prohibited.

**1.11. Merchants in the Lodging Industry.**

**1.11.1. Generally.** There are additional rules and requirements that apply to merchants in the lodging industry for practices including, but not limited to, Guaranteed Reservations and charges for no shows, advance deposits, overbookings, and priority checkout.



you are a merchant in the lodging industry, you must contact us for these additional rules and requirements. Failure to do so could result in additional charges or termination of this Agreement.

**1.11.2. Lodging Service Programs.** In the event you are a lodging merchant and wish to participate in Visa's and/or MasterCard's lodging services programs, please contact your sales representative or relationship manager for details and the appropriate MasterCard and Visa requirements.

**1.12. Customer Activated Terminals and Self-Service Terminals.** Prior to conducting Customer Activated Terminal ("CAT") transactions or Self-Service Terminal transactions you must contact us for approval and further instructions, rules and requirements that apply to CAT and Self-Service Terminal transactions. Failure to do so could result in additional charges or termination of this Agreement.

**1.13. Displays and Advertising.** You must prominently display appropriate Visa, MasterCard, Discover Network and, if applicable, other Card Organization decals and program Marks at each of your locations, in catalogs, on websites and on other promotional materials as required by Card Organization Rules. You may not indicate that Visa, MasterCard, Discover Network or any other Card Organization endorses your goods or services.

Your right to use the program Marks of the Card Organizations terminates upon the earlier of (i) if and when your right to accept the Cards of the respective Card Organization terminates (e.g., if your right to accept Discover Network Cards terminates, you are no longer permitted to use Discover Network Program Marks), (ii) delivery of notice by us or the respective Card Organization to you of the termination of the right to use the Mark(s) for that Card Organization, or (iii) termination of the license to use the program Marks by the respective Card Organization to us.

**1.13.1. Discover Network Sublicense to Use Discover Network Program Marks.** You are prohibited from using the Discover Network Program Marks, as defined below, other than as expressly authorized in writing by us. "Discover Network Program Marks" means the brands, emblems, trademarks and/or logos that identify Discover Network Cards, including, without limitation, Diners Club International Cards. Additionally, you shall not use the Discover Network Program Marks other than as a part of the display of decals, signage, advertising and other forms depicting the Discover Network Program Marks that are provided to you by us or otherwise approved in advance in writing by us.

You may use the Discover Network Program Marks only to promote the services covered by the Discover Network Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by us in writing.

You shall not use the Discover Network Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Network Program Marks. You recognize that you have no ownership rights in the Discover Network Program Marks. You shall not assign to any Person any of the rights to use the Program Marks.

**1.14. Cash Payments by and Cash Disbursements to Cardholders.** You must not accept any direct payments from Cardholders for charges of merchandise or services which have been included on a Sales Draft; it is the right of the Issuer to receive such payments. You may not make any cash disbursements or cash advances to a Cardholder as part of a Card transaction unless you are a financial institution with express authorization in writing in advance from Servicers.

**1.15. Discover Network Cash Over Transactions.** Cash Over transactions are not available for MasterCard or Visa transactions. You may issue Cash Over in connection with a Discover Network Card sale, provided that you comply with the provisions of this Agreement, including the following requirements:

- You must deliver to us a single authorization request for the aggregate total of the goods/services purchase amount and the Cash Over amount of the Card sale. You may not submit separate authorization requests for the purchase amount and the Cash Over amount.
- The Sales Draft must include both the purchase amount and the Cash Over amount, and you may not use separate Sales Drafts for the purchase amount and Cash Over amount.
- No minimum purchase is required for you to offer Cash Over to a Discover Network Cardholder, provided that some portion of the total Card sale must be attributable to the purchase of goods or services.
- The maximum amount of cash that you may issue as Cash Over is \$100.00.

(Cash Over may not be available in certain markets. Contact us for further information).

**1.16. Telecommunication Transactions.** Telecommunication Card Sales occur when a telephone service provider is paid directly using a Card for individual local or long-distance telephone calls. (NOTE: Pre-paid telephone service cards are not and do not give rise to Telecommunication Card Sales). Prior to conducting Telecommunication transactions you must contact us for approval and further instructions, rules and requirements. Failure to do so could result in additional charges or termination of this Agreement.

## 2. Suspect Transactions

If the appearance of the Card being presented or the behavior of the person presenting the Card is suspicious in nature, you must immediately call the Voice Authorization Center and ask to speak to a Code 10 operator. Answer all their questions and follow their instructions. While not proof that a transaction is fraudulent, the following are some suggestions to assist you in preventing fraudulent transactions that could result in a Chargeback:

**Ask yourself, does the Customer:**

- appear nervous/agitated/hurried?
- appear to be making indiscriminate purchases (e.g., does not care how much an item costs, the size, etc.)?
- make purchases substantially greater than your usual customer (e.g., your average transaction is \$60, but this transaction is for \$360)?
- insist on taking the merchandise immediately (e.g., no matter how difficult it is to handle, is not interested in free delivery, alterations, etc.)?

- appear to be purchasing an unusual amount of expensive items?
- take an unusual amount of time to sign the Sales Draft, or look at the back of the Card as he signs?
- talk fast or carry on a conversation to distract you from checking the signature?
- take the Card from a pocket instead of a wallet?
- repeatedly come back, in a short amount of time, to make additional purchases?
- cause an unusual, sudden increase in the number and average sales transactions over a one- to three-day period?
- tell you he has been having some problems with his Issuer and request that you call a number (that he provides) for a "special" handling or authorization?

**Does the Card:**

- have characters the same size, height, style and all within alignment?
- appear to be re-embossed (the original numbers or letters may be detected on the back of the Card)?
- have a damaged hologram?
- have a Magnetic Stripe on the back on the Card?
- have an altered signature panel (e.g., appear discolored, glued or painted, or show erasure marks on the surface)?
- have "valid from" (effective) and "valid thru" (expiration) dates consistent with the sale date

If you use an electronic terminal and swipe the Card, make sure the account number displayed on the terminal and/or the Sales Draft matches the number on the Card. If you cannot or do not verify the account number and accept the sale, you are subject to a Chargeback and could be debited for the amount of the transaction. IF THE NUMBERS DO NOT MATCH, DO NOT ACCEPT THE CARD AS A FORM OF PAYMENT, EVEN THOUGH AN AUTHORIZATION CODE FOR THE MAGNETICALLY SWIPED CARD NUMBER MAY BE RECEIVED.

**Fraud-Prone Merchandise Tips:**

- Jewelry, video, stereo, computer and camera equipment, shoes and men's clothing are typically fraud-prone because they can easily be resold.
- Be suspicious of high dollar amounts and transactions with more than one fraud-prone item, e.g., two VCRs, three gold chains, etc.

**If you suspect fraud:**

- Call the Voice Authorization Center and ask to speak to a Code 10 operator.
- If the terminal does not display the Card number, call the POS Help Desk for terminal assistance.

**REMEMBER: AN AUTHORIZATION CODE ONLY INDICATES THE AVAILABILITY OF A CARDHOLDER'S CREDIT AT THE TIME OF THE TRANSACTION. IT DOES NOT WARRANT THAT THE PERSON PRESENTING THE CARD IS THE RIGHTFUL CARDHOLDER. IF PROPER PROCEDURES ARE NOT FOLLOWED AT THE TIME OF THE TRANSACTION, YOU ARE SUBJECT TO A CHARGEBACK AND YOUR ACCOUNT MAY BE DEBITED FOR THE AMOUNT OF THE TRANSACTION.**

## 3. Completion of Sales Drafts and Credit Drafts

You must prepare a Sales Draft or Credit Draft, as applicable, for each Card transaction and provide a copy of it or a transaction receipt or copy of the Draft to the Cardholder at the time the Card transaction is completed.

**3.1. Information Required.** All of the following information must be contained on a single page document constituting a Sales Draft:

- Cardholder's account number must appear on the Credit Draft or Sales Draft in the manner required by applicable law and Card Organization Rules. **NOTE: The copy of the Sales Draft or Credit Draft you provide to a Cardholder must not include the Cardholder's Card expiration date or any more than the last four digits of the Cardholder's Card number.** Some states have similar requirements that also apply to the Sales Drafts or Credit Drafts you retain. MasterCard requires that Card expiration dates be excluded from the Sales Drafts or Credit Drafts your business retains. You are solely responsible to determine the Card account number truncation requirements and Card expiration date exclusion requirements for your state/jurisdiction;
- Clear imprint of the Card. Whenever the term "imprint" is used it refers to the process of using a manual imprinting machine to make an impression of the Card on a Sales Draft; it does not include the printout from a printer attached to an electronic device. If you use an electronic device (e.g., authorization/draft capture terminal, cash register, POS Device, etc.) and swipe the Card to read and capture the Card information via the Magnetic Stripe, you do not have to imprint the Card. **HOWEVER, IF THE TERMINAL FAILS TO READ THE MAGNETIC STRIPE OR IF YOU ARE REQUIRED TO OBTAIN A VOICE AUTHORIZATION, THEN YOU MUST IMPRINT THE CARD.** IN ADDITION, THE SALES DRAFT MUST HAVE THE CARDHOLDER'S SIGNATURE. FAILURE TO FOLLOW THESE PROCEDURES WILL PREVENT YOU FROM DEFENDING A TRANSACTION IN THE EVENT THAT IT IS CHARGED BACK UNDER A CLAIM THAT THE RIGHTFUL CARDHOLDER DID NOT AUTHORIZE THE PURCHASE. ENTERING INFORMATION INTO A TERMINAL MANUALLY WILL NOT PREVENT THIS TYPE OF CHARGEBACK. FOR MAIL, TELEPHONE, INTERNET AND OTHER CARD NOT PRESENT ORDERS SEE SECTION 3.2;
- Cardholder's signature. However, eligible merchants participating in MasterCard's Quick Payment Service Program, Visa's Small Ticket and No Signature Programs, Discover Network's No Signature Program, and/or certain Discover Network transactions (see note below) are not required to obtain the Cardholder's signature under certain conditions set forth by each program;
- Date of the transaction;
- Amount of the transaction (including the approved currency of the sale);
- Description of the goods and/or services involved in the transaction (if there are too many items, combine them into one description; e.g., "clothing" instead of "one pair of pants, one shirt"). Do not carry information onto a second Sales Draft;



Description of your merchandise return and Credit/refund policy;  
A valid authorization code; and  
Merchant's Doing Business As ("D/B/A") name and location (city and state required) and Merchant Account Number.

When imprinting Sales Drafts, do not alter the Cardholder account number, circle or underline any information on the Sales Draft or alter a Sales Draft in any way after the transaction has been completed and signed. Stray marks and other alterations on a Sales Draft may render it electronically unscannable, unreadable or illegible. This may result in a Chargeback or Summary Adjustment to your account.

For Discover Network sales using a paper Sales Draft (as opposed to Electronic Draft Capture), the paper Sales Draft must also contain the initials of your representative or employee that conducted the transaction. For Discover Network Credits, the Credit Draft must contain the signature of your authorized representative or employee that conducted the transaction.

Discover Card Sales in an amount more than \$25.00 including sales taxes, tip, and/or Cash Over amount are not eligible for treatment as No Signature Required Card Sales and you may lose a dispute of such a Card Sale if the Merchant fails to obtain the Cardholder's Signature on the Sales Draft.

Eligible merchants participating in No Signature Program, Quick Payment Service and/or Small Ticket are only required to provide the Cardholder with the completed Sales Draft when requested by the Cardholder.

**NOTE:** For Discover Network transactions, if you are a merchant operating under certain merchant category codes approved by Discover Network, you are not required to obtain the Cardholder's signature so long as the full track data is transmitted in the authorization request and the sale amount is \$25.00 or less.

**3.2. Mail / Telephone / Internet (Ecommerce) Orders and Other Card Not Present Sales.** You may only engage in mail/telephone/Internet orders provided they do not exceed the percentage of your total payment Card volume reflected on your application. Failure to adhere to this requirement may result in cancellation of your Agreement. Merchants conducting Internet transactions using MasterCard or Visa Cards must have special codes (an "Electronic Commerce Indicator") added to their authorization and settlement records. Discover Network does not use an Electronic Commerce Indicator. Failure to register as a merchant conducting Internet transactions can result in fines imposed by the Card Organizations.

Mail, Telephone, Internet and other Card Not Present transactions have a substantially higher risk of Chargeback. Since you will not have an imprinted or magnetically swiped transaction and you will not have the Cardholder's signature on the Sales Draft as you would in a face-to-face transaction, you will assume all risk associated with accepting a mail/telephone/Internet or other Card Not Present transaction. The following procedures, while they will not eliminate Chargebacks, are useful in reducing them and should be followed by you:

- Obtain the expiration date of Card.
- On the Sales Draft, clearly print the Cardholder's account number; effective and expiration dates; date of transaction; description of the goods and services; amount of the transaction (including shipping, handling, insurance, etc.); Cardholder's name, billing address and shipping address; authorization code; and merchant's name and address (city and state required); provided, that you must effect PAN Truncation, and must not include the expiration date, on the copy of the Sales Draft or Credit Draft that you provide to the Cardholder, or as required by applicable law, the Sales Draft or Credit Draft you retain.
- For mail orders, write "MO"; for telephone orders, write "TO" on the Cardholder's signature line.
- If feasible, obtain and keep a copy of the Cardholder's signature on file on a form authorizing you to submit telephone and mail order transactions.
- You should utilize the Address Verification Service for all Card Not Present Transactions (see note below). Address Verification is specifically required for all Discover Network Card Not Present Transactions, and if you do not receive a positive match through AVS, you may not process the Discover Network Card Not Present Transaction. If you do not have AVS, contact us immediately.
- You should obtain the 3-digit Card Validation Code number and include it with each authorization request. Discover Network Card Organization Rules specifically require that you submit the Card Validation Code with the authorization request for all Discover Network Card Not Present Transactions.
- For telephone orders, it is recommended that written verification of the sale be requested from the Cardholder (sent by mail or fax).
- You may not submit a transaction for processing until after the merchandise has been shipped or the service has been provided to the customer. (The Card Organizations will permit the immediate billing of merchandise manufactured to the customer's specifications [i.e., special/custom orders] provided the Cardholder has been advised of the billing details.)
- You should provide a copy of the Sales Draft to the Cardholder at the time of delivery. You must also obtain proof of delivery of the goods or services to the address designated by the Cardholder (i.e., by getting a signature of the Cardholder or person designated by the Cardholder through the delivery carrier). If the Cardholder visits one of your locations to receive the goods or services purchased, obtain an imprint of the card and the Cardholder's signature.
- Notify the Cardholder of delivery time frames and special handling and/or cancellation policies. Merchandise shipping dates must be within seven (7) days of the date authorization was obtained. If, after the order has been taken, additional delays will be incurred (e.g., out of stock), notify the Cardholder and reauthorize the transaction.
- You may not require a Cardholder to complete a postcard or other document that displays the Cardholder's account number in clear view when mailed.
- If you accept orders via the Internet, your web site must include the following information in a prominent manner:

- Complete description of the goods or services offered;
- Description of your merchandise return and Credit/refund policy;
- Customer service contact, including email address and/or telephone number;
- Transaction currency (U.S. dollars, unless permission is otherwise received from Services);
- Any applicable export or legal restrictions;
- Delivery policy;
- Consumer data privacy policy;
- A description of the transaction security used on your website; and
- The sale or disclosure of databases containing Cardholder account numbers, personal information, or other Card transaction information to third parties is prohibited.

- You may not accept Card Account Numbers through Electronic Mail over the Internet.

**NOTE:** Address Verification Service ("AVS") does not guarantee against Chargebacks, but used properly, it assists you in reducing the risk of fraud by confirming whether certain elements of the billing address provided by your customer match the billing address maintained by the Issuer. AVS also may help you avoid incurring additional interchange expenses. AVS is a separate process from obtaining an Authorization and will provide a separate response. A transaction may not match addresses when submitted for AVS and still receive an Authorization. It is your responsibility to monitor the AVS responses and use the information provided to avoid high-risk transactions.

**3.2.1. Discover Network Protocol for Internet Transactions.** Each Internet Discover Network Card transaction accepted by you and submitted to us shall comply with Discover Network standards, including, without limitation, Discover Network standards governing the formatting, transmission and encryption of data, referred to as the "designated protocol." You shall accept only those Internet Discover Network Card transactions that are encrypted in accordance with the designated protocol. As of the date of these Operating Procedures, the designated protocol for the encryption of data is Secure Socket Layer (SSL). We may, at our discretion, withhold Settlement until security standards can be verified. However, the designated protocol, including any specifications with respect to data encryption, may change at any time upon thirty (30) days advance written notice. You shall not accept any Internet Discover Network Card transaction unless the transaction is sent by means of a browser which supports the designated protocol.

**3.3. Customer Service Telephone Numbers** for Card types which are funded by individual non-bank Card Organizations include:

|                         |                           |
|-------------------------|---------------------------|
| American Express/Optima | 1-800-528-5200            |
| JCB, International      | 1-800-366-4522            |
| TeleCheck               | 1-800-366-1054            |
| Voyager                 | 1-800-987-6591            |
| WEX                     | 1-800-492-0669 (24 hours) |

#### 4. Data Security

THE FOLLOWING IS IMPORTANT INFORMATION REGARDING THE PROTECTION OF CARDHOLDER DATA. PLEASE REVIEW CAREFULLY AS FAILURE TO COMPLY CAN RESULT IN SUBSTANTIAL FINES AND LIABILITIES FOR UNAUTHORIZED DISCLOSURE AND TERMINATION OF THIS AGREEMENT.

**4.1. Payment Card Industry Data Security Standards (PCI DSS).** Visa, MasterCard, American Express, Discover Network and JCB aligned data security requirements to create a global standard for the protection of Cardholder data. The resulting Payment Card Industry Data Security Standards (PCI DSS) defines the requirements with which all entities that store, process, or transmit payment card data must comply. PCI DSS is the name used to identify those common data security requirements. The Cardholder Information Security Program (CISP) is Visa USA's data security program, the Site Data Protection (SDP) program is MasterCard's data security program and Discover Network Information Security and Compliance (DISC) is Discover Network's data security program, each based on the PCI DSS and industry aligned validation requirements. PCI DSS compliance validation is focused on Merchant Equipment (as defined below) where Cardholder data is retained, stored, or transmitted, including:

- All external connections into your network (i.e., employee remote access, third party access for processing, and maintenance);
- All connections to and from the authorization and settlement environment (i.e., connections for employee access or for devices such as firewalls, and routers); and
- Any data repository outside of the authorization and settlement environment.

For the purposes of this Section 4, "Merchant Equipment" means any and all equipment you use in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, including, without limitation, all telecommunication lines and wireless connections and software, systems, point-of-sale terminals, card readers, merchandise and card scanners, printers, PIN pad devices and other hardware, whether owned by you, Merchant Providers or other Persons used by you.

The Card Organizations or we may impose fines or penalties, or restrict you from accepting Cards if it is determined that you are not compliant with the applicable data security requirements. We may in our sole discretion, suspend or terminate Services under this Agreement for any actual or suspected data security compromise. You agree that you will not request any Authorizations, submit any Sales Drafts or Credit Drafts until you have read and understood the PCI DSS, CISP, SDP and DISC for which you acknowledge we have provided you sufficient information to obtain, and you will be deemed to have done so upon our receipt of your request or submission of any Authorizations, Sales Drafts or Credit Drafts.

You must comply with the data security requirements described in this Section 4.1, including, without limitation, PCI DSS, SDP, CISP and DISC, and any additional Card Organization requirements applicable to PIN transactions.

Detailed information about PCI DSS can be found at the PCI DSS Council's website: [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).

Detailed information about Visa's CISP program can be found at Visa's CISP website: [www.visa.com/cisp](http://www.visa.com/cisp).

Detailed information about MasterCard's SDP program can be found at the MasterCard DP website: [www.mastercard.com/US/sdp/index.html](http://www.mastercard.com/US/sdp/index.html).

Detailed information about DISC can be found at Discover Network's DISC website: <http://www.discovernetwork.com/fraudsecurity/disc.html>.

**4.2. Data Security Requirements.** You must comply with the data security requirements shown below:

- You must install and maintain a secure network firewall to protect data across public networks.
- You must encrypt stored data and data sent across networks.
- You must use and regularly update anti-virus software and keep security patches up-to-date.
- You must restrict access to data by business "need to know," assign a unique ID to each person with computer access to data and track access to data by unique ID.
- Don't use vendor-supplied defaults for system passwords and other security parameters.
- You must regularly test security systems and processes.
- You must maintain a policy that addresses information security for employees and contractors.
- You must restrict physical access to Cardholder information.
- You may not transmit Cardholder account numbers to Cardholders for Internet transactions.
- You cannot store or retain Card Validation Codes (three-digit values printed in the signature panel of most Cards, and a four-digit code printed on the front of an American Express Card).
- You cannot store or retain Magnetic Stripe data, PIN data or AVS data. Only Cardholder account number, Cardholder Name and Cardholder expiration date can be retained subsequent to transaction authorization.
- You must destroy or purge all Media containing obsolete transaction data with Cardholder information.
- You must keep all systems and Media containing Card account, Cardholder, or transaction information (whether physical or electronic) in a secure manner so as to prevent access by, or disclosure to any unauthorized party.
- For Internet transactions, copies of the transaction records may be delivered to Cardholders in either electronic or paper format.
- You must use only services and Merchant Equipment that have been certified as PCI-DSS compliant by the Card Organizations.

**4.3. Compliance Audits.** You may be subject to ongoing validation of your compliance with PCI DSS standards. Furthermore, we retain the right to conduct an audit at your expense, performed by us or a Person designated by us to verify your compliance, or that of your agents or Merchant Providers, with security procedures and these Operating Procedures.

**4.4. Immediate Notice Required.** In the event that transaction data is known or suspected of having been accessed or retrieved by any unauthorized Person, you must contact us immediately, and in no event more than 24 hours after becoming aware of such activity.

**4.5. Investigation.** You must, at your own expense (i) perform or cause to be performed an independent investigation, including a forensics analysis performed by a certified forensic vendor acceptable to us and the Card Organizations, of any data security breach of Card or transaction data, (ii) perform or cause to be performed any remedial actions recommended by any such investigation, and (iii) cooperate with us in the investigation and resolution of any security breach. Notwithstanding the foregoing, if required by a Card Organization, we will engage a forensic vendor approved by a Card Organization at your expense. You must cooperate with the forensic vendor so that it may immediately conduct an examination of Merchant Equipment, and your and Merchant Providers' procedures and records and issue a written report of its findings.

**4.6. Required Information for Discover Network Security Breaches.** For security breaches involving Discover Network transactions and/or track data, you must provide us and/or Discover Network with the following information: (i) the date of breach; (ii) details concerning the data compromised (e.g., account numbers and expiration dates, Cardholder names and addresses, etc.); (iii) the method of such breach; (iv) your security personnel contacts; (v) the name of any person (including law enforcement) assisting you with your investigation of such breach; and (vi) any other information which we reasonably request from you concerning such breach, including forensics reports. You shall provide such information as soon as practicable, and the items listed in (i)-(v) shall be provided to us in any event within 48 hours of your initial notification to us of the breach.

**4.7. Merchant Providers.** The data security standards set forth in this Section 4 also apply to Merchant Providers. Before you engage any Merchant Provider, you must provide to us in writing (a) the Merchant Provider's legal name, (b) contact information, and (c) intended function. You acknowledge and agree that you will not use, or provide Cardholder data access to, any Merchant Provider until you receive our approval and, if required, confirmation of our registration of that Merchant Provider with applicable Card Organizations. You must ensure that you and Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with all applicable Card Organization Rules, including without limitation, those requiring security of Cardholder data. You may allow Merchant Providers access to Cardholder data only for purposes authorized under and in conformance with the Card Organization Rules. You are responsible for all our costs and expenses associated with our review, approval, certification (and recertification as may be required by us or the Card Organization Rules) and registration of any Merchant Providers.

Your use of the Services, equipment, software, systems, materials, supplies or resources of third parties regarding your Card transactions processing, including, without limitation, Merchant Providers and any third party lessors or licensors, will not affect your obligations under this Agreement to us which will apply to the same extent as if you had not used them.

We have no liability or responsibility to you or others regarding these third parties, even if we referred them to you. These third parties are your agents, and you are solely responsible for (i) determining whether they can meet your needs and standards, (ii) their actions, inactions and compliance with the terms of this Agreement and the Card Organization Rules and (iii) any and all fees, costs, expenses and other obligations owed to them by you or owed by them to us or to Card Organizations.

**4.8. Noncompliance Fees.** If we have not received receipt of your validation of compliance with your PCI DSS standards within the first 120 days of the date of the Agreement, you will be charged a monthly non-receipt of PCI Validation fee as set forth in the Application or as otherwise communicated to you, for the period beginning upon expiration of the 120 day period, until such time as you are compliant or this Agreement is terminated, whichever comes first. This monthly non-receipt of PCI Validation fee is in addition to any and all other fees for which you are responsible related to your failure to be compliant as required hereunder.

**4.9. Costs.** If you or a Merchant Provider (or other Person used by you) are determined by any Card Organization, regardless of any forensic analysis or report, to be the likely source of any loss, disclosure, theft or compromise of Cardholder data or Card transaction information (together, "Compromised Data Events") and regardless of your belief that you have complied with the Card Organization Rules or any other security precautions and are not responsible for the Compromised Data Event, you must promptly pay us for all related expenses, claims, assessments, fines, losses, costs, and penalties and Issuer reimbursements imposed by the Card Organizations against us (together, "Data Compromise Losses"). In addition to the foregoing, you must also pay us promptly for all expenses and claims made by Issuers against us alleging your responsibility for the Compromised Data Event, apart from any claim procedures administered by the Card Organizations.

## 5. Authorizations

Each authorization request you submit to us must fully comply with the applicable provisions of this Agreement. Submission of an authorization request that does not fully comply may result in assessment of additional fees to you, a declined authorization response or a Chargeback to you.

You must obtain an Authorization Approval Code from us (or a Person, as provided in Section 5.4) for all transactions. A positive authorization response for MasterCard remains valid for seven (7) days for electronic processed transactions. For true paper merchants for MasterCard and Visa transactions the Authorization remains valid for thirty (30) days. A positive authorization response for Discover Network transactions remains valid for ninety (90) days. Failure to settle within these timeframes may result in a late presentment Chargeback.

Failure to obtain an Authorization Approval Code for a sales transaction may result in a Chargeback and/or the termination of your Agreement. Authorization Approval Codes can be obtained through your POS Terminal or a Voice Response Unit ("VRU"). Any fees related to authorizations will be charged for a request for an Authorization Approval Code, whether or not the transaction is approved.

Do not attempt to obtain an Authorization Approval Code provided by someone other than us except as described in Section 5.4. If a Cardholder or another service provider provides you with either an authorization number or with a telephone number for obtaining authorizations, the Authorization Approval Code you receive may not be valid. Even if the transaction is initially processed and funded, it may be charged back at a later date. Also, if you receive a purported Authorization Approval Code from someone other than us, we will not have the supporting records and will be unable to verify that you received the authorization if that is later questioned in a Chargeback.

An Authorization Approval Code only indicates the availability of credit on an account at the time the authorization is requested. It does not warrant that the person presenting the Card is the rightful Cardholder, nor is it a promise or guarantee that you will not be subject to a Chargeback.

If you obtain Address Verification, you must review the AVS response separately from the authorization response and make your own decision about whether to accept the transaction. A transaction can receive an Authorization Approval Code from the Issuer even if AVS is unavailable or reflects that the address provided to you does not match the billing address on file at the Issuer. If the authorized Cardholder disputes such a transaction, you will be responsible for the resulting Chargeback.

If you receive a Referral response to an attempted authorization, you may not submit the transaction without calling for and receiving a voice authorization. After receiving a Referral response you may not attempt another authorization on the same Card through your POS Terminal.

If you fail to obtain an Authorization Approval Code or if you submit a Card transaction after receiving a decline (even if a subsequent authorization attempt results in an Authorization Approval Code), your transaction may result in a Chargeback and may be assessed fines or fees by the Card Organizations for which you will be responsible. These currently range from \$25 to \$150 per transaction. To avoid these costs and related Chargebacks, always obtain an Authorization Approval Code directly from your terminal before submitting a transaction for settlement.

For Cards other than MasterCard, Visa and Discover Network (e.g., American Express, etc.) or for check acceptance, you must follow the procedures for authorization and acceptance for each.

You may not attempt to obtain multiple authorizations for a single transaction. If a sale is declined, do not take alternative measures with the same Card to obtain an approval of the sale from other authorization sources. Instead, request another form of payment. If you accept and process a transaction that was declined, or attempt multi-transactions and/or multi-authorizations, you are subject to a Chargeback, Card Organization fines and/or cancellation of your Agreement.

**5.1. Card Not Present Transactions.** You must obtain the 3-digit Card Validation Code (CVV2, CVC2, CID) and submit this Code with all authorization requests with respect to transactions where the Card is not present (e.g., telephone, mail or internet



(es). However, for recurring transaction authorizations you should submit the Card Validation Code with the first authorization request only, and not with subsequent recurring transaction authorization requests. (See Section 1.7). **NOTE: For each Card Not Present Discover Network transaction, you must also verify the name and billing address of the Discover Network Cardholder using the Address Verification System (AVS), and if you do not receive a positive match, do not process the Discover Network Card Not Present transaction.**

### 5.2. Authorization via Telephone (Other Than Terminal/Electronic Device Users).

- Call your designated voice authorization toll free number and enter the authorization information into the VRU using a touch tone phone or hold for an authorization representative.
- If advised to pick up a Card, use reasonable and peaceful means to do so, and do not take any action that will alarm or embarrass the Card presenter. You will bear all responsibility for claims, liabilities, costs and expenses as a result of any action by you, your employees, vendors or agents, that attempt to retain a Card without the Issuer's direct request or failure to use reasonable, lawful means in retaining or attempting to retain the Card. Forward the Card to: Attn: Rewards Department, P.O. Box 5019, Hagerstown, MD 21740. You may be paid a reward for the return of the Card.
- On occasion, the Authorization Center will ask you to obtain identification from the Cardholder before issuing an approval code. If you are instructed to do so, clearly write the appropriate identification source and numbers in the space provided on the Sales Draft unless otherwise prohibited by law.
- If the sale is declined, please remember that our operators are only relaying a message from the Issuer. The fact that a sale has been declined should not be interpreted as a reflection of the Cardholder's creditworthiness. The Cardholder should be instructed to call the Issuer.

### 5.3. Authorization via Electronic Devices.

- If you use an electronic terminal to obtain an Authorization Approval Code, all sales should be authorized through this equipment. Authorizations through other methods will result in additional charges to you.
- If your terminal malfunctions, refer to your Quick Reference Guide, if necessary, or call the POS Help Desk. The problem will either be corrected promptly or may require terminal programming or replacement. During the period in which your terminal is not functioning, remember to check it periodically since most terminal problems are temporary in nature and are quickly corrected.
- If a terminal is moved or if wires are disconnected, causing malfunction, call the POS Help Desk immediately and follow their instructions. You may be responsible for any service charges incurred for reactivation of the terminal.
- Until the terminal becomes operable, you must call your designated voice authorization toll free number and enter authorization information into the VRU using a touchtone phone. During this time, each transaction must be imprinted using a manual Imprinter machine. Failure to obtain an Authorization Approval Code and to imprint these transactions could result in a Chargeback to your account.

**5.4. Third Party Authorization System.** If you have contracted with another authorization network to obtain Credit Card authorization, i.e., your terminal can Split Dial, liability resulting from discrepancies with that network must be resolved between you and that network. We will not research Chargebacks resulting from Authorization Approval Codes obtained from another authorization service organization. Such Chargebacks will be passed through to you for resolution. If an authorization provided by a third party authorization system is challenged in a Chargeback, you must obtain proof (e.g., third party authorization logs) from the authorization source and submit it to us within the time frame specified on the Chargeback documentation.

**IF YOU CONTRACTED TO USE ONE OF OUR AUTHORIZATION SERVICES, DO NOT USE ANOTHER THIRD PARTY SYSTEM WITHOUT NOTIFYING CUSTOMER SERVICE. OTHERWISE, WE WILL BE UNABLE TO SUCCESSFULLY RESEARCH AND DEFEND ANY AUTHORIZATION RELATED CHARGEBACKS ON YOUR BEHALF. THIS DELAY WILL SIGNIFICANTLY DECREASE YOUR TIME TO RESEARCH AND PROVIDE PROOF OF AUTHORIZATION, THUS REDUCING YOUR OPPORTUNITY TO REVERSE A CHARGEBACK.**

If you utilize another authorization network, you will be responsible for the downgrade of any transactions to a higher cost interchange that result from a mismatch of information to our systems and those of third party authorization networks (see Section 18.1).

If you use a third party authorization network, you must also comply with Section 4.7.

**Call the following for other Card types:**

|                         |                |
|-------------------------|----------------|
| American Express/Optima | 1-800-528-5200 |
| JCB, International      | 1-800-522-9345 |
| TeleCheck               | 1-800-366-5010 |
| Voyager                 | 1-800-987-6589 |
| WEX                     | 1-800-842-0071 |

**Available 24 hours/day; 7 days/week.**

All approved sales authorized in this manner must be entered manually as "post authorization" transactions into the terminal, once the terminal becomes operational. All Credit transactions must be entered into the terminal for data capture. You may be subject to a Chargeback if you receive a Referral and subsequently receive an approval. To reduce the risk of such a Chargeback, the Card should be imprinted using a manual Imprinter machine. (For specific procedures on Electronic Data Capture, refer to the Terminal Operating Instructions/Users Guide.) If the terminal malfunctions for more than twenty-four (24) hours, contact Customer Service for further instructions on processing your transactions.

**5.5. Automated Dispensing Machines.** Records must be produced for all transactions whose origin and data capture are automated dispensing machines or Limited Amount Terminals. Records should include the Cardholder account number, merchant's name, terminal location, transaction date and amount.

**5.6. Pre-Authorization for T&E (Travel & Entertainment) and Restaurant Merchants.** If you are a business engaged in providing travel and/or entertainment

services (e.g., car rentals, hotels, motels, etc.) or a restaurant business, and engage in the practice of "pre-authorization" you must comply with the following general procedures:

- A hotel, motel, or car rental merchant may obtain an estimated Visa, MasterCard or Discover Network authorization at the time of check-in.
- Restaurants must not add an estimated tip amount to the authorization request beyond the value of the goods provided, or services rendered, plus any applicable tax.
- You must notify the Cardholder of the dollar amount you intend to "Pre-Authorize."
- If the customer decides to use another form of payment (e.g., cash, check, etc.) you must promptly call the Voice Authorization Response Unit to delete the authorization hold. Provide the Cardholder's account number, original dollar amount and date of the transaction, and the authorization code. If a new transaction takes place, a new imprinted and signed Sales Draft for the exact amount and a new authorization code for that amount must be obtained.
- **VEHICLE RENTAL PROVIDERS MAY NOT INCLUDE POTENTIAL VEHICLE DAMAGE OR INSURANCE DEDUCTIBLES IN ANY PREAUTHORIZATIONS.**
- If you receive a decline on a transaction, you must wait twenty-four (24) hours before attempting to reauthorize. If you reauthorize prior to this time frame and receive an approval, you may be subject to a Chargeback and a fine imposed by the Card Organizations.
- Hotels, motels, and car rental merchants are allowed up to a 15% variance above the amount authorized. If the final amount charged to the Cardholder exceeds the original estimate by more than 15% above the preauthorization, you must authorize any additional amounts, and all incremental authorization codes must be written in the authorization area along with the date of authorization and the amount authorized.
- Pre-Authorization for certain establishments, are allowed up to a 20% (instead of 15%) variance above the amount authorized. If the final amount exceeds the amount "pre-authorized" by more than 20%, you must authorize the additional amount. Estimating the Authorization amount to include a tip is prohibited. The authorization request should include only the amount associated with the bill presented to the consumer.
- You should obtain an authorization for the initial estimated charges and then monitor the charges to ensure that the actual charges made do not exceed the estimated charges. If the actual charges exceed the amount of the initial estimated authorization (and any subsequent estimated authorizations), then you must secure a positive authorization for the additional amount. **NOTE:** Subsequent authorizations should only be for the additional amount of total charges and not include amounts already authorized.
- The estimated amount of any pre-authorization for lodging accommodations must be based on (i) the intended length of stay; (ii) the room rate; (iii) applicable taxes and service charges; and (iv) other miscellaneous charges as dictated by experience.
- If an authorization request is declined, no charges occurring after that date will be accepted for that Cardholder.
- You do not need to obtain a final authorization if the total sum of charges (the final amount) does not exceed 120% of the previously authorized charges. You must record the dates, authorized amounts, and their respective Authorization Approval Codes on the Sales Draft(s).

**5.7. Discover Network Procedure for Request for Cancellation of Authorization.** If a Discover Network Card sale is cancelled or the amount of the transaction changes following your receipt of authorization for the sale, you must call your Authorization Center directly and request a cancellation of the authorization. An authorization may be cancelled at any time within fifteen (15) days of your receipt of the authorization, but must be cancelled before the sales data relating to the transaction is submitted to us, after which the authorization cannot be changed. For an authorization cancellation, you must provide us with the following information, in this order:

- The Discover Network Merchant Number used in the authorization;
- The Card number;
- The original amount of the authorization being cancelled;
- The new amount of the total transaction (if any);
- The original authorization code for the authorization being cancelled;
- The expiration date of the Card; and
- A brief reason for the authorization cancellation.

**5.8. Partial Authorization and Authorization Reversal.** Partial authorization provides an alternative to a declined transaction by permitting an Issuer to return an authorization approval for a partial amount, an amount less than the transaction amount requested by the merchant when the available card balance is not sufficient to approve the transaction in full. The Cardholder is able to use up the remaining funds on the card and select another form of payment (i.e., another payment card, cash, check) for the remaining balance of the transaction. If you support partial authorizations, a partial authorization indicator must be included in each authorization request.

An authorization reversal must be submitted if the authorization is no longer needed, a partial amount of the total authorized is submitted for the settled transaction, or the Cardholder elects not to complete the purchase. The transaction sent for settlement must be no more than the amount approved in the partial authorization response. In the event that you wish to support the partial authorization functionality, you must contact Processor for additional rules and requirements.

## 6. Submission/Deposit of Sales Drafts and Credit Drafts

**6.1. Submission of Sales for Merchants Other Than Your Business.** You may present for payment only valid charges that arise from a transaction between a bona fide Cardholder and your establishment. If you deposit or attempt to deposit transactions that arise from sales between Cardholders and a different business than the one approved by us in our Agreement with you, then the transaction may be charged back, we may suspend or debit funds associated with all such transactions, and we may immediately terminate your account and the Agreement.

**6.1.1. Factoring.** Factoring is considered merchant fraud and strictly prohibited. Factoring is the submission of authorization requests and/or Sales Drafts by a merchant for Card transactions transacted by another business. If you submit Sales Drafts on behalf of another person, you will suffer any losses associated with the disputes of any such Sales Draft and/or transaction. Also if any fraud is involved, you could face criminal prosecution.

**6.2. Timeliness.** In order to qualify for the lowest interchange Discount Rate, all Sales and Credit Drafts must be properly completed and submitted daily. If you have not received payment for submitted Sales Drafts after one (1) week from your normal payment date, contact Customer Service. **Late Submission of Sales or Credit Drafts may result in increased interchange rates or fees or in a Chargeback to you.**

**6.3. Mail/Branch Deposit Procedures.** Complete the appropriate summary form designated for your use. Imprint the completed summary with your Merchant Identification Card, if applicable, and sign it. Please do not staple or clip Sales Drafts together or to summary forms. This will distort the Cardholder's account number and may result in a Summary Adjustment or Chargeback to you. Mail your deposits daily to us, or, if your Agreement allows deposit at a local bank branch, you must make daily deposits.

Do not send us the merchant copies (which are for your records); submit only the Bank hard copies of the transactions. If merchant copies are submitted, they will be returned to you unprocessed.

**6.4. Electronic Merchants: Daily Batching Requirements & Media Submission.** Batches must be transmitted to us by the time indicated in Section A.2. of Part IV, of this Agreement in order to be processed on the date of transmission. Additionally, if you deposit via magnetic tape, electronic transmissions, or Electronic Data Capture terminal, and have contracted to send the actual Sales Drafts and Credit Drafts to us for imaging and retrieval, the Media must be batched daily by register/terminal following the procedures below. Failure to do so may result in a processing fee and/or a Chargeback due to our inability to retrieve the Media as requested by the Issuer.

- A register/terminal Batch header form must be filled out for each Batch of Media.
- The Batch header must be imprinted with your Merchant Identification Card, and all areas completed properly (i.e., Batch number, date, amount, number of items, etc.).
- The Batch/deposit total must match to the settled/reconciled amount displayed on the terminal upon closing the Batch.
- Any discrepancies between the actual Media and electronic display must be reconciled and corrected before storing the Media (for merchants who contract to hold their Media) or before sending us the copies of the deposit. Otherwise, transactions may appear to be a new Submission and may be manually keyed (causing duplicate billing to Cardholders and resulting in Chargebacks) or we may not be able to retrieve an item when requested by the Issuer.
- It is your responsibility to ensure that the actual Media is batched correctly and, depending on the terms of your Agreement, either stored at your location or sent to Processor. (In some cases, the actual Media is sent daily to your head office, and forwarded to Processor for imaging.)
- **You must confirm that your equipment has transmitted its Batches to us at least once daily.** Even if your equipment is designed or programmed to close and submit Batches without your intervention, it is ultimately your responsibility to confirm that the Batches have been transmitted to us for processing.

## 7. Settlement

Your funds for MasterCard/Visa/Discover Network transactions will be processed and transferred to your financial institution within two (2) Business Days from the time a Batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard/Visa/Discover Network transactions will be processed via the Federal Reserve within two (2) Business Days from the time a Batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

If you have been classified by Discover Network as having a Discover Direct Strategic Relationship with Discover Network, we will not acquire your Discover Network transactions and they will be subject to your agreement with Discover Network.

You acknowledge and agree that if we have not agreed to or do not acquire transactions for any Card type (i) we have no liability or responsibility whatsoever for the settlement of or disputes regarding those transactions and (ii) you will pursue directly with the related Card Organization all claims and disputes regarding those transactions. You agree to pay us for per item processing, authorization and other fees in the Application for any non-acquired transaction services you receive from us.

## 8. Refunds/Exchanges (Credits)

### 8.1. Refunds.

- You must promptly complete and submit a Credit Draft for the total amount of the Credit, which must include the following information:
  - The account number and expiration date;
  - The Cardholder's name;
  - Your name, city, state and Merchant Account Number;
  - A description of the goods or services;
  - The transaction date of the Credit;
  - The total amount of the Credit; and
  - For Discover Network transactions, the approved currency used and the signature of your authorized representative or employee.
- You cannot process a Credit transaction that does not correspond to a refund on a previous transaction on the original Sales Draft.
- Full refunds must be for the exact dollar amount of the original transaction including tax, handling charges, etc. (You must identify the shipping and handling charges incurred.) The refund amount may not be for more than the original Card sale amount.
- All dollar amounts and other handwritten information must be clearly written. (Stray marks on the Credit Draft will render it unscannable/illegible.)

- Do not circle or underline any information on the Credit Draft.
- Imprint the Credit Draft with the same Card used by the Cardholder to make the original purchase when applicable. You should not credit an account that differs from the account used for the original transaction.
- Never give cash or check Credit refunds for Card sales.
- Have the Cardholder sign the Credit Draft, give the Cardholder the appropriate copy, and deposit the Credit Draft immediately. Failure to process a Credit within five (5) calendar days may result in a Chargeback.
- Authorization is not required for Credits.
- You cannot intentionally submit a sale and an offsetting Credit at a later date solely for the purpose of debiting and crediting your own or a customer's account.
- You are responsible for paying all refunds submitted to us on your merchant account. We assume no responsibility for verifying any Credits or refunds.
- Do not process a Credit transaction once a Chargeback is received. Credits issued after a Chargeback has been received may not be recoverable and the merchant would be financially responsible for the credit as well as the Chargeback.
- **YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

### 8.2. Exchanges.

- No additional paperwork is necessary for an even exchange. Just follow your standard company policy.
- For an uneven exchange, complete a Credit Draft (follow the procedures outlined in Section 8.1) for the total amount of only the merchandise returned. The Cardholder's account will be credited for that amount. Then, complete a new Sales Draft for the total amount of any new merchandise purchased.

## 9. Retention of Records For Retrievals and Chargebacks

### 9.1. Retain Legible Copies.

**For MasterCard and Visa:** You must securely retain legible copies of all Sales Drafts and Credit Drafts or any other transaction records for a period of eighteen (18) months from the date of each transaction and a period of five (5) years for the retention of healthcare Sales Drafts and Credit Drafts. The Sales Drafts you retain must comply with all requirements (see Section 3.1).

**For Discover Network:** You must securely retain legible copies of all Sales Drafts and Credit Drafts or any other transaction records for the longer of (i) 365 days or (ii) the resolution of any pending or threatened disputes, claims, disagreements or litigation involving the Card transaction. You must also keep images or other copies of Sales Drafts for no less than three (3) years from the date of the Discover Network transaction.

**9.2. Provide Sales and Credit Drafts.** You must provide all Sales Drafts and Credit Drafts or other transaction records requested by us within the shortest time limits established by Card Organization Rules. You are responsible for any deficiencies in Card transaction data transmitted or otherwise delivered to us.

**9.3. Ensure Proper Retrieval Fulfillment.** To ensure proper Retrieval fulfillments and/or Chargeback processing, Sales Drafts and Credit Drafts must contain the full account number and expiration date to the extent permitted by applicable law and Card Organization Rules (see Section 3.1). Failure to retain this information could result in a future Chargeback to your account.

## 10. Chargebacks, Retrievals and Other Debits

### 10.1. Chargebacks.

**10.1.1. Generally.** Both the Cardholder and the Issuer have the right to question or dispute a transaction. If such questions or disputes are not resolved, a Chargeback may occur. As a result, we will debit your Settlement Account or settlement funds for the amount of each Chargeback. It is strongly recommended that, whenever possible, you contact the Cardholder directly to resolve a disputed transaction or Chargeback, unless the dispute involves a Discover Network Cardholder, in which case Discover Network rules and regulations expressly prohibit you from contacting the Discover Network Cardholder regarding the dispute. You are responsible for all Chargebacks, our Chargeback fees, and related costs arising from your transactions.

**10.1.2. Transaction Documentation Requests.** In some cases, before a Chargeback is initiated, the Issuer will request a copy of the Sales Draft, via a request for transaction documentation. We will forward the request to you. You must respond to the request within the time frame and manner set forth in the request. We will then forward your response to the Issuer. If you fail to timely respond, we will so notify the Issuer and a Chargeback may result. Upon receipt of a transaction documentation request, immediately retrieve the requested Sales Draft(s) using the following guidelines:

- Make a legible copy, centered on 8 1/2 x 11-inch paper (only one (1) Sales Draft per page).
- Write the "case number" from the request for transaction documentation on each copy/page.
- If applicable, make copies of a hotel folio, car rental agreement, mail/phone/internet order form, or other form of receipt.
- If a Credit transaction has been processed, a copy of the Credit Draft is also required.
- Letters are not acceptable substitutes for Sales Drafts.
- Fax or mail legible copies of the Sales Draft(s) and Credit Drafts, if applicable, to the fax number or mail address provided on the request form.
- If you fax your response, please set your fax machine to print your fax number and name on the documents that you send. We can use this information to help determine where the documentation received originated from should additional research be required.
- Additionally, please set the scan resolution on your fax machine to the highest setting. The higher resolution setting improves the clarity of characters and graphics on the



documentation transmitted and helps reduce the number of illegible fulfillments and/or Chargebacks.

If we do not receive a clear, legible and complete copy of the transaction documentation within the timeframe specified on the request, you may be subject to a Chargeback for "non-receipt" for which there is no recourse.

A handling fee may be charged by the Issuer and will be debited from your Settlement Account or settlement funds if, a transaction documentation request results from a difference in the following information on the Sales Draft and the transmitted record: Merchant name or an incorrect city, state, foreign country and/or transaction date.

**10.1.3. Chargeback Process.** Regardless of whether you respond to a transaction documentation request, a Chargeback may be debited to your Settlement Account for numerous reasons (see below). If the Issuer submits a Chargeback, we will send you a Chargeback notification, which may also include a request for transaction documentation. Due to the short time requirements imposed by MasterCard, Visa and Discover Network, it is extremely important that you respond to a Chargeback notification and transaction documentation request within the time frame set forth in the notification. Do not process a Credit transaction once a Chargeback is received; the Issuer will credit the Cardholder's account. Credits issued after a Chargeback has been received may not be recoverable and the merchant would be financially responsible for the Credit as well as the Chargeback. If the information you provide is both timely and, in our sole discretion, sufficient to warrant a representation of the transaction and/or reversal of the Chargeback, we will do so on your behalf. However, representation and/or reversal is/are ultimately contingent upon the Issuer and/or Cardholder accepting the transaction under applicable Card Organization guidelines. Representation or reversal is not a guarantee that the Chargeback has been resolved in your favor.

**For Visa Chargebacks:** If we reverse the Chargeback and represent the transaction to the Issuer, at its sole discretion, may elect to submit the matter for arbitration before Visa. Visa currently charges a \$250 filing fee and a \$250 review fee. If a decision is made in favor of the Cardholder and/or Issuer, and the Chargeback is upheld, you will be responsible for all such fees and any other applicable fees and penalties imposed by Visa, as they may change from time to time. Such fees and penalties will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

**For MasterCard Chargebacks:** If we reverse the Chargeback and represent the transaction to the Issuer, at its sole discretion, may elect to resubmit the Chargeback. In such event, at the discretion of Processor, we will debit your Settlement Account or settlement funds for the Chargeback. However, if you feel strongly that it is an invalid Chargeback, we may, on your behalf and at your request, submit the matter for arbitration before MasterCard. MasterCard currently charges a \$150 filing fee and a \$250 review fee. If a decision is made in favor of the Cardholder and/or Issuer, and the Chargeback is upheld, you will be responsible for all such fees and any other penalties imposed by MasterCard as they may change from time to time. Such fees and penalties will be debited from your Settlement Account or settlement funds, in addition to the Chargeback.

**For Discover Network Chargebacks:** If Discover Network rejects our representation request and you feel strongly that the Chargeback is invalid, we may, at the discretion of Processor and on your behalf and at your request, submit the matter for dispute arbitration before Discover Network. Discover Network charges fees for representation requests and an arbitration fee as published in their fee schedule.

If the Chargeback is not disputed within the applicable time limits set forth by MasterCard, Visa, and Discover Network rules and regulations, reversal rights are forfeited. Our only alternative, for Visa and MasterCard non-fraud Chargeback reason codes, is to attempt a "good faith collection" from the Issuer on your behalf. This process can take up to six (6) months and must meet the Issuer's criteria (e.g., at or above a set dollar amount). Good faith collection attempts are not a guarantee that any funds will be collected on your behalf. Issuers normally charge good faith collection fees, which are deducted from the transaction amount if accepted in addition to any processing fees that are charged by us. **NOTE:** Discover Network does not offer good faith collection for Acquirers.

MasterCard and Visa Card Organization Rules require that a merchant make a good faith attempt and be willing and able to resolve any disputes directly with the Cardholder. Discover Network rules and regulations, however, prohibit you and/or us from contacting the Cardholder directly regarding dispute(s) or any other matter, except as required for acceptance of Discover Network transactions, and require you and/or us to submit any responses to dispute notices directly to Discover Network.

Due to Card Organization Rules, you may not re-bill a Cardholder after a Chargeback is received for that transaction, even with Cardholder authorization.

We strongly recommend that you include a detailed rebuttal letter along with all pertinent documents when responding to a transaction request or a Chargeback notification (e.g., rental agreement, imprinted portion of the invoice or Sales Draft; the portion signed by the Cardholder; and the area where the authorization codes, with amounts and dates, are located).

Due to the short time frames and the supporting documentation necessary to successfully (and permanently) reverse a Chargeback in your favor, we strongly recommend the following:

- Avoid Chargebacks by adhering to the guidelines and procedures outlined in these Operating Procedures.
- If you do receive a Chargeback, investigate, and if you dispute the Chargeback, submit the appropriate documentation within the required time frame.
- Whenever possible, contact the Cardholder directly to resolve the dispute, unless the dispute relates to a Discover Network Cardholder, in which case direct contact with the Discover Network Cardholder regarding the dispute is prohibited by Discover Network Card Organization Rules.
- If you have any questions, call Customer Service.

**10.1.4. Chargeback Reasons.** The following section outlines the most common types of Chargebacks. This list is not exhaustive. For ease of understanding, we have combined like Chargebacks into six groupings. We have included recommendations on how

to reduce the risk of Chargebacks within each group. These are recommendations only, and do not guarantee that you will be able to prevent Chargebacks.

**1. Authorization Issues:** Proper Authorization procedures were not followed and valid Authorization was not obtained.

**The following scenarios could cause an Authorization Related Chargeback to occur:**

- Authorization not obtained.
- Authorization was declined.
- Transaction processed with an expired card and Authorization was not obtained.
- Transaction was processed with an invalid account number and Authorization was not obtained.
- Card Recovery Bulletin (CRB) or Exception File was not checked (transactions below floor limit).

**To reduce your risk of receiving an Authorization Related Chargeback:**

- Obtain valid Authorization on the day of the transaction
  - Card Present Transactions-Authorization must be obtained on the transaction date for the amount settled.
  - Card Not Present Transactions-Authorization must be obtained on the transaction date for the amount settled. However, if merchandise is being shipped, Authorization must be obtained within seven calendar days of the transaction ship date.
- If a declined response is received, then request another form of payment from the Cardholder.
- If a Referral response is received, then follow proper voice procedures to obtain a valid Authorization and obtain an imprint of the card.
- "Pick-up" response indicates that the Issuer is requesting for the card to be retained and returned back to them. The Card should not be accepted for payment. Additionally, you can choose to retain the Credit Card and return it to the Acquirer.
- Merchants should not exceed any predetermined thresholds for specific terminal types as specified by each Card Organization.

**2. Cancellations and Returns:** Credit was not processed properly or the Cardholder has cancelled and/or returned items

**The following scenarios could cause a Cancellation and Return Related Chargeback to occur:**

- Cardholder received damaged or defective merchandise.
- Cardholder continued to be billed for cancelled recurring transaction.
- Credit transaction was not processed.

**To reduce your risk of receiving a Cancellation and Return Related Chargeback:**

- Issue Credit to the Cardholder for the same account as the purchase in a timely manner.
  - Do not issue Credit to the Cardholder in the form of cash, check or in-store/merchant-issued Credit as we may not be able to recoup your funds in the event the transaction is charged back.
- Ensure customers are fully aware of the conditions for recurring transactions. Cancel recurring billings as soon as notification is received from the Cardholder or as a Chargeback, and Issue the appropriate Credit as needed to the Cardholder in a timely manner.
- Pre-notify the Cardholder of billings within 10 days (Domestic) and 15 (International) prior to billing, allowing the Cardholder time to cancel the transaction.
- Provide proper disclosure of your refund policy for returned/cancelled merchandise, or services to the Cardholder at the time of transaction.
  - Card present, Cardholder signed the Sales Draft containing disclosure.
- If applicable, the words "NO EXCHANGE, NO REFUND," etc. must be clearly printed in 1/4 inch lettering on the Sales Draft near or above the Cardholder signature.
  - Ecommerce, provide disclosure on website on same page as check out requiring Cardholder to click to accept prior to completion.
  - Card Not Present, provide cancellation policy at the time of the transaction.
  - Provide cancellation numbers to Cardholder's when lodging services are cancelled.
- Ensure delivery of the merchandise or services ordered to the Cardholder.

**3. Fraud:** Transactions that the Cardholder claims are unauthorized; the account number is no longer in use or is fictitious, or the merchant was identified as "high risk."

**The following scenarios could cause a Fraud Related Chargeback to occur:**

- Multiple transactions were completed with a single card without the Cardholder's permission.
- Counterfeit card was utilized and proper acceptance procedures were not followed.
- Authorization was obtained; however, full track data was not transmitted.
- Cardholder states that they did not authorize or participate in the transaction.

**NOTE:** Visa Fraud Chargebacks: Chargeback representation rights do not exist if you failed to fulfill a retrieval request and/or provide a sales slip that contains all required data elements. To preserve Chargeback representation rights, respond to all retrieval requests with a clear legible copy of the transaction document that contains all required data elements within the required timeframe that is specified by the retrieval request.

**To reduce your risk of receiving a Fraud Related Chargeback:**

**Card Present Transactions:**

- Obtain an Authorization for all transactions.
- If you are utilizing an electronic device to capture card information, swipe all Card transactions through your electronic authorization device to capture Cardholder information and ensure the displayed Cardholder number matches the number on the Card.
- If you are unable to swipe the Card or if a Referral response is received, imprint the Card using a valid imprinting device that will capture the embossed Card and merchant information. Do not alter the imprint on the draft in any way. Manually entering the information into the terminal does not protect you from this type of Chargeback. All pertinent information relating to the transaction must be written on the manually imprinted draft (transaction date, dollar amount, authorization code and merchandise description) along with the Cardholder signature.

**NOTE:** Do not imprint on the back of a signed Sales Draft. The imprint must be on the transaction document that contains all transaction elements to prove the Card was present at the time of the transaction.

Obtain the Cardholder signature for all transactions; ensure the signature on the Sales Draft matches the signature on the back of the Card.

- Process all transaction one time and do not Batch out transactions multiple times.
- Educate staff on procedures to eliminate point of sale (POS) fraud.

**Card Not Present Transactions:**

- Participation in recommended Fraud Prevention Tools:
  - Verified by Visa Program
  - MasterCard SecureCode
  - Address Verification Services
  - CVV2, CVC2 and CID Verification

**NOTE:** While transactions utilizing these tools may still be disputed, the service may assist you with your decision to accept the Card for the transaction.

- Ensure you ship to the AVS confirmed address (bill to and ship to should match).
- Obtain Authorization for all transactions.
- Ensure merchant descriptor matches the name of the business and is displayed correctly on the Cardholder statement.
- Ensure Cardholder includes correct business address and a valid customer service number.

4. **Cardholder Disputes:** Merchandise or services not received by the Cardholder, Merchandise defective or not as described.

**The following scenarios could cause a Cardholder Dispute Chargeback to occur:**

- Services were not provided or merchandise was not received by the Cardholder.
- The Cardholder was charged prior to merchandise being shipped or merchandise was not received by agreed upon delivery date or location.
- Cardholder received merchandise that was defective, damaged, or unsuited for the purpose sold, or did not match the description on the transaction documentation/verbal description presented at the time of purchase.
- Cardholder paid with an alternate means and their Card was also billed for the same transaction.
- Cardholder cancelled service or merchandise and their Card was billed.
- Cardholder billed for a transaction that was not part of the original transaction document.

**To reduce your risk of receiving a Cardholder Dispute Related Chargeback:**

- Provide Services or Merchandise as agreed upon and described to the Cardholder; clearly indicate the expected delivery date on the sales receipt or invoice.
- Contact the Cardholder in writing if the merchandise or service cannot be provided or is delayed, and offer the Cardholder the option to cancel if your internal policies allow.
- In the event that the Cardholder received defective merchandise or the merchandise received was not as described; resolve the issue with the Cardholder at first contact.
- If the merchandise is being picked up by the Cardholder, have them sign for the merchandise after inspection that it was received in good condition.
- Do not charge the Cardholder until the merchandise has been shipped, ship according to the agreed upon terms and obtain signed Proof of Delivery from the Cardholder.
- If unable to provide services or merchandise, issue a Credit to Cardholder in a timely manner.
- Accept only one form of payment per transaction and ensure the Cardholder is only billed once per transaction.
- Do not bill Cardholder for loss, theft or damages unless authorized by the Cardholder.

5. **Processing Errors:** Error was made when transaction was processed or it was billed incorrectly.

**The following scenarios could cause a Processing Error Chargeback to occur:**

- Transaction was not deposited within the Card Organization specified timeframe.
- Cardholder was issue a Credit Draft; however, the transaction was processed as a sale.
- Transaction was to be processed in a currency other than the currency used to settle the transaction.
- The account number or transaction amount utilized in the transaction was incorrectly entered.
- A single transaction was processed more than once to the Cardholder's account.
- Cardholder initially presented Card as payment for the transaction; however Cardholder decided to use an alternate form of payment.
- Limited amount or self-service terminal transaction was processed for an amount which is over the pre-determined limit.

**To reduce your risk of receiving a Processing Error Related Chargeback:**

- Process all transactions within the Card Organization specified timeframes.
  - Ensure all transactions are processed accurately and only one time.
- NOTE:** In the event that a transaction was processed more than once; immediately issue voids, transaction reversals or Credits.
- Ensure that credit transaction receipts are processed as Credits and sale transaction receipts are processed as sales.
  - Ensure all transactions received a valid Authorization Approval Code prior to processing the transaction and obtain a legible magnetic swipe or imprinted Sales Draft that is signed.
  - Do not alter transaction documentation or make any adjustments unless the Cardholder has been contacted and agrees to any modifications of the transaction amount.
  - Ensure limited amount, self-service and automated fuel dispenser terminals are set properly to conform to the pre-determined limits.

6. **Non Receipt of Information:** Failure to Respond to a Retrieval Request or Cardholder Does Not Recognize

**The following scenarios could cause Non Receipt of Information Chargeback to occur:**

- The transaction documentation was not provided to fulfill the retrieval request.

- The retrieval request was fulfilled with an illegible Sales Draft or was an invalid fulfillment (incorrect sales draft or sales draft did not contain required information which may include signature).
- The Cardholder does not recognize or is unfamiliar with the transaction due to the merchant name and/or location not matching the name and/or location where the transaction took place.

**To reduce your risk of receiving a Non Receipt of Information Related Chargeback:**

- Provide a clear and legible copy of the Sales Draft that contains all required data elements within the required timeframe that is specified on the retrieval request.
- Ensure that the most recognizable merchant name, location and/or customer service phone number is provided on all transactions.
- Retain copies of all transaction documentation for the required timeframe that is specified by each Card Organization.
- Develop efficient methods to retrieve transaction documentation to maximize ability to fulfill requests.

**10.2. Other Debits.** We may also debit your Settlement Account or your settlement funds in the event we are required to pay Card Organization fees, charges, fines, penalties or other assessments as a consequence of your sales activities. Such debits shall not be subject to any limitations of time specified elsewhere in the Agreement, including, without limitation the following, which we may add to or delete from this list as changes occur in the Card Organization Rules or our Operating Procedures pursuant to Section 15:

- Card Organization fees, charges, fines, penalties, registration fees, or other assessments including any fees levied against us or any amount for which you are obligated to indemnify us.
- Currency conversion was incorrectly calculated. **NOTE: For Discover Network transactions, you are not permitted to convert from your local Discover Network approved currency into another currency, nor may you quote the price of a transaction in U.S. Dollars if completed in another approved currency.**
- Discount Rate not previously charged.
- Reversal of deposit posted to your account in error.
- Debit for Summary Adjustment not previously posted.
- Reversal of Credit for deposit previously posted.
- Debit for Chargeback never posted to your account.
- Debit for EDC Batch error fee.
- Card Organization Merchant Chargeback/fraud monitoring fees – excessive Chargeback handling fees.
- Failure of transaction to meet Member Controller Authorization Service ("MCAS") – Cardholder account number on exception file.
- Original transaction currency (foreign) not provided.
- Travel Voucher exceeds maximum value.
- Debit and/or fee for investigation and/or Chargeback costs related to this Agreement, or for costs related to our collection activities in an amount no less than \$100.00.
- Costs arising from replacement or damage to equipment rented.
- Payment of current or past due amounts for any equipment purchase, rental or lease.
- Incorrect merchant descriptor (name and/or city, state) submitted.
- Incorrect transaction date submitted.
- Shipping and handling interchange fees.
- Costs or expenses associated with responding to any subpoena, garnishment, levy or other legal process associated with your account in an amount no less than \$150.00.

**10.3. Summary (Deposit) Adjustments/Electronic Rejects.** Occasionally, it is necessary to adjust the dollar amount of your summaries/Submissions (deposits) and credit or debit your Settlement Account or settlement funds accordingly. The following is a list of the most frequent reasons for Summary (Deposit) Adjustments/Electronic Rejects:

- Your summary reflected an arithmetic error.
- Submitted sales not included in your Agreement (e.g., American Express).
- The dollar amount is unreadable/illegible.
- The Cardholder's account number is unreadable/illegible.
- Duplicate Sales Draft submitted.
- Card number is incorrect/incomplete.
- Summary indicated credits, but no credits were submitted.

**10.4. Disputing Other Debits and Summary Adjustments.** In order to quickly resolve disputed debits and Summary Adjustments, it is extremely important that the items listed in this section be faxed or sent to the address listed on the notification.

If the Summary Adjustment is for an unreadable or incorrect Cardholder account number, resubmit the corrected Sales Draft with your next deposit. Also, if the transaction is over thirty (30) calendar days old, you must reauthorize and obtain a valid Authorization Approval Code.

A clear and legible copy of the Sales Draft containing the following should be obtained from your files:

- Date of sale/Credit;
- Cardholder's account number, name and signature;
- Total amount of the sale and description of goods and services; and
- Date and Authorization Approval Code.

Include a dated cover letter detailing the reasons for requesting a review of the debit or Summary Adjustment and documentation to support your dispute. (You should retain a copy of the correspondence and all documentation for your files.) If the inquiry is related to prior correspondence, be sure to include the control number we previously used.

Immediately fax or mail the Sales Draft or Credit Drafts to the fax number or address provided on your notification letter.

If you have any questions, please call the Customer Service number provided on the last page of this Program Guide. If a Customer Service Representative informs you that additional documentation is required in order to fully review the item, please immediately submit your rebuttal and transaction documentation to the fax number or address listed on the debit notification.



## 11. Account Maintenance

**11.1. Change of Settlement Account Number.** If you change the Settlement Account in which you receive the proceeds of your transactions, you must call Customer Service or your Relationship Manager immediately. If you accept payment types other than Visa, MasterCard and Discover Network (such as the American Express Card and TeleCheck Services), you are also responsible for contacting the Card Organizations or companies governing those Cards to notify them of this change.

**11.2. Change in Your Legal Name or Structure.** You must call Customer Service or your Relationship Manager and request a new Agreement.

**11.3. Change in Company DBA Name, Address or Telephone/ Facsimile Number.** To change your company or location DBA name, address or telephone/ facsimile number, you must send the request in writing to the address on your statement.

**11.4. Other Change(s) in Merchant Profile.** You must immediately notify us of any change to the information on file with us in your merchant profile, including: (i) any new lines or types of business; (ii) change in ownership; (iii) the opening, closing or liquidation of business or any location; (iv) change in Card processing method (i.e., paper Sales Drafts to POS Device); (v) voluntary or involuntary party to a bankruptcy case; (vi) entry into a loan or other agreement with a Person that seeks to affect this Agreement; and/or (vii) change from a business that exclusively conducts Card-present retail sales to one that accepts Card sales by mail, telephone or Internet transactions. We retain the right to terminate this Agreement if you fail to notify us of any change to the information in your merchant profile.

**11.5. Charges for Changes to Account Maintenance.** You may be charged for any changes referenced in this Section or any other changes requested by you or otherwise necessary related to account maintenance.

## 12. Card Organization Monitoring

MasterCard, Visa and Discover Network have established guidelines, merchant monitoring programs and reports to track merchant activity such as, but not limited to excessive Credit, reported fraud and Chargebacks, and increased deposit activity. In the event you exceed the guidelines or submit suspicious transactions as identified by an Card Organization or any related program or reports, you may be subject to: (i) operating procedure requirement modifications; (ii) Chargebacks and/or increased fees; (iii) settlement delay or withholding; (iv) termination of your Agreement; or (v) audit and imposition of fines.

## 13. Supplies

### Placing Orders.

- To order additional supplies, call Customer Service when you have two months' inventory left. We will ship you an adequate amount of supplies. The amount of supplies (based on usage) on hand should not exceed a three- to six-month supply.
- In an EMERGENCY, please contact Customer Service using the number provided on the last page of this Program Guide. If supplies are sent via an express delivery service, the delivery charges will be debited to your account.
- You are responsible for unauthorized use of sales/Credit and summary Media. We recommend that you store all supplies in a safe location.
- You may be charged for supplies and applicable shipping and handling charges.

## B. CARD GENERAL TERMS

In addition to the preceding Operating Procedures, our Agreement with you includes the following General Terms. If you fail to follow any of the provisions of the Operating Procedures or General Terms, you may incur certain liabilities and we may terminate our Agreement.

## 14. Services

Subject to Card Organization Rules, Services may be performed by us or our agents, including, without limitation, our respective Affiliates, including the provision of terminals or other equipment and local support functions in connection with this Agreement.

## 15. Operating Procedures; Card Organization Rules and Compliance

You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Card Organization Rules, including without limitation, the data security requirements described in Section 4 above. From time to time, we may amend the Operating Procedures, by providing you with at least 20 days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the Card Organization Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there are any inconsistencies between the General Terms and the Operating Procedures, the General Terms will govern. You are responsible for staying apprised of all applicable changes to the Card Organization Rules and maintaining compliance with the Card Organization Rules. Card Organization Rules may be available on web sites such as <http://usa.visa.com/merchants> and <http://mastercardmerchant.com>, as those links may change from time to time.

## 16. Settlement of Card Transactions

**16.1.** We will only be required to settle Card transactions for Card types specified in your Application. Promptly after presentment of Sales Drafts pursuant to the Operating Procedures, we will initiate a transfer of the applicable settlement funds to you.

**16.2.** All settlements for Visa, MasterCard and Discover Network Card transactions will be net of Credits, Summary Adjustments, applicable discount fees when due, Chargebacks and any other amounts then due from you. We may also set off from any payments otherwise due, any amounts owed to any of our respective Affiliates, whether or not arising out of or related to this Agreement.

**16.3.** All credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our right to deduct fees, our final audit, Chargebacks (including our related losses), and fees and lines imposed by the Card Organizations. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees, pending Chargebacks and any other amounts owed to us or any of our respective Affiliates, or we may deduct such amounts from settlement funds or other amounts due to you from us, or our respective Affiliates. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

**16.4.** We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by you or any Person.

**16.5.** In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 23.4) occur, we may, with or without notice, change processing or payment terms and/or suspend credits or other payments of any and all funds, money and amounts now due or hereafter to become due to you pursuant to the terms of this Agreement, until we have had reasonable opportunity to investigate such event.

**16.6.** You acknowledge and agree that transfers to and from the Settlement Account shall be based on the account number and routing number supplied by you. We are not responsible for detecting errors in any Settlement Account information you provide, including the account numbers and routing numbers, even if any of those numbers do not correspond to the actual account or financial institution identified by name.

**16.7.** This Agreement is a contract whereby we are extending financial accommodations to you within the meaning of Section 365(c) of the U.S. bankruptcy code. Your right to receive any amounts due or to become due from us is expressly subject and subordinate to Chargeback, setoff, lien, security interest and our rights to withhold settlement funds under this Agreement, without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

## 17. Exclusivity

During the term of this Agreement, you shall use us as your exclusive provider of all Services.

## 18. Fees; Adjustments; Collection of Amounts Due

**18.1.** In consideration of the Services provided by us, you shall be charged, and hereby agree to pay us any and all fees set forth in this Agreement (for the purposes of clarity, this includes the Application and any additional pricing supplements or subsequent communications), all of which shall be calculated and payable pursuant to the terms of this Agreement and any additional pricing supplements or subsequent communications.

If a transaction fails to qualify for your anticipated interchange levels or you inadvertently or intentionally accept a transaction other than the type anticipated for your account (including a different Card type), then, as applicable to your pricing method, you will be charged a higher interchange, Discount Rate or Non-Qualified Interchange Fee, as well as any applicable surcharge for that transaction, all as further described in Section A.3 of Part IV of this Agreement and in the Application. With respect to inadvertent or intentional acceptance of a transaction other than the type anticipated for your account (including a different Card type), you will also be subject to payment to us of our then-current transaction fee(s) with respect to such Card and/or transaction and be liable, obligated and responsible under this Agreement for any such transaction to the same extent as you would be if it was of a Card type elected and approved.

For more information on Visa's and MasterCard's interchange rates, please go to [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com).

**18.2.** All authorization fees will be charged for each transaction that you attempt to authorize. All capture fees will be charged for each transaction that you transmit to us for settlement.

**18.3.** The fees for Services set forth in this Agreement are based upon assumptions associated with the anticipated annual volume and average transaction size for all Services as set forth in this Agreement and your method of doing business. If the actual volume or average transaction size are not as expected or if you significantly alter your method of doing business, we may adjust your discount fee and transaction fees without prior notice.

**18.4.** The fees for Services set forth in this Agreement may be adjusted to reflect increases, or new fees imposed by Card Organizations, including without limitation, interchange, assessments and other Card Organization fees, or to pass through increases or new fees charged to us by other Persons related to the Services. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change or addition is implemented by the applicable Card Organization or other Person as specified in our notice to you.

**18.5.** Subject to Section 23.3, we may also increase our fees or add new fees for Services for any reason at any time, by notifying you twenty (20) days' prior to the effective date of any such change or addition.

**18.6.** If you receive settlement funds by wire transfer, we may charge a wire transfer fee per wire.

**18.7.** To the extent the Automated Clearing House ("ACH") settlement process is used to effect debits or credits to your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association, as in effect from time to time. You hereby authorize us to initiate credit and debit entries and adjustments to your account through the ACH network and/or through direct instructions to the financial institution where your Settlement Account is maintained for amounts due under this Agreement and under any agreements with us or our respective Affiliates for any related services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to effect all such debits and credits to your account. This authority will remain in full force and effect until we have given written notice to the financial institution where your Settlement Account is maintained that all monies due under this Agreement and under any other agreements with us or our respective Affiliates for any related services have been paid in full.

18.8. You agree to pay any fines imposed on us by any Card Organization resulting from chargebacks and any other fees or fines imposed by a Card Organization with respect to our acts or omissions. You are also responsible for any fines or fees imposed on us as a result of acts or omissions by your agents or third parties.

18.9. If your Chargeback percentage for any line of business exceeds the estimated industry Chargeback percentage, you shall, in addition to the Chargeback fees and any applicable Chargeback handling fees or fines, pay us an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry Chargeback percentage is subject to change from time to time by us in order to reflect changes in the industry Chargeback percentages reported by Visa, MasterCard or Discover Network. Your Chargeback Percentage will be calculated as the larger of (a) the total Visa, MasterCard and Discover Network Chargeback items in any line of business in any calendar month divided by the number of Visa, MasterCard and Discover Network transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, MasterCard and Discover Network Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, MasterCard and Discover Network transactions in that line of business submitted in that month.

18.10. You must promptly and carefully review statements or reports provided or made available to you (physically, electronically or otherwise) reflecting Card transaction activity, including, activity in the Settlement Account and Reserve Account, whether provided by us or others. If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within sixty (60) days after any debit or credit is or should have been effected or such shorter period as provided in the terms and conditions that govern such account. If you notify us after such time period, we may, in our discretion, assist you, at your expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but we shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

18.11. If you do not pay us all fees and any other amounts due under this Agreement within thirty (30) days of the date of our merchant statement or other statement setting forth the amount due, then we may, in our sole discretion, charge you interest, for such time that the amount and all accrued interest remain outstanding at the lesser of (i) the per annum rate equal to Bank's then current prime rate plus two percent (2%), based on a 360 day year, or (ii) the maximum rate permitted by applicable law.

## 19. Chargebacks

19.1. You shall be responsible for reimbursing us for all transactions you submit that are charged back. See the Operating Procedures for additional information regarding Chargebacks and Chargeback procedures.

19.2. You shall reimburse us for any Chargebacks, return items, or other losses resulting from your failure to produce a Card transaction record requested by us within the applicable time limits.

## 20. Representations; Warranties; Covenants; Limitations on Liability; Exclusion of Consequential Damages

20.1. Without limiting any other warranties hereunder, you represent, warrant to and covenant with, us, and with the submission of each Sales Draft reaffirm, the following representations, warranties and/or covenants:

20.1.1. each Card transaction is genuine and arises from a bona fide transaction permissible under the Card Organization Rules by the Cardholder directly with you, represents a valid obligation for the amount shown on the Sales Draft, preauthorized order, or Credit Draft, and does not involve the use of a Card for any other purpose;

20.1.2. each Card transaction represents an obligation of the related Cardholder for the amount of the Card transaction;

20.1.3. the amount charged for each Card transaction is not subject to any dispute, setoff or counterclaim;

20.1.4. each Card transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased or rented or other payments to you and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Agreement, that merchandise or service was actually delivered to or performed for the Cardholder entering into that Card transaction simultaneously upon your accepting and submitting that Card transaction for processing;

20.1.5. with respect to each Card transaction, you have no knowledge or notice of any fact, circumstance or defense which would indicate that such Card transaction is fraudulent or not authorized by the related Cardholder or which would otherwise impair the validity or collectability of that Cardholder's obligation arising from that Card transaction or relieve that Cardholder from liability with respect thereto;

20.1.6. each Card transaction is made in accordance with these General Terms, Card Organization Rules and the Operating Procedures; and

20.1.7. each Sales Draft is free of any alternation not authorized by the related Cardholder;

20.1.8. you have completed one Card transaction per sale; or one Card transaction per shipment of goods for which the Cardholder has agreed to partial shipments;

20.1.9. you are validly existing, in good standing and free to enter into this Agreement;

20.1.10. each statement made on the Application or other information provided to us in support of this Agreement is true and correct;

20.1.11. you are not doing business under a name or style not previously disclosed to us;

20.1.12. you have not changed the nature of your business, Card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different merchant category code under Card Organization Rules, in a way not previously disclosed to us;

20.1.13. you will use the Services only for your own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Person;

20.1.14. you have not filed a bankruptcy petition not previously disclosed to us;

20.1.15. you own and control the Settlement Account, and no third party security interest or lien of any type exists regarding the Settlement Account or any Card transaction.

20.1.16. you will not at any time during the term of this Agreement, or until all amounts due under this Agreement have been paid in full, grant or pledge any security interest or lien in the Reserve Account, Settlement Account or transaction proceeds to any Person without our consent;

20.2. THIS AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.

20.3. IN NO EVENT SHALL WE OR OUR AFFILIATES OR ANY OF OUR OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY EARLY TERMINATION FEE OR LIQUIDATED DAMAGES AS PROVIDED ELSEWHERE IN THIS AGREEMENT SHALL NOT BE PROHIBITED BY THIS PARAGRAPH.

20.4. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 26 or 20.5), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.

20.5. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 26), OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 16.4, 16.6 OR 35.1, WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK, FROM TIME TO TIME, LESS ONE PERCENT (1%).

20.6. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BANK IS NOT RESPONSIBLE, AND SHALL HAVE NO LIABILITY, TO YOU IN ANY WAY WITH RESPECT TO AMERICAN EXPRESS CARD, PIN DEBIT CARD, AND ELECTRONIC BENEFITS TRANSFER TRANSACTIONS, TELECHECK CHECK SERVICES, GIFT CARD SERVICES, AND TRANSACTIONS INVOLVING CARDS FROM OTHER NON-BANK CARD ORGANIZATIONS, SUCH AS VOYAGER FLEET SYSTEMS, INC., WRIGHT EXPRESS CORPORATION AND WRIGHT EXPRESS FINANCIAL SERVICES CORPORATION.

## 21. Confidentiality

21.1. Unless you obtain consents from us and each applicable Card Organization, Issuer and Cardholder, you must not use, disclose, store, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, Retrieval Requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. You shall use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. You may not retain or store Magnetic Stripe data or Card Validation Codes after a transaction has been authorized. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature except upon our specific request.

21.2. You acknowledge that you will not obtain ownership rights in any information relating to and derived from Card transactions. Cardholder account numbers, personal information and other Card transaction information, including any databases containing such information, may not be sold or disclosed to a Person as an asset upon a bankruptcy, insolvency or failure of Client's business. Upon a bankruptcy, insolvency or failure of Client's business, all Card transaction information must be returned to Servicers or acceptable proof of the destruction of all Card transaction information must be provided to Servicers.

21.3. You will treat this Agreement, the Card Organization Rules and any information supplied or otherwise made accessible by us or our agents as confidential, including without limitation, (i) information about the products, services, operations, procedures, customers, suppliers, sales, pricing, business plans and marketing strategies of Servicers or Bank, their respective Affiliates and the customers, clients and suppliers of any of them; (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords Servicers or Bank a competitive advantage over its competitors; and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and



trade secrets, whether or not patentable or copyrightable and will not disclose the same to any third parties, provided, however, that these restrictions do not apply to information: (a) rightfully obtained on a non-confidential basis from a Person and your agents and representatives, which Person was not subject to a duty of confidentiality; (b) rightfully and independently known by you on a non-confidential basis prior to its disclosure or (c) generally available to the public other than through any disclosure by or fault of you, your agents or representatives.

**21.3.1.** Our confidential information shall be used by you only to exercise your rights and to perform your obligations hereunder. Client shall receive our confidential information in confidence and not disclose the confidential information to any third party, except as may be agreed upon in writing by us. Client shall safeguard all of our confidential information using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material. Upon request by us or upon termination of this Agreement, Client shall return to us or destroy all of our confidential information in its possession or control.

**21.3.2.** The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the date of the Agreement or subsequently came into the public domain through no fault of Client; (ii) was received from a third party free of any obligation of confidence of Client to the third party and which third party, to Client's knowledge, was not under an obligation to keep the information confidential; (iii) was already in Client's possession prior to receipt from us; (iv) is required to be disclosed by law, regulation or court order after giving us as much advance notice as practical of the possibility of disclosure; or (v) is subsequently and independently developed by Client's employees, consultants or agents without use of or reference to our confidential information.

**21.3.3.** Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under our confidential information to Client. Except as specifically provided for herein, no license is hereby granted to Client under any patent, trademark, copyright, trade secret or other proprietary rights of ours.

**21.3.4.** Client acknowledges that breach of the restrictions on use or disclosure of any our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

**21.4.** With respect to any information received by us from Client via its use of the Services, we will keep such information confidential in accordance with applicable law; provided, that we may disclose such information (i) to third parties as we deem appropriate to provide the Services, (ii) our auditors and attorneys (internal and external) and regulators, (iii) as required or permitted by law, regulation or court order (iv) to our respective Affiliates as we deem appropriate.

**21.5.** You shall not assign to any Person, the rights to use the Marks of Servicers, our agents or the Card Organizations.

**21.6.** All rights, title, and interest in and to all intellectual property related to the Services (including without limitation, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods), owned, developed or licensed by us prior to, during the term of, or after the Agreement, or employed by us in connection with the Services and any updates, changes, alterations, or modifications to or derivative works from such intellectual property, shall be and remain, as among the Parties, our exclusive property of us.

**21.7.** Client agrees that we may obtain relevant information from any applicable telecommunications provider utilized by Client, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by Client in connection with the Services.

## 22. Assignments

**22.1.** Any transfer or assignment of this Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable by us. Any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Agreement. Furthermore, you shall indemnify and hold us harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's Submission of Card transactions to us for processing. For purposes of this Section 22, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

**22.2.** The payment Services provided by us require access to a single bank account in which we may initiate both credits and debits. You may not enter into any agreement that would require, in any circumstance or event, the transfer of any payments or proceeds from Card transactions covered by this Agreement to the custody or control of any Person. You may not assign any rights, including the right of payment under this Agreement, to any other person. In the event that you make an assignment (or provide a security interest) of receivables covered by this Agreement, then we may, at our option, elect to (a) refuse to acknowledge such assignment unless accompanied by an Authorization to both initiate debits or credits to the bank account of the assignee, (b) terminate this Agreement immediately, or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of \$100 per transfer.

**22.3.** Upon notice to you, another Visa and MasterCard member may be substituted for Bank under whose sponsorship this Agreement is performed with respect to Visa and MasterCard transactions. Upon substitution, such other Visa and MasterCard member shall be responsible for all obligations required of Bank for Visa and MasterCard transactions, including without limitation, full responsibility for its Card program and such other obligations as may be expressly required by applicable Card Organization Rules.

Subject to Card Organization Rules, we may assign or transfer this Agreement and our rights and obligations hereunder and/or may delegate our duties hereunder, in whole or in part, to any Person, whether in connection with a change in sponsorship, as set forth in the preceding paragraph, or otherwise, without notice to you or your consent.

**22.4.** Except as set forth elsewhere in this Section and as provided in the following sentence, this Agreement shall be binding upon successors and assigns and shall inure to

the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, or other person charged with taking custody of a party's assets or business, shall have any right to continue, assume or assign this Agreement.

## 23. Term; Events of Default

**23.1.** This Agreement shall become effective upon the date this Agreement is approved by our Credit Department.

**23.2.** The initial term of this Agreement shall commence and shall continue in force for five years after it becomes effective. Thereafter, it shall continue until we or you terminate this Agreement upon written notice to the other, or as otherwise authorized by this Agreement.

**23.3.** Notwithstanding the above or any other provisions of this Agreement, we may terminate this Agreement at any time and for any reason by providing 30 days' advance notice to you. We may terminate this Agreement immediately or with shorter notice upon an Event of Default as provided under Section 23.4 of this Agreement. In the event we provide notice to you of any new fees or increases in existing fees for Services, pursuant to Section 18.5, you may terminate this Agreement without further cause or penalty by providing us 30 days' advance written notice of termination. You must terminate within 30 days after we provide notice of any fee changes pursuant to Section 18.5; any such fee changes shall not take effect in the event you provide timely notice of termination. However, maintaining your merchant account, or your continued use of the Services after the effective date of any such fee changes shall be deemed your acceptance of such fee changes for the Services, throughout the term of this Agreement.

**23.4.** If any of the following events shall occur (each an "Event of Default"):

**23.4.1.** a material adverse change in your business, financial condition, or business prospects; or

**23.4.2.** any assignment or transfer of voting control of you or your parent; or

**23.4.3.** a sale of all or a substantial portion of your assets; or

**23.4.4.** irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, or any Card Organization, or any other Person, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or

**23.4.5.** any of your representations, warranties or covenants in this Agreement are breached in any respect; or

**23.4.6.** you default in any material respect in the performance or observance of any term, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 24; or

**23.4.7.** you default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our respective Affiliates; or

**23.4.8.** you default in the payment when due, of any material indebtedness for borrowed money; or

**23.4.9.** you file a petition or have a petition filed by another party under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against you in an involuntary case under such laws; 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 receiver, custodian, trustee or liquidator of you or of a substantial part of your property; or make a general assignment for the benefit of creditors; or take any action for the purpose of authorizing any of the foregoing; or

**23.4.10.** your independent certified accountants shall refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries; or

**23.4.11.** a violation by you of any applicable law or Card Organization Rule or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury or your breach, as determined by Servicers, of Section 35.2 ("Compliance with Laws"), then, upon the occurrence of (1) an Event of Default specified in subsections 23.4.4, 23.4.9 or 23.4.11, we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

**23.5.** Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by you to pay or reimburse us for any obligations associated with transactions you have submitted to us will survive termination of this Agreement until finally and irrevocably paid in full and settled.

**23.6.** If any Event of Default occurs, regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, and this Agreement including, without limitation, exercising our rights under Section 24.

**23.7.** In the event you file for protection under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our Services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that

ent, you will be responsible for submitting an accounting supporting any adjustments at you may claim.

18. The Card Organizations often maintain lists of merchants who have had their merchant agreements or Card Acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Card Organizations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa, MasterCard or Discover Network. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

23.9. After termination of this Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, Credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

## 24. Reserve Account; Security Interest

24.1. You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 24. The amount of such Reserve Account shall be set by us, in our sole discretion, based upon your processing history and the potential risk of loss to us as we may determine from time to time.

24.2. The Reserve Account shall be fully funded upon three (3) days' notice to you, or in instances of fraud or suspected fraud or an Event of Default, Reserve Account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to your Settlement Account or any other accounts held by Bank or any of its Affiliates, at any financial institution maintained in the name of Client, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account; (ii) any payments otherwise due to you, including any amount due from TeleCheck; (iii) your delivery to us of a letter of credit; or (iv) if we so agree, your pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination of this Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination of this Agreement or for such longer period of time as is consistent with our liability for Card transactions and Chargebacks in accordance with Card Organization Rules. We will hold funds pursuant to this Section 24 in master account(s) with your funds allocated to separate sub accounts. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in a Reserve Account.

24.3. If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges and amounts due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request. 24.4.1. To secure your obligations to us and our respective Affiliates under this Agreement and any other agreement for the provision of related equipment or related services (including any obligations for which payments on account of such obligations are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause), you grant to us a first priority lien and security interest in and to (i) the Reserve Account and (ii) any of your funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in our possession, whether now or hereafter due or to become due to you from us. Any such funds, money or amounts now or hereafter in our possession may be commingled with other funds of ours, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of ours. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, we are hereby authorized by you at any time and from time to time, without notice or demand to you or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of your obligations to us and our respective Affiliates under this Agreement and any other agreement with us our respective Affiliates for any related equipment or related services (including any check services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to us such instruments and documents as we may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

24.4.2. To the extent funds are held in a separate Reserve Account, the Reserve Account shall be subject to (i) Servicers' security interest pursuant to this subsection 24.4, and (ii) an account control agreement (as defined by the applicable sections of the Uniform Commercial Code, hereinafter referred to as "Control Agreement") among you, the institution at which the Reserve Account is held (such institution hereinafter referred to as "Settlement Account Bank") and Servicers (such investment account hereinafter referred to as the "Control Account"). The Control Agreement shall be in form and substance satisfactory to Servicers. The Settlement Account Bank shall be a FDIC Insured bank which is mutually acceptable to you and Servicers.

24.4.3. For sake of clarification and notwithstanding anything in the Agreement to the contrary, in the event Servicers deduct, holdback, suspend, off set or set off any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement (collectively "Set Off Funds"), you acknowledge that such Set Off Funds will be held in a commingled Reserve Account(s) of Servicers unless such Set Off Funds are wired or deposited by Servicers into any Control Account, pursuant to a Control Agreement in which case Servicers will transfer Set Off Funds from their commingled Reserve Account(s) to the Control Account as soon as practicable using commercially reasonable efforts.

24.4.4. If in replacement of or in addition to the first priority lien and security interest in the Reserve Account, you grant to Servicers a first priority lien and security interest in and to one or more certificates of deposit, the certificates of deposit shall be uncertificated and shall be subject to an Acknowledgement of Pledge of Certificate of Deposit and Control

Agreement (the "Certificate of Deposit Control Agreement") by, between and among Customers, Servicers and the financial institution that has established and issued the certificate of deposit. The form of the Certificate of Deposit Control Agreement and the financial institution that will establish and issue the certificate of deposit shall be satisfactory and acceptable to Servicers.

## 25. Financial and Other Information

25.1. Upon request, you will provide us and our Affiliates, quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us and our Affiliates to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide, and/or cause to be provided, to us and our Affiliates, or our representatives or regulators (as well as those of the Card Organizations) reasonable access to your or your Merchant Providers' facilities and records for the purpose of performing any inspection and/or copying of books and/or records deemed appropriate. In such event, you shall pay the costs incurred by us or our Affiliates for such inspection, including, but not limited to, costs incurred for airfare and hotel accommodations.

25.2. You will provide us with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three (3) days after you become aware of same.

## 26. Indemnification

26.1. You agree to indemnify and hold us harmless from and against all losses, liabilities, damages and expenses: (a) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by you under this Agreement; (b) arising out of your or your employees' or your agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders; (c) arising out of your use of the Services; or (d) arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Card Organization or Issuer).

26.2. We agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall not apply to Bank with respect to Discover Network Card Transactions, American Express Card Transactions and Other Services, including JCB Card, PIN Debit Card, and Electronic Benefits Transfer Transactions, TeleCheck check services, TRS collection services, Gift Card Services, and Transactions involving Cards from other Non-Bank Card Organizations such as Voyager Fleet Systems, Inc., Wright Express Corporation and Wright Express Financial Services Corporation.

## 27. Special Provisions Regarding Non-Bank Cards

27.1. Non-Bank Card transactions are provided to you by Processor and not by Bank and include transactions made using Discover Network, American Express, JCB, Voyager and WEX Card types. The Services provided, transactions processed and other matters contemplated under this Section 27 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 27 directly conflict with another provision of this Agreement, in which case the terms of this Section 27 will control; provided, however, that (i) Bank is not a party to this Agreement insofar as it relates to Non-Bank Card services, and Bank is not liable to you in any way with respect to such Services and (ii) you agree to pay Processor any per item processing, authorization and other fees described in the Application for any non-acquired transaction services you receive from Processor. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank. You authorize us to share information from your Application with American Express, JCB (and Discover Network on its behalf), Discover Network or any other Non-Bank Card Organization.

27.2. You understand that for American Express transactions, authorizations are obtained from and are funded by American Express. American Express will provide you with its own agreement that governs those transactions, unless American Express OnePoint Services are provided to you in Section 2.0 of Third Party Agreements. You understand and agree that we are not responsible and assume absolutely no liability with regard to any such transactions, including but not limited to the funding and settlement of American Express transactions, and that American Express will charge additional fees for the services they provide.

27.3. If you accept JCB Cards, you agree to be bound by all JCB and/or Discover Network provisions of this Agreement. You also acknowledge and agree that JCB transactions will be processed under and subject to Discover Network Card Organization Rules.

27.4. If you accept Voyager and/or WEX Cards, you agree to be bound by the WEX and/or Voyager rules. You also agree to be bound by all other provisions of this Agreement which are applicable to WEX and/or Voyager.

27.5. If you execute a separate WEX Merchant Agreement (WEX Non Full Service Program), you understand that we will provide such agreement to WEX, but that neither we nor WEX shall have any obligation whatsoever to you with respect to processing WEX Cards unless and until WEX executes your WEX Merchant Agreement. If WEX executes your WEX Merchant Agreement and you accept WEX Cards, you understand that WEX transactions are processed, authorized and funded by WEX. You understand that WEX is solely responsible for all agreements that govern WEX transactions and that we are not responsible and assume absolutely no liability with regard to any such agreements or WEX transactions, including but not limited to the funding and settlement of WEX transactions. You understand that WEX will charge additional fees for the services that it provides.



**6. If you elect to participate in the WEX Full Service Program, the following terms and conditions shall apply:**

- You shall provide, at your own expense, all equipment necessary to permit the electronic acceptance of the WEX Cards, including the operation and maintenance of the equipment, telecommunication link, and provision of all networking services;
  - b) All authorization request data for WEX Card sales must include WEX Cardholder account number, vehicle number, Card expiration date, driver identification number; and the amount of the transaction, date and time of the transaction, quantity of goods sold, unit price, and product code (the "Authorization Request Data"). All manual WEX Card sales (i.e., sales facilitated by a card imprinter) must include an Authorization number or other approval code from WEX along with the aforementioned Authorization Request Data;
  - c) You shall not submit a WEX Card sale for processing when a WEX Card is not presented at the time of the WEX Card sale;
  - d) You shall complete a WEX Card sale only upon the receipt of an Authorization approval message and not accept a WEX Card when an expired Card/decline message is received;
  - e) You shall not submit a WEX Card sale for processing until the goods have been delivered or services performed;
  - f) You shall not accept a WEX Card where the WEX Card appears to be invalid or expired or there is reasonable belief that the WEX Card is counterfeit or stolen;
  - g) You shall provide a copy of the receipt for a WEX Card sales, upon the request of the Cardholder, to the extent permitted by applicable law, which shall not include the full account number or driver identification number;
  - h) You shall require the Cardholder to sign a receipt when a WEX Card sale is not completed by an island Card reader;
  - i) You shall take all commercially reasonable efforts to protect manual WEX Card sales data from fraud or misuse;
  - j) You shall not divide the price of goods and services purchased in a single WEX Card sale among two or more sales receipts or permit a WEX Card sale when only partial payment is made by use of the WEX Card and the balance is made with another bank Card;
  - k) You shall maintain a record of all WEX Card sales, including the Authorization Request Data, for a period of one year and produce such records upon the reasonable request of WEX;
  - l) You shall notify Bank of any errors contained within a settlement report within forty-five (45) days of receipt of such report. Processor will not accept reprocessing requests for WEX transactions older than 90 days;
  - m) You shall allow WEX to audit records, upon reasonable advance notice, related to the WEX Full Service; and
  - n) You shall retransmit WEX Card sales data when reasonably requested to do so. Client acknowledges and agrees that its sole remedies with respect to the WEX Full Acquiring services shall be against Bank for the WEX Full Acquiring Services and not WEX, except to the extent that WEX knows of any fraud related to the WEX Cards and fails to provide notice of such fraud or WEX commits fraud in respect to the WEX Full Acquiring Services
- 27.7. If you accept Voyager Cards:**
- In addition to the information stated in Section 1 (MasterCard, Visa and Discover Network Acceptance) of the Operating Procedures, you should check Fleet Cards for any printed restrictions at the point of sale.
  - In addition to the information provided under Section 1.5 (Special Terms) of the Operating Procedures, you shall establish a fair policy for the exchange and return of merchandise. You shall promptly submit credits to us for any returns that are to be credited to a Voyager Cardholder's account. Unless required by law, you shall not give any cash refunds to any Voyager Card holder in connection with a sale.
  - In addition to the information required under Section 3.1 (Information Required) of the Operating Procedures, the following information must be contained on the single page document constituting the Sales Draft for Voyager transactions:
    - Time of transaction
    - Type of fuel sold
    - As permitted by the applicable POS device, odometer reading
    - For all cashier-assisted Sales Drafts and Credit Drafts processed manually using a card Imprinter if required, the identification number from the source credentials provided by Cardholder to valid Cardholder's identity (e.g., Driver's License number).
  - If an increase in the number of Voyager transaction authorization calls from you not due to our or Voyager system outages in excess of 15% for a given month as compared to the previous month occurs, we may, in our discretion, deduct telephone charges, not to exceed \$.25 (25 cents) per call, for the increased calls, from your settlement of your Voyager transactions.
  - In addition to the information provided under Section 7 (Settlement) of the Operating Procedures, settlement of Voyager transactions will generally occur by the fourth banking day after we process the applicable card transactions. We shall reimburse you for the dollar amount of sales submitted for a given day by you, reduced by the amount of Chargebacks, tax exemptions, discounts, credits, and the fees set forth in the Application. Neither we nor Voyager shall be required to reimburse you for sales submitted more than sixty (60) days from the date of purchase.
  - For daily transmission of sales data, you shall maintain true and complete records in connection with the information required to be provided under this paragraph for a period of not less than thirty-six (36) months from the date of the generation of the data. You may store records on electronic media. You are responsible for the expense of retaining sales data records and Sales Drafts.
  - In addition to the scenario identified in Section 10.1.4 of this Program Guide that could cause an authorization related Chargeback to occur, with respect to Voyager transactions, Chargebacks shall be made in accordance with any other Voyager rules. Notwithstanding termination or expiration of this paragraph or the Agreement, you shall remain liable for all outstanding Chargebacks on Voyager transactions.

- In addition to the information provided under Section 20 (Representations; Warranties; Covenants; Limitations of Liability; Exclusion of Consequential Damages) of the General Terms, in no event shall our cumulative liability to you for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions exceed the lesser of \$10,000.00 or the Voyager transaction fees paid by you to us for the two months prior to the action giving rise to the claim.
- Notwithstanding anything in this Agreement to the contrary, our obligation to provide services to you relating to any Fleet Card will terminate automatically without penalty to us or the related Card Organization upon the earlier of (i) the termination or expiration of our agreement with such Card Organization, (ii) at least twenty (20) days prior written notice by us to you; (iii) your failure to comply with material terms relating to such Fleet Card transactions, or (iv) written notice, if a Card Organization discontinues its Card.

## 28. Special Provisions for PIN Debit Card

The special provisions outlined in this Section 28 apply only to those PIN Debit Card transactions that are processed by a Cardholder entering a PIN. These provisions do not apply to Non-PIN Debit Card transactions which do not involve entry of a PIN. The Services provided, transactions processed and other matters contemplated under this Section 28 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 28 directly conflict with another provision of this Agreement, in which case the terms of this Section 28 will control. PIN Debit Card transactions are provided to you by Processor and not by Bank. Bank is not a party to this Agreement insofar as it relates to PIN Debit Card Services, and Bank is not liable to you in any way with respect to such services. For certain PIN Debit networks, there may be other sponsoring or acquiring banks, referred to herein as PIN Debit Sponsor Banks. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor, and, if applicable, PIN Debit Sponsor Banks and not to the Bank.

**28.1. PIN Debit Card Acceptance.** Most, but not all, ATM Cards (Debit Cards) can be accepted at the point of sale at participating locations. Examine the back of the PIN Debit Card to determine if the Card participates in a PIN Debit network that you are authorized to accept. PIN Debit network Mark(s) are usually printed on the back of the Card. If the PIN Debit Card is valid and issued by a financial institution Issuer participating in a PIN Debit network, you must comply with the following general requirements for all participating PIN Debit networks, in addition to the specific requirements of that PIN Debit network:

- You must honor all valid PIN Debit Cards when presented that bear authorized PIN Debit network Marks.
- You must treat transactions by Cardholders from all Issuers in the same manner.
- You may not establish a minimum or maximum transaction amount for PIN Debit Card acceptance.
- You may not require additional information, besides the PIN, for the completion of the transaction unless the circumstances appear suspicious. A signature is not required for PIN Debit Card transactions.
- You shall not disclose transaction related information to any party other than your agent, a PIN Debit network, or Issuer and then only for the purpose of settlement or error resolution.
- You may not process a Credit Card transaction in order to provide a refund on a PIN Debit Card transaction.

**28.2. Transaction Processing.** The following general requirements apply to all PIN Debit Card transactions:

- All PIN Debit Card transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for PIN Debit Card transactions.
- You may not complete a PIN Debit Card transaction that has not been authorized. If you cannot obtain an Authorization at the time of sale, you should request another form of payment from the Cardholder or process the transaction as a Store and Forward or Resubmission, in which case you assume the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuer to find out why a transaction has been declined.
- You may not complete a PIN Debit Card transaction without entry of the PIN by the Cardholder. The PIN must be entered into the PIN pad only by the Cardholder. You cannot accept the PIN from the Cardholder verbally or in written form.
- The PIN Debit Network used to process your transaction will depend upon, among other things, the availability of the PIN Debit network at the time of the transaction, whether a particular PIN Debit Card is enabled for a particular PIN Debit network and the routing requirements established by the PIN Debit networks and the Issuers. We may, at our sole discretion, utilize any PIN Debit network available to us for a given transaction.
- You must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN Truncation on it.
- You may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, you must request another form of payment from the Cardholder.
- Any applicable tax must be included in the total transaction amount for which Authorization is requested. Tax may not be collected separately in cash.
- YOU ARE RESPONSIBLE TO SECURE YOUR TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

**28.3. Cash Back From Purchase.** You have the option of offering cash back to your customers when they make a PIN Debit Card purchase. You may set a minimum and maximum amount of cash back that you will allow. If you are not now offering this service, your terminal may require additional programming to begin offering cash back.

**28.4. Settlement.** Within one Business Day of the original transaction, you must balance each location to our system for each Business Day that each location is open.

25. **Adjustments.** An adjustment is a transaction that is initiated to correct a PIN Debit Card transaction that has been processed in error. You will be responsible for all applicable adjustment fees that may be charged by a PIN Debit Card network. Some PIN Debit networks may have established minimum amounts for adjustments.

There are several reasons for adjustments being initiated:

- The Cardholder was charged an incorrect amount, either too little or too much.
- The Cardholder was charged more than once for the same transaction.
- A processing error may have occurred that caused the Cardholder to be charged even though the transaction did not complete normally at the point of sale.

All parties involved in processing adjustments are regulated by time frames that are specified in the operating rules of the applicable PIN Debit network, The Electronic Funds Transfer Act, Regulation E, and other applicable law.

## 29. Special Provisions Regarding EBT Transactions

If you elect to accept EBT Cards and engage in EBT transactions, the terms and conditions of this Section 29 shall apply.

EBT transactions are provided to you by Processor and not by Bank. The Services provided, transactions processed and other matters contemplated under this Section 29 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 29 directly conflict with another section of this Agreement, in which case the terms of this Section 29 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to EBT transactions, and Bank is not liable to you in any way with respect to such Services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank.

We offer electronic interfaces to EBT networks for the processing, settlement and switching of EBT transactions initiated through the use of a state-issued EBT card ("EBT Card") at your POS Terminal(s) for the provision of United States Department of Agriculture, Food and Nutrition Service ("FNS") food stamp benefits ("Food Stamp Benefits") and/or government delivered Cash Benefits (Cash Benefits, together with Food Stamp Benefits, "EBT benefits") to EBT benefit recipients ("EBT customers"), subject to the terms below.

**29.1. Acceptance of EBT Benefits.** You agree to accept EBT Cards and provide EBT benefits to EBT customers through the use of a POS Terminal, PIN pad and printer or other equipment that meet standards set forth in the EBT Rules ("Authorized Terminal") applicable to such EBT benefits during your normal business hours, in a manner consistent with your normal business practices and in accordance with the EBT Rules.

The "EBT Rules" means (i) all procedures that we establish and provide to you from time-to-time regarding your acceptance of EBT Cards and provision of EBT benefits to EBT customers; (ii) the Quest Rules, as amended from time-to-time, issued by the National Automated Clearing House Association and as approved by the Financial Management Service of the U.S. Treasury Department, as necessary (and any rules that succeed or replace the Quest Rules); and (iii) other such laws, rules, regulations and procedures that are applicable to the acceptance of EBT Cards and the provision of EBT benefits by you under this Section 29, including without limitation, laws pertaining to delivery of services to EBT customers and EBT customer confidentiality, the federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, regulations issued by the Department of Agriculture pertaining to Food Stamp Program, and, any additional procedures specified by the state regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by providing EBT customers with information such as telephone numbers and addresses of the state or other appropriate agencies. The "Food Stamp Program" is the government benefits program operated under the authority of the Food Stamp Act of 1964.

You will provide EBT benefits to EBT customers, in accordance with the procedures set forth in the EBT Rules, in the amount authorized through your Authorized Terminal upon presentation by an EBT customer of an EBT Card and such EBT customer's entry of a valid PIN. If the Authorized Terminal fails to print EBT benefit issuance information as approved and validated as a legitimate transaction, you will comply with the procedures set forth in the EBT Rules for authorization of EBT benefits in such instance. You are solely responsible for your provision of EBT benefits other than in accordance with authorizations timely received from EBT service provider. You will not resubmit any EBT Card transaction except as specifically permitted by the EBT Rules and procedures applicable to such EBT Card transaction. You must provide a receipt for each EBT transaction to the applicable EBT customer.

You will not accept any EBT Card for any purpose other than providing EBT Benefits, including without limitation accepting an EBT Card as security for repayment of any EBT customer obligation to you. In the event of any violation of this provision, you will be obligated to reimburse the state or us for any EBT benefits unlawfully received by either you or an EBT customer to the extent permitted by law. Cash should never be dispensed for Food Stamp Benefits.

You authorize us to initiate EBT Card transactions and to receive settlement for such transactions on your behalf.

**29.2. Manual EBT Vouchers.** In accordance with the procedures set forth in this Section 29 and the EBT Rules, you will manually accept EBT Cards during periods of time when your Authorized Terminal is not working or the EBT system is not available; you will manually provide EBT benefits in the amount authorized through the applicable EBT service provider to the EBT customers at no cost to the EBT customers upon presentation by an EBT customer of his/her EBT Card. All manual voucher authorizations must be cleared on your POS terminal for payment of voucher to be made to you. In addition to any procedures set forth in the EBT Rules, the following limitations will apply to manual issuance of FS Benefits by Merchant:

- i. An authorization number for the amount of the purchase must be received by you from the applicable EBT service provider while the respective EBT customer is present and before you provide such EBT customer with any Food Stamp Benefits or Cash

Benefits, as applicable. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to sign the voucher. The EBT customer must sign the voucher. A copy of the voucher should be given to the EBT customer at the time of authorization and you should retain one copy for your records.

- ii. Specified EBT customer, clerk and sales information, including the telephone authorization number, must be entered properly and legibly on the manual sales draft.
- iii. All manual voucher authorizations must be cleared on your Authorized Terminal before payment of voucher will be made to you. Vouchers must be cleared within 10 Business Days after the date of applicable voice authorization. Vouchers cannot be cleared by any manner except by your Authorized Terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your Authorized Terminal for payment, no further action can be taken to obtain payment for the voucher.
- iv. In the event that, due to EBT host failure, EBT benefit availability for an EBT customer cannot be determined at the time you request authorization, the maximum authorized manual transaction and benefit encumbrance will be \$40.00 or such other state specific floor limit as set forth in the most current version of the applicable EBT Rules.
- v. Except as specifically provided in the applicable EBT Rules, you will not be reimbursed and will be solely responsible for a manual transaction when you fail to obtain an authorization number from the applicable EBT service provider as set forth in this Section 29 or otherwise fail to process the manual transaction in accordance with the EBT Rules.
- vi. If you have not received an authorization number in accordance with paragraph 29.1 above, you may not "re-submit" a manual sales draft for payment for the same transaction.

**29.3. Acceptance of Cash Benefits.** If you agree to accept EBT Cards and to provide Cash Benefits, you agree to maintain adequate cash on hand to issue EBT service provider authorized Cash Benefits and will issue such Cash Benefits to EBT customers in the same manner and to the same extent cash is provided to your other customers. You may not require, and may not in your advertising suggest, that any EBT customers must purchase goods or services from you as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate and direct EBT customers to special checkout lanes restricted to use by EBT customers unless you also designate and direct other customers to special checkout lanes for Debit Cards or Credit Cards and/or other payment methods such as checks other than cash.

**29.4. Interoperability.** If you accept EBT Cards and provide EBT benefits (Food Stamps Benefits and/or Cash Benefits), you must do so for EBT customers from all states.

**29.5. Required Licenses.** If you provide Food Stamp Benefits under this Agreement, you represent and warrant to us that you are a FNS authorized merchant and are not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS. You agree to secure and maintain at your own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of EBT benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenant that you will not accept EBT Cards or provide EBT benefits at any time during which you are not in compliance with the requirements of any EBT Rules.

**29.6. Term and Termination.** If you are disqualified or withdrawn from the Food Stamp Program, your authority to issue benefits will be terminated concurrently therewith. Such disqualification or withdrawal will be deemed a breach of this Agreement with respect to your authority to issue Cash Benefits and, in the event of such disqualification, we have the right to immediately terminate the provision of service under this Section 29 or the Agreement in its entirety. With respect to the issuance of Cash Benefits only, your authority to issue Cash Benefits may be suspended or terminated immediately at the sole discretion of us, the state or its EBT service provider, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination if there will be (i) any suspension, injunction, cessation, or termination of the EBT service provider's authority to provide EBT services to the state; (ii) failure by you, upon not less than thirty (30) days' prior written notice, to cure any breach by you of these terms and conditions, including without limitation, your failure to support the issuance of EBT benefits during your normal business hours consistent with your normal business practices, your failure to comply with EBT benefit issuance procedures, your impermissible acceptance of an EBT Card, or your disqualification or withdrawal from the Food Stamp Program; or (iii) based on a state's or its EBT service provider's investigation of the relevant facts, evidence that you or any of your agents or employees are committing, participating in, or have knowledge of fraud or theft in connection with the dispensing of EBT benefits. If you fail to cure any breach as set forth above, you may appeal such suspension of termination to the applicable state for determination in its sole discretion.

In the event that your authority to accept benefits is suspended or terminated by a state or its EBT service provider, and you successfully appeal such suspension or termination to the state or its EBT service provider, we shall be under no obligation to reinstate the services previously provided under this Section 29 or the Agreement, as applicable.

The provision of services under this Section 29 shall terminate automatically if our agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

You will give prompt notice to us if you plan to stop accepting EBT Cards and providing EBT benefits or if you are unable to comply with the terms of this Section 29.

**29.7. Confidentiality of EBT System Information.** All information related to EBT customers and/or the issuance of EBT benefits shall be considered confidential information.

Individually identifiable information relating to an EBT customer or applicant for EBT benefits will be held confidential and will not be disclosed by you or your directors, officers, employees or agents, without prior written approval of the applicable state.

You will: (a) implement appropriate measures designed to: (1) ensure the security and confidentiality of all non-public personal information or materials regarding customers ("NPPI"); (2) protect against any anticipated threats or hazards to the security or integrity of NPPI; (3) protect against unauthorized access to or use of NPPI that could result in



substantial harm or inconvenience to any customer and (4) ensure the proper disposal of PPI; and (b) take appropriate actions to address incidents of unauthorized access to NPPI, including notification to us as soon as possible.

The use of information obtained by you in the performance of your duties under this Section 29 will be limited to purposes directly connected with such duties.

**29.8. EBT Service Marks.** You will adequately display any applicable state's service Marks or other licensed marks, including the Quest Marks, and other materials supplied by us (collectively the "Protected Marks") in accordance with the standards set by the applicable state. You will use the Protected Marks only to indicate that EBT benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider endorse your goods or services. Your right to use such Protected Marks pursuant to this Agreement will continue only so long as this Section 29 remains in effect or until you are notified by us, any state or its EBT service provider to cease their use or display. You will not use the Marks of any EBT service provider without prior written approval from such EBT service provider.

**29.9. Miscellaneous.**

**29.9.1. Errors.** You will fully cooperate with us and any other participants in the EBT system in the resolution of errors and disputes regarding EBT transactions processed pursuant to this Section 29. You will promptly notify us of any such errors or disputes.

**29.9.2. Issuance Records.**

- i. You agree to make available such informational materials as may be required by the state, its EBT service provider or any applicable regulations pertaining to the issuance of Benefits.
- ii. You will retain all EBT-related records (including but not limited to manual sales drafts or vouchers) in the manner required by the EBT Rules or otherwise reasonably requested by us for three (3) years following the date of the applicable EBT transaction, or for such additional period as may be required by the EBT Rules. Records involving matters in litigation will be kept by you for a period of not less than three (3) years following the termination of the applicable litigation. Copies of any documents in media other than paper (e.g. microfilm, etc.) related to this Section 29 may be substituted for the originals to the extent permitted under applicable EBT Rules and provided that legible paper copies can be reproduced within a reasonable time after such records are requested.
- iii. You will make all EBT-related records available for audit upon request to representatives of the state or its EBT service provider, or other authorized state or federal government agency during normal business hours.
- iv. To assure compliance with this Agreement, including without limitation this Section 29, the state, its EBT service provider, or other authorized state or federal government agency, will at all times, upon advance notice except in the case of suspected fraud or other similar activity, have the right to enter, during normal business hours, your premises to inspect or evaluate any work performed under this Agreement, or to obtain any other information required to be provided by you or otherwise related to this Agreement.

**29.9.3. Training.** You will train and permit your employees to receive training regarding the issuance of EBT benefits.

**29.9.4. Amendments.** Notwithstanding anything to the contrary in this Agreement, if any of these terms and conditions are found to conflict with the EBT Rules or federal or state policy, these terms and conditions are subject to reasonable amendment by us, a state or its EBT service provider to address such conflict upon twenty (20) days' written notice to you provided that you may, upon written notice, terminate your obligation under this Section 29 upon receipt of notice of such amendment.

**29.9.5. State Action.** Nothing contained herein shall preclude a state from commencing appropriate administrative or legal action against you or for making any referral for such action to any appropriate federal, state, or local agency.

**29.9.6. Reference to State.** Any references to state herein will mean the state in which you accept EBT benefits pursuant to this Section 29. If you accept EBT benefit in more than one state pursuant to this Section 29, then the reference will mean each such state severally, not jointly.

**29.9.7. Third Party Beneficiaries.** These terms and conditions, do not create, and will not be construed as creating, any rights enforceable by any person not having any rights directly under this Agreement, except that the state and its Issuer, as defined in the Quest Rules, will be deemed third party beneficiaries of the representations, warranties, covenants and agreements made by you under the Agreement, including without limitation this Section 29.

### 30. Special Provisions Regarding Wireless Service

If you elect to purchase the Wireless Services from us as indicated on the Application, then the following terms and conditions of this Section 30, referred to as the "Wireless Services Terms," shall apply. THE WIRELESS SERVICES ARE BEING SOLD TO YOU FOR USE IN BUSINESS AND ARE NOT BEING SOLD TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank. The Services provided, transactions processed and other matters contemplated under this Section 30 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 30 directly conflict with another section of this Agreement, in which case this the terms of this Section 30 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Wireless Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank.

Through one or more third party vendors ("Wireless Vendor(s)") selected by us in our sole discretion, we have acquired the right to resell certain wireless data communication services that use radio base stations and switching offered by certain cellular telephone and data networks throughout the country (the "Wireless Networks") in order to allow you to capture and transmit to Processor and Bank certain wireless Card Authorization transactions or to transmit other communications to our system ("Wireless Services").

If you elect to purchase voice and/or data services directly from a third party provider for use with the Wireless Equipment as permitted by Processor, you acknowledge and agree

that this Agreement does not address or govern those voice and/or data services or your relationship with that third party provider, and Services are in no way responsible for providing, maintaining, servicing or supporting such third party voice and/or data services.

**30.1. Purchase of Wireless Services.** The prices that you will pay for the Wireless Services are set forth on the Application. In connection with your purchase of Wireless Services, you will receive access to a certain Wireless Network(s).

- **Licenses.** You agree to obtain any and all licenses, permits or other authorizations required by the Federal Communications Commission ("FCC") or any other regulatory authority, if any, for the lawful operation of Wireless Equipment used by you in connection with your receipt of Wireless Services. You will promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.
- **Wireless Equipment.** You agree that in order to access the Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by Processor from time to time in its sole discretion (the "Wireless Equipment"). If Wireless Equipment is purchased by you from us as indicated on the Application, then the terms of this Agreement, including without limitation Section 33 of this Agreement, apply to your use of such Wireless Equipment.
- **Improvements/General Administration.** We and the Wireless Vendor(s) reserve the right to make changes, from time to time, in the configuration of the Wireless Services, Wireless Networks, Wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms and designation of the control center serving you at the particular address. In addition, we reserve the right to schedule, from time to time, interruptions of service for maintenance activities.
- **Suspension of Wireless Services.** We or a Wireless Network may suspend the Wireless Services to: (a) prevent damages to, or degradation of, our or a Wireless Network's network integrity that may be caused by a third party; (b) comply with any law, regulation, court order or other governmental request which requires immediate action; or (c) otherwise protect us or a Wireless Network from potential legal liability. To the extent commercially reasonable, we shall give notice to you before suspending the Wireless Services to you. If not commercially reasonable to give prior notice, we will give notice to you as soon as commercially practicable thereafter. Availability of the Wireless Services may vary due to events beyond the control of us or our Wireless Vendors. In the event of a suspension of the Wireless Services, we or the applicable Wireless Vendor will promptly restore the Wireless Services after the event giving rise to the suspension has been resolved.

**30.2. Software Licenses.** Processor hereby grants to you a non-exclusive, non-transferable, revocable limited sublicense to use any wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from Processor's systems onto the Wireless Equipment in connection with your purchase and use of the Wireless Services in accordance with the terms of this Agreement, including this Section 30 and Section 33 ("Wireless Software"). Anything in this Agreement to the contrary notwithstanding, we or certain third parties retain all ownership and copyright interest in and to all Wireless Software, related documentation, technology, know-how and processes embodied in or provided in connection with the Wireless Software, and you shall have only a nonexclusive, non-transferable license to use the Wireless Software in your operation of the Wireless Equipment for the purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Wireless Software to you or shall be construed as a sale of any rights in any such Wireless Software to you. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Wireless Software. You shall not reverse engineer, disassemble or decompile the Wireless Software. You shall not give any Person access to the Wireless Software without our prior written consent. Your obligations under this Section 30.2 shall survive the termination of this Agreement. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this Section.

**30.3. Limitation on Liability.** We shall have no liability for any warranties by any party with respect to uninterrupted Wireless Services, as set forth in Section 30.10, or for any Person's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services (including the Wireless Software), or Wireless Networks, regardless of the form of action (whether in contract, tort (including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor's, Bank's, and Wireless Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the lesser of the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services or \$50,000.00. In no event shall Servicers, Wireless Vendor(s) or our respective Affiliates be liable for any indirect incidental, special, consequential or punitive damages. The remedies available to you under these Wireless Services Terms will be your sole and exclusive remedies.

**30.4. Indemnification.** In addition to any other indemnifications as set forth in this Agreement, you will indemnify and hold Servicers, Wireless Vendor(s) and our respective officers, directors, employees, and Affiliates harmless from and against any and all losses, claims, liabilities, damages, costs or expenses arising from or related to: (a) the purchase, delivery, acceptance, rejection, ownership, possession, use condition, liens against, or return of the Wireless Equipment or the Wireless Equipment (including the Wireless Software), as applicable; (b) your negligent acts or omissions; (c) any breach by you of any of your obligations under this Section 30; or (d) any Person's unauthorized access to Client's data and/or unauthorized financial activity occurring on your Merchant Account Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

**30.5. Confidentiality.** All information or materials which could reasonably be considered confidential or competitively sensitive that you access from or relate to either Wireless Vendor(s) or Servicers related to the subject matter of these Wireless Services Terms will be considered confidential information. You will safeguard our confidential information with at least the same degree of care and security that you use for your confidential information, but not less than reasonable care.

**30.6. Termination.** In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 30 may terminate:

- a) Immediately upon termination of the agreement between us (or our Affiliates) and Wireless Vendor(s), provided that we will notify you promptly upon our notice or knowledge of termination of such agreement, provided further that if Wireless Vendor(s) loses its authority to operate less than all of the Wireless Services or if the suspension of any authority or non-renewal of any license relates to less than all of the Wireless Services, then these Wireless Services Terms will terminate only as to the portion of the Wireless Services affected by such loss of authority, suspension or non-renewal; or
- b) Immediately if either we or our Affiliates or Wireless Vendor(s) are prevented from providing the Wireless Services by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority (including without limitation the FCC).

**30.7. Effect of Termination.** Upon termination of these Wireless Services Terms for any reason, you will immediately pay to us all fees due and owing to us hereunder. If these Wireless Services terms terminate due to a termination of the agreement between us or our Affiliates and Wireless Vendor(s), then we may, in our sole discretion, continue to provide the Wireless Services through Wireless Vendor(s) to you for a period of time to be determined as long as you continue to make timely payment of fees due under these Wireless Services Terms.

**30.8. Third Party Beneficiaries.** Wireless Vendor(s) are third party beneficiaries of these Wireless Services Terms and may enforce its provisions as if a party hereto.

**30.9. Other Applicable Provisions.** You also agree to be bound by all other terms and conditions of this Agreement.

**30.10. Disclaimer.** Wireless Services use radio transmissions, so Wireless Services can't be provided unless your Wireless Equipment is in the range of one of the available Wireless Networks' transmission sites and there is sufficient network capacity available at that moment. There are places, particularly in remote areas, with no service at all. Weather, topography, buildings, your Wireless Equipment, and other conditions we don't control may also cause failed transmissions or other problems. PROCESSOR, BANK, AND WIRELESS VENDOR(S) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATING TO WIRELESS SERVICES. WE CANNOT PROMISE UNINTERRUPTED OR ERROR-FREE WIRELESS SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF.

### 31. Special Provisions Regarding Gift Card Services

Gift Card Services are provided to you by Processor. The Services provided, transactions processed and other matters contemplated under this Section 31 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 31 directly conflict with another provision of this Agreement, in which case this the terms of this Section 31 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Gift Card Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank. The terms and conditions set forth in this Section govern the provision of Gift Card Services.

**31.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 31.1 or as defined in the Glossary or elsewhere in this Section.

- a) "ACH" means the Automated Clearing House system.
- b) "Affiliated Issuer(s)" means each Client Affiliate and/or franchisee that enters into an Affiliated Issuer Agreement, in the form required and provided by Processor.
- c) "Database" means the database on which Gift Card Data for each Gift Card issued under the Program is maintained.
- d) "Designated Location" means any store or other place of business (including a direct marketing program or Internet site), located in the U.S.A., and at or through which Client issues Gift Cards and/or processes transactions using Gift Cards issued under the Program. Designated Locations include any help desk or IVR through which transactions are processed under the Program.
- d) "Gift Card" means an encoded device that accesses Gift Card Data maintained in the Database.
- f) "Gift Card Data" means the current value and record of transactions corresponding to each Gift Card issued under the Program.
- g) "Gift Card Equipment" means any POS Terminal, software or other similar telecommunications equipment that has been programmed and certified to Processor's specifications in order to transmit Gift Card Data and process online transactions under the Program.
- h) "Gift Card Holder" means any person in possession of or that uses a Gift Card.
- i) "Gift Card Number" means the identifying number of a Gift Card.
- j) "Gift Card Production Company" means a company selected and retained by Processor to produce Gift Cards and provide related products or services for the Program.
- j) "IVR" means an automated Interactive Voice Response system accessed via a toll-free telephone number.
- k) "POS Terminal" means an electronic Point-Of-Sale terminal placed in a Designated Location which is connected to Processor's system via telephone lines and is designed to swipe Gift Cards.
- l) "Program" means Client's program pursuant to which Client issues Gift Cards to Gift Card Holders and Processor provides the Services to enable such Gift Card Holders to use such Gift Cards to purchase goods and services at Designated Locations.

m) "Services" means the services provided by Processor in connection with the Program as further described in this Section.

**31.2. Services.** Processor agrees to provide the Services set forth below in connection with the Program.

- a) Processor will arrange for the production of all Gift Cards and all other services related thereto by the Gift Card Production Company for the Program in accordance with the specifications and fees set forth on the Gift Card Set-Up Form (the "Gift Card Set-Up Form"), which is incorporated by reference herein.
  - b) Processor shall establish and maintain Gift Card Data on the Database.
  - c) Processor shall provide Client and its Affiliated Issuers with the capability to process selected transactions under the Program through Gift Card Equipment at Designated Locations.
  - d) Upon receipt of transaction information from a Designated Location by the Database, Processor will compare the proposed transaction amount with the account balance maintained on the Database corresponding to the Gift Card or Gift Card Number that was presented at the Designated Location. If the account balance is greater than or equal to the amount of the proposed transaction, Processor will authorize the transaction. If the account balance is less than the amount of the proposed transaction, Processor will decline the transaction. If Client's Gift Card Equipment supports "split tender," and the account balance is less than the amount of the proposed transaction, Processor will authorize the transaction for the amount of the account balance, and return a message and/or receipt to the Gift Card Equipment showing the remaining amount of the transaction to be collected by Client. Client understands and agrees that an Authorization by Processor only indicates the availability of sufficient value on a Gift Card account at the time of Authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number.
  - e) Processor shall provide an IVR, twenty-four (24) hours per day, seven (7) days per week, through which Client and Gift Card Holders may obtain Gift Card balances.
  - f) Processor shall provide a Gift Card product support help desk through which Client may process selected non-financial transactions under the Program. Support is currently available Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern Time (excluding holidays). The hours and days of support are subject to change at any time; provided that (i) Processor will provide advance notice of any change in the hours and days; and (ii) the total number of hours shall not be less than 40 in any regular work week (excluding holidays).
  - g) Processor will provide Client with Gift Card transaction reports, accessible by Client through a designated Internet site. Processor will maintain reports on the Internet site for Client's use for a period of six (6) months. Processor may, in its discretion, provide additional or custom reports or report formats, as may be requested by Client from time to time, at a fee to be determined by Processor.
  - h) Client will at all times own all right, title and interest in and to all Gift Card Data generated under the Program. During the term, Processor will retain the Gift Card Data for each Gift Card on the Database for a period of twenty-four (24) months following the date that the account balance reaches zero. Thereafter, during the term, Processor may remove the Gift Card Data from the Database and archive such Gift Card Data in any manner determined by Processor in its reasonable business judgment. Notwithstanding the foregoing, within ninety (90) days of Client's written request, during the first twelve (12) months following the expiration or termination of the Gift Card Services, Processor will compile a data report of the Gift Card Data stored in the Database, in Processor's standard format, at a fee to be determined by Processor. Processor shall deliver Client's Gift Card Data to Client in a mutually agreeable format. Processor shall have no obligations with respect to Client's Gift Card Data following delivery to Client.
- 31.3. Responsibilities of Client.** The responsibilities of Client are set forth below and elsewhere in this Section.
- a) Client will accept for processing any transaction initiated by one of its customers using a Gift Card pursuant to the Services without discrimination with regard to the customer who initiated the transaction.
  - b) Client will maintain all transaction records and other records required by law or regulation to be maintained in connection with the operation of the Gift Card Equipment or the Program. Client will download and store any and all Gift Card transaction reports for future reference. In the event that Client needs a report for a period past such six (6) months, Processor may provide such requested report to Client at a fee to be determined by Processor.
  - c) Client will make its personnel and records available to Processor, its agents and contractors, all within such time and in such forms or manner as may be reasonably necessary to enable Processor to perform the Services promptly and in an efficient manner.
  - d) Client shall be responsible, at its sole cost and expense, for the sale and other distribution of Gift Cards to Gift Card Holders and for any marketing or advertising of the Program.
  - e) Client shall obtain, operate and maintain, at its sole cost and expense, all Gift Card Equipment required to enable Client and Affiliated Issuers to electronically transmit Gift Card Data in accordance with Processor's specifications from all Designated Locations to the Database.
  - f) Client is solely responsible for obtaining Authorization in advance of each transaction. Client is solely responsible for any losses it may incur in conducting transactions when an Authorization is not obtained, including, without limitation, transactions conducted when the Database or the Gift Card Equipment is not in service. Client assumes all risk of erroneous or fraudulently obtained Authorizations, unless such erroneous or fraudulently obtained Authorization is caused directly by Processor. Client understands and agrees that an Authorization by Processor only indicates the availability of sufficient value on a Gift Card account at the time of Authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number. Client is responsible for the accuracy of all data transmitted by it for processing by Processor.



Client shall be responsible for accessing and comparing the reports supplied by Processor to its own records and promptly notifying Processor of any necessary adjustments to Gift Card accounts. Client acknowledges that Processor will make adjustments to Gift Card accounts pursuant to Client's instructions, and Processor shall have no liability for any errors to Gift Card accounts that are made in accordance with Client's instructions.

- h) Client shall comply and shall ensure that all Affiliated Issuers comply with all laws and regulations applicable to the Program. Client acknowledges and agrees that it is solely responsible for interpreting all laws and regulations applicable to the Program, for monitoring changes in laws and regulations applicable to the Program, and for determining the requirements for compliance with laws and regulations applicable to the Program. Processor shall be entitled to rely upon and use any and all information and instructions provided by Client for use in performing the Services, and Processor shall have no liability whatsoever for any noncompliance of such information or instructions with laws or regulations.
- i) As between Client and Processor, Client shall bear all risk related to the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number or PIN: (i) in the case of Gift Cards ordered through Processor, upon delivery of such Gift Cards to Client or Client's Designated Location, as applicable, and (ii) in the case of Gift Cards obtained by Client from a Person or Gift Cards which Client requests to be delivered in a pre-activated state, whether such loss occurs before or after delivery of such Gift Cards to Client or Client's Designated Location.
- j) Processor and Client agree that during the term: (i) Processor will be the sole and exclusive provider of the Services to Client and its Affiliated Issuers; and (ii) Client will not directly or indirectly either itself or through a Person, offer or promote any other proprietary, closed network, online Gift Card or similar access device.
- k) Client may allow Affiliated Issuers to participate in the Program; provided, however that (i) Client shall be responsible for ensuring that all Affiliated Issuers comply with the terms and conditions of this Section and the separate Affiliated Issuer Agreement, and (ii) Client shall be jointly and severally liable for all fees and other amounts payable to Processor in connection with any activities of Affiliated Issuers related to this Section, including but not limited to Gift Card transactions.
- l) Client is responsible for any settlement of funds among Affiliated Issuers and Designated Locations.

**31.4. Fees and Payment.** In addition to all other rights we have under the Agreement, Client shall pay Processor the fees set forth on the Gift Card Set-Up Form. Client shall also be responsible for the payment of any taxes imposed by any applicable governmental authority in connection with any products or services covered by this Section (other than those taxes based solely on the net income of Processor). All fees for the Services shall be paid via an ACH transfer of funds from a bank account designated by Client. To authorize the ACH transfers, Client agrees to execute the ACH Authorization on the Gift Card Set-Up Form. In the event that fees cannot be collected from Client as set forth above, Processor reserves and may exercise all other rights to collect any fees due.

**31.5. Termination.**

- a) The provision of Gift Card Services may be terminated at any time: (i) by either party in the event that the other materially breaches any term or condition of this Section and fails to cure such breach within thirty (30) days of written notice of such breach from the non-breaching party; (ii) by Processor if Client fails to pay any amount due within ten (10) Business Days after written notice to Client of its failure to pay such amount; (iii) by Processor upon written notice to Client in the event that Client's operation of the Program results in a violation of law or regulation (by Client, an Affiliated Issuer or Processor); (iv) by Client if Processor increases its rates under Section 31.4(c) above and Client provides thirty (30) days written notice of termination within thirty (30) days of receiving notice of said increase; or (v) by either party upon written notice to the other after the filing by the other of any petition in bankruptcy or for reorganization or debt consolidation under the federal bankruptcy laws or under any comparable law, or upon the other party's making of an assignment of its assets for the benefit of creditors, or upon the application of the other party for the appointment of a receiver or trustee of its assets.
- b) If (i) the Gift Card Services are terminated for any reason other than Processor's material breach prior to the expiration of the initial term, or (ii) Client suspends or terminates the Program prior to the expiration of the initial term except as provided for in Section 31.5 (a) (iv), nothing in this subsection shall prohibit or limit Processor's right to recover damages or any other amounts due and owing Processor in the event that the Gift Card Services are terminated by Processor due to a breach by Client or shall be deemed to waive or otherwise limit Client's obligations pursuant to Section 31.6(a).
- c) If requested by Client, Processor may, in its sole and absolute discretion, continue to provide the Services for all previously issued and unexpired (if applicable) Gift Cards for up to twelve (12) months following the termination of the Gift Card Services; provided, however, that Processor shall not activate any new Gift Cards after the effective date of termination. Processor's obligation to provide continuing Services after termination is contingent upon Client's agreement to pay for such Services and to conduct its operations in accordance with the terms of this Section, and Processor may require advance payment for some portion or all of the estimated cost of such Services to be provided after termination.
- d) Termination of the Gift Card Services shall not affect Client's obligation (including any obligation incurred by an Affiliated Issuer) to pay for services rendered or obligations due or owing under this Section prior to termination.
- e) The provisions of Sections 31.3 (f), (g), (h), (i), (k) and (l), and Sections 31.4, 31.5(b), 31.5(c), 31.5(d), 31.6 and 31.7 hereof shall survive any termination of this Agreement.

**31.6. Indemnification.**

- a) Client shall indemnify and hold harmless Servicers, their directors, officers, employees, agents and their respective Affiliates from and against any and all third party claims, losses, liabilities, damages and expenses, including reasonable attorneys' fees, (collectively "Claims") to the extent that any such Claim is caused by or arises out of: (i) any

failure of Client or an Affiliated Issuer to comply with any law or regulation applicable to the Program; (ii) any dispute between Client and any Affiliated Issuer, or Client and any Gift Card Holder, or an Affiliated Issuer and any Gift Card Holder, including, without limitation, any dispute regarding the goods or services purchased using a Gift Card or the payment of any amounts owed or alleged to be owed by one or more such persons to any other such persons; (iii) any instructions or procedures that Client may provide to Processor in connection with the Program and Processor's compliance therewith; (iv) any actual or alleged loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number or PIN; (v) use or operation of Gift Card Equipment by Client or an Affiliated Issuer; and (vi) any Claim or action against Servicers for actual or alleged infringement of any patent, copyright, trademark, trade secret or other proprietary right of any person arising in connection with the production of Gift Cards or related products for Client using artwork, designs, specifications or concepts provided by Client.

- b) Processor shall indemnify and hold harmless Client and its directors, officers, employees, agents and Affiliated Issuers from and against any and all third party Claims to the extent that any such Claim is caused by or arises out of: (i) any failure of Processor to comply with any law or regulation applicable to the Program; or (ii) any error in the Database, unless the error is caused by incorrect information submitted by Client or is otherwise made in accordance with Client's instructions.

**31.7. Patents, Copyrights, Intellectual Property, etc.** Client shall have no interest whatsoever, including copyright interests, franchise interests, license interests, patent rights, property rights or other interest in the Services provided hereunder. These provisions are not to be construed as granting to Client any patent rights or patent license in any patent, which may be obtained in respect of the Services. Artwork created by Processor on behalf of Client remains the property of Processor. Client retains ownership of any artwork supplied to Processor.

**31.8. Limitation of Liability; Disclaimer of Warranties.** NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, SERVICERS' CUMULATIVE AGGREGATE LIABILITY FOR ANY LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES ARISING OUT OF RELATED TO THIS SECTION FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED BY CLIENT AND, IN ANY EVENT, SHALL NOT EXCEED THE LESSER OF (i) THE AMOUNT OF FEES PAID TO PROCESSOR BY CLIENT UNDER THIS SECTION DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THAT THE LIABILITY ARISES, OR (ii) TWENTY THOUSAND DOLLARS (\$20,000).

## 32. Special Provisions Regarding Loyalty Program Services

If you elect to utilize the Loyalty Services, the terms and conditions of this Section 32, shall apply.

Loyalty Services are provided to you by Processor and not by Bank. The Services provided, transactions processed and other matters contemplated under this Section 32 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 32 directly conflict with another provision of this Agreement, in which case the terms of this Section 32 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Loyalty Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank.

**32.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section or as defined elsewhere in this Agreement.

**32.2. Provision of Loyalty Services by Processor.**

- a) **Loyalty Services.** During the term of this Agreement and subject to the fees set forth on the Loyalty Set-Up Form, Processor will provide the Loyalty Services to Client. ("Loyalty Services" means the services provided by Processor as further described in this Section). Client acknowledges and agrees that the Loyalty Services hereunder may be provided in whole or in part by Affiliates, or vendors of Processor, and further, that Processor may subcontract with one or more Affiliates, or vendors to provide any service(s) required to be provided by Processor hereunder; provided, however, that such use of an Affiliate(s) or vendors shall not relieve Processor of its obligations under this Section.
- b) **FDLS Website.** Processor will establish and maintain Client on the First Data™ Loyalty Solution (FDLS) platform and provide Client access to the Client Website. Client's access to the FDLS Website (pursuant to Section 32.2(a) above) will include providing Client with a user ID and password. The FDLS Website layout, features (including, without limitation reporting) and functionality of may be modified from time to time by Processor. The FDLS Website is not designed to be accessed by Client's loyalty customers. If Client wishes to establish a website for use by its loyalty customers, Client shall be solely responsible for the development and maintenance of such website including all costs associated therewith.
- c) **Loyalty Campaigns.** Processor can support a variety of loyalty campaigns as set forth on the FDLS Website, provided, however, that the types of promotions (e.g., by way of example, and not as a limitation, recency, frequency, SKU-based and monetary algorithms) that are supported may be changed from time to time at Processor's sole discretion. Processor shall not have any obligations or liability of any kind whatsoever related to the loyalty campaigns selected and offered by Client, which selection and offering is Client's sole responsibility. Client acknowledges that any requests to Processor for modification or customization of loyalty campaigns, or any consulting or other additional work requested by Client will be subject to additional fees as determined by the Processor, at its sole discretion, from time to time.
- d) **Processing of Loyalty Transactions.** For each loyalty transaction transmitted to Processor by Client and/or a participating location's Point of Sale Terminal (according to current specifications established by Processor), Processor will determine if a reward is

applicable, based upon the then-current loyalty campaigns offered by Client at its participating locations. If a reward is applicable, Processor will send back an applicable response message to Client and/or a participation locations Point of Sale Terminal, such as, but not limited to, the number of points to be issued or the discount to be applied.

- e) **Reporting.** Processor will provide Client with Processor's standard reporting for Client's loyalty transactions via the FDLS Website. Client acknowledges that reporting on the FDLS Website is generated from a data warehouse that is updated with a particular day's loyalty transaction data at the end of the day, and therefore, not available in real time. Historical reporting will be available in accordance with Processor's then-current policies.
- f) **Help Desk.** Processor will provide a support help desk for Client issues relating to the Loyalty Service. Full Client support will be available each day from 7 a.m. - 12 a.m. CT and partial Client support will be available each day from 12 a.m. - 7 a.m. CT. The hours and days of support are subject to change at any time; provided, however, that Processor will provide notice of any change in hours and days. Client acknowledges that help desk is for Client issues only and that Client is solely responsible for providing customer support or service to loyalty customers. Support for Client's loyalty customers will be made available to Client only as agreed to separately in writing by the parties.

### 32.3. Responsibilities of Client.

- a) **Loyalty Services; Exclusivity.** During the Term, Client shall use Processor as its sole and exclusive provider of all Loyalty Services for Client and its participating locations. Client is responsible for managing the participating locations, which includes changes to, or additions or removals of, the participating locations by providing written notice to Processor or by other means established by Processor from time to time.
- b) **Terminals/POS Systems.** Client shall be responsible at its sole cost and expense for (i) obtaining, operating and maintaining (including modifications to) Point of Sale Terminals required to enable Client to electronically submit loyalty transactions to Processor in accordance with Processor's specifications, and (ii) the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of, the Point of Sale Terminals.
- c) **Transmission of loyalty transactions.** Loyalty transactions shall be electronically transmitted to Processor according to current specifications established by Processor.
- d) **Loyalty Campaign Rewards.** As between Client and Processor, Client shall be responsible for the provision of, and all costs associated with, any rewards (including, but not limited to, discounts, points, coupons, or other loyalty reward or benefit) provided to a loyalty customer under Client's loyalty campaigns. As between Client and Processor, Client is responsible for the accuracy of all data transmitted by it or any participating locations for processing hereunder by Processor.
- e) **Running of Loyalty Campaigns.** At all times during the term of this Agreement, Client will have running at least one loyalty campaign and use commercially reasonable efforts to promote such loyalty campaign from the loyalty programs supported by the FDLS. Client and/or participating locations may select and modify its loyalty campaigns through the FDLS Website.
- f) **Transaction and Loyalty Campaign Information.** Client will download and store any and all data and information relating to loyalty transactions and loyalty campaigns available to Client for future reference. After termination of this Agreement, Client will not have access to FDLS Website and Processor will have no obligation to provide Client with any reports or other data.
- g) **Loyalty Identifiers.** Client shall be responsible, at its sole cost and expense, for designing, producing and issuing loyalty identifiers and for any marketing or advertising of Client's loyalty program. Client's loyalty identifiers must meet Processor's program specifications, which may be modified from time to time by Processor upon reasonable notice to Client. As requested by Client, Processor will arrange for the production of the loyalty identifiers in accordance with the specifications and fees set forth on the Loyalty Set-Up Form.
- h) **Promotion of Loyalty Program.** Client shall be solely responsible for (i) promoting the Client loyalty program and enrolling customers in Client's loyalty program, and (ii) preparing all marketing and informational materials to be provided to its customers in connection with enrollment and participation in Client's loyalty program, which includes, without limitation Client's terms and conditions for Client's loyalty program and Client's privacy policy. Client shall not, and shall not permit any participating locations to act in contravention of its privacy policy, as it may be amended from time to time. Client shall be responsible for obtaining authorization from each loyalty customer, in accordance with applicable laws and governmental regulations, for Client, Processor and any other Affiliates, or vendors, as applicable to use such loyalty customer's transaction data and information for purposes of participating in Client's loyalty program and as otherwise contemplated herein. In no event shall Processor be responsible for, or have any liability related to, any of the materials contemplated by Subsection 32.3(h)(ii).
- i) **Applicable Laws.** Client acknowledges that Client's loyalty program will be subject to various state and federal laws and regulations that may differ from each other and that are subject to change at any time. Client shall comply, and shall ensure that all participating locations comply, with all applicable state and federal laws and regulations, including, but not limited to, advertising sweepstakes, telemarketing, email and fax marketing, privacy and other consumer protection laws and laws applicable to Client's role as a provider of a loyalty program (collectively, "Applicable Laws"). Client acknowledges and agrees that, as between Client and Processor, it will be solely responsible for monitoring, interpreting and establishing compliance with all Applicable Laws. Processor shall be entitled to rely upon and use any and all information and instructions provided by Client or any participating locations for use in performing its obligations hereunder, and Processor shall have no liability whatsoever for any errors in such information or instructions, or for any noncompliance of such information or instructions with laws or regulations.

- j) **Acknowledgements.** Client acknowledges and agrees that: (i) Processor may, in its sole discretion at any time, issue and require Client to publish and comply with a privacy policy with respect to the Loyalty Services; and (ii) it shall not submit, and shall require the participating locations to not submit, any loyalty transaction Information not based on bona fide loyalty transactions; and (iii) it shall bear all risk related to the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of the loyalty identifiers, the loyalty program, and improper award and/or redemption of rewards.

### 32.4. Term and Termination.

- a) **Termination Rights.** The terms of this Section 32 may be terminated at any time by Processor if Processor has reason to believe that Client has materially breached any of its obligations with respect to the Loyalty Services. The terms of this Section may be terminated at any time by either party in the event of an Event of Default. In addition to the foregoing, the terms of this Section may be terminated: (i) by Processor upon written notice to Client in the event that Client's operation of Client's loyalty program results in a violation of law or regulation (by Client, a participating location or Processor), which shall include, without limitation any misuse of loyalty customer or transaction information, or (ii) by Client if Processor increases its rates under Section 32.5(c) below and Client provides written notice of termination within thirty (30) days of receiving notice of said increase.
- b) **Obligation to Pay Fees.** Termination of the terms of this Section shall not affect Client's obligation to pay for services rendered or obligations due and owing under this Section 32 prior to termination. In addition, if an early termination fee is set forth in the Loyalty Set-Up Form, then in addition to any other remedies contained herein or otherwise available to Processor, Client shall pay Processor, as liquidated damages, an early termination fee in the amount calculated in the Loyalty Set-Up Form, which shall be paid to Processor in the event of an early termination (unless as a result of Section 32.4(a)(ii)). Client acknowledges and agrees that the amount of the early termination fee is a reasonable estimate of Processor's probable damages in the event of such termination or suspension and does not constitute a penalty. Nothing in this section shall prohibit or limit Processor's right to recover damages in the event that this Agreement is terminated by Processor due to a breach by Client or shall be deemed to waive or otherwise limit Client's obligations pursuant to Section 32.7(a).

### 32.5. Fees and Payment.

- a) **Fees.** Client shall pay Processor the fees set forth on the Loyalty Set-Up Form. Client shall also be responsible for the payment of any taxes imposed by any applicable governmental authority in connection with any products or services covered by this Section (other than those taxes based solely on the net income of Processor). All fees for the Loyalty Services shall be paid via an ACH transfer of funds from a bank account designated by Client.
- b) **Adjustments for Increases in Costs.** Processor may increase the fees from time to time to the extent necessary to pass through increases in the costs of the underlying goods and services used or provided by Processor in connection with the provision of Loyalty Services. Any such adjustments shall become effective upon written notice to Client.
- c) **Other Adjustments to Fees.** Processor may also increase fees for any other reason upon thirty (30) days written notice to Client.

**32.6. Indemnification by Client.** Client shall indemnify and hold harmless Processor, its directors, officers, employees, agents and Affiliates from and against any and all third party claims, losses, liabilities, damages and expenses, including reasonable attorneys' fees, (collectively "Claims") to the extent that any such Claim is caused by or arises out of: (i) any failure of Client or a participating location to comply with this Agreement or any law or regulation applicable to the Program; (ii) any dispute between Client and a loyalty customer or between a participating location and a loyalty customer Client, including, without limitation, any dispute regarding the goods or services purchased in connection with a loyalty transaction or the discount or other form of reward owed or alleged to be owed by one or more such persons to any other such persons; (iii) any instructions or procedures that Client may provide to Processor in connection with the Loyalty Services and Processor's compliance therewith; (iv) any actual or alleged loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Loyalty ID; or (v) any claim(s) brought by a loyalty customer(s) with respect to Client's loyalty program, including, but not limited to, any collection and use of loyalty customer information by Processor and/or affiliate(s), or vendor(s) in accordance with the terms of this Section 32.

### 33. Terms of Equipment Purchase or Rental

This Section 33 governs any equipment that is rented to you on a month to month basis or that is sold to you by Processor under the Merchant Processing Application, subsequent purchase or rental agreements and/or other documentation provided in connection with the purchase or rental of Equipment ("Equipment Documents"). If the Equipment Documents that your equipment is leased, then the provisions of your lease are governed by Section 1 of Part II (Third Party Agreement). Equipment rented to or purchased by you under the Equipment Documents is referred to in this Section 33 as the "Equipment." THE EQUIPMENT IS BEING SOLD TO YOU FOR USE IN YOUR BUSINESS AND IS NOT BEING SOLD OR RENTED TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sales and rentals of equipment are made by Processor. The Services provided, Equipment, Equipment Documents and other matters contemplated under this Section 33 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 33 directly conflict with another provision of this Agreement, in which case the terms of this Section 33 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to sales and rental of equipment and Bank is not liable to you in any way with respect to such services. For purposes of this section the words "we," "our" and "us" refer only to Processor and not to Bank.

Warranties, if any, for the Equipment or any related Software originate from the applicable third party provider or manufacturer ("Vendor"). Materials or documents, if any, setting forth warranty terms, conditions, exceptions, exclusions and disclaimers will be contained within the packaging shipped from the Vendor.



We or third parties designated by us will only provide help desk support for Equipment purchased or rented from us under the Equipment Documents, and we will not provide any such support or related services for any other products or equipment.

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASED OR RENT FROM US MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE RENTED OR PURCHASED UNDER THIS AGREEMENT.

**33.1. Purchased Equipment; Supplies.** We will sell to you, and you will buy from us the Equipment identified in the Equipment Documents throughout the term of this Agreement as being purchased by you (individually and collectively, the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 33.7), except that any "Software" (as defined in Section 33.8) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 33.8 of this Agreement. You shall pay the purchase price specified for the Purchased Equipment and the related software license(s), including all applicable tax, prior to the effective date of this Agreement or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 33.5. We will provide you supplies as requested by you from time to time. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 33.5. (Maintenance and repair of merchant-owned equipment is your responsibility). Should your terminal become inoperable, we can provide you with equipment at a monthly rental fee. There will also be a nominal shipping and handling fee. For such rental equipment contact the POS Help Desk.)

**33.2. Rental Equipment.** We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Equipment Documents as being rented to you (individually and collectively, the "Rental Equipment"), according to the terms and conditions of this Section 33. In addition, any Equipment ordered by and rented to you during the term of this Agreement shall constitute Rental Equipment and be governed by the terms of this Section 33.

**33.3. Effective Date and Term of Section 33.** This Section 33 shall become effective on the first date you receive any piece of Equipment covered by this Section 33. This Section 33 will remain in effect until all of your obligations and all of our obligations under this Agreement have been satisfied. We will deliver the Equipment to the site designated by you. You shall be deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation, (b) delivery to you if your site is not prepared and ready for installation, or (c) for Equipment that we have not agreed to install for you, seven (7) days after shipment of each such piece of Equipment. The rental period with respect to each piece of Rental Equipment shall commence on the date such Equipment is deemed accepted and shall terminate at the scheduled termination date (but not upon any early termination) of this Agreement and/or any other agreement then in effect with us for Card services. The provisions of this Section 33 shall survive the termination of this Agreement and continue until all Rental Equipment is returned or paid for.

**33.4. Site Preparation, Installation & Maintenance.** You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date. You will support the installation in accordance with our requirements.

- Upon request, you must allow us (or our agents) reasonable access to the premises where Authorization terminals or other communications Equipment (e.g., printers) are or will be located.
- Any alterations required for installation of Authorization terminal(s) or other communications Equipment will be done at your expense.
- Only we or our agents can alter or modify Authorization terminal(s) or other communications equipment owned by us.
- If a terminal or printer appears to be defective, you must immediately call the POS Help Desk.
- You are responsible for safeguarding Equipment from loss, damage, unauthorized use, misuse or theft; we should be notified immediately if any of the foregoing occurs.
- If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.
- You are responsible for keeping all communication Equipment free of any claims, liens and legal processes initiated by creditors.
- Equipment may not be subleased at any time. The cost of comparable new Equipment, as well as any associated legal and/or collection costs incurred by us or the owner of the Equipment, will be assessed to you for each piece of Equipment not returned upon termination of the Agreement by either party, or upon request for the return of the Equipment for any reason.
- You may not relocate, remove, disconnect, modify or in any way alter any equipment used in connection with the services we are providing to you without first obtaining our permission.
- You must provide us with thirty (30) days' prior written notice to request the relocation of any Equipment.
- Should you require additional equipment, you must contact Relationship Management or Customer Service (there may be additional costs or fees charged to you in connection with any new equipment ordered, including download fees).

**33.5. Payment of Amounts Due.**

- a) You agree to pay the monthly rental charge specified in the Equipment Documents which shall be due and payable on the first day of each month of the rental period for

each piece of Rental Equipment, except that the first payment of the monthly rental charge for each piece of Rental Equipment shall be due and payable upon acceptance of such Equipment by you at the location designated in the Equipment Documents or, upon delivery if the site is not prepared for installation (as provided in Section 33.3). The monthly rental charge for fractions of a calendar month shall be prorated based on a thirty (30) day month.

- b) You hereby authorize us to collect all amounts due from you under this Section 33 by initiating debit entries for such amounts to the Settlement Account or by deducting such amounts from amounts due to you from TeleCheck or Servicers.
- c) In addition to the purchase price or monthly rental charge due hereunder, you shall pay, or reimburse us for, amounts equal to any taxes, levies, duties or assessments, however designated, levied or based on such charges, or on this Agreement or the Equipment and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income.
- d) Separate charges will apply for supplies; they are not included in monthly rental charges.

**33.6. Use and Return of Equipment; Insurance.**

- a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer and in connection with the Services. You shall not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.
- b) You shall not permit any physical alteration or modification of the Equipment without our prior written consent.
- c) You shall not change the installation site of the Equipment without our prior written consent, which consent we will not unreasonably withhold.
- d) You shall not assign your rights or obligations under this Agreement, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Rental Equipment to any other person, firm or organization without our prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of such consent shall be void.
- e) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all legally required permits for the Equipment.
- f) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.
- g) Promptly upon termination of all applicable rental periods or promptly following any action by us pursuant to Section 33.11(b), you shall deliver possession of the Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, reasonable wear and tear excepted.
- h) For each item of Rental Equipment that you fail to return to us at your cost in the same operating order, repair, condition and appearance that it had at the time of delivery to you, reasonable wear and tear excepted, by the 10th Business Day after (i) termination of the applicable rental period, or (ii) any action by us pursuant to Section 33.11(b), you agree to pay us the greater of \$250 or the fair market value of such item of Equipment if it were in the condition described above, as determined by us. We may collect such amounts in the manner provided in Section 33.5 and to the extent we are unable to do so, you agree to pay us the amounts owed promptly.
- i) Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.
- j) You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft or damage to the Rental Equipment shall not relieve you from your obligation to pay the full purchase price or rent payable hereunder.
- k) Except for Purchased Equipment that has been paid in full, the Equipment shall be kept at the address indicated in the Equipment Documents and shall not be removed from there without our prior written consent (except where normal use of the Equipment requires temporary removal).
- l) In order to return equipment, you should:
- Call Customer Service for the address of the location to send the equipment.
  - The following information must be included within the shipping box:
    1. Company name, complete address and phone number.
    2. Name of person to contact if there are any questions.
    3. Your Merchant Account Number.
    4. Serial number of the terminal (found on the underside of the terminal).
  - Please maintain proof of delivery documents for your records, and the serial number from the bottom of the terminal.
  - Rental fees may be continued until equipment is returned.

**33.7. Security Interest; Financing Statements.** You hereby grant to us a security interest in (a) all Purchased Equipment and the related Software to secure payment of the purchase price, and (b) all Rental Equipment and the related Software to secure payment of the monthly payments therefor and authorize us to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.

**33.8. Software License.** Anything in this Agreement to the contrary notwithstanding, we or certain third parties retain all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment (collectively "Software"), and you shall have only a nonexclusive, non-transferable, revocable license to use the Software in your operation of the Equipment for the purposes set forth in this Agreement. Nothing in this



reement confers any title or ownership of any such Software to you or shall be construed a sale of any rights in any such Software to you. You agree to accept, agree to and be bound all applicable terms and conditions of use and other license terms applicable to such Software. You shall not reverse engineer, disassemble or decompile the Software. You shall not give any Person access to the Software without our prior written consent. Your obligations under this Section 33.8 shall survive the termination of this Agreement.

**33.9. Limitation on Liability.** Notwithstanding any provision of this Agreement to the contrary, and in addition to the limitations and disclaimers set forth in Section 20 of this Agreement (including without limitation the disclaimers in Section 20.2 of this Agreement), our liability arising out of or in any way connected with the Equipment or related software shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved.

**33.10. Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, resulting from (a) the purchase, delivery, installation, acceptance, rejection, ownership, leasing, possession, use, operation, condition, liens against, or return of the Equipment, or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

In addition to your other obligations hereunder, You acknowledge and agree that the "use" and "operation" of the Equipment for which you will indemnify and hold us harmless shall include, but not be limited to, You loading additional software onto Equipment or using such software, or using Equipment or Software to access the Internet.

**33.11. Default; Remedies.**

- a) If any debit of your Settlement Account initiated by us for rent and/or other charges due hereunder is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision in this Section 33, or if any other default occurs under this Agreement, any such event shall be a default hereunder.
- b) Upon the occurrence of any Event of Default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Section 33, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, in which case this Section 33 shall terminate as soon as your obligations to us are satisfied, or (ii) accelerate and declare immediately due and payable all monthly rental charges for the remainder of the applicable rental period and proceed in any lawful manner to obtain satisfaction of the same.

### 34. Special Provisions Regarding TransArmor<sup>SM</sup> Services

If you elect to utilize the TransArmor Service, the following additional terms and conditions of this Section 34 shall apply.

The TransArmor Service is provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the TransArmor Service, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not the Bank.

The TransArmor Service provided, transactions processed and other matters contemplated under this Section 34 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 34 directly conflict with another provision of this Agreement, in which case the terms of this Section 34 will control.

**34.1. Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 34 or as defined elsewhere in this Agreement.

**34.2. Grant of License.** Processor grants to you a non-transferable, non-assignable, non-exclusive, revocable sub-license during the term of this Section 34 to use the TransArmor Service and the TransArmor Service Marks (as identified in the TransArmor Rules and Procedures) in the United States in accordance with this Section 34, including without limitation the TransArmor Rules and Procedures. Any rights with respect to the TransArmor Service not expressly granted by Processor in this Section 34 are deemed withheld.

**34.3. Services.** The TransArmor Service applies only to Card transactions sent from you to us for authorization and settlement pursuant to the Agreement, and specifically excludes electronic check and closed-loop gift card transactions. Processor will provide an encryption key to you to be used to encrypt (make unreadable) Card data during transport of the authorization request from your point of sale to Processor's systems. During the period when the transaction is being transmitted to Processor for authorization processing, all historical transaction data, including Card number and full magnetic stripe data (track data and expiration date), will be encrypted. Processor will then generate or retrieve a unique, randomly generated token assigned to the Card number that will be returned to you in the authorization response (the "Token").

**34.4. Responsibilities of Client.** You are responsible to comply with the following regarding your use of the TransArmor Service:

- a) You are required to comply with the Card Organization Rules, including taking all steps required to comply with the Payment Card Industry Data Security Standards (PCI DSS). You must ensure that all third parties and software use by you in connection with your payment processing are compliant with PCI DSS. Use of the TransArmor Service will not, on its own, cause you to be compliant or eliminate your obligations to comply with PCI DSS or any other Association Rule. You must demonstrate and maintain your current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), as applicable, and if applicable to your business, passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with Card Organization Rules and PCI DSS.
- b) Use of the TransArmor Service is not a guarantee against an unauthorized breach of your point of sale systems or any facility where you process and/or store transaction data (collectively, "Merchant Systems").

- c) You must deploy the TransArmor Service (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your Merchant Systems including replacing existing Card numbers on your Merchant Systems with Tokens. Full Card numbers must never be retained, whether in electronic form or hard copy.
- d) You must use the Token in lieu of the Card number for **ALL** activities subsequent to receipt of the authorization response associated with the transaction, including without limitation, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.
- e) Any POS device, gateway and/or VAR you use in connection with the TransArmor Service must be certified by FDMS for use with the TransArmor Service.
- f) If you send or receive batch files containing completed Card transaction information to/from Processor, you must use the service provided by Processor to enable such files to contain only Tokens or truncated information.
- g) You must use truncated report viewing and data extract creation within reporting tools provided by Processor.
- h) You are required to follow rules or procedures we may provide to you from time to time related to your use of the TransArmor Service ("TransArmor Rules and Procedures"). We will provide you with advance written notice of any such rules or procedures or changes to such rules or procedures.
- i) You have no right, title or interest in or to the TransArmor Service, any related software, materials or documentation, or any derivative works thereof, and nothing in this Agreement assigns or transfers any such right, title or interest to you. You shall not take any action inconsistent with the stated title and ownership in this Section 34. You will not file any action, in any forum that challenges the ownership of the TransArmor Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate this Section 34 and your access to and use of the TransArmor Service in the event of a challenge by you. No additional rights are granted by implication, estoppel or otherwise.
- j) You will not: (i) distribute, lease, license, sublicense or otherwise disseminate the TransArmor Service or any portion of it to any third party; (ii) modify, enhance, translate, supplement, create derivative works from, reverse engineer, decompile or otherwise reduce to human-readable form the TransArmor Service or any portion of it; or (iii) sell, license or otherwise distribute the TransArmor Service or any portion of it; (iv) make any copies, or permit any copying, of the TransArmor Service or any portion of it; or (v) use any portion of the TransArmor Service as a standalone program or in any way independently from the TransArmor Service. If any portion of the TransArmor Service contains any copyright notice or any other legend denoting the proprietary interest of Processor or any third party, you will not remove, alter, modify, relocate or erase such notice or legend on such item.
- k) You will only use the TransArmor Service for your internal business purposes in a manner consistent with this Agreement.
- l) You will use only unaltered version(s) of the TransArmor Service and will not use, operate or combine the TransArmor Service or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this Section 34.
- m) You will promptly notify us of a breach of any terms of this Section 34.

**34.5. Termination.** The TransArmor Service being provided under this Section 34 may be terminated upon thirty days written notice from one party to the other party.

**34.6. Fees.** Client shall pay Processor the fees for TransArmor Service as set forth on the Application.

**34.7. TransArmor Limited Warranty.** Processor warrants that the Token returned to you, as a result of using the TransArmor Service, cannot be used to initiate a financial sale transaction by an unauthorized entity/person outside the Merchant Systems. This warranty by Processor is referred to herein as the "Limited Warranty" and is subject to the terms and conditions set forth in this Section 34. To be eligible for the Limited Warranty, you must maintain a processing relationship with Processor and be in compliance with all the terms of the Agreement, including this Section 34, and any other agreement relating to Cards eligible for the TransArmor Service. Subject to the terms, conditions and limitations set forth in the Agreement, including the limitation of liability provisions, Processor agrees to indemnify and hold you harmless from direct damages, including third party claims, resulting from Processor's breach of the Limited Warranty. The express remedy for Processor's breach of the Limited Warranty set forth in this paragraph constitutes Processor's entire liability and your sole and exclusive remedy for Processor's breach of the Limited Warranty. The Limited Warranty is void if (i) you use the TransArmor Service in a manner not contemplated by, or in violation of, the Agreement, including this Section 34, or any other agreement relating to Cards eligible for the TransArmor Service or (ii) you are grossly negligent or engage in intentional misconduct.

**34.8. TransArmor Disclaimer.** IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE AGREEMENT, THE FOLLOWING DISCLAIMER APPLIES TO THE TRANSARMOR SERVICE: EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 34, PROCESSOR MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED WITH REGARD TO THE TRANSARMOR SERVICE INCLUDING THE UNINTERRUPTED OR ERROR-FREE OPERATION OF THE TRANSARMOR SERVICE.

### 35. Special Provisions Regarding Fraud Detection Services

If you elect to receive Fraud Services from us as indicated on the Application, then the following terms and conditions of this Section, referred to as the Fraud Services Terms, shall apply.

Through our strategic agreement with Accertify, Inc. we have acquired the right to sublicense the access and use of Interceptas, InterceptNOW and InterceptSHARE, which are software systems and related services that will help you efficiently reduce your exposure

fraudulent transactions (the "Fraud Services"). The Fraud Services are proprietary products and services of Accertify, Inc., and may include specific data and services from third party service providers for things like geolocation or device identification, which are specific tools used together with Accertify's software. For all purposes of the Fraud Services Terms, the term Fraud Services includes any such third party data or service providers accessed through any of Accertify's proprietary software described above.

**35.1. Software Licenses.** We hereby grant you a non-exclusive, non-transferable, limited sublicense to use the Fraud Services for the duration of this Agreement, or until otherwise terminated, solely in connection with your use of the payment and processing services otherwise described in this Program Guide. You acknowledge that the only right you obtain to the Fraud Services is the right to use the Fraud Services for the screening and review of your own transactions in accordance with the terms in this Section.

The Fraud Services and related materials include confidential, competitively sensitive and trade secret information, processes, software, user interfaces and other elements. You are not permitted to allow any third party service provider access to these materials or to the output generated by the Fraud Services, nor use or demonstrate the Fraud Services or related materials for, or on behalf of, any third party service provider without the prior written permission of the Fraud Services provider.

**35.2. Reservation of Rights.** Subject only to the limited sublicense granted herein, we and the Fraud Services provider(s) reserve all ownership rights to our and their respective intellectual property related in any way to the Fraud Services. We reserve the right to alter or suspend the Fraud Services in the event of (i) a violation of Fraud Services Terms or (ii) the termination of the agreement with our Fraud Services provider or other inability to continue to provide the Fraud Services.

**35.3. Transaction Data.** Your transaction data will be processed by the Fraud Services. As part of this processing, the transaction data may be retained for statistical analysis, and elements of data from fraudulent transactions may be captured, retained and shared with others to help improve the Fraud Services and prevent further fraud. In no event will the source of any such retained data be disclosed to a third party. You hereby agree to the transmission and use of the data in this manner.

**35.4. Disclaimer of Warranties.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS MAY BE EXPRESSLY PROVIDED HEREIN, THE FRAUD SERVICES ARE PROVIDED TO YOU "AS IS," WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND. INCLUDED IN THIS DISCLAIMER ARE BOTH EXPRESS AND IMPLIED WARRANTIES, AND WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES THAT THE FRAUD SERVICES WILL BE COMPLETELY ACCURATE, ERROR-FREE OR WILL BE AVAILABLE WITHOUT INTERRUPTION.

**35.5. Limitation of Liability.** The Fraud Services provide a tool for you to efficiently make better informed decisions whether to accept or reject transactions that may be fraudulent. There is no assurance that the Fraud Services will accurately identify every instance of fraud, nor that every transaction that may appear fraudulent is in fact so. BY YOUR ACCEPTANCE OF THE TERMS OF THIS PROGRAM GUIDE, AND YOUR USE OF THE FRAUD SERVICES, YOU AGREE THAT, UNDER ANY THEORY OF LAW OR EQUITY, WITH RESPECT TO YOUR USE OF THE FRAUD SERVICES (I) OUR LIABILITY AND THAT OF ANY FRAUD SERVICES PROVIDER SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED TWELVE (12) MONTHS OF FRAUD SERVICES FEES, AND (II) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER WE NOR ANY FRAUD SERVICES PROVIDER SHALL HAVE ANY LIABILITY FOR ANY SUBSEQUENT CHARGEBACKS OR LOSS OF REVENUE FROM FALSE POSITIVE FRAUD SCORES OR IN ANY OTHER WAY RELATED TO THE USE OF THE FRAUD SERVICES.

**35.6. Termination.** Upon termination of the Fraud Services for any reason, you agree to pay any remaining fees or expenses related to your use of the Fraud Services, to cease attempts to access the Fraud Services and to return all user manuals or other materials received in connection with the Fraud Services.

**35.7. Third Party Beneficiaries.** The Fraud Services provider(s) is(are) an intended third party beneficiary of this Section of the Program Guide, and may enforce the terms of this Section directly against you as if it were a party hereto.

**35.8. Your Privacy Policy.** Your privacy policy should reflect the fact that you will subject transactions to fraud screening. You and your privacy legal counsel should consider your specific circumstances and what disclosures will best fit your needs and provide your customers with a clear picture of how customer and transaction data is being used. Example language is set forth below, but is only a suggestion, which you should not adopt without careful consideration and advice of counsel.

Any information you provide to [Merchant] may be combined with information from other sources and used by [Merchant], or a third party retained by [Merchant], to help detect and prevent fraud, misuse of [Merchant]'s website or other illegal activity. Parts or all of this information may be retained by us or the third parties involved in fraud detection and used for future fraud prevention efforts. Information believed to be fraudulent may be shared with other merchants, banks and law enforcement officials to help prevent further misuse. [Merchant] may also use "device identification" technology to recognize specific computers or other internet devices each time they access the website, and associate historical data with that computer or device as part of its efforts to prevent fraud or other misuse.

### 36. Special Provisions Regarding Buyer Initiated Payments

The terms and conditions set forth in this Section 36 govern the provision of Buyer Initiated Payment services and apply only to Card payments that originate from a business certified into a Card Organization approved gateway for Buyer Initiated Payments. These provisions do not apply to any transactions originating from a terminal or software at your business.

**36.1. Description of Buyer Initiated Payments.** Buyer Initiated Payments ("BIP") allow invoices that have been electronically entered at the cardholding buyer's location to be processed by us for settlement to you (the seller of goods and services in B2B transactions) without you manually re-entering the same pieces of card and invoice information.

Use of this service only changes the method of payment between you and your Buyer (your customer). All other processes between you and the Buyer as it pertains to invoicing, approvals and exceptions will remain as is for each Buyer paying you through this service.

#### 36.2. Acceptance of Buyer Initiated Payments.

- There is no hardware, software, or supplies required to accept Buyer Initiated Payments.
- All transactions submitted through a BIP account must be Buyer initiated. You cannot request a terminal or initiate transactions in any way through the Merchant ID established by these terms. Merchant processing must be done through a separate Merchant ID.
- No credits are permitted on BIP accounts. In the event of a dispute regarding a Buyer Initiated Payment, all refunds, discounts, or other remedies must be handled between you and your customer, the Buyer, without the involvement of Processor.
- It is your responsibility to ensure that only customers that you authorize to submit payments on this account do so. We will not disclose the fact that you are enrolled to receive BIP to other businesses unless you authorize us to do so.
- If a business does process a payment on the account without your consent, you must handle the matter directly with your customer, the Buyer, without the involvement of Processor.
- Processor's sole responsibility is processing the BIP. Any concessions given by your customers such as accelerating payment terms or changing early payment discounts are not administered or enforced by Processor. Such agreements are strictly part of the relationships between your business and those of your buyers and the resolution to issues arising from those arrangements are to be handled outside of this Agreement.

**36.3. Chargebacks related to Buyer Initiated Payments.** In BIP processing, the Buyer has control over the payment, and is therefore prohibited from initiating most chargeback types. In the event your buyer initiates a chargeback on this Merchant ID, please contact your Processor.

**36.4. Limitation on Liability/Indemnification.** Limitation of Liability. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, PROCESSOR'S CUMULATIVE AGGREGATE LIABILITY FOR ANY LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES ARISING OUT OF RELATED TO THIS SECTION FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED BY CLIENT AND, IN ANY EVENT, SHALL NOT EXCEED THE LESSER OF (I) THE AMOUNT OF FEES PAID TO PROCESSOR BY CLIENT UNDER THIS SECTION DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THAT THE LIABILITY ARISES, OR (II) TWENTY THOUSAND DOLLARS (\$20,000), WHICHEVER IS LESS.

**36.5. Indemnification.** Client shall indemnify and hold harmless Processor, its directors, officers, employees, agents and Affiliates from and against any and all third party claims, losses, liabilities, damages and expenses, including reasonable attorneys' fees, (collectively "Claims") to the extent that any such Claim is caused by or arises out of: (i) any failure of Client to comply with this Agreement or any law or regulation applicable to BIP; (ii) any dispute between Client and Buyer; or (iii) any instructions or procedures that Client may provide to Processor in connection with the Buyer Initiated Payments and Processor's compliance therewith.

**36.6. Processing Specifications.** The following details apply to how Processor transfers monies between parties.

- Unless otherwise specified by you on the Application, amounts deposited into your account will be in the whole amount of the payment from your customer. After a payment is made by the Buyer, it typically takes one to three business days for the funds to be deposited into your checking account.
- Unless otherwise specified by you on the Application, the fees applied to your transactions will be debited from your Settlement Account on or about the first business day of the month following when the transactions occurred. It is your responsibility to ensure that there are no settings on your account prohibiting a debit entry. You must ensure there are adequate funds available in your Settlement Account.

**36.7. Authorization.** Authorization will occur at the Processor or relevant Card Association.

**36.8. Termination.** As stated on your Application, there is no early termination fee associated with BIP accounts. At any time, you are able to terminate service by calling the customer service number listed on your statement. It is your responsibility to contact your Buyers to inform them that a different payment option will be needed on future invoices. We can terminate BIP services upon 30 days notice to you or immediately in the event of your breach of the Agreement.

### 37. Choice of Law; Venue; Waiver of Jury Trial

**37.1. Choice of Law.** Our Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions).

**37.2. Venue.** We have substantial facilities in the State of New York and many of the services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in Suffolk County, New York.

**37.3. Waiver of Jury Trial.** ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.

### 38. Other Terms

**38.1. Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil



borders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or thin the party's power to satisfy); or (v) the nonperformance by a Person for any similar use beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the nonperforming party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment or funds from a Person shall not excuse the performance of your obligations to us under this Agreement.

**38.2. Compliance with Laws.** In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it. You further agree to cooperate and provide information requested by Servicers, as Servicers determine necessary, to facilitate Servicers compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury. You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time.

**38.3. Notices.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier), if to you at your address appearing in the Application or by any electronic means, including but not limited to the e-mail address you have provided on the Application, and if to us at our address appearing in Section A.4 of Part IV of this Agreement, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065, and shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to the Merchant's last known address, as indicated in our records, shall constitute effective notice to the Merchant under this Agreement.

**38.4. Headings.** The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement.

**38.5. Severability.** The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

**38.6. Entire Agreement; Waiver.** This Agreement constitutes the entire Agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

**38.7. Amendment.** We may modify any provision of this Agreement by providing written notice to you. You may choose not to accept the requirements of any such change by terminating the Agreement within twenty (20) days of receiving notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any early termination fee that might otherwise apply. For purposes of this section, an electronic or "click-wrap" notice intended to modify or amend this Agreement and which you check "I Accept" or "I Agree" or otherwise accept through an electronic process, shall constitute in writing as required herein. This section 38.7 does not apply to fee changes, which are governed by Sections 18.4 and 18.5.

**38.8. Third Party Beneficiaries.** Our respective Affiliates and any Persons we use in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as it was a party hereto. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any Person any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Agreement.

**38.9. Card Organization Rules.** The parties acknowledge that the Visa, MasterCard and Discover Network Card Organization Rules give Visa, MasterCard and Discover Network certain rights to require termination or modification of this Agreement with respect to transactions involving Visa, MasterCard and Discover Network Cards and the Visa, MasterCard and Discover Network Card systems and to investigate you. The parties also acknowledge that issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable Card Organization Rules with respect to this Agreement's applicability to transactions involving such other Cards.

**38.10. Publicity.** Client may not use the logo, name, trademark, or service mark of Processor and/or Bank in any manner, including without limitation, in any advertisements, displays, or press releases, without the prior written consent of Processor and Bank.

### 39. Glossary

As used in this Agreement, the following terms mean as follows:

**Acquirer:** Bank in the case of MasterCard, Visa and certain debit transactions or Processor in the case of Discover Network transactions that acquire Card sale transactions from merchants such as yourself.

**Address Verification:** A service provided through which the merchant verifies the Cardholder's address, in whole or in part. Primarily used by Mail/Telephone/Internet order merchants, Address verification is intended to deter fraudulent transactions. However, it is not a guarantee that a transaction is valid.

**Affiliate:** A person that, directly or indirectly, (i) owns or controls a party to this Agreement or (ii) is under common ownership or control with a party to this agreement.

**Agreement:** The Agreements among Client, Processor, Bank, and the PIN Debit Sponsor Bank, contained in the Application, the Program Guide and the Schedules thereto and documents incorporated therein, each as amended from time to time, which collectively constitute the Agreement among the parties. Bank is a party to this Agreement for Visa, MasterCard and non-PIN debit purposes only.

**Application:** See Merchant Processing Application

**Authorization:** Approval by, or on behalf of, the Issuer to validate a transaction. An Authorization indicates only the availability of the Cardholder's Credit Limit or funds at the time the Authorization is requested.

**Authorization Approval Code:** A number issued to a participating merchant by the Authorization Center which confirms the Authorization for a sale or service.

**Authorization Center:** A department that electronically communicates a merchant's request for Authorization on Credit Card transactions to the Cardholder's bank and transmits such Authorization to the merchant via electronic equipment or by voice Authorization.

**Bank:** The bank identified on the Application signed by you.

**Bankruptcy Code:** Title 11 of the United States Code, as amended from time to time.

**Batch:** A single Submission to us of a group of transactions (sales and Credits) for settlement. A Batch usually represents a day's worth of transactions.

**Business Day:** Monday through Friday, excluding Bank holidays.

**Buyer Initiated Payment (BIP):** A payment that occurs when a cardholding business approves an invoice (or invoices) and submits an electronic payment instruction causing funds to be deposited directly into a their supplier's merchant account

**Card:** See either Credit Card or Debit Card.

**Cardholder:** Means the Person whose name is embossed on a Card (or Debit Card, as applicable) and any authorized user of such Card.

**Card Not Present Sale/Transaction:** A transaction that occurs when the Card is not present at the point-of-sale, including Internet, mail-order and telephone-order Card sales.

**Card Organization:** Any entity formed to administer and promote Cards, including without limitation MasterCard Worldwide ("MasterCard"), Visa U.S.A., Inc. ("Visa"), DFS Services LLC ("Discover Network") and any applicable debit networks.

**Card Organization Rules:** The rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBTs, the Quest Operating Rules).

**Card Validation Codes:** A three-digit value printed in the signature panel of most Cards and a four-digit value printed on the front of an American Express Card. Visa's Card Validation Code is known as CVV2; MasterCard's Card Validation Code is known as CVC2; Discover Network's Card Validation Code is known as a CID. Card Validation Codes are used to deter fraudulent use of an account number in a non-face-to-face environment, (e.g., mail orders, telephone orders and Internet orders).

**Card Verification Value (CVV)/Card Validation Code (CVC):** A unique value encoded on the Magnetic Stripe of a Card used to validate Card information during the Authorization process.

**Cash Benefits:** An EBT account maintained by an Issuer that represents pre-funded or day-of-draw benefits, or both, administered by one or more government entities, and for which the Issuer has agreed to provide access under the EBT program. Multiple benefits may be combined in a single cash benefit account.

**Cash Over Transaction:** Dispensing of cash by a merchant in connection with a Card sale, other than a PIN Debit Card transaction, for the purchase of goods or services.

**Chargeback:** A Card transaction (or disputed portion) that is returned to us by the Issuer. Client is responsible for payment to us for all Chargebacks.

**Client:** The party identified as "Client" on the Application. The words "Subscriber," "you" and "your" refer to Client.

**Credit:** A refund or price adjustment given for a previous purchase transaction.

**Credit Card:** A device bearing a valid Organization Mark of Visa, MasterCard or Discover Network and authorizing the Cardholder to buy goods or services on credit and, to the extent the Schedules so provide, a valid device authorizing the Cardholder to buy goods or services on credit and issued by any other Card Organization specified on such Schedules.

**Credit Draft:** A document evidencing the return of merchandise by a Cardholder to a Client, or other refund or price adjustment made by the Client to the Cardholder, whether electronic, paper or some other form, all of which must conform to Card Organization Rules and applicable law.

**Credit Limit:** The credit line set by the Issuer for the Cardholder's Credit Card account.

**Customer Activated Terminal (CAT):** A magnetic stripe terminal or chip-reading device (such as an automatic dispensing machine, Limited Amount Terminal, or Self-Service Terminal) that is not an ATM.

**Debit Card:** See either PIN Debit Card or Non-PIN Debit Card.

**Dial-Up Terminal:** An Authorization device which, like a telephone, dials an Authorization Center for validation of transactions.

**Discount Rate:** A percentage rate and/or amount charged a merchant for processing its qualifying daily Credit Card and Non-PIN Debit Card transactions, as set forth in the Application. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 18.1.

**Electronic Benefit Transfer (EBT):** An Electronic Benefits Transfer system used to deliver certain government delivered benefits, including without limitation Cash Benefits and Food Stamp Benefits, to EBT customers.

**Electronic Draft Capture (EDC):** A process which allows a merchant's Dial-Up Terminal to receive Authorization and capture transactions, and electronically transmit them to the Processor. This eliminates the need to submit paper for processing.

**Factoring:** The submission of authorization requests and/or Sales Drafts by a merchant for Card sales or cash advances transacted by another business.

**General Terms:** Section of the Program Guide, including any amendments or modifications.

**Gross:** When referred to in connection with transaction amounts or fees, refers to the total amount of Card sales, without set-off for any refunds or Credits.

**Imprinter:** A manual or electric machine used to physically imprint the merchant's name and ID number as well as the Cardholder's name and Card number on Sales Drafts.

**Issuer:** The financial institution or Card Organization which has issued a Card to a Person.

**Limited Amount Terminal:** A Customer Activated Terminal that has data capture only capability, and accepts payment for items such as parking garage fees, road tolls, motion picture theater entrance, or magnetic-stripe telephones.

**Magnetic Stripe:** A stripe of magnetic information affixed to the back of a plastic Credit or Debit Card. The Magnetic Stripe contains essential Cardholder and account information.

**Marks:** Names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations.

**Media:** The documentation of monetary transactions (i.e., Sales Drafts, Credit Drafts, computer printouts, etc.)

**Merchant Account Number (Merchant Number):** A number that numerically identifies each merchant location, outlet, or line of business to the Processor for accounting and billing purposes.

**Merchant Identification Card:** A plastic embossed card supplied to each merchant to be used for imprinting information to be submitted with each Batch of paper Sales Drafts. Embossed data includes Merchant Account Number, name and sometimes merchant ID code and terminal number.

**Merchant Processing Application:** The Merchant Processing Application and Agreement executed by Client, Processor and Bank, which is one of the documents comprising the Agreement.

**Merchant Provider:** Any Person engaged by you to provide services to you involving or relating to (i) access to Cardholder data, transaction data or information related to either Cardholder data or transaction data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs).

**Non-PIN Debit Card:** A device with a Visa, MasterCard or Discover Network Mark that is tied to a Cardholder's bank account or a prepaid account and which is processed without the use of a PIN.

**Non-Qualified Interchange Fee:** The difference between the interchange fee associated with the Anticipated Interchange Level and the interchange fee associated with the more costly interchange level at which the transaction actually processed.

**Non-Qualified Surcharge:** A surcharge applied to any transaction that fails to qualify for the Anticipated Interchange Level and is therefore downgraded to a more costly interchange level. The Non-Qualified Surcharge (the amount of which is set forth on the Service Fee Schedule) is in addition to the Non-Qualified Interchange Fee, which is also your responsibility (see above, Section 18.1)

**Operating Procedures:** The manual prepared by Processor, containing operational procedures, instructions and other directives relating to Card transactions. The current Operating Procedures are set forth in the Program Guide.

**Other Services:** Other Services include all services related to JCB Card, PIN Debit Card, and EBT Transactions, TeleCheck check services, TRS collection services, Equipment purchase and rental, Gift Card Services, Loyalty Services and Transactions involving Cards from other Non-Bank Card Card Organizations such as Voyager Fleet Systems, Inc., Wright Express Corporation and Wright Express Financial Services Corporation.

**PAN Truncation:** A procedure by which a Cardholder's copy of a Sales Draft or Credit Draft, or as required by applicable law, the Sales Draft or Credit Draft you retain, will only reflect the last four digits of the Card account number.

**Person:** A third party individual or entity, other than the Client, Processor or Bank.

**PIN:** A Personal Identification Number entered by the Cardholder to submit a PIN Debit Card transaction.

**PIN Debit Card:** A device bearing the Marks of ATM networks (such as NYCE or Star) used at a merchant location by means of a Cardholder-entered PIN in the merchant PIN Pad. PIN Debit Cards.

**PIN Debit Sponsor Bank:** The PIN Debit Sponsor Bank(s) identified on the Application signed by you that is/are the sponsoring or acquiring bank(s) for certain PIN Debit networks.

**Point of Sale (POS) Terminal:** A device placed in a merchant location which is connected to the Processor's system via telephone lines and is designed to authorize, record and transmit settlement data by electronic means for all sales transactions with Processor.

**Processor:** The entity identified on this Application (other than the Bank) which provides certain services under this Agreement.

**Program Guide:** The booklet which contains Operating Procedures, General Terms, Third Party Agreements and Confirmation Page, which together with the Application and the Schedules thereto and documents incorporated therein, constitute your Agreement with Processor and Bank.

**Recurring Payment Indicator:** A value used to identify transactions for which a Cardholder provides permission to a merchant to bill the Cardholder's Card account at either a predetermined interval or as agreed by the Cardholder for recurring goods or services.

**Referral:** A message received from an Issuer when an attempt for Authorization requires a call to the Voice Authorization Center or Voice Response Unit (VRU).

**Reserve Account:** An account established and funded at our request or on your behalf, pursuant to Section 24 of the Agreement.

**Resubmission:** A transaction that the Client originally processed as a Store and Forward transaction but received a soft denial from the respective debit network or Card Organization. The resubmission transaction allows the merchant to attempt to obtain an approval for the soft denial, in which case Client assumes the risk that the transaction fails.

**Retrieval Request/Transaction Documentation Request:** A request for documentation related to a Card transaction such as a copy of a Sales Draft or other transaction source documents.

**Sales/Credit Summary:** The identifying form used by a paper Submission merchant to indicate a Batch of Sales Drafts and Credit Drafts (usually one day's work). Not a Batch header, which is used by electronic merchants.

**Sales Draft:** Evidence of a purchase, rental or lease of goods or services by a Cardholder from, and other payments to, Client using a Card, including preauthorized orders and recurring transactions (unless the context requires otherwise); regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Card Organization Rules and applicable law.

**Schedules:** The attachments, addenda and other documents, including revisions thereto, which may be incorporated into and made part of this Agreement concurrently with or after the date of this Agreement.

**Self-Service Terminal:** A Customer Activated Terminal that accepts payment of goods or services such as prepaid cards or video rental, has electronic capability, and does not accept PINs.

**Services:** The activities undertaken by Processor and/or Bank, as applicable, to authorize, process and settle all United States Dollar denominated Visa, MasterCard and Discover Network transactions undertaken by Cardholders at Client's location(s) in the United States, and all other activities necessary for Processor to perform the functions required by this Agreement for Discover Network and all other Cards covered by this Agreement.

**Servicers:** For Visa and MasterCard Credit, Non-PIN Debit Card transactions, PIN Debit, Bank and Processor collectively, in which case, Bank and Processor shall be jointly, but not also severally, liable to the Client. For all other Card transactions, Processor. The words "our," "us" and "we" refer to Servicers.

**Settlement Account:** An account or account(s) at a financial institution designated by Client as the account to be debited and credited by Processor or Bank for Card transactions, fees, Chargebacks and other amounts due under the Agreement or in connection with the Agreement.

**Split Dial:** A process which allows the Authorization terminal to dial directly to different Card processors (e.g., American Express) for Authorization. In this instance, the merchant cannot be both EDC and Split Dial. Split Dial is also utilized for Check Guarantee companies.

**Split Dial/Capture:** Process which allows the Authorization terminal to dial directly to different Card processors (e.g., Amex) for Authorization and Electronic Draft Capture.

**Store and Forward:** A transaction that has been authorized by a merchant when the merchant cannot obtain an Authorization while the customer is present, typically due to a communications failure. The merchant will store the transaction electronically in their host system and retransmit the transaction when communications have been restored.

**Submission:** The process of sending Batch deposits to Processor for processing. This may be done electronically or by mail.

**Summary Adjustment:** An adjustment to your Submission and/or Settlement Accounts in order to correct errors. (See Sections 10.3 and 10.4).

**Telecommunication Card Sale:** Individual local or long-distance telephone calls, for which the telephone service provider is paid directly by use of a Card. These do not include, however, calls paid for with pre-paid telephone service cards. Telecommunication Card Sales are considered Card Not Present Sales.

**Transaction Fees:** Service costs charged to a merchant on a per transaction basis.

**Us, We and Our:** See Servicers.

**You, Your:** See Client.



## PART II: THIRD PARTY AGREEMENTS

The following Agreements are Third Party Agreements entered into between Client and the Third Parties identified in the Third Party Agreements.

Client desires to receive the products and/or services offered under a Third Party Agreement, Client must check the appropriate box or otherwise indicate such desire in the Merchant Processing Application, in which case the terms and conditions of the Third Party Agreement shall be binding upon Client. The Signature page in the Merchant Processing Application or any Schedule thereto shall also serve as a signature page to the Third Party Agreements.

Client acknowledges that the Third Parties are relying upon the information contained on the Merchant Processing Application and the Schedules thereto, all of which are incorporated by reference into the Third Party Agreements.

### 1.0. Equipment Lease Agreement

This Equipment Lease Agreement ("Lease Agreement") is being entered into by and between First Data Merchant Services Corporation (through its business unit First Data Global Leasing), and the Lessee identified on the signature panel of this Merchant Processing Application ("MPA"). In this Lease Agreement, the words "we," "our" and "us" refer to First Data Merchant Services Corporation and its successors and assigns and the words "you" and "your" refer to Lessee and its permitted successors and assigns.

Lessee hereby authorizes us or our designees, successors or assigns (hereinafter "Lessor") to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Lessee in conjunction with this Lease Agreement by initiating debit entries to the bank account designated by Lessee on the MPA (the "Settlement Account"). In the event of default of Lessee's obligation hereunder, Lessee authorizes debit of its account for the full amount due under this Lease Agreement. Further, Lessee authorizes its financial institution to accept and to charge any debit entries initiated by Lessor to Lessee's account. In the event that Lessor withdraws funds erroneously from Lessee's account, Lessee authorizes Lessor to credit Lessee's account for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor has received written notice from Lessee of its termination in such time and in such manner as to afford Lessor a reasonable opportunity to act. Lessee also authorizes Lessor from time to time to obtain investigative credit reports from a credit bureau or a credit agency concerning Lessee.

**1.1. Equipment.** We agree to lease to you and you agree to lease from us the equipment identified on the MPA or such other comparable equipment we provide you (the "Equipment"), according to the terms and conditions of this Lease Agreement. We are providing the Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the Equipment for any particular purpose. The term Equipment includes the Equipment initially deployed under the Lease Agreement and/or any additions, replacements, substitutions, or additions thereto.

#### 1.2. Effective Date, Term and Interim Rent.

- This Lease Agreement becomes effective on the earlier of the date we deliver any piece of Equipment to you (the "Delivery Date") or acceptance by us. This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Equipment to the site designated by you.
- The term of this Lease Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us (the "Commencement Date"), and continues for the number of months indicated on the MPA. **THIS IS A NON-CANCELABLE LEASE FOR THE TERM INDICATED.**
- You agree to pay an Interim Lease Payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Delivery Date until the date preceding the Commencement Date.
- YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF YOUR MERCHANT PROCESSING AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS LEASE AGREEMENT WITH SAID SERVICE PROVIDER.**

**1.3. Site Preparation.** You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

#### 1.4. Payment of Amounts Due.

- The monthly lease charge is due and payable monthly, in advance. You agree to pay all assessed costs for delivery and installation of Equipment.
- In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes, assessments on or arising out of this Lease Agreement or the Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, tax preparation, compliance expenses, but exclusive of taxes based on our net income. Property taxes are calculated and charged based on the average of the estimated annual property taxes over the course of the term of the lease. You will also be charged an annual Tax Handling Fee, as set forth in the MPA and/or applicable Fee Schedule.
- Your lease payments will be due despite dissatisfaction with the Equipment for any reason.
- Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than \$5.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of \$10.00 for any debit we attempt to make against your Settlement Account that is rejected.

- In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense charge of \$50.00 for each aggregate payment requiring a collection effort.

#### 1.5. Use and Return of Equipment; Insurance.

- You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.
- You shall not permit any physical alteration or modification of the Equipment, or change the installation site of the Equipment, without our prior written consent.
- You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment without our prior written consent.
- You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility.
- We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.
- The Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment evidencing our ownership.
- You shall keep the Equipment adequately insured against loss by fire, theft, and all other hazards.
- You shall provide proof of insurance as evidenced by a certificate naming First Data Merchant Services Corporation as a loss payee under your insurance policy. **The loss, destruction, theft, or damage of or to the Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly lease charges hereunder.**
- If you do not provide such proof of insurance, you may be charged a fee, on which we may make a profit, as set forth on your fee schedule in connection with insuring the Equipment.

**1.6. Title to Equipment.** The Equipment is, and shall at all times be and remain, our sole and exclusive property, and you shall have no right, title or interest in or to the Equipment except as expressly set forth in this Lease Agreement or otherwise agreed in writing. Except as expressly provided in Section 8, no transference of intellectual property rights is intended by or conferred in this Lease Agreement. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Equipment, then we shall be deemed to have a first lien security interest on the Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto.

**1.7. Return or Purchase of Equipment at End of Lease Period.** Upon the completion of your lease term or any extension, you will have the option to: (a) return the Equipment to us, or (b) purchase the Equipment from us for the lesser of fair market value at the time (as determined in good faith by us) or an amount equal to ten-percent (10%) of the total lease payments under this Lease Agreement with respect to each item of Equipment. In the absence of an affirmative election by you to return or purchase the Equipment, this lease will continue on a month-to-month basis at the existing monthly lease payment; or (c) after the final lease payment has been received by FDGL, the Agreement will revert to a month by month rental at the existing monthly lease payment. If Client does not want to continue to rent the equipment, then Client will be obligated to provide FDGL with 30 day prior written notice to terminate and return the equipment to FDGL. If we terminate this Lease Agreement pursuant to Section 12 (b) due to a default by you, then you shall immediately return the Equipment to us no later than the tenth Business Day after termination, or remit to us the fair market value of the Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 7 by debiting your Settlement Account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

**1.8. Software License.** We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment other than those owned or licensed by the manufacturer of the Equipment (collectively "Software"), and you shall have only a non-exclusive license to use the Software in your operation of the Equipment.

**1.9. Limitation on Liability.** We are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment, including any damage or injury to persons or property caused by the Equipment. We are not liable for the use or



maintenance of the Equipment, its failure to operate, any repairs or service to it, or by any interruption of service or loss of use of the Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Lease Agreement shall not exceed the aggregate lease amount paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Lease Agreement are your sole and exclusive remedies.

#### 1.10. Warranties.

- a) All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment, or non-infringement.
- b) You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.

**1.11. Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses resulting from (a) the operation, use, condition, liens against, or return of the Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

#### 1.12. Default; Remedies.

- a) If any debit of your Settlement Account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Lease Agreement or any agreement with any of our affiliates or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under a processing agreement with us or with an affiliate or joint venture to which we are a party will be treated as a default under this Lease Agreement. Such a default would include a default resulting from early termination of the MPA.
- b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this lease and our future obligations under this Lease Agreement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the Equipment (as determined by us), not as a penalty but as liquidated damages for our loss of the bargain. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment. In any case, you shall also be responsible for our costs of collection, court costs, as well as applicable shipping, repair and refurbishing costs of recovered Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by charging your Settlement Account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Without limiting the foregoing, you agree that we are entitled to recover amounts owed to us under this Lease Agreement by obtaining directly from an affiliate or joint venture to which we are a party and with which you have entered into an MPA any funds held or available as security for payment under the terms of the MPA, including funds available under the "Reserve Account; Security Interest" section of the MPA, if applicable.

**1.13. Assignment.** You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign or transfer this Lease Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent.

**1.14. Lease Guaranty.** No guarantor shall have any right of subrogation to any of our rights in the Equipment or this Lease Agreement or against you, and any such right of subrogation is hereby waived and released. All indebtedness that exists now or arises after the execution of this Lease Agreement between you and any guarantor is hereby subordinated to all of your present and future obligations, and those of your guarantor, to us, and no payment shall be made or accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full.

**1.15. Governing Law; Venue; Miscellaneous.** This Lease Agreement shall be governed by and will be construed in accordance with the laws of the State of New York (without applying its conflicts of laws principles). The exclusive venue for any actions or claims arising under or related to this Lease Agreement shall be in the appropriate state of federal court located in Suffolk County, New York. If any part of this Lease Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

**1.16. Notices.** All notices must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing on the MPA, and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida 33065. Attn: Lease Department. Customer Service toll free number 1-877-257-2094.

**1.17. Entire Agreement.** This Lease Agreement constitutes the entire Agreement between the parties with respect to the Equipment, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Lease Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Lease Agreement.

## 2.0. AMERICAN EXPRESS® ONEPOINT CARD ACCEPTANCE AGREEMENT

### TERMS AND CONDITIONS FOR AMERICAN EXPRESS ONEPOINT CARD ACCEPTANCE ESTABLISHMENT SALES AND SERVICING PROGRAM

#### 2.1. Scope and Other Parts of Agreement; Definitions

**a. Scope of the Agreement.** The Agreement governs your acceptance of American Express Cards in the United States (but not Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions) under our American Express OnePoint Program, which makes available to eligible merchants an integrated service through our agent First Data Merchant Services Corporation ("FDMS"), among other agents. Schedule A contains important provisions governing your acceptance of the Card under this program. The Agreement covers you *alone*. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

#### b. Other Parts of the Agreement.

**i. Merchant Regulations.** The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 2.8.j below. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please contact FDMS' Customer Service department, at the number set forth in your Merchant Processing Agreement with FDMS. We (or FDMS) may charge you a fee for each copy that you request.

**ii. Schedule A.** Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.

**c. Definitions.** Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions are repeated here for ease of reference.

**Affiliate** means any Entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, *control* means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities,

by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute "control" of the Entity.

**Agreement** means these General Provisions, Schedule A and any other accompanying schedules and exhibits, and the Merchant Regulations, collectively.

**American Express Card and Card** mean (i) any card, account access device, or payment device bearing our or our Affiliates' Marks and issued by an Issuer or (ii) a Card Number.

**Cardmember** means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.

**Charge** means a payment or purchase made on the Card. **Card Present Charge** means a Charge for which the Card is presented at the point of sale. **Card Not Present Charge** means a Charge for which the Card is not presented at the point of sale (e.g., Charges by mail, telephone, fax or the Internet), is used at unattended Establishments (e.g., customer activated terminals, called CATs), or for which the transaction is key-entered. **Disputed Charge** means a Charge about which a claim, complaint, or question has been brought.

**Chargeback** (sometimes called "full recourse" or "Full Recourse" in our materials), when used as a verb, means our reimbursement from you for the amount of a Charge subject to such right; when used as a noun, means the amount of a Charge subject to reimbursement from you. **Immediate Chargeback** (sometimes called "Immediate Full Recourse" in our materials) means our right to Chargeback immediately and irrevocably without first contacting you or sending you an Inquiry and for which you have no right to present any written response to dispute the Chargeback.

**Claim** means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements or the relationship resulting therefrom.

**Credit** means the amount of the Charge that you refund to Cardmembers for purchases or payments made on the Card.

**Discount** means the amount that we charge you for accepting the Card, which amount is: (i) a percentage (**Discount Rate**) of the face amount of the Charge that you submit; or a flat Transaction fee, or a combination of both; and/or (ii) a Monthly Flat Fee (if you meet our requirements).

Entity means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

Establishments means any or all of your and your Affiliates' locations, outlets, websites, on-line networks, and all other methods for selling goods and services, including methods that you adopt in the future.

General Provisions means the provisions set out in this document other than in Schedule A or any other accompanying schedule or exhibit hereto.

Marks mean names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.

Merchant Number (sometimes called the "Merchant ID" or "Establishment" or "SE" number in our materials) means the unique ten-digit number we assign to your Establishment; if you have more than one Establishment, we may assign to each a separate Merchant Number.

Merchant Regulations means the American Express Merchant Regulations – U.S., which are available from your Service Agent.

Other Agreement means any agreement, other than the Agreement, between (i) you or any of your Affiliates and (ii) us or any of our Affiliates.

Other Payment Products mean any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products other than the Card.

Reserve means a fund established and/or collateral held by us as security for your or any of your Affiliates' obligations to us or any of our Affiliates under the Agreement or any Other Agreement.

We, our, and us mean American Express Travel Related Services Company, Inc.

You and your (sometimes called the "Merchant," "Service Establishment" or "SE" in our materials) mean the Entity accepting the Card under the Agreement, and its Affiliates conducting business in the same industry.

d. **List of Affiliates.** You must provide to our agent a complete list of your Affiliates conducting business in your industry and notify our agent promptly of any subsequent changes in the list.

## 2.2. Accepting the Card

a. **Acceptance.** You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmember's choice of which Card to use and that charge and credit Cards, including corporate Cards, are interchangeable. You are jointly and severally liable for the obligations of your Establishments under the Agreement.

b. **Transaction Processing and Payments.** Our Card acceptance, processing, and payment requirements are set forth in the Merchant Regulations. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Regulations.

i) **Format.** You must create a Charge Record for every Charge and a Credit Record for every Credit that comply with our requirements, as described in the Merchant Regulations. You may create multiple Charge Records for a single purchase placed on different Cards, but you must not create multiple Charge Records for a single purchase to the same Card, by dividing the purchase into more than one Charge.

ii) **Authorization.** You must obtain from and submit to us an Authorization Approval code for all Charges. Authorization does not guarantee that we will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

iii) **Submitting Charges and Credits.** Your Establishments must submit Charges and Credits in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card account used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations.

iv) **Payment for Charges.** We will pay you, through our agent, according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations. We may adjust any of these amounts and may change any other amount we charge you for accepting the Card.

v) **Chargeback.** We and our agent have Chargeback rights, as described in the Merchant Regulations. We and our agent may Chargeback by deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Account), or we or our agent may notify you of your obligation to pay us, which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Chargeback rights.

vi) **Protecting Cardmember Information.** You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI Standard performed by Qualified Security Assessors or Approved Scanning Vendors (or both).

## 2.3. Protective Actions

a. **Creating a Reserve.** Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to have some security for your or any of your Affiliates' obligations to us or any of our Affiliates, under the Agreement or any Other Agreement. If we so determine, we may (i) withhold and offset amounts from

payments we otherwise would make to you under the Agreement or (ii) establish a Reserve, including by requiring you to deposit funds or other collateral with us.

b. **Trigger Events for Reserve.** Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties currently owning 25% or more of such interests), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business; (iv) your becoming insolvent; (v) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; or (vi) our reasonable belief that you will not be able to perform your obligations under the Agreement, under any Other Agreement, or to Cardmembers.

c. **Establishing a Reserve.** If an event leads us to believe that we need to create a Reserve, then we may immediately establish a Reserve or terminate the Agreement. We shall inform you if we establish a Reserve. We may increase the amount of the Reserve at any time as long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under the Agreement (including from Charges submitted by you for goods or services not yet received by Cardmembers) or to us or our Affiliates under any Other Agreement, or to Cardmembers.

d. **Other Protections.** We may deduct and withhold from, and recoup and offset against, the Reserve (i) any amounts you or any of your Affiliates owe us or any of our Affiliates under the Agreement or any Other Agreement; (ii) any costs incurred by us in connection with administration of the Reserve, including legal fees; and (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including legal fees. We may take other reasonable actions to protect our rights or those of any of our Affiliates, including changing the speed or method of payment for Charges, exercising immediate Chargeback, or charging you fees for Disputed Charges. If we deem it necessary based on our assessment of risk posed by your business, we may require you at any time to deposit funds or other collateral with us as security to protect our financial risk hereunder as a condition of your accepting the Card. These funds and collateral shall be treated as a Reserve under the Agreement.

e. **Providing Information.** You must provide to us promptly, upon request, information about your finances, creditworthiness, and operations, including your most recent certified financial statements.

## 2.4. Notices

a. **Delivery and Receipt.** Unless otherwise explicitly provided for herein, all notices hereunder must be in writing and sent by hand delivery; or by U.S. postal service, such as first class mail or third class mail, postage prepaid; or by expedited mail courier service; or by electronic mail (e-mail), or by facsimile transmission, to the addresses set out below. Notices are deemed received and effective as follows: If hand-delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail if mailed by first class postage or ten days after being deposited in the mail if mailed by third class postage. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver.

b. **Our Notice Address.** Unless we notify you otherwise, you shall send notices to our agent, at: American Express Travel Related Services Company, Inc. c/o First Data Merchant Services Corporation, 1307 Walt Whitman Road, Melville, NY, 11747.

c. **Your Notice Address.** Our agent shall send notice to you at the address, e-mail address, or facsimile number you indicated on your application to accept the Card. You must notify our agent immediately of any change in your notice address.

## 2.5. Indemnification and Limitation of Liability

a. **Indemnity.** You shall indemnify, defend, and hold harmless us and our Affiliates, agents, successors, assigns, and third party licensees, from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from your breach, negligent or wrongful act or omission, failure to perform under the Agreement, or failure in the provision of your goods or services.

b. **Limitation of Liability.** In no event shall we or our Affiliates, agents, successors, or assigns be liable to you for any incidental, indirect, speculative, consequential, special, punitive, or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory) arising out of or in connection with the Agreement, even if advised of such potential damages. Neither you nor we (and our agent) will be responsible to the other for damages arising from delays or problems caused by telecommunications carriers or the banking system, except that our (and our agent's) rights to create Reserves and exercise Chargebacks will not be impaired by such events.

## 2.6. Term and Termination

a. **Effective Date/Termination Date.** The Agreement begins as of the date (i) you first accept the Card after receipt of the Agreement or otherwise indicate your intention to be bound by the Agreement or (ii) we approve your application to accept the Card, whichever occurs first. Either party can terminate the Agreement without cause (and notwithstanding any other rights established under the Agreement) at any time by notifying the other party. Termination will take effect according to the notice period specified in section 2.4.a above.

b. **Grounds for Termination.** In addition to our rights in sections 2.3. and 2.6 above, we may terminate the Agreement at any time without notice to you and without waiving our other rights and remedies if you have not submitted a Charge within any twelve month



period. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

**Post-Termination.** If the Agreement terminates, without waiving our other rights and remedies, we and our agent may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove all displays of our Marks, return our materials and equipment immediately, and submit to our agent any Charges and Credits incurred prior to termination.

**d. Effect of Termination.** Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 2.1, 2.3, 2.5, 2.6, 2.7, and 2.8 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our and our agent's right of direct access to the Demand Deposit Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

## 2.7. Dispute Resolution

**a. Arbitration Rights.** All Claims shall be resolved, upon your or our election, through arbitration pursuant to this section 2.7 rather than by litigation.

**b. Arbitration Rules/Organizations.** The party asserting the Claim shall select one of the following arbitration organizations, which shall apply its rules in effect at the time the Claim is filed. In the event of an inconsistency between this section 2.7 and any rule or procedure of the arbitration organization, this section 2.7 controls. The party asserting the Claim shall simultaneously notify the other party of its selection. If our selection is not acceptable to you, then you may select another of the following organizations within thirty days after you receive notice of our initial selection. Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located.

- National Arbitration Forum (NAF): P.O. Box 50191, Minneapolis, MN 55404-0191; (800) 474-2371; [www.arbitration-forum.com](http://www.arbitration-forum.com)
- American Arbitration Association (AAA): 335 Madison Avenue, New York, NY 10017; (800) 778-7879; [www.adr.org](http://www.adr.org)

**c. Limitation of Rights.** IF ARBITRATION IS CHOSEN BY A PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE SHALL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES OR PROCEDURES OF NAF OR AAA, AS APPLICABLE. FURTHER, YOU SHALL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. NOTWITHSTANDING ANY OTHER PROVISION IN THE AGREEMENT AND WITHOUT WAIVING EITHER PARTY'S RIGHT TO APPEAL SUCH DECISION, IF ANY PORTION OF THIS SECTION 2.7.c OR OF SECTION 2.7.d BELOW IS DEEMED INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION 2.7 (OTHER THAN THIS SENTENCE) SHALL NOT APPLY.

**d. Individually Named Parties Only.** All parties to the arbitration must be individually named. There is no right or authority for any Claims to be arbitrated or litigated on a class-action or consolidated basis, on behalf of the general public or other parties, or joined or consolidated with claims of other parties, and you and we are specifically barred from doing so. This prohibition is intended to, and does, preclude any trade association or other organization from arbitrating any Claim on a representative basis on behalf of the organization's members. The arbitrator's authority to resolve Claims is limited to Claims between you and us alone, and the arbitrator's authority to make awards is limited to awards to you and us alone.

**e. Application of Provision.** For the avoidance of any confusion, and not to limit its scope, this section 2.7 applies to any putative class action lawsuit that has been filed against us prior to the effective date of the Agreement relating to the "Honor All Cards," "non-discrimination" or "no steering" provisions of the Agreement as described in sections 2.1 and 2.2 of these General Provisions and Chapter 3 (Card Acceptance) of the Merchant Regulations, or prior versions of a Card acceptance agreement.

**f. Equitable Relief.** The arbitrator shall have the power and authority to grant equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section 2.7, nor to determine any matter or make any award except as provided in this section 2.7.

**g. Small-Claims Court; Injunctive Relief.** We shall not elect to use arbitration under this section for any individual Claim that you properly file in a small claims court so long as the Claim is pending only in that court. Injunctive relief sought to enforce the provisions of sections 2.8.a and 2.8.b of these General Provisions is not subject to the requirements of this section 2.7. This section 2.7 is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

**h. Governing Law/Appeal/Entry of Judgment.** This section 2.7 is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. § 16 et seq. (FAA). The arbitrator shall apply New York law and applicable statutes of limitations, honor claims of privilege recognized by law and, at the timely request of either party, provide a written and reasoned opinion explaining his or her decision. The

arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery; not the federal or any state rules of civil procedure or rules of evidence. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA or if the amount of the award exceeds US \$100,000, in which case either party can appeal that award to a three-arbitrator panel administered by NAF or AAA, as applicable, which shall reconsider de novo any aspect of the initial award requested by majority vote and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. The costs of such an appeal shall be borne by the appellant regardless of the outcome of the appeal. Judgment upon the award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

**i. Confidential Proceedings.** The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the negotiations, arbitrations, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by the arbitrator, including any arbitration award or judgment related thereto, are confidential, privileged, and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or arbitration.

**j. Split Proceedings for Equitable Relief.** Either you or we may seek equitable relief in arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered. Except as otherwise provided in section 2.7.c. above, if any portion of this section 2.7 (other than section 2.7.c. or 2.7.d) is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this section 2.7, the Agreement, or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

## 2.8. Miscellaneous

**a. Confidentiality.** You must keep confidential and not disclose to any third party the provisions of the Agreement and any information that you receive from us that is not publicly available.

**b. Proprietary Rights and Permitted Uses.** Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations, nor shall one party use the other party's Marks without its prior written consent, except that we may use your name, address (including your website addresses or URLs), and customer service telephone numbers in any media at any time.

**c. Your Representations and Warranties.** You represent and warrant to us that: (i) you are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which you are organized; (ii) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business; (iii) you have full authority to enter into the Agreement and all necessary assets and liquidity to perform your obligations and pay your debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on your business or your ability to perform your obligations or pay your debts hereunder; (v) you are authorized to enter into this Agreement on behalf of your Establishments and Affiliates, including those indicated in this Agreement, and the individual who signs this Agreement or otherwise enters into it has authority to bind you and them to it; (vi) you are not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (vii) you have not assigned to any third party any payments due to you under this Agreement; (viii) all information that you provided in connection with this Agreement is true, accurate, and complete; and (ix) you have read this Agreement and kept a copy for your file. If any of your representations or warranties in this Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate this Agreement in our discretion.

**d. Compliance with Laws.** You shall comply with all applicable laws, regulations, and rules.

**e. Governing Law; Jurisdiction; Venue.** The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Notwithstanding the immediately preceding sentence, the parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 et seq. (E-Sign Act). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein. Subject to section 2.7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

**f. Interpretation.** In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the

from "including" means "including, but not limited to"; (iv) the term "day" means "calendar day"; (v) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (vi) all captions, headings, and similar terms are for reference only. To the extent possible, these General Provisions, the provisions of Schedule A, and the provisions of the Merchant Regulations shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: Schedule A and any accompanying exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

**g. Assignment.** You shall not assign the Agreement, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign the Agreement without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

**h. Waiver; Cumulative Rights.** Either party's failure to exercise any of its rights under the Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

**i. Savings Clause.** Other than as set forth in the last sentence of section 2.7.c above, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.

**j. Amendments.** We reserve the right to change the Agreement at any time (including by amending any of its provisions, adding new provisions, or deleting or modifying existing provisions) on at least ten days' prior notice to you, provided that we shall change the Merchant Regulations pursuant to the following provisions. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card. We are not bound by any changes that you propose in the Agreement, unless we expressly agree in a writing signed by our authorized representative. An e-mail does not constitute such a signed writing.

**1. Scheduled Changes.** The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:

- a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations, and
- a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.

Where a change is to take effect during the period between two editions of the Merchant Regulations, we shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change therein.

**2. Unscheduled Changes.** We also have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to you (unless another effective date is specified in the notice).

**k. Entire Agreement.** The Agreement is the entire agreement between you and us regarding the subject matter hereof and supersedes any previous agreements, understandings, or courses of dealing regarding the subject matter hereof.

**l. Disclaimer of Warranties.** WE DO NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF TITLE OR NON-INFRINGEMENT.

**m. No Third-Party Beneficiaries.** The Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto and none of the provisions of the Agreement shall be enforceable by any person other than the parties hereto, their successors and permitted assigns.

**n. Press Releases.** You shall not issue any press release or make any public announcement (or both) in respect of the Agreement or us without our prior written consent.

**o. Independent Contractors.** You and we are independent contractors. No agency, partnership, joint-venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with the Agreement.

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By: 

Kim C. Goodman  
Executive Vice President Merchant Services, United States

## SCHEDULE A

### Other Important Provisions for Card Acceptance American Express OnePoint Program

#### 1. Overview of American Express OnePoint Program

**a. Eligibility; Transition to Our Standard Card Acceptance Program.** Our American Express OnePoint Program provides integrated Card acceptance services to eligible Entities through our agents, including First Data Merchant Services Corporation. If you do not qualify for this program, you may be enrolled in our standard American Express Card acceptance program, which has different servicing terms (e.g., different speeds of payment); you may terminate the Agreement if you do not wish to so be enrolled. If you become ineligible for our American Express OnePoint Program, we will transition you to our standard American Express Card acceptance program upon forty-five day's prior notice, unless you opt-out of that transition by notifying our agent in writing no later than fifteen days prior to the effective date of transition.

**b. Program Services.** We may perform our obligations and exercise our rights under the Agreement directly or through our agents. Since we are acting through our agent in many instances under the Agreement, the terms *we*, *our*, or *us* also may refer to our agent above, as the context requires. **Please direct all inquiries and notices under the American Express OnePoint Program to our agent:**

First Data Merchant Services Corporation.

**c. Merchant Regulations.** The Merchant Regulations set forth the policies and procedures of our standard American Express Card acceptance program. The provisions of this Schedule A describe the different terms that apply to you under the American Express OnePoint Program and take precedence over the corresponding provisions of the Merchant Regulations. For example, since Entities classified in certain industries do not qualify for the American Express OnePoint Program, references in the Merchant Regulations to those industries may not apply to you. Please contact our agent for a copy of the Merchant Regulations and with any questions about specific industries under the program.

#### 2. Doing Business With American Express

**a. Certain American Express Terms Not Applicable.** Our Online Merchant Services, the terms applicable to Corporate Purchasing Cards, and our Monthly Flat Fee option are not available to you under the American Express OnePoint Program. During your participation in the program, you are not required to configure your systems to communicate directly with our systems and you must not provide Payment Services or otherwise act as a Payment Service Provider.

**b. Merchant Number; Your Merchant Information.** Under the American Express OnePoint Program, you will not receive a standard American Express Merchant Number. Our agent will instead assign a unique OnePoint Program "merchant" or "account" number to your Establishment; if you have more than one Establishment (or a sales channel for Internet Orders), it may assign to each a separate number. You will need that number each time you call our agent under the American Express OnePoint Program (If you are enrolled in or transition to our standard Card acceptance program, we (not our agent) will assign you a standard American Express Merchant Number.) You must notify our agent of any changes in your business and banking information and any closings of your Establishments. Our agent may verify and disclose information about you, including by requesting reports about you and the person signing your application to accept the Card.

#### 3. Authorization

During your participation in the American Express OnePoint Program, you must initiate an Authorization for each Charge according to the Authorization procedures of our agent and contact our agent about all Authorization responses. You must obtain from and submit to our agent an Authorization Approval code for all Charges. Authorization does not guarantee that we or our agent will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

#### 4. Submission

During your participation in the American Express OnePoint Program, you must submit Charges and Credits electronically to our agent according to its Submission procedures under the OnePoint Program "merchant" or "account" number of the Establishment where the Charge or Credit originated. You must not submit Charges and Credits on paper.

#### 5. Settlement

**a. Settlement Amount.** Our agent will pay you according to your payment plan, as described below, in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, which may include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Our agent will subtract the full amount of all applicable deductions from this payment to you (or debit your Demand Deposit Account), but if it cannot, then you must pay it promptly upon demand.

**b. Discount.** Your initial Discount and other fees and assessments are indicated in the Agreement or otherwise provided to you in writing by our agent. We or our agent may adjust any of these amounts and may change any other amount charged to you for accepting the Card. We or our agent may charge you different Discount Rates for Charges submitted by your Establishments that are in different industries. We or our agent will notify you of such fees, such adjustments and charges, and assessments and any different Discount Rates or Transactions fees that apply to you.



**Payment Plan.** During your participation in the American Express OnePoint Program, the terms of your payment plan (e.g., speed of payment, payment and reconciliation) with our agent govern settlement payments to you. Our agent will send payments to your Demand Deposit Account that you designate to it. You must notify your bank that we, through our agent, will have access to your account for debiting and crediting the Demand Deposit Account.

#### 6. Protecting Cardmember Information

You must notify our agent immediately if you know or suspect that Cardmember Information has been accessed or used without authorization or used other than in accordance with the Agreement. You must promptly provide to us and our agent all Card Numbers related to the data incident and audit reports of the data incident, and you must work with us and our agent to rectify any issues arising from the data incident, as specified in the Merchant Regulations.

#### 7. Risk Evaluation

**a. Prohibited/High Risk Merchants and Activities.** Entities classified in certain industries or accepting Transactions for certain prohibited activities do not qualify for the American Express OnePoint Program, but may qualify for our standard American Express Card acceptance program. Please contact our agent with any questions about those risk evaluation procedures under the program.

**b. Protective Actions.** Our agent may take actions to protect our rights or those of any of our Affiliates on our behalf. For example, the determination to establish a Reserve may be triggered by events identified by our agent and may include requiring you to deposit

funds or other collateral with us or our agent, changing the speed of payment for Charges, exercising immediate Chargeback, and charging you fees for Disputed Charges. Our agent may establish the Reserve; increase the Reserve from time to time; make deductions and withhold from, and recoup and offset against the Reserve any amounts owed under the Agreement, and terminate the Agreement on our behalf. Our agent will inform you if a Reserve is established. You must provide to our agent promptly, upon request, information about your finances, creditworthiness, and operations, including your most recent certified financial statements.

#### 8. Inquiries and Chargebacks

During your participation in the American Express OnePoint Program, our agent's procedures for Inquiries, Disputed Charges, and Chargebacks govern the Disputed Charge process, provided that nothing therein waives our Chargeback rights under the Agreement. Our agent may Chargeback by deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Account), or our agent may notify you of your obligation to pay us (through our agent), which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Chargeback rights.

#### SCHEDULE B

Intentionally Omitted

#### SCHEDULE C

Intentionally Omitted

### PART III: TELECHECK CHECK SERVICES AND TRS COLLECTION SERVICES

#### 1.0. TeleCheck / TRS Services Agreement

This TeleCheck/TRS Services Agreement (the "Agreement") is entered by and between TeleCheck Services, Inc. ("TeleCheck"), TRS Recovery Services, Inc. ("TRS") (if applicable) and Subscriber as indicated on the Merchant Processing Application ("Subscriber"). TeleCheck will provide the Electronic Check Acceptance ("ECA") Warranty Services ("ECA Warranty Services"), Paper Warranty Services, ECA Verification Services, Paper Verification Services, LockBox Warranty Services or LockBox Verification Services, selected in the Merchant Processing Application. The term "Service Provider" shall mean TeleCheck. If Subscriber has selected to receive ECA Verification with TRS Collections Services, TRS, an affiliate of TeleCheck, will provide the collection services, and this Agreement shall then be applicable to TRS. The term "Service Provider" shall mean either TeleCheck or TRS, as applicable. Upon processing Subscriber's first check through the TeleCheck\* service or from the date Subscriber is entered into the TeleCheck system as a subscriber, whichever is earlier (the "Effective Date"), the terms and conditions of this Agreement, including payment and the Minimum Monthly Fee, shall apply from that point forward. Any of the TeleCheck services, including, without limitation, funds settlement, billing and customer service, may be performed by one or more of TeleCheck's affiliates.

**1.1. Term, Termination and Amendment.** This Agreement shall be effective for an initial term of 12 months from the Effective Date; provided, however, that Subscriber may terminate this Agreement if Subscriber gives and TeleCheck receives written notice of termination within the first 30 days of the Agreement. Thereafter, this Agreement shall automatically renew for successive 12 month terms until terminated as provided for herein. Subscriber may terminate this Agreement at the end of the initial term or any renewal term upon at least 30 days' prior written notice to TeleCheck. Each Service Provider reserves the right to amend, at its discretion, this Agreement, including, without limitation, any addenda (and in the case of TeleCheck, the TeleCheck Operational Procedures), by providing Subscriber notice and such amendments shall be effective 30 days from the date notice is mailed to Subscriber. In the event either Service Provider changes the rates, fees or warranty limits hereunder, Subscriber may terminate this Agreement upon written notice received by TeleCheck within such 30 day period. Either Service Provider may terminate this Agreement at any time upon notice to Subscriber. Subscriber may terminate this Agreement at anytime upon written notice if TeleCheck or TRS has failed to cure a material breach of this Agreement within 30 days following written notice of that breach given by Subscriber.

**1.2. Definitions.** As used in this Agreement, the following definitions apply: "ACH Network" means the Automated Clearing House Network, a processing and delivery system that provides for the distribution and settlement of electronic credits and debits. "Authorization Receipt" means the written authorization receipt, in the form approved by TeleCheck, signed by Consumer for each ECA Warranty Transaction or ECA Verification Transaction, as applicable. "Batch" means a collection of saved transactions transmitted to TeleCheck for settlement processing. "Claim" means any claim, demand, directive, suit or other proceeding, notice, damage, expense (including reasonable attorney's fees), assessment, fine or liability of any kind. "Collection Items" means the Return Items processed as ECA Verification Transactions (other than an ECA Verification Transaction processed as a paper check) and shall include the Return Item Fee. The TRS collection services described in this Agreement are only provided to a Subscriber which has elected to receive ECA Verification Services with TRS Collections. "Consumer" means a person or entity that authorizes an Item. "ECA Verification Transaction" or "ECA Warranty Transaction" means a transaction processed by TeleCheck as an electronic funds transfer, a remotely created check or a paper check for the contemporaneous purchase of goods or services by a Consumer. "Item" means an outstanding financial obligation pursuant to a paper check, electronic funds transfer or remotely created check processed under this Agreement. "LockBox Warranty Transaction" means the payment of goods or services by a paper check sent to Subscriber through the U.S. mail or delivered to Subscriber's dropbox, which

payment is processed by TeleCheck as an electronic fund transfer, a remotely created check or a paper check. "NACHA Rules" means the National Automated Clearing House Association Operating Rules and Guidelines, as amended from time to time, that govern the ACH Network. "Paper Warranty Transaction" means a transaction for the contemporaneous purchase of goods or services pursuant to TeleCheck's Paper Warranty Services program. "Return Item Fee" means any fee or exemplary damages allowed by law that may be assessed on a Return Item. "Return Items" mean any Items that are dishonored, returned, reversed, charged back or otherwise unpaid by a Consumer's financial institution upon presentment for payment, regardless of the reason or timing. "Returned Payment" means any financial obligation pursuant to this Agreement not paid by Subscriber's financial institution. "Subscriber's Account" means Subscriber's financial institution account. "TeleCheck Approval Code" means (a) for warranty services, that TeleCheck has authorized an Item for warranty coverage under this Agreement, and (b) for verification services, that TeleCheck has authorized an Item as eligible for processing. "TeleCheck Operational Procedures" means TeleCheck's published policies and procedures contained in various documents provided to Subscriber concerning the services, equipment and maintenance provided pursuant to this Agreement. "TeleCheck/TRS Parties" means TeleCheck, TRS and their affiliates, officers, directors, employees, shareholders, agents and attorneys. "Warranty Maximum" (a) for an Item processed as an ECA Warranty Transaction or LockBox Warranty Transaction means the lower of (i) the face amount of the Item (not to exceed \$25,000.00), or (ii) the amount set forth on the Merchant Processing Application; and (b) for an Item processed as a Paper Warranty Transaction means the lower of (i) the face amount of the Item (not to exceed \$99,999.99); or (ii) the amount set forth on the Merchant Processing Application.

#### TERMS APPLICABLE ONLY TO TELECHECK ECA WARRANTY SERVICES

##### 1.3. ECA Warranty Services.

**1.3.1. Description.** The TeleCheck ECA Warranty Services provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; (b) processing services; and (c) warranty services for ECA Warranty Transactions that comply with the warranty requirements of Section 1.3.3, all in accordance with this Agreement.

**1.3.2. Processing Services.** For each ECA Warranty Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following Subscriber's regular close-out of the point of sale terminal and transmission of the saved ECA Warranty Transactions to TeleCheck for settlement processing, provided that the Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for ECA Warranty Transactions, including, without limitation, Chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as an ECA Warranty Transaction.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due should an excessive amount of Return Items or other questionable activity occur as determined by TeleCheck in its discretion, or as otherwise required by law. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if Subscriber breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within 3 business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has



and reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Subscriber or as a result of a Subscriber error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Subscriber. TeleCheck may also recover from Subscriber the amount of any fees paid by a Consumer to Consumer's financial institution which resulted from a Subscriber error.

**1.3.3. Warranty Requirements.** TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Subscriber one Item per ECA Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the Item. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such Item subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each ECA Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

- a. The check is a first party check drawn on Consumer's account at a United States financial institution and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer;
- b. Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 1.3.6(f)), including through split sales;
- c. The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;
- d. The signature of Consumer on the Authorization Receipt is not substantially different from the name imprinted on the check;
- e. The date of the check and the ECA Warranty Transaction accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);
- f. Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- g. The transaction is not subject to any stop payment, dispute or set-off;
- h. Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules;
- i. Consumer authorized the debiting of Consumer's account and the debit entry is in an amount agreed to by Consumer. Subscriber received a separate signed and completed Authorization Receipt from Consumer for each ECA Warranty Transaction;
- j. The paper check to which the ECA Warranty Transaction relates: (i) has not been used in any other transaction, (ii) is voided on the front by Consumer or Subscriber, and (iii) is returned to Consumer;
- k. The amount entered into the TeleCheck system and on the Authorization Receipt match exactly and does not exceed the Warranty Maximum; and
- l. If the ECA Warranty Transaction is approved as a paper check not eligible for processing as an electronic funds transfer, each representation and warranty set forth Section 1.4.2 shall be applicable to such ECA Warranty Transaction.

**1.3.4. Authorization Receipts.** Subscriber shall (a) maintain the signed Authorization Receipt for a minimum period of 2 years from the date of the transaction or for the period specified by the NACHA Rules, whichever is longer, (b) physically deliver either the original or a legible copy of the signed Authorization Receipt to TeleCheck within 7 days of TeleCheck's request, and (c) permit TeleCheck to audit Subscriber (upon reasonable notice and during normal business hours) for compliance with this requirement.

**1.3.5. Assignment of ECA Warranty Transactions.** By electing to subscribe to the TeleCheck ECA Warranty Services, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any ECA Warranty Transaction submitted by Subscriber to TeleCheck under this Agreement. Subscriber shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

**1.3.6. Chargeback and Reassignment.** TeleCheck may chargeback to Subscriber any ECA Warranty Transaction processed by TeleCheck, or reassign to Subscriber any ECA Warranty Transaction which has been approved as a paper check and purchased by TeleCheck, in any of the following circumstances:

- a. The goods or services, in whole or in part, for which the ECA Warranty Transaction was submitted, have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- b. Subscriber has received full or partial payment or security in any form to secure payment of the Item, or the goods or services for which the Item was issued or authorized were initially delivered on credit or under a lease;
- c. The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the Item is not permitted by applicable law; or a court of law determines that the Item is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- d. Any of the representations made by Subscriber as set forth in Section 1.3.3 are or become false or inaccurate;
- e. Subscriber failed to comply with this Agreement;

- f. Subscriber, or any of Subscriber's owners, agents or employees (i) materially altered either the check or the Authorization Receipt; or (ii) processed the transaction with reason to know that the Item was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction;
- g. The Authorization Receipt was incomplete or unsigned, or a legible copy of the Authorization Receipt was not received by TeleCheck within 7 days of a request by TeleCheck;
- h. A duplicate ECA Warranty Transaction relating to the same transaction was received and processed, or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;
- i. Consumer disputes authorizing the ECA Warranty Transaction or the validity or accuracy of the transaction;
- j. Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice; or
- k. The closeout of the Batch and transmission of the ECA Warranty Transaction to TeleCheck for settlement processing did not occur within 7 days from the date the TeleCheck Approval Code was issued for the transaction.

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the Item is charged back or reassigned as provided herein, (a) TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the Item, (b) deduct or offset such Item against any amounts to be paid to Subscriber for ECA Warranty Transactions, or (c) upon request, Subscriber shall remit the amount of the Item to TeleCheck. TeleCheck may also chargeback to Subscriber any amount over the Warranty Maximum on any ECA Warranty Transaction where TeleCheck has not received payment for such transaction within 60 days of the date of the ECA Warranty Transaction. Upon charging back or reassigning an Item, TeleCheck shall have no further liability to Subscriber on such Item. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, Chargebacks and adjustments made under this Section.

**1.3.7. Account Reconciliation.** Payments processed by TeleCheck will be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in the reports, or of any funding failures or errors. In the event any ECA Warranty Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 1.3.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

**1.3.8. "Goodwill" of a Non-Compliance Item.** TeleCheck, in its sole discretion, may voluntarily elect not to chargeback or reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 1.3.3. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to chargeback or reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

**1.3.9. Reserve Account Establishment and Funding.** Subscriber expressly authorizes TeleCheck to establish a reserve account for ECA Warranty Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon 3 days' notice to Subscriber or in instances of fraud or breach of this Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following: (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by either TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. If Subscriber's funds in the reserve account are not sufficient to cover the delinquent fees, Chargebacks or rejected and reassigned warranty Items, or any other fees and charges due from Subscriber to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In the event of a failure by Subscriber to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

**1.3.10. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Inquiry Rate" is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Transaction Fee" is the additional per transaction charge for

each ECA Warranty Transaction. The "Advantage Billing" or "One Rate" is a monthly fee for the ECA Warranty Services, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee, Monthly Processing/Statement Fee and December Risk Charge. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The "Monthly Minimum Fee" is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "December Risk Surcharge" is an additional percentage charge for each transaction in December. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "Dual ID Surcharge" is an additional 85 basis points (0.85%) charge for each transaction if the amount of the Item exceeds the MICR floor limit established by TeleCheck for Subscriber, and Subscriber is prompted for but does not obtain a second form of identification. The "Funding Report Fee" is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The "POS Support Fee" is a \$10.00 monthly fee for point of sale support services. The "Chargeback Fee" is a \$5.00 handling fee for each Chargeback of an ECA Warranty Transaction. The "Correction Fee" is a \$5.00 fee payable on each item that must be corrected due to Subscriber's error or at Subscriber's request. The "Recovery Processing Fee" is a \$5.00 fee for each item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A "Warranty Research Fee" of \$7.50 may be charged each time Subscriber requests substantiation of a warranty payment/non-payment. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### TERMS APPLICABLE ONLY TO TELECHECK PAPER WARRANTY SERVICES

##### 1.4. Paper Warranty Services.

**1.4.1. Description.** The TeleCheck Paper Warranty services provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept a check; and (b) warranty services for checks that meet the warranty requirements of Section 1.4.2, all in accordance with this Agreement.

**1.4.2. Warranty Requirements.** TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Subscriber one check per Paper Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the check. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such check subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each Paper Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

- The check is a first party check drawn on Consumer's account at a United States or Canadian financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer. If a P.O. Box is used or an address is not imprinted by the check manufacturer, a physical address description is written on the check according to TeleCheck Operational Procedures;
- Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 1.4.4(f)), including through split sales;
- The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;
- The signature in the signature block on the check is not substantially different from the name imprinted on the check;
- The date of the check accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);
- Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- The TeleCheck Subscriber Number, Consumer's telephone number (including area code), identification type and number and TeleCheck Approval Code are printed or written on the check;
- The amount shown in words and figures on the check is (i) less than or equal to the amount entered into the TeleCheck system; or (ii) no more than \$1.00 over the amount entered into the TeleCheck system;

- The check is deposited in Subscriber's Account and received by TeleCheck for purchase within 30 days of the date of the check. Such check has been sent directly from Subscriber's financial institution after being presented for payment only once (no representations shall be allowed, whether paper or electronic); and
- The transaction is not subject to any stop payment, dispute or set-off.

**1.4.3. Assignment of Checks.** By electing to subscribe to the Paper Warranty Services, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any check submitted to TeleCheck for coverage under this Agreement. Subscriber shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

**1.4.4. Reassignment.** TeleCheck may reassign to Subscriber any check purchased by TeleCheck pursuant to the Paper Warranty Services provisions of this Agreement, in any of the following circumstances:

- The goods or services, in whole or in part, for which the check was issued have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- Subscriber has received full or partial payment or security in any form to secure payment of the check, or the goods or services for which the check was issued were initially delivered on credit or under a lease;
- The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the check is not permitted by applicable law; or a court of law determines that the check is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- Any of the representations made by Subscriber as set forth in Section 1.4.2 are or become false or inaccurate;
- Subscriber failed to comply with this Agreement;
- Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered the check; or (ii) accepted the check with reason to know that it was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction; or
- Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice.

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the check is reassigned as provided herein, TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the check, or upon request, Subscriber shall remit the amount of the check to TeleCheck. Upon reassignment of a check, TeleCheck shall have no further liability to Subscriber on such check. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, Chargebacks and adjustments made under this Section.

**1.4.5. "Goodwill" of a Non-Compliance Item.** TeleCheck, in its sole discretion, may voluntarily elect not to reassign to Subscriber a specific non-compliance item which fails to comply with the warranty requirements set forth in Section 1.4.2. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

**1.4.6. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Inquiry Rate" is the percentage rate which shall apply to the face amount of each item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Transaction Fee" is the additional per transaction charge for each transaction. The "Advantage Billing" or "One Rate" is a monthly fee for the TeleCheck service, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee, Monthly Processing/Statement Fee and December Risk Charge. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The "Monthly Minimum Fee" is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "December Risk Surcharge" is an additional percentage charge for each transaction in December. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "Dual ID Surcharge" is an additional 85 basis points (0.85%) charge for each transaction if the



amount of the Item exceeds the MICR floor limit established by TeleCheck for Subscriber, and Subscriber is prompted for but does not obtain a second form of identification. The "POS Support Fee" is a \$10.00 monthly fee for point of sale support services. The "Recovery Processing Fee" is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A "Warranty Research Fee" of \$7.50 may be charged each time Subscriber requests substantiation of a warranty payment/non-payment. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### TERMS APPLICABLE ONLY TO TELECHECK ECA VERIFICATION SERVICES

##### 1.5. ECA Verification Services.

**1.5.1. ECA Verification Services.** The TeleCheck ECA Verification services provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; and (b) processing services, all in accordance with this Agreement. TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber for any loss from transactions processed through the ECA Verification services. Subscriber assumes all risks that Items accepted by Subscriber may result in Return Items. The maximum amount of an ECA Verification Transaction which can be processed through TeleCheck is the lesser of (a) the face amount of the Item, or (b) \$25,000; it being understood that TeleCheck may also decline to process Items in excess of its risk parameters.

**1.5.2. ECA Processing.** For each ECA Verification Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following Subscriber's regular close-out of the point of sale terminal and transmission of the saved ECA Verification Transactions to TeleCheck for settlement processing, provided that the Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for ECA Verification Transactions, including, without limitation, Chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as an ECA Verification Transaction.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due should an excessive amount of Return Items or other questionable activity occur as determined by TeleCheck in its discretion, or as otherwise required by law. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if Subscriber breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within 3 business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Subscriber or as a result of a Subscriber error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Subscriber. TeleCheck may also recover from Subscriber the amount of any fees paid by a Consumer to Consumer's financial institution which resulted from a Subscriber error.

**1.5.3. ECA Verification Transaction Requirements and Representations.** Subscriber represents and warrants with respect to each ECA Verification Transaction submitted to TeleCheck for processing under this Agreement that:

- The check is a first party check drawn on a Consumer's account at a United States financial institution and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer;
- Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code;
- The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber;
- The signature of Consumer on the Authorization Receipt is not substantially different from the name imprinted on the check;
- The date of the check and the ECA Verification Transaction accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);
- Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability;
- Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules;
- Consumer authorized the debiting of Consumer's account and the debit entry is in an amount agreed to by Consumer. Subscriber received a separate signed Authorization Receipt from Consumer for each ECA Verification Transaction;
- The paper check to which the ECA warranty Transaction relates: (i) has not been used in for any other transaction, (ii) is voided on the front by Consumer or Subscriber, and (iii) is returned to Consumer; and

- The amount entered into the TeleCheck system and on the Authorization Receipt match exactly.

**1.5.4. Account Reconciliation.** Payments processed by TeleCheck shall be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in such reports, or of any funding failures or errors. In the event any ECA Verification Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 1.5.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of the transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

**1.5.5. Return Items and Returned Payments.** Subscriber shall be fully responsible and liable to TeleCheck for all Return Items and Returned Payments, regardless of the reason or timing. TeleCheck shall deduct or offset all Return Items and Returned Payments against any amounts to be paid to Subscriber for ECA Verification Transactions or, alternatively, TeleCheck may initiate debits to Subscriber's Account for all such Return Items and Returned Payments. **For Subscribers which have elected to receive ECA Verification Services with TRS Collections:** The Return Item shall be deemed assigned to TRS for collection services hereunder upon the occurrence of any of the following events: (a) a Return Item occurs following the second representation of the Item, (b) a Return Item occurs after the first representation of an administrative Item, (c) the Return Item occurs due to a reason for which representations are not allowed pursuant to the NACHA Rules or TeleCheck policy, (d) TeleCheck or TRS takes any action with respect to such Item at the request of Subscriber, or (e) a Chargeback occurs because of the failure of the ECA Verification Transaction to meet all of the requirements of Section 1.5.3.

**1.5.6. Authorization Receipts.** Subscriber shall (a) maintain the signed Authorization Receipt for a minimum period of 2 years from the date of the transaction or for the period specified by the NACHA Rules, whichever is longer, (b) physically deliver either the original or a legible copy of the signed Authorization Receipt to TeleCheck within 7 days of TeleCheck's request, and (c) permit TeleCheck to audit Subscriber (upon reasonable notice and during normal business hours) for compliance with this requirement.

**1.5.7. Reserve Account Establishment and Funding.** Subscriber expressly authorizes TeleCheck to establish a reserve account for ECA Verification Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon 3 days' notice to Subscriber or in instances of fraud or breach of this Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following: (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by either TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. If Subscriber's funds in the reserve account are not sufficient to cover the delinquent fees, Chargebacks or rejected and reassigned warranty Items, or any other fees and charges due from Subscriber to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In the event of a failure by Subscriber to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

**1.5.8. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Transaction Fee" is the per transaction charge for each Item for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Advantage Billing" is a monthly fee for the ECA Verification service, and is intended to replace the Transaction Fee, Monthly Minimum Fee and Monthly Processing/Statement Fee. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The "Monthly Minimum Fee" is the minimum aggregate amount of Transaction Fees that Subscriber shall pay on a monthly basis. If the total Transaction Fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "POS Support Charge" is a \$10.00 monthly fee for point of sale support services. The "Funding Report Fee" is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The "Chargeback Fee" is a \$5.00 handling fee for each Chargeback of an ECA Verification Transaction. The "Correction Fee" is a \$5.00 fee payable on each Item that must be corrected due to Subscriber's error or at Subscriber's request.

"Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. The "Administrative Return Fee" is a \$10 handling fee for each Return Item that is returned under NACHA Rules, and is classified by TeleCheck as an administrative return. For Subscribers which have elected to receive ECA Verification Services with TRS Collections: The "Resolved Administrative Return Fee" is a \$5.00 handling fee for each such administrative return that is corrected and resolved through manual efforts. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### TERMS APPLICABLE ONLY TO TELECHECK PAPER VERIFICATION SERVICES

##### 1.6. Paper Verification Services.

**1.6.1. Description.** The TeleCheck Paper Verification services provide Subscriber with coded information to assist Subscriber in deciding whether or not to accept a check. TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber for any loss from transactions processed through the Paper Verification services. Subscriber assumes all risks that checks accepted by Subscriber may result in Return Items.

**1.6.2. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Transaction Fee" is the per transaction charge for each Item for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Advantage Billing" is a monthly fee for the Paper Verification service, and is intended to replace the Transaction Fee, Monthly Minimum Fee and Monthly Processing/Statement Fee. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The "Monthly Minimum Fee" is the minimum aggregate amount of Transaction Fees that Subscriber shall pay on a monthly basis. If the total Transaction Fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "POS Support Fee" is a \$10.00 monthly fee for point of sale support services. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### TERMS APPLICABLE ONLY TO TELECHECK LOCKBOX WARRANTY SERVICES

##### 1.7. LockBox Warranty Services.

**1.7.1. Description.** The TeleCheck LockBox Warranty Services (formerly known as PayIt™) provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; (b) processing services; and (c) warranty services for LockBox Warranty Transactions that comply with the warranty requirements of Section 1.7.3, all in accordance with this Agreement.

**1.7.2. Processing Services.** For each LockBox Warranty Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following TeleCheck's receipt and acceptance of completed LockBox Warranty Transactions received prior to 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for LockBox Warranty Transactions, including, without limitation, Chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as a LockBox Warranty Transaction.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due should an excessive amount of Return Items or other questionable activity occur as determined by TeleCheck in its discretion, or as otherwise required by law. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if Subscriber breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within 3 business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Subscriber or as a result of a Subscriber error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Subscriber. TeleCheck may also recover from Subscriber the amount of any

fees paid by a Consumer to Consumer's financial institution which resulted from a Subscriber error.

**1.7.3. Warranty Requirements.** TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Subscriber one Item per LockBox Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the Item. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such Item subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each LockBox Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

- The check is a first party check drawn on Consumer's account (not a corporate check) at a United States financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer and check serial number are imprinted on the check by the check manufacturer;
- The check is sent to Subscriber through the U.S. mail or delivered to Subscriber's dropbox;
- Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 1.7.6(f)), including through split sales;
- The signature in the signature block on the check is not substantially different from the name imprinted on the check;
- The check is not post-dated or dated earlier than 20 days from the date of inquiry to TeleCheck, and the amount called into TeleCheck and the amount shown in words and figures on the check match exactly;
- Consumer did not notify Subscriber that the check was not to be converted to an electronic funds transfer;
- The transaction represents an obligation of Consumer for the purchase or payment for goods or services from Subscriber for the price of such goods or services;
- The transaction is not subject to any stop payment, dispute or set-off;
- Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules;
- Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability; and
- If the LockBox Warranty Transaction is approved as a paper check not eligible for processing as an electronic funds transfer, each representation and warranty set forth Section 1.4.2 shall be applicable to such LockBox Warranty Transaction, except that the check is (i) received by TeleCheck for purchase within 45 days of the check, (ii) sent to Subscriber through the U.S. mail or delivered to Subscriber's dropbox, and (iii) not post-dated or dated earlier than 20 days from the date of inquiry to TeleCheck.

**1.7.4. Additional Requirements for LockBox Warranty Transaction Notices.** Subscriber shall provide Consumer with notice that includes the following, or substantially similar, language: "When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction." In addition, until January 1, 2010, the notice shall also include the following, or substantially similar language: "When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution."

**1.7.5. Assignment of LockBox Warranty Transactions.** By electing to subscribe to the TeleCheck LockBox Warranty Services, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any LockBox Warranty Transaction submitted by Subscriber to TeleCheck under this Agreement. Subscriber shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

**1.7.6. Chargeback and Reassignment.** TeleCheck may chargeback to Subscriber any LockBox Warranty Transaction processed by TeleCheck, or reassign to Subscriber any LockBox Warranty Transaction which has been approved as a paper check and purchased by TeleCheck, in any of the following circumstances:

- The goods or services, in whole or in part, for which the Item was submitted have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;
- Subscriber has received full or partial payment or security in any form to secure payment of the Item, or the goods or services for which the Item was issued or authorized were initially delivered on credit or under a lease;
- The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the Item is not permitted by applicable law; or a court of law determines that the Item is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- Any of the representations made by Subscriber as set forth in Section 1.7.3 are or become false or inaccurate;
- Subscriber failed to comply with this Agreement;
- Subscriber, or any of Subscriber's owners, agents or employees (i) materially altered the check; or (ii) processed the transaction with reason to know that the Item was likely to be dishonored (including failure to receive a TeleCheck Approval Code); or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check.



"Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction;

- g. A duplicate LockBox Warranty Transaction relating to the same transaction was received and processed, or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;
- h. Consumer disputes authorizing the transaction or the validity or accuracy of the transaction; or
- i. Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice.

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the Item is charged back or reassigned as provided herein, (a) TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the Item, (b) deduct or offset such Item against any amounts to be paid to Subscriber for LockBox Warranty Transactions, or (c) upon request, Subscriber shall remit the amount of the Item to TeleCheck. TeleCheck may also chargeback to Subscriber any amount over the Warranty Maximum on any LockBox Warranty Transaction where TeleCheck has not received payment for such transaction within 60 days of the date of the LockBox Warranty Transaction. Upon charging back or reassigning an Item, TeleCheck shall have no further liability to Subscriber on such Item. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, Chargebacks and adjustments made under this Section.

**1.7.7. Account Reconciliation.** Payments processed by TeleCheck will be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in the reports, or of any funding failures or errors. In the event any LockBox Warranty Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 1.7.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy; funding failure or error.

**1.7.8. Information Storage.** Subscriber shall use commercially reasonable methods to securely store the check used in a LockBox Warranty Transaction until destruction and all banking information relating to the transaction.

**1.7.9. "Goodwill" of a Non-Compliance Item.** TeleCheck, in its sole discretion, may voluntarily elect not to chargeback to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 1.7.3. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to chargeback or reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

**1.7.10. Reserve Account Establishment and Funding.** Subscriber expressly authorizes TeleCheck to establish a reserve account for LockBox Warranty Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon 3 days' notice to Subscriber or in instances of fraud or breach of this Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following: (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by either TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. If Subscriber's funds in the reserve account are not sufficient to cover the delinquent fees, Chargebacks or rejected and reassigned warranty Items, or any other fees and charges due from Subscriber to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In the event of a failure by Subscriber to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

**1.7.11. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Inquiry Rate" is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Transaction Fee" is the additional per transaction charge for each LockBox Warranty Transaction. The "Advantage Billing" is a monthly fee for the LockBox Warranty service, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee, Monthly Processing/Statement Fee and December Risk Charge. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds

TeleCheck's parameters. The "Monthly Minimum Fee" is the aggregate minimum amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "December Risk Surcharge" is an additional percentage charge for each transaction in December. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also charged by TeleCheck: The "POS Support Fee" is a \$10.00 monthly fee for point of sale support services. The "Funding Report Fee" is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The "Chargeback Fee" is a \$5.00 handling fee for each Chargeback of a LockBox Warranty Transaction. The "Correction Fee" is a \$5.00 fee payable on each Item that must be corrected due to Subscriber's error or at Subscriber's request. The "Recovery Processing Fee" is a \$5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Return Item. A "Warranty Research Fee" of \$7.50 may be charged each time Subscriber requests substantiation of a warranty payment/non-payment. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

## TERMS APPLICABLE ONLY TO TELECHECK LOCKBOX VERIFICATION SERVICES

### 1.8. LockBox Verification Services.

**1.8.1. Description.** The TeleCheck LockBox Verification Services (formerly known as PayIt<sup>SM</sup>) provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; and (b) processing services, all the foregoing in accordance with this Agreement. TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber for any loss from transactions processed through the LockBox Verification services. Subscriber assumes all risks that Items accepted by Subscriber may result in Return Items. The maximum amount of a LockBox Verification Transaction which can be processed through TeleCheck is the lesser of (a) the face amount of the Item, or (b) \$25,000; it being understood that TeleCheck may also decline to process Items in excess of its risk parameters.

**1.8.2. Processing Services.** For each LockBox Verification Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following TeleCheck's receipt and acceptance of completed LockBox Verification Transactions received prior to 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for LockBox Verification Transactions, including, without limitation, Chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as a LockBox Verification Transaction.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due should an excessive amount of Return Items or other questionable activity occur as determined by TeleCheck in its discretion, or as otherwise required by law. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if Subscriber breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within 3 business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Subscriber or as a result of a Subscriber error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Subscriber. TeleCheck may also recover from Subscriber the amount of any fees paid by a Consumer to Consumer's financial institution which resulted from a Subscriber error.

**1.8.3. LockBox Verification Transaction Requirements and Representations.** Subscriber represents and warrants with respect to each LockBox Verification Transaction submitted to TeleCheck for processing under this Agreement that:

- a. The check is a first party check drawn on Consumer's account (not a corporate check) at a United States financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer and check serial number are imprinted on the check by the check manufacturer;
- b. The check is sent to Subscriber through the U.S. mail or delivered to Subscriber's dropbox;
- c. Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code;
- d. The signature in the signature block on the check is not substantially different from the name imprinted on the check;
- e. The check is not post-dated or dated earlier than 20 days from the date of inquiry to TeleCheck, and the amount called into TeleCheck and the amount shown in words and figures on the check match exactly;



Consumer did not notify Subscriber that the check was not to be converted to an electronic fund transfer;

Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules;

The transaction represents an obligation of Consumer for the purchase or payment for goods or services from Subscriber for the price of such goods or services; and

- i. Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of Consumer's obligation or relieve Consumer from liability.

#### 1.8.4. Additional Requirements for LockBox Verification Transaction Notices.

Subscriber shall provide Consumer with notice that includes the following, or substantially similar, language: "When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction." In addition, until January 1, 2010, the notice shall also include the following, or substantially similar language: "When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution."

**1.8.5. Account Reconciliation.** Payments processed by TeleCheck will be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in the reports, or of any funding failures or errors. In the event any LockBox Verification Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 1.8.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

**1.8.6. Return Items and Returned Payments.** Subscriber shall be fully responsible and liable to TeleCheck for all Return Items and Returned Payments, regardless of the reason or timing. TeleCheck shall deduct or offset all Return Items and Returned Payments against any amounts to be paid to Subscriber for LockBox Verification Transactions or, alternatively, TeleCheck may initiate debits to Subscriber's Account for all such Return Items and Returned Payments.

**1.8.7. Information Storage.** Subscriber shall use commercially reasonable methods to securely store the check used in a LockBox Verification Transaction until destruction and all banking information relating to the transaction.

**1.8.8. Reserve Account Establishment and Funding.** Subscriber expressly authorizes TeleCheck to establish a reserve account for LockBox Verification Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon 3 days' notice to Subscriber or in instances of fraud or breach of this Agreement, the reserve account may be funded immediately at TeleCheck's election. The reserve account may be funded by all or any combination of the following: (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by either TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. If Subscriber's funds in the reserve account are not sufficient to cover the delinquent fees, Chargebacks or rejected and reassigned warranty items, or any other fees and charges due from Subscriber to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In the event of a failure by Subscriber to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

**1.8.9. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "Transaction Fee" is the per transaction charge for each Item for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "Advantage Billing" is a monthly fee for the LockBox Verification service, and is intended to replace the Transaction Fee, Monthly Minimum Fee and Monthly Processing/Statement Fee. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional \$10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check/Call Volume as stated in the Merchant Processing Application is accurate. Subscriber acknowledges that the fee is tied to monthly check and call volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check and call volume exceeds TeleCheck's parameters. The "Monthly Minimum Fee" is the minimum aggregate amount of Transaction Fees that Subscriber shall pay on a monthly basis. If the total Transaction Fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The "Customer Requested Operator Call Fee" or "Voice Authorization Fee" is an additional fee per operator-assisted call not requested by TeleCheck. The "Monthly Statement/Processing Fee" is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The "Funding Report Fee" is a \$15.00 monthly fee to receive daily funding reports or \$10.00 monthly fee to receive weekly funding reports. The "POS Support Fee" is a \$10.00 monthly fee for point of sale support services. The "Chargeback Fee" is a \$5.00 handling fee for each Chargeback of a LockBox Verification Transaction. The "Correction Fee" is a \$5.00 fee payable on each Item that must be corrected due to Subscriber's error or at Subscriber's request. The "Administrative Return Fee" is a \$0.10 handling fee for each Return Item that is returned under NACHA Rules, and is classified by TeleCheck as an administrative return. A "Terminal Application Update Fee" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

#### GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES

**1.9. Payment.** All fees and charges are due upon receipt of invoice. Subscriber authorizes TeleCheck to debit from Subscriber's Account, all payments and other amounts owed (including, without limitation, all Return Items, Returned Payments, Chargebacks, adjustments, fees and charges, and delinquency charges) under this Agreement or any other agreement between Subscriber and TeleCheck or its affiliates, and to credit all amounts owing to Subscriber under this Agreement to Subscriber's Account. If there are insufficient funds in Subscriber's Account to pay amounts owed to TeleCheck or its affiliates, or if debits to Subscriber's account are rejected due to ACH debit blocks, or if there are any amounts otherwise not paid by Subscriber when due, including, without limitation, delinquency charges, Chargebacks or rejected and reassigned warranty items, Subscriber shall immediately reimburse TeleCheck or its affiliates upon demand, or at TeleCheck's option, TeleCheck may offset or recoup such amounts against any amounts due Subscriber under this Agreement or any other agreement between Subscriber and TeleCheck or its affiliates. A delinquency charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account over 15 days delinquent. TeleCheck shall have the right to suspend all services and obligations to Subscriber, including the payment of all warranties due and all transactions previously authorized, during any period in which Subscriber's account is delinquent. Subscriber agrees to pay to TeleCheck a fee of \$25.00 or the highest amount permitted by law, whichever is lower, for any Returned Payment. Subscriber shall also be responsible for paying for all of the point of sale supplies related to the TeleCheck services (i.e., paper and ink for terminals, rubber stamps, if applicable).

**1.10. Security Interest.** To secure Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement (including any check or credit card processing services), Subscriber grants to TeleCheck a lien and security interest in and to any of Subscriber's funds pertaining to the transactions contemplated by this Agreement now or hereafter in the possession of TeleCheck or its affiliates, whether now or hereafter due or to become due to Subscriber from TeleCheck. Any such funds may be commingled with other funds of TeleCheck, or, in the case of any funds held in a reserve account, with any other funds of other subscribers of TeleCheck. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, TeleCheck is hereby authorized by Subscriber at any time and from time to time, without notice or demand to Subscriber or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement, including, without limitation, fees for any other services (including any check or credit card processing services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Subscriber agrees to duly execute and deliver to TeleCheck such instruments and documents as TeleCheck may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

**1.11. Point of Sale Notices; Return Item Fees.** Subscriber agrees to follow procedures and post and provide at TeleCheck's direction any notices (including any updates to such notices) which in TeleCheck's opinion may be required for TeleCheck to process the Item and/or the Return Item Fee, as an electronic funds transfer, draft or otherwise. Subscriber also agrees to assess a Return Item Fee on all Return Items, and that TeleCheck shall be entitled to collect and retain the Return Item Fee from Consumer.

**1.12. TeleCheck Approval Code.** Subscriber acknowledges that TeleCheck will use its internal and proprietary risk management systems to evaluate the risk associated with any particular Item and to assist in its decision whether or not to issue a TeleCheck Approval Code. The decision to issue a TeleCheck Approval Code shall be within the discretion of TeleCheck.

**1.13. Credit Law Compliance.** Subscriber certifies that (a) Subscriber has a legitimate business need, in connection with a business transaction initiated by Consumer, for the information provided by TeleCheck under this Agreement regarding such Consumer; and (b) the information provided by TeleCheck shall only be used for permissible purposes as defined in the Fair Credit Reporting Act, and applicable state and federal laws, with the exception that the information shall not be used for employment purposes, and shall not be used by Subscriber for any purpose other than a single business transaction between Consumer and Subscriber occurring on the date of the inquiry call to TeleCheck. Neither Subscriber, nor Subscriber's agents or employees, shall disclose the results of any inquiry made to TeleCheck except to Consumer about whom such inquiry is made and in no case to any other person outside Subscriber's organization. If Subscriber decides to reject any transaction, in whole or in part, because of information obtained from TeleCheck, Subscriber agrees to provide Consumer with all information required by law and TeleCheck.

**1.14. Use of TeleCheck Materials and Marks.** Pursuant to authorization granted to TeleCheck by TeleCheck International, Inc., the owner of the trademarks referenced in this section, TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, non-assignable and nontransferable limited license, uncoupled with any right or interest, to

the TELECHECK and the TELECHECK logo service marks, and for those Subscribers who are receiving ECA Warranty Services or ECA Verification Services, the TELECHECK ELECTRONIC CHECK ACCEPTANCE and ECA service marks (collectively, the TeleCheck Marks") as follows. Subscriber may use and display decals, identification data and other materials provided by TeleCheck during the term of this Agreement at Subscriber's location solely in connection with the offering of TeleCheck services as authorized under this Agreement. Subscriber shall not permit any persons other than its own officers or employees at Subscriber's locations to use the TeleCheck Subscriber number assigned by TeleCheck. Subscriber agrees that upon termination of this Agreement it will, at its own expense, either return or destroy all TeleCheck materials (including the prompt removal of any TeleCheck decals, electronic files, logos or other materials or references to TeleCheck that are displayed to the public, including those affixed to equipment, doors or windows). The monthly fees payable by Subscriber will apply for all months or fractions of a month that any materials or TeleCheck-owned equipment remain in use. Subscriber shall not create any print, electronic or Internet-based materials including but not limited to any advertising or promotional materials using any TeleCheck Marks without the prior written consent of TeleCheck. Subscriber acknowledges TeleCheck International, Inc.'s ownership of the TeleCheck Marks and will not contest the validity of the marks or the ownership thereof. Subscriber further agrees to refrain from performing any acts that might discredit, disparage, dilute, infringe or negatively affect the value of the TeleCheck Marks or constitute unfair competition to TeleCheck or TeleCheck International, Inc. Subscriber agrees promptly to bring to TeleCheck's attention any unauthorized use of the TeleCheck Marks by third parties of which Subscriber becomes aware. Subscriber shall use the TeleCheck Marks pursuant to any guidelines provided by TeleCheck, as may be amended from time to time. The following shall appear at least once on every piece of advertising or promotional material created by Subscriber which uses the TeleCheck Marks and has received prior written approval from TeleCheck: "The ("Applicable Mark") trademark is owned by TeleCheck International, Inc. and is licensed for use by ("Subscriber Name")."

**1.15. Use of Information.** Subscriber agrees that: (a) any data and other information relating to an Item or Consumer obtained by TeleCheck in connection with any service provided hereunder (including any electronic or other image of all or any portion of any check or driver's license or other identification) shall be owned by TeleCheck, with all right, title, and interest thereto; (b) TeleCheck may use any credit information provided to a TeleCheck affiliate for TeleCheck's credit review; and (c) TeleCheck may provide or receive any experiential information regarding Subscriber or Subscriber's customers to or from any TeleCheck affiliate.

**1.16. TeleCheck Operational Procedures.** Subscriber shall strictly follow all TeleCheck Operational Procedures provided to Subscriber, as may be amended from time to time by TeleCheck, in its discretion.

**1.17. Limitation of Liability.** In no event shall either TeleCheck or Subscriber be liable to the other party, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental, indirect or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL TELECHECK'S LIABILITY UNDER THIS AGREEMENT EXCEED, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY SUBSCRIBER AGAINST TELECHECK, WHETHER RELATED OR UNRELATED), THE LESSER OF: (A) THE TOTAL AMOUNT OF FEES PAID TO TELECHECK BY SUBSCRIBER PURSUANT TO THIS AGREEMENT DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE EVENT GIVING RISE TO SUCH CLAIMS OCCURRED; OR (B) \$75,000.00.

**1.18. Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER. All decisions to reject any Item, driver's license or other form of identification or payment for Subscriber's products or services are solely Subscriber's responsibility.

**1.19. Changes in Law or NACHA Rules.** Notwithstanding anything to the contrary in this Agreement, if the continued performance of all or any portion of the obligations of TeleCheck becomes impossible or illegal due to changes in applicable federal, state or local laws or regulations, or by NACHA Rules, as determined by TeleCheck in its reasonable discretion, TeleCheck may, upon 30 days written notice to Subscriber, request to modify or discontinue TeleCheck's performance of its obligations to the extent necessary to avoid a violation of law or NACHA Rules or, if TeleCheck chooses in its sole discretion to incur additional expenses to comply, request to increase its fees to cover the additional cost of compliance. Additionally, if any fees or charges to TeleCheck increase for processing transactions through the ACH Network, TeleCheck may request to increase its fees to cover such increases. If TeleCheck makes such request and the parties are unable to agree upon corresponding changes to the terms and conditions of this Agreement within 30 days of such request, TeleCheck may terminate this Agreement upon 30 days written notice.

#### TERMS APPLICABLE ONLY TO THE COLLECTION SERVICES PROVIDED BY TRS

**1.20. Assignment of Collection Items.** Subscriber authorizes and assigns certain Collection Items to TRS for collection. Collection Items shall not include any unauthorized items, duplicate items, or any items which are the subject of disputes over goods or services. All Collection Items are hereby assigned to TRS with the exclusive right and full power and authority to collect, sue for or in any lawful manner seek to enforce collection of Collection Items on Subscriber's behalf in TRS' name or otherwise. Subscriber further agrees to execute all documents provided by TRS to evidence such assignment and rights.

Subscriber may not recall any Collection Items assigned to TRS without TRS' prior written consent, unless this Agreement is terminated as provided for herein. Once a Collection Item is assigned to TRS, Subscriber shall not enter into any payment arrangement or settlement regarding such Collection Item without the prior written consent of TRS.

**1.21. Collection Efforts.** TRS will use lawful means to attempt to contact Consumer and to collect the Collection Items for a 90 day period, and after such period may cease all collection activity without any further obligation except to account for any amount collected on such item. If TRS at any time deems a Collection Item to be uncollectible in whole or in part, TRS may cease collection prior to the end of the 90 day period without any further obligation except to account for any amount collected on the Collection Item. The level of collection effort shall be in the sole discretion of TRS. Subscriber agrees to permit the electronic representation of Collection Items through the ACH Network. If TRS is unable to collect a Collection Item in any state due to such state's laws or regulations, TRS shall have the right to forward the Collection Item to an agency which has the right to collect in such state, or at TRS' election return the Collection Item to Subscriber. Subscriber shall, upon request, provide TRS with all reasonable assistance and all relevant documents within Subscriber's control regarding the Collection Item.

**1.22. Recovery Fees and Costs.** Except as otherwise set forth herein, TRS agrees to pay Subscriber amounts collected by TRS on a Collection Item less all the fees and rates due to TRS under this Agreement. (TRS shall be entitled to retain fees and rates as provided for herein and as initially set forth on the Merchant Processing Application, any interest paid on the Collection Item, interest earned on funds collected for Subscriber except where prohibited by local law, and all statutory damages or other fees collected from Consumer incidental to the principal amount of the Collection Item.) Notwithstanding any language in this Agreement to the contrary, TRS may change any fees or rates upon written notice to Subscriber if TRS ceases to collect the Return Item Fee in any state in which it collects such a fee on the Effective Date of this Agreement.

**1.23. Payment Remittance.** TRS agrees to remit payments received on Collection Items to Subscriber at least monthly, less any fees and charges to be paid hereunder. A written statement of account will accompany each such remittance setting forth all credits and debits. The statement need not account for any Return Item Fees, interest, or other charges and amounts which may be collected incidental to the principal amount of the Collection Item; except that the foregoing shall not be applicable to Wisconsin subscribers. Subscriber hereby authorizes TRS to endorse for deposit and collection any commercial paper TRS may receive made payable to Subscriber in payment of any Collection Item. TRS shall have the right at anytime and from time to time to offset any amounts owing by Subscriber under this or any other agreement between TRS or a TRS affiliate and Subscriber against any amounts owed to Subscriber from TRS under this Agreement.

**1.24. Fees for Return of Merchandise or Direct Payments to Subscriber.** TRS shall be due its normal fees and rates in any instance where (a) Consumer satisfies all or part of the Collection Item by returning the underlying merchandise to Subscriber, or (b) Subscriber receives payment of any amount on a Collection Item or a Return Item Fee. TRS may at its election deduct its fees and rates from any current or future amount collected and due to Subscriber, or bill Subscriber for such amounts. Subscriber shall pay such amounts to TRS within 15 days of billing. Subscriber shall use its best efforts to obtain payment of the Return Item Fee in all instances where Consumer directly pays Subscriber any amount on a Collection Item.

**1.25. Use of Information.** Subscriber agrees that TRS, TeleCheck and their affiliates shall have full right, as permitted by law, to use in its products or services, any data and other information relating to a Collection Item or a Consumer obtained by TRS in connection with its services hereunder, including, without limitation, for use by TeleCheck in its check approval and account screening services.

**1.26. Accuracy and Change of Information.** Subscriber warrants that all Collection Items assigned to TRS are due and owing to Subscriber and that Subscriber is not aware of any dispute regarding the Collection Items delivered to TRS, except as expressly disclosed to TRS in writing. Subscriber agrees to inform TRS promptly of any collection, compromise or dispute of any Collection Item, the return of all or part of the underlying merchandise, or any notice of bankruptcy. Subscriber agrees to indemnify, defend and hold harmless TRS from any claims, liability and expenses arising from Subscriber's failure to so notify TRS promptly or from Subscriber's breach of any other obligation or warranty under this Agreement.

**1.27. Indemnification.** TRS agrees that its collection efforts shall be conducted in conformity with the Fair Debt Collection Practices Act and shall be courteous and business-like. TRS shall indemnify Subscriber and hold Subscriber harmless from any out-of-pocket losses resulting from claims, damages or liabilities from debtors arising out of any unlawful practices or willful misconduct by TRS in its collection efforts. In the event that Subscriber receives any claim or demand or becomes subject to any suit or proceeding under which a claim may be made against TRS under this Section, Subscriber shall give prompt written notice thereof to TRS which shall be entitled to participate in the settlement or defense thereof and, if TRS elects, to take over and control the settlement or defense thereof with counsel reasonably satisfactory to Subscriber. The required notice shall include a copy of any claim, all correspondence between the claimant and Subscriber and the name, addresses and telephone numbers of the claimant and the claimant's attorney, if any. In any case, TRS and Subscriber shall cooperate (at no cost to Subscriber) in the settlement or defense of any such claim, demand, suit or proceeding, including providing information and making available at least one employee or agent who can testify regarding any claims or defenses.

**1.28. Limitation of Liability.** In no event shall either TRS or Subscriber be liable to the other party, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental, indirect or consequential damages including, without limitation, loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL TRS' LIABILITY UNDER THIS AGREEMENT FOR ALL



CLAIMS ARISING UNDER, OR RELATED TO, THIS AGREEMENT EXCEED, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY SUBSCRIBER AGAINST TRS, WHETHER RELATED OR UNRELATED), THE AMOUNT OF \$75,000.00.

#### GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES AND TRS COLLECTIONS

**1.29. Updating Information.** With regard to any Return Items or Collection Items submitted to TeleCheck or TRS, Subscriber shall promptly notify TeleCheck or TRS if: (a) a Consumer makes any payment to Subscriber; (b) there is a return of goods or services, in whole or in part; or (c) there is a dispute of any amount, notice of bankruptcy or any other matter.

**1.30. Confidentiality.** Subscriber shall maintain the confidentiality of this Agreement and any information provided to Subscriber by either TeleCheck or TRS, including, without limitation, TeleCheck Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential. Such information shall not be used except as required in connection with the performance of this Agreement or disclosed to third parties.

**1.31. No Resale, Assignment of Agreement.** This Agreement is solely between TeleCheck, TRS and Subscriber. Subscriber shall not provide or resell directly or indirectly, the services provided by Service Provider to any other third party. This Agreement may be assigned by Subscriber only with the prior written consent of TeleCheck and TRS. Either Service Provider may freely assign this Agreement, its rights, benefits or duties hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of TeleCheck and TRS and Subscriber's heirs, executors, administrators, successors and assigns.

**1.32. Indemnification.** In the event Subscriber (a) fails to strictly comply, in whole or in part, with any: (i) terms and conditions of this Agreement and any addenda hereto or TeleCheck Operational Procedures; or (ii) applicable law, rules, regulations and NACHA Rules, or (b) makes any false or inaccurate representation, Subscriber shall indemnify, defend and hold harmless the TeleCheck/TRS Parties from and against any and all Claims arising therefrom, including payment of all costs and reasonable attorneys' fees for actions taken by TeleCheck or TRS, whether by suit or otherwise, to defend the TeleCheck/TRS Parties from any Claim related thereto or to preserve or enforce Service Provider's rights under this Agreement. In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, Subscriber shall: (a) promptly notify the applicable Service Provider of the Claims or legal action; (b) reasonably cooperate with such Service Provider in the making of any Claims or defenses; and (c) provide information, assist in the resolution of the Claims and make available at least one employee or agent who can testify regarding such Claims or defenses. Upon written notice from Service Provider to Subscriber, Subscriber shall immediately undertake the defense of such Claim by representatives of its own choosing, subject to Service Provider's reasonable approval; provided, however, that Service Provider shall have the right to control and undertake such defense by representatives of its own choosing, but at Subscriber's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws.

**1.33. Notices.** Any notice or other communication required or permitted to be given hereunder shall be delivered by facsimile transmission, overnight courier or certified or registered mail (postage prepaid return receipt requested) addressed or transmitted to the party to be notified at such party's address or number as provided on the Merchant Processing Application or at such party's last known address or number. Any notice delivered hereunder shall be deemed to have been properly given (a) upon receipt if by facsimile transmission, as evidenced by the date of transmission indicated on the transmitted material, (b) upon receipt if deposited on a prepaid basis with a nationally recognized overnight courier for next business day delivery; and (c) on the date of delivery indicated on the return receipt, if mailed by certified or registered mail. TeleCheck and TRS shall also be permitted to provide notice by regular mail and such notice shall be deemed effective 10 days after mailing. The parties' addresses may be changed by written notice to the other party as provided herein.

**1.34. Force Majeure.** Neither Service Provider shall be held responsible for any delays in or failure or suspension of service caused by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), transmission link failures, communication failures, failure, delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve system, failure, delay or error by any third party or any other third party system, strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, act of God or other causes reasonably beyond the control of Service Provider.

**1.35. Compliance with Laws, Governing Law and Integration.** The parties agree to comply with all federal and state laws, regulations and rules, including NACHA Rules, relating to the services provided hereunder. You further acknowledge and agree that you will not use your merchant account and/or the services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., as may be amended from time to time. Subscriber certifies that it has not been suspended by NACHA or any credit card association, or cancelled by an ODFI or Third Party Sender (as defined in the NACHA Rules). This Agreement, plus any addenda attached hereto, constitutes the entire Agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

**1.36. Severability and Interpretation.** If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. Neither this Agreement, nor any addenda or

TeleCheck Operational Procedures, shall be interpreted in favor or against any party because such party or its counsel drafted such document. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement. This Agreement is solely for the benefit of TeleCheck (and its affiliates) and Subscriber and no other person or entity shall have any right, interest or claim under this Agreement.

**1.37. Amendment and Waiver.** No modification, amendment or waiver of any of the terms and conditions of this Agreement shall be binding upon TeleCheck or TRS unless made in writing and approved and signed by TeleCheck and TRS. No waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party. No waiver by any party of a breach or any provision of this Agreement shall constitute a waiver of any prior or subsequent breach of the same or any other provision of this Agreement. The parties agree that no failure or delay in exercising any right hereunder shall operate as a waiver of any such right. All of TeleCheck's and TRS' rights are cumulative, and no single or partial exercise of any right hereunder shall preclude further exercise of such right or any other right.

**1.38. Damages.** Upon Subscriber's breach of this Agreement, including any unauthorized termination, TeleCheck shall be entitled to recover from Subscriber liquidated damages in an amount equal to ninety percent (90%) of the aggregate Monthly Minimum Fees and Monthly Statement/Processing Fees payable for the unexpired portion of the then current term of this Agreement. TeleCheck and Subscriber hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of Subscriber's breach of this Agreement, to the possibility that TeleCheck will not be able to mitigate its damages, and to the expense savings that TeleCheck may obtain by not having to provide services or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach and shall not be construed as a penalty.

**1.39. Survivability.** All representations, warranties, indemnities, limitations of liability and covenants made herein shall survive the termination of this Agreement and shall remain enforceable after such termination.

### ADDENDA TO TELECHECK / TRS SERVICES

#### 2.0. Check Cashing Warranty Service Addendum

If you elect to subscribe to the Check Cashing Warranty Service, the terms and conditions of this Section shall apply, and the TeleCheck/TRS Services Agreement (the "Agreement") is amended to include the Check Cashing Warranty Service for the warranty of certain paper checks that meet the warranty requirements. TeleCheck and Subscriber agree as follows:

**2.1. Amendment to Definitions.** Section 2 (Definitions) of the Agreement is amended as follows:

- a. For purposes of a Check Cashing Transaction, "Warranty Maximum" means the lower of (i) the face amount of the check; or (ii) \$100.00 for a Personal Check made payable to a Subscriber; or (iii) \$750.00 for a Company or Government Check.
- b. The following definitions shall be added to this Section: "Check" means a Company Check, a Government Check or a Personal Check. "Check Cashing Consumer" means a person who authorizes a Check Cashing Transaction for: (i) a Company Check or Government Check made payable to the Check Cashing Consumer; or (ii) a Personal Check made payable to Subscriber. "Check Cashing Transaction" means the contemporaneous presentment of a Company Check, Government Check or Personal Check for cash in accordance with the procedures of the Agreement and this Addendum. "Company Check" means a company payroll, expense reimbursement or non-medical insurance refund check. "Convenience Check" means a check provided by a third party (i.e., credit card issuer) to a Check Cashing Consumer on behalf of such Check Cashing Consumer, for which such check does not debit against the Check Cashing Consumer's own demand deposit account. "Government Check" means a U.S. federal, state, or local government payroll, expense reimbursement, tax refund or benefit/assistance (i.e., Social Security, disability, child support) check. "PayDay Loan" (also called a Deferred Deposit Loan, Deferred Presentment Loan, Small Loan or Short Term Loan) means a transaction for which a merchant makes a cash advance to a consumer and, for a fee, finance charge or other consideration: (i) accepts a check (sometimes post-dated) from the consumer; (ii) agrees to hold the check for a period of time prior to negotiation, deposit or presentment of the check for payment; and (iii) advances to the consumer, credits the consumer's account, or pays to another person or entity on the consumer's behalf, the amount of the check, less any fee, finance charge or other consideration. "Payor" means a company or governmental agency that issues a Company Check or Government Check made payable to a Check Cashing Consumer. "Personal Check" means a personal check made payable to the Subscriber which debits against the Check Cashing Consumer's own demand deposit account.

**2.2. Warranty Requirements and Representations for Check Cashing Transactions.** During the initial or any renewal term, Subscriber agrees that it will process through TeleCheck's authorization system all Checks presented to Subscriber for check cashing prior to acceptance thereof. TeleCheck agrees to purchase from Subscriber one check per Check Cashing Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the check. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such check subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each Check Cashing Transaction submitted to TeleCheck for processing under this Agreement that:

- a. The Check is drawn on a United States or Canadian financial institution, and is completely and properly filled out.

Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code.

The TeleCheck Subscriber Number, TeleCheck Approval Code, and Payor's or Check Cashing Consumer's telephone number (including area code) and identification type and number are printed, written, endorsed or franked on the Check. If a P.O. Box is used or an address is not imprinted by the check manufacturer, a physical address description of Check Cashing Consumer is written on the front of the check according to TeleCheck Operational Procedures.

- d. The amount entered into the TeleCheck system and on the Check (in words and figures) match and does not exceed the Warranty Maximum.
- e. The Personal Check is a first party check made payable to Subscriber.
- f. The Company or Government Check is payable to, and endorsed by, the Check Cashing Consumer, without any restrictions or limitations of any kind (except for time limitations), and the name and address of the Payor is imprinted or typed on the Check by the check manufacturer.
- g. The signature in the signature block on a Personal Check is not substantially different from the name imprinted on the check, and reasonably corresponds to any signature contained in the piece of identification. The physical description of the Check Cashing Consumer reasonably corresponds to the description contained in the piece of identification.
- h. The endorsement signature by the Check Cashing Consumer on the back of a Company or Government Check is not substantially different from the name of the Check Cashing Consumer on the front side of such Check. The endorsement signature and physical description of the Check Cashing Consumer reasonably corresponds to any signature and physical description contained in the piece of identification.
- i. The Personal Check transaction represents an obligation of the Check Cashing Consumer presenting the Check for cash and does not involve any element of credit for any purpose. TeleCheck does not warrant any Payday Loans or Convenience Checks.
- j. The date of the Personal Check accurately coincides with the date of the inquiry call to TeleCheck and the date the Check Cashing Transaction actually occurred (No Pre- or Post-dated checks).
- k. The date of the transaction is within 30 days of the date of issuance on the Company or Government Check (no post-dated Company or Government Checks). The date of the inquiry call to TeleCheck is the same date as the Check Cashing Transaction.
- l. The Check is deposited in Subscriber's Account and received by TeleCheck for purchase: (i) in the case of a Personal Check, within 30 days of the date of the Check, and (ii) in the case of a Company or Government Check, within 30 days following the date the Check was presented to Subscriber. Such Check has been sent directly to TeleCheck after being presented for payment only once (no representations shall be permitted, whether paper or electronic).
- m. Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of the Payor's or Check Cashing Consumer's obligation or relieve the Check Cashing Consumer from liability.

**2.3. Limitations.** TeleCheck shall warrant a Personal Check for a Check Cashing Transaction only to subscribers using TeleCheck's Check Cashing Warranty services in SICs 5541 (convenience stores), 5411 (grocery stores), and 7011 (general lodging such as hotels/motels), and such subscribers must fully comply with TeleCheck's sales management qualifications. For SIC 7011 Only: TeleCheck shall only warrant a Personal Check if the Check Cashing Consumer: (a) is a registered guest of Subscriber on the date of the Check Cashing Transaction; and (b) presents a maximum of one Check Cashing Transaction per day.

**2.4. Termination.** This Addendum may be terminated by either party at any time by providing 30 days written notice to the other party and is not valid until accepted by TeleCheck's management.

Except as expressly modified by this Check Cashing Warranty Service Addendum, all provisions contained in the Agreement and applicable to the TeleCheck Paper Warranty Services shall remain in full force and effect. In the event of any conflict or any inconsistency between the Agreement and this Addendum, the provisions of this Addendum shall govern and control.

### 3.0. Check Cashing Verification Service Addendum

If you elect to subscribe to the Check Cashing Verification Service, the terms and conditions of this Section shall apply, and the TeleCheck/TRS Services Agreement (the "Agreement") is amended to include the Check Cashing Verification Service. TeleCheck and Subscriber agree as follows:

**3.1. Description.** The TeleCheck Check Cashing Verification services provide Subscriber with coded information to assist Subscriber in deciding whether or not to accept a Check (as defined below). TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber for any loss from transactions processed through the Check Cashing Verification services. Subscriber assumes all risks that checks accepted by Subscriber may result in Return Items.

**3.2. Definitions.** The following definitions shall be applicable to Check Cashing Verification services: "Check" means a Company Check, a Government Check or a Personal Check. "Check Cashing Consumer" means a person who authorizes a Check Cashing Verification services transaction for: (i) a Company Check or Government Check made payable to the Check Cashing Consumer; or (ii) a Personal Check made payable to Subscriber. "Company Check" means a company payroll, expense reimbursement or non-medical insurance refund check. "Convenience Check" means a check provided by a third party (i.e., credit card issuer) to a Check Cashing Consumer on behalf of such Check Cashing Consumer, for which such check does not debit against the Check Cashing

Consumer's own demand deposit account. "Government Check" means a U.S. federal, state, or local government payroll, expense reimbursement, tax refund or benefit/assistance (i.e., Social Security, disability, child support) check. "PayDay Loan" (also called a Deferred Deposit Loan, Deferred Presentment Loan, Small Loan or Short Term Loan) means a transaction for which a merchant makes a cash advance to a consumer and, for a fee, finance charge or other consideration: (i) accepts a check (sometimes post-dated) from the consumer; (ii) agrees to hold the check for a period of time prior to negotiation, deposit or presentment of the check for payment; and (iii) advances to the consumer, credits the consumer's account, or pays to another person or entity on the consumer's behalf, the amount of the check, less any fee, finance charge or other consideration. "Personal Check" means a personal check made payable to the Subscriber which debits against the Check Cashing Consumer's own demand deposit account.

**3.3. Eligible Checks.** The Check Cashing Verification service shall be limited to (a) Company Checks made payable to the Check Cashing Consumer, (b) Government Checks made payable to the Check Cashing Consumer, and (c) Personal Check made payable to Subscriber. In no event may the transaction involve (i) a Convenience Check, or (ii) a PayDay Loan.

**3.4. Eligible Subscribers.** TeleCheck shall process a Personal Check in a check cashing transaction only for subscribers using services in SICs 5541 (convenience stores), 5411 (grocery stores), 6012 (depository financial institutions), 5933 (pawn shops), 5921 (liquor stores) and 7011 (general lodging such as hotels/motels), and such subscribers must fully comply with TeleCheck's sales management qualifications.

**3.5. Termination.** This Addendum may be terminated by either party at any time by providing 30 days written notice to the other party and is not valid until accepted by TeleCheck's management.

Except as expressly modified by this Check Cashing Verification Service Addendum, all provisions contained in the Agreement shall remain in full force and effect. In the event of any conflict or any inconsistency between the Agreement and this Addendum, the provisions of this Addendum shall govern and control.

### 4.0. Mail Order Warranty Service Addendum

If you elect to subscribe to the Mail Order Warranty Service, the terms and conditions of this Section shall apply, and the TeleCheck/TRS Services Agreement (the "Agreement") is amended to include the Mail Order Warranty Service for the warranty of paper checks issued in mail order transactions. TeleCheck and Subscriber agree as follows:

**4.1. Warranty Requirements.** The warranty requirements for Paper Warranty Services as set forth in Section 1.4.2 of the Agreement are modified as follows:

- a. The date of the check and the date of the inquiry call to TeleCheck are no later than the date of the deposit of the check;
- b. The goods purchased through mail order are not mailed to a P.O. Box address unless the order is mailed to a post office box located in Alaska;
- c. The date of the inquiry is written on the check; and
- d. The check is received by TeleCheck for purchase within 45 days from the date of the inquiry call. A copy of the invoice must accompany each warranty request.

**4.2. Termination.** This Addendum may be terminated by either party at any time by providing 30 days written notice to the other party and is not valid until accepted by TeleCheck's management.

Except as expressly modified by this Mail Order Warranty Service Addendum, all provisions contained in the Agreement and applicable to the TeleCheck Paper Warranty Services shall remain in full force and effect. In the event of any conflict or any inconsistency between the Agreement and this Addendum, the provisions of this Addendum shall govern and control.

### 5.0. C.O.D. Warranty Service Addendum

If you elect to subscribe to the C.O.D. Warranty Service, the terms and conditions of this Section shall apply, and the TeleCheck/TRS Services Agreement (the "Agreement") is amended to include the C.O.D. Warranty Service for the warranty of paper checks issued in a C.O.D. transaction that meet the warranty requirements. TeleCheck and Subscriber agree as follows:

**5.1. Check Approval Amount.** To obtain an authorization, Subscriber may need to estimate the amount of the check to include freight and handling charges. TeleCheck will honor the warranty on the check in accordance with the warranty requirements up to the Warranty Maximum if the amount of the check differs from the check approval amount by no more than 10%.

**5.2. Warranty Requirements.** The warranty requirements for Paper Warranty Services as set forth in Section 1.4.2 of the Agreement are modified as follows:

- a. The date of the inquiry call to TeleCheck is no later than 10 days of the date of the check;
- b. The date of inquiry call and TeleCheck Approval Code are written on the check; and
- c. The check is received by TeleCheck for purchase within 45 days from the date of the inquiry call. A copy of the invoice must accompany each warranty request.

**5.3. Termination.** This Addendum may be terminated by either party at any time by providing 30 days written notice to the other party and is not valid until accepted by TeleCheck's management.

Except as expressly modified by this C.O.D. Warranty Service Addendum, all provisions contained in the Agreement and applicable to the TeleCheck Paper Warranty Services shall remain in full force and effect. In the event of any conflict or any inconsistency between the Agreement and this Addendum, the provisions of this Addendum shall govern and control.



**TERMS AND CONDITIONS FOR  
TRS COLLECTION SERVICES**  
Other than ECA Verification with TRS Collection Services)

**6.0. TRS Collection Services Agreement**

This TRS Collection Services Agreement (the "TRS Agreement") is entered by and between TRS Recovery Services, Inc. ("TRS") and Subscriber as indicated on the Merchant Processing Application ("Subscriber").

**6.1. Term, Termination and Amendment.** This TRS Agreement shall be effective for an initial period of 12 months from the Effective Date and thereafter unless or until terminated as provided for herein. Either party may terminate this TRS Agreement at any time upon 30 days' written notice to the other party. TRS reserves the right to amend at any time and from time to time any term or condition of this TRS Agreement including, without limitation, rates and fees initially set forth on the Merchant Processing Application by providing Subscriber written notice, and such amendments shall be effective 30 days following said notice. If TRS so amends this TRS Agreement, Subscriber shall have the right to terminate this TRS Agreement if it provides written notice to TRS within such 30 day period. Except as specifically provided herein, no modification, amendment, or waiver shall be binding upon the parties including, without limitation, course of dealings and communications, whether written, oral or in any other medium, unless made in writing and signed by both parties.

**6.2. Assignment of Collection Items.** Subscriber agrees to deliver to TRS certain of Subscriber's checks for collection ("Collection Items"). Collection Items shall not include any stop payments, unauthorized items, duplicate items, or any items which are the subject of disputes over goods or services. All Collection Items delivered to TRS are hereby assigned to TRS with the exclusive right and full power and authority to collect, sue for or in any lawful manner seek to enforce collection of Collection Items on behalf of the Subscriber in TRS' name or otherwise. Subscriber further agrees to execute all documents provided by TRS to evidence such assignment and rights. Subscriber may not recall any Collection Items assigned to TRS without TRS' prior written consent, unless this TRS Agreement is terminated as provided for herein. Once a Collection Item is assigned to TRS, Subscriber shall not enter into any payment arrangement or settlement regarding such Collection Item without the prior written consent of TRS. If Subscriber selects "Bank Authorization" on the Merchant Processing Application, Collection Items shall be automatically returned to TRS directly from the Subscriber's financial institution. Upon termination, TRS will return all Collection Items if requested by Subscriber.

**6.3. Collection Efforts.** TRS will use lawful means to attempt to contact the check writer and to collect the Collection Items. The level of collection effort will be in the sole discretion of TRS. Subscriber agrees to permit the electronic representation of Collection Items through the automated clearing house ("ACH") network. If TRS is unable to collect a Collection Item in any state due to such state's laws or regulations, TRS shall have the right to forward the Collection Item to an agency which has the right to collect in such state, or at TRS' election return the Collection Item to Subscriber. Subscriber shall, upon request, provide TRS with all reasonable assistance and all relevant documents within Subscriber's control regarding the Collection Item. If TRS at any time deems a Collection Item to be uncollectible in whole or in part, TRS may return the item to Subscriber without any further obligation except to account for any amount collected on such item. TRS reserves the right to destroy any physical Collection Item after 2 years from the date it is assigned to TRS.

**6.4. Recovery Fees and Costs.** Except as otherwise set forth herein, TRS agrees to pay Subscriber amounts collected by TRS on a Collection Item less all the fees and rates due to TRS under this TRS Agreement. TRS shall be entitled to retain fees and rates as provided for herein and as initially set forth on the Merchant Processing Application, any interest paid on the Collection Item, interest earned on funds collected for Subscriber except where prohibited by local law, and all statutory damages or other fees collected from the check writer incidental to the principal amount of the Collection Item. To the extent any payments on Collection Items are received by Subscriber or TRS after termination, TRS shall be entitled to receive its fees in accordance with this TRS Agreement.

**6.5. Return Check Fees/Notices.** Subscriber agrees to assess a fee or exemplary damages, as allowed by law, on each Collection Item ("Return Check Fee") and TRS shall be entitled to collect and retain the Return Check Fee from the check writer. Notwithstanding any language in this TRS Agreement to the contrary, TRS may change any fees or rates upon written notice to Subscriber if TRS ceases to collect the Return Check Fee in any state in which it collects such a fee on the Effective Date of this TRS Agreement. Subscriber agrees to post and provide any notices required by TRS to permit (a) the recovery of Return Check Fees and (b) the processing by draft and/or electronic presentment of Collection Items and Return Check Fees.

**6.6. Payment Remittance.** TRS agrees to remit payments received on Collection Items to Subscriber at least monthly, less any fees and charges to be paid hereunder. A written statement of account will accompany each such remittance setting forth all credits and debits. The statement need not account for any Return Check Fees, interest, or other charges and amounts which may be collected incidental to the principal amount of the Collection Item; except that the foregoing shall not be applicable to Wisconsin subscribers. Subscriber hereby authorizes TRS to endorse for deposit and collection any commercial paper TRS may receive made payable to Subscriber in payment of any Collection Item. TRS shall have the right at anytime and from time to time to offset any amounts owing by Subscriber under this or any other agreement between Subscriber and TRS or a TRS affiliate against any amounts owed to Subscriber from TRS under this TRS Agreement.

**6.7. Fees for Return of Merchandise or Direct Payments to Subscriber.** TRS shall be due its normal fees and rates in any instance where (a) the check writer satisfies all or part of the Collection Item by returning all or part of the underlying merchandise to Subscriber, or (b) Subscriber receives payment of any amount on a Collection Item or a Return Check Fee. TRS may at its election deduct its fees and rates from any current or future amount collected and due to Subscriber, or bill Subscriber for such amounts. Subscriber shall pay such amounts to TRS within 15 days of billing. Subscriber shall use its best efforts to obtain payment of the Return Check Fee in all instances where the check writer directly pays Subscriber any amount on a Collection Item.

**6.8. Use of Information.** Subscriber agrees that TRS, TeleCheck Services, Inc. ("TeleCheck"), and their affiliates shall have full right, as permitted by law, to use in its products or services, any data and other information relating to a Collection Item or a check writer obtained by TRS in connection with its services hereunder, including, without limitation, for use by TeleCheck in its check approval and account screening services.



**9. Accuracy and Change of Information.** Subscriber warrants that all Collection Items assigned to TRS are due and owing to Subscriber and that Subscriber is not aware of any dispute regarding the Collection Items delivered to TRS, except as expressly disclosed to TRS in writing. Subscriber also warrants that all Collection Items have been returned for non-payment only once (i.e., no representations, paper or electronic have occurred). Subscriber agrees to inform TRS promptly of any collection, compromise or dispute of any Collection Item, the return of all or part of the underlying merchandise, or of any notice of bankruptcy. Subscriber agrees to indemnify, defend and hold harmless TRS from any claims, liability and expenses arising from Subscriber's failure to so notify TRS promptly or from Subscriber's breach of any other obligation or warranty under this TRS Agreement.

**6.10. Indemnification.** TRS agrees that its collection efforts shall be conducted in conformity with the Fair Debt Collection Practices Act and shall be courteous and business-like. TRS shall indemnify Subscriber and hold Subscriber harmless from any out-of-pocket losses resulting from claims, damages or liabilities from check writer arising out of any unlawful practices or willful misconduct by TRS in its collection efforts. In the event that Subscriber receives any claim or demand or becomes subject to any suit or proceeding under which a claim may be made against TRS under this section, Subscriber shall give prompt written notice thereof to TRS which shall be entitled to participate in the settlement or defense thereof and, if TRS elects, to take over and control the settlement or defense thereof with counsel reasonably satisfactory to Subscriber. The required notice shall include a copy of any claim, all correspondence between Subscriber and the claimant and the name, addresses and telephone numbers of the claimant and the claimant's attorney, if any. In any case, Subscriber and TRS shall cooperate (at no cost to Subscriber) in the settlement or defense of any such claim, demand, suit or proceeding, including providing information and making available at least one employee or agent who can testify regarding any claims or defenses.

**6.11. Limitation of Liability.** In no event shall either party be liable to the other, or to any other person or entity, under this TRS Agreement, or otherwise, for any punitive, exemplary, special, incidental, indirect or consequential damages including, without limitation, loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY THIS TRS AGREEMENT, IN NO EVENT SHALL TRS' LIABILITY UNDER THIS TRS AGREEMENT FOR ALL CLAIMS ARISING UNDER, OR RELATED TO, THIS TRS AGREEMENT EXCEED, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY SUBSCRIBER AGAINST TRS, WHETHER RELATED OR UNRELATED), THE AMOUNT OF \$75,000.00.

**6.12. Assignment of Agreement.** Neither party shall assign any of its rights or obligations under this TRS Agreement without the prior written consent of the other party. Notwithstanding the foregoing, either party shall have the right to assign any of its rights or obligations under this TRS Agreement to any subsidiary or affiliate of such party or if such assignment is pursuant to a sale of substantially all of its business or in connection with a merger, consolidation or corporate reorganization. The terms of this TRS Agreement shall be binding upon and shall inure to the benefit of the parties and their successors or assigns.

**6.13. Force Majeure.** TRS shall not be held responsible for any delays in, or failure or suspension of service caused by mechanical or power failure, computer malfunction (whether hardware, firmware or software related), communications failures, inability to process through the ACH network strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delay in transportation, acts of God, or other causes reasonably beyond the control of TRS.

**6.14. Integration and Governing Law.** This TRS Agreement, plus any addenda attached hereto, is the entire agreement between the parties concerning its subject matter, and supersedes all previous understandings, representations and agreements in relation to its subject matter. THIS TRS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF), EXCEPT TO THE EXTENT SPECIFICALLY REQUIRED BY THE LAWS OF ANY OTHER STATE WHICH HAS JURISDICTION OVER THIS TRS AGREEMENT OR THE SERVICES PROVIDED HEREIN.

**6.15. Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by facsimile transmission, overnight courier, or certified or registered mail (postage prepaid return receipt requested) addressed or transmitted to the party to be notified at such party's address or number as shown on the Merchant Processing Application or at such party's last known address or number. Any notice delivered hereunder shall be deemed to have been properly given (a) upon receipt if by facsimile transmission, as evidenced by the date of transmission indicated on the transmitted material, (b) upon receipt if deposited on a prepaid basis with a nationally recognized overnight courier for next business day delivery, and (c) on the date of delivery indicated on the return receipt, if mailed by certified or registered mail. TRS shall also be permitted to provide notice by regular mail and such notice shall be deemed effective 10 days after mailing. The parties' addresses may be changed by written notice to the other party as provided herein.

**6.16. Severability and Interpretation.** If any provision, in whole or in part, of this TRS Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this TRS Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. This TRS Agreement and any addenda shall not be interpreted in favor or against any party because such party or its counsel drafted this TRS Agreement.

**6.17. Waiver.** No waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party. No waiver of any provision of this TRS Agreement shall be deemed a waiver of a subsequent breach or non-compliance with such provision or a waiver of breach or non-compliance with any other provision. The parties agree that no failure to exercise, and no delay in exercising, any right hereunder on the part of either party shall operate as a waiver of any such right. The parties agree that no single or partial exercise of any right hereunder shall preclude its further exercise.

**6.18. Survival.** All representations, warranties, limitations of liability, indemnities and covenants made herein shall survive the termination of this TRS Agreement and shall remain enforceable after such termination.

## PART IV: ADDITIONAL IMPORTANT INFORMATION FOR CARDS

### A.1. Electronic Funding Authorization

All payments to Client shall be through the Automated Clearing House ("ACH") and shall normally be electronically transmitted directly to the Settlement Account you have designated or any successor account designated to receive provisional funding of Client's Card sales pursuant to the Agreement. Client agrees that any Settlement Account designated pursuant to the preceding sentence will be an account primarily used for business purposes. Neither Citicorp Payment Services, Inc. nor First Data Merchant Services Corporation can guarantee the time frame in which payment may be credited by Client's financial institution where the Settlement Account is maintained.

Client hereby authorizes Citicorp Payment Services, Inc. and its authorized representative, including First Data Merchant Services Corporation, to access information from the Settlement Account and to initiate credit and/or debit entries by bankwire or ACH transfer and to authorize your financial institution to block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement Account and to authorize your financial institution to provide such access and to credit and/or debit or to block the same to such account. This authorization is without respect to the source of any funds in the Settlement Account, is irrevocable and coupled with an interest. This authority extends to any equipment rental or purchase agreements which may exist with Client as well as to any fees and assessments and Chargeback amounts of whatever kind or nature due to First Data Merchant Services Corporation or Citicorp Payment Services, Inc. under terms of this Agreement whether arising during or after termination of the Agreement. This authority is to remain in full force and effect at all times unless and until First Data Merchant Services Corporation and Citicorp Payment Services, Inc. have consented to its termination at such time and in such a manner as to afford them a reasonable opportunity to act on it. In addition, Client shall be charged twenty-five dollars (\$25.00) for each ACH which cannot be processed, and all subsequent funding may be suspended until Client either (i) notifies First Data Merchant Services Corporation that ACH's can be processed or (ii) a new electronic funding agreement is signed by Client. Client's Settlement Account must be able to process or accept electronic transfers via ACH.

### A.2. Funding Acknowledgement

**Automated Clearing House (ACH).** Your funds for MasterCard, Visa and Discover Network transactions will be processed and transferred to your financial institution within two (2) Business Days from the time a batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard, Visa and Discover Network transactions will be processed via the Federal Reserve within two (2) Business Days from the time a batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

### A.3. Additional Fees and Early Termination

The Discount Rates for MasterCard, Visa and Discover Network as shown on your fee schedule are based on the assumption that your Credit Card and Non-PIN Debit transactions will qualify at the Anticipated Interchange Levels associated with your account. If a transaction fails to qualify for your Anticipated Interchange Levels, you will be billed a Non-Qualified Interchange Fee, plus a Non-Qualified Surcharge for each such non-qualifying transaction (see Section 18.1 and Glossary). Your initial MasterCard, Visa and Discover Network rates are stated on your Application and may be adjusted from time to time including to reflect:

- Any increases or decreases in the interchange and/or assessment portion of the fees;
- The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Client;
- Increases in any applicable sales or telecommunications charges or taxes levied by any state, federal or local authority related to the delivery of the Services provided by First Data Merchant Services Corporation when such costs are included in the Service or other fixed fees.

The Minimum Processing Fee set forth on the Application is a per location fee. The "Discount Fees" and "Other Payment Fees" you pay to Servicers (as set forth on the Service Fee Schedule) count toward the Minimum Processing Fee. If these fees are equal to, or greater than the amount set forth on the Application for the Minimum Process Fee, then no fee is charged. This fee will be calculated beginning thirty (30) days after the date Client's Application is approved.

In addition to the debit card transaction fees set forth on the Application, Client shall be responsible for the amount of any fees imposed upon a transaction by the applicable debit network.

An equipment rental fee will be charged each month for each piece of equipment rented, plus tax as applicable. Client will be charged for cost of supplies and actual shipping fees for equipment and supplies. First Data Merchant Services Corporation will cover or replace all inoperable equipment during the rental term.

The parties further agree and acknowledge that, in addition to any remedies contained herein or otherwise available under applicable law and, if (a) Client breaches this Agreement by terminating it prior to the expiration of the applicable term of the Agreement, or (b) this Agreement is terminated prior to the expiration of the applicable term of the Agreement due to an Event of Default, then Servicer will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, in an effort to liquidate in advance the sum that should represent such damages, the parties have agreed that the amount calculated in the manner specified below is a reasonable pre-estimate of Servicer's probable loss. Such amount shall be paid to Servicer within 15 days after Client's receipt of Servicer's calculation of the amount due.

If Client's annualized transaction volume for the twelve months immediately prior to the date of termination is less than \$5,000,000, then the amount shall equal \$500 per Client location. If Client's annualized transaction volume for the twelve months immediately prior to the date of termination is equal to or exceeds \$5,000,000, then the per Client location amount shall be the greater of (a) \$500, or (b) \$100 per month for the number of months, including any pro rata portion of a month, then remaining prior to the date on which Client may terminate this Agreement in accordance with the terms hereof.

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CBV(TCK)1305(la)

For Clients in good standing, payment of the Compliance Fee will cover the costs of one PCI questionnaire per year, or if an Internet scan is required, four scans per year for one IP address from a data security vendor approved by Processor, while Client has an open account with Processor. If Client has more than one IP address that requires scanning, Client is responsible for any such scans. These benefits are subject to change without notice. The payment of the Compliance Fee does not affect your compliance responsibilities and obligations associated with your Merchant Account.

Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return for each calendar year beginning January 1, 2011 reporting all payment card transactions and third party network transactions with payees occurring in that calendar year. Accordingly, you will receive a Form 1099 reporting your gross transaction amounts for each calendar year beginning with transactions processed in calendar year 2011. In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. Payors are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.

### Purchased Equipment (One Year Warranty)

Purchased equipment is warranted against material defects for a one year period after the original date of purchase. This warranty does not include damage to the equipment resulting from accident or misuse or any other breach of Section 33. If the equipment should otherwise become defective within the warranty period, Processors will replace it free of charge (except that appropriate shipping charges may apply). This warranty does not apply to equipment that may become obsolete, notwithstanding this limited warranty, it may be necessary for you to upgrade your equipment or purchase new equipment from time to time, for which you will be charged.

### Lease Equipment (Life of the Lease)

Section 1.10 of the Lease Agreement is hereby revised as follows: Leased equipment is warranted against material defects for the life of the lease. This warranty does not include damage to the equipment resulting from accident or misuse or any other breach of the Lease Agreement. If the equipment should become defective within the warranty period, First Data Merchant Services Corporation will replace it free of charge (except that appropriate shipping charges may apply).

### Customer Owned Equipment

Customer-owned equipment is not covered under any warranty. If Customer Owned equipment needs to be replaced, you will be charged a replacement fee as well as the appropriate shipping fees.

If you have any additional equipment needs please contact the POS Help Desk number listed in Section A.4.

### Premium Equipment Service Program

If you purchase equipment from Processor or if you own your own equipment, you may be eligible to participate in Processor's Premium Equipment Service Program. The Premium Equipment Service Program provides a lifetime replacement of your point-of-sale terminal for as long as you participate in the program. The Premium Equipment Service Program includes (i) free comparable replacement terminal (new or refurbished) in the event of a defect or malfunction (terminal defects or malfunctions caused by acts of God are not covered by this program), (ii) free shipping & handling on both the replacement terminal and return of defective terminal, (iii) free overnight shipping & handling on replacement terminal if requested by 3:00 pm ET (Monday-Thursday), (iv) free terminal supplies (roll paper, sales slips and print ribbons) - you will be charged for shipping & handling on terminal supply orders, and (v) periodic discount offers on certain equipment purchases and product entitlements. If you don't return your damaged equipment, you will be charged the full purchase price of the replacement equipment sent to you.

The monthly fee set forth on the Application for the optional Premium Equipment Service Program is a per location fee and covers all eligible terminals at your participating location(s). Only certain types of equipment are eligible to participate in this program. A list of eligible terminals is available from our Customer Service department. You may terminate your participation in the program at any time by calling our Customer Service department.

### A.4. Addresses For Notices

#### PROCESSOR:

##### First Data Merchant Services:

1307 Walt Whitman Road  
Melville, NY 11747  
Attn: Merchant Services

##### Citicorp Payment Services, Inc.

(an operating subsidiary of  
Citibank, South Dakota, N.A.):  
50 Northwest Point Blvd  
Elk Grove Village, IL 60007  
Attn: Office of the President 224-222-2000

#### Important Phone Numbers: (see also Sections 3.3 and 5.4)

**Customer Service RM**  
1-800-430-0263

**MasterCard/Visa/Discover  
Authorization Center**  
1-800-611-0455

**Technical Help Desk**  
1-800-430-0263

If this application for business credit is denied you may obtain a written statement of the specific reasons for denial. To obtain the statement, please contact Credit Initiation, 1307 Walt Whitman Road, Melville, NY 11747, 1-800-767-2484 ext. 32900, within sixty (60) days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within thirty (30) days of receiving your request.



CBV(TCK)1305(ia)

**PART V: DUPLICATE CONFIRMATION PAGE**

Please read the Program Guide in its entirety. It describes the terms under which we will provide merchant processing Services to you. From time to time you may have questions regarding the contents of your Agreement with Bank and/or Processor or the contents of your Agreement with TeleCheck and/or its affiliate, TRS. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. **Your Discount Rates are assessed** on transactions that qualify for certain reduced interchange rates imposed by MasterCard and Visa. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 18 of the Program Guide).
2. **We may debit your bank account** from time to time for amounts owed to us under the Agreement.
3. **There are many reasons why a Chargeback may occur.** When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks see Section 10 of Card Processing Operating Guide or see the applicable provisions of the TeleCheck Services Agreement.
4. **If you dispute any charge or funding,** you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing or within 30 days of the date of a TeleCheck transaction.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 20 of the Card Processing General Terms; or Sections 1.17 and 1.28 of the TeleCheck/TRS Services Agreement; or Section 6.11 of the TRS Services Agreement.
6. **We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card Processing General Terms in Section 23, Term; Events of Default and Section 24, Reserve Account; Security Interest), (see TeleCheck/TRS Services Agreement in Sections 1.1, 1.3.2, 1.3.9, 1.5.2, 1.5.7, 1.7.2, 1.7.10, 1.8.2, 1.8.8, 1.9, and 1.10) (see Section 6.4 of the TRS Services Agreement), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us and our Affiliates to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us and our Affiliates are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement early, you will be responsible for the payment of an early termination fee as set forth in Part IV, A.3 under "Additional Fee Information" and Section 1.38 of the TeleCheck/TRS Services Agreement.
9. **If you lease equipment from Processor,** it is important that you review Section 1 in Third Party Agreements. **THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.**

**10. Association Disclosure**

**Visa and MasterCard Member Bank Information: Citicorp Payment Services, Inc.**

The Bank's mailing address is 50 Northwest Point Blvd., Elk Grove Village, IL 60007, and its phone number is 224-222-2000.

**Important Member Bank Responsibilities:**

- a) The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a Merchant.
- b) The Bank must be a principal (signer) to the Merchant Agreement.
- c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard rules with which Merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the Merchant.
- e) The Bank is responsible for all funds held in reserve that are derived from settlement.

**Important Merchant Responsibilities:**

- a) Ensure compliance with Cardholder data security and storage requirements.
- b) Maintain fraud and Chargebacks below Association thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Association rules.

**Print Client's Business Legal Name:** \_\_\_\_\_

By its signature below, Client acknowledges that it has received the Interchange Qualification Matrix (version IQM.MVD.S10.1 or \_\_\_\_\_) and complete Program Guide [version CBV(TCK)1305(ia)] consisting of 46 pages (including this confirmation).

Client further acknowledges reading and agreeing to all terms in the Program Guide, which shall be incorporated into Client's Agreement. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

**NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM GUIDE WILL BE ACCEPTED.**

**Client's Business Principal:**

**Signature (Please sign below):**

**X** \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Please Print Name of Signer

CBV(TCK)1305(la)

**PART V: CONFIRMATION PAGE**

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- 2. We may debit your bank account** from time to time for amounts owed to us under the Agreement.
- 3. There are many reasons why a Chargeback may occur.** When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks see Section 10 of Card Processing Operating Guide or see the applicable provisions of the TeleCheck Services Agreement.
- 4. If you dispute any charge or funding,** you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing or within 30 days of the date of a TeleCheck transaction.
- 5. The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 20 of the Card Processing General Terms; or Sections 1.17 and 1.28 of the TeleCheck/TRS Services Agreement; or Section 6.11 of the TRS Services Agreement.
- 6. We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card Processing General Terms in Section 23, Term; Events of Default and Section 24, Reserve Account; Security Interest), (see TeleCheck/TRS Services Agreement in Sections 1.1, 1.3.2, 1.3.9, 1.5.2, 1.5.7, 1.7.2, 1.7.10, 1.8.2, 1.8.8, 1.9, and 1.10) (see Section 6.4 of the TRS Services Agreement), under certain circumstances.
- 7. By executing this Agreement with us** you are authorizing us and our Affiliates to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us and our Affiliates are satisfied.
- 8. The Agreement contains a provision** that in the event you terminate the Agreement early, you will be responsible for the payment of an early termination fee as set forth in Part IV, A.3 under "Additional Fee Information" and Section 1.38 of the TeleCheck/TRS Services Agreement.
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**Important Member Bank Responsibilities:**

- The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a Merchant.
- The Bank must be a principal (signer) to the Merchant Agreement.
- The Bank is responsible for educating Merchants on pertinent Visa and MasterCard rules with which Merchants must comply; but this information may be provided to you by Processor.
- The Bank is responsible for and must provide settlement funds to the Merchant.
- The Bank is responsible for all funds held in reserve that are derived from settlement.

**Important Merchant Responsibilities:**

- Ensure compliance with Cardholder data security and storage requirements.
- Maintain fraud and Chargebacks below Association thresholds.
- Review and understand the terms of the Merchant Agreement.
- Comply with Association rules.

**Print Client's Business Legal Name:** \_\_\_\_\_

By its signature below, Client acknowledges that it has received the Interchange Qualification Matrix (version IQM.MVD.S10.1 or \_\_\_\_\_) and complete Program Guide [version CBV(TCK)1305(la)] consisting of 46 pages (including this confirmation).

Client further acknowledges reading and agreeing to all terms in the Program Guide, which shall be incorporated into Client's Agreement. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

**NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM GUIDE WILL BE ACCEPTED.**

**Client's Business Principal:**

**Signature (Please sign below):**

**X** \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Please Print Name of Signer

## RESOLUTION NO. (ID # 1091)

Accepting Proposal With Eministration, LLC for Fiber Sales Services**RESOLUTION ACCEPTING PROPOSAL WITH  
EMINISTRATION, LLC FOR FIBER SALES SERVICES**

**WHEREAS**, Eministration, LLC (“Eministration”), is a locally owned and operated IT company; and

**WHEREAS**, the City of Opelika, Alabama (the “City”) is desirous of entering into an agreement with Eministration for fiber sales services on a basis of a one-time fee for each account sold, assisted or referred to Opelika Power Services (“OPS”);

**WHEREAS**, a Proposal has been received by OPS from Eministration for fiber sales services; and

**WHEREAS**, City staff is recommending the acceptance of the Proposal from Eministration.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama (the “City”), as follows:

1. That the Proposal from Eministration for fiber sales services, a copy which is attached hereto and marked as Exhibit “A”, be and the same is hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve which approval shall be conclusively evidenced by execution and delivery of the Proposal Acceptance Form.

2. That the Mayor is hereby authorized and directed to execute and deliver the Proposal Acceptance form in the name of the City.



3. That the officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal of the City or otherwise, as they, or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Proposal Acceptance Form.

4. That this Resolution shall take effect upon its passage and adoption by the City Council.

**ADOPTED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
 PRESIDENT OF THE CITY COUNCIL OF THE  
 CITY OF OPELIKA, ALABAMA

ATTEST:

\_\_\_\_\_  
 CITY CLERK



HIPAA Compliance  
Server and Desktop repair  
Disaster Recovery Planning  
Microsoft Enterprise Solutions  
Networking and Security

# Proposal Opelika Power Services Fiber Sales

**Opelika Power Services**  
Attn: June Owens  
OPS Manager of Marketing and Comm.  
600 Fox Run Parkway  
Opelika, AL 36801

Attachment: Eminent Administration Proposal for OPSa (1091 : Resolution for Accepting Eminent Administration)





**HIPAA Compliance  
Server and Desktop repair  
Disaster Recovery Planning  
Microsoft Enterprise Solutions  
Networking and Security**

### **Opelika Power Services**

April 30, 2015

Attn: June Owens  
OPS Manager of Marketing and Comm.  
600 Fox Run Parkway  
Opelika, AL 36801

### **Profile**

Eministration, LLC, a locally owned and operated IT company founded by Scott Lowery, has been in business in Opelika, Alabama, since 1996. During that time, we have been providing Managed IT Services and IT Solutions for business in and around East Alabama. We are DELL, HP, Cisco and Microsoft partners and service providers. We maintain a customer base of well over 100 clients with locations in Israel, Washington, Virginia, South Carolina, Georgia and Alabama.

Our office is headquartered in Opelika, Alabama, along 410 Second Ave. Our staff is available from 8 AM until 5 PM Monday through Friday, and our engineers are on-call 24 hours. We currently do not maintain a toll free number.

### **Fiber Sales Proposal**

We are proposing to provide **Opelika Power Services (OPS)** with Fiber Sales based on the following payment schedule:

For sales of or assistance with the sales of OPS fiber services, OPS would pay Eministration, LLC, a one-time fee for each account sold, assisted or referred to OPS. The fee would be equal to the monthly value of services (excluding taxes and fees) and would have no maximums or minimums in value.

*For example:*

**Example 1:** The first month's bill for OPS services (excluding taxes and fees) is \$100 MRC, Eministration, LLC, would receive a one-time payment of \$100.

**Example 2:** The first month's bill for OPS services (excluding taxes and fees) is \$1,000 MRC, Eministration, LLC, would receive a one-time payment of \$1,000.

**Example 3:** The first month's bill for OPS services (excluding taxes and fees) is \$10,000 MRC, Eministration, LLC, would receive a one-time payment of \$10,000.

Payments are subsequently paid 91 days after the installation of services rendered.





HIPAA Compliance  
Server and Desktop repair  
Disaster Recovery Planning  
Microsoft Enterprise Solutions  
Networking and Security

### Proposal Acceptance

Date of Proposal: 4/30/15

RE: OPS Fiber Sales

Opelika Power Services is pleased to confirm our acceptance of the proposal referred to above upon the terms stated or referred to therein.

Signed on behalf of  
Opelika Power Services \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

Attachment: Eministration Proposal for OPSa (1091 : Resolution for Accepting Eministration)





## RESOLUTION NO. (ID # 1090)

Approving Employment Contract with Derek S. Lee**RESOLUTION APPROVING EMPLOYMENT CONTRACT  
WITH DEREK S. LEE**

**WHEREAS**, the City of Opelika, Alabama, (the “City”) requires the services of a Manager of Distribution Services / Assistant Director of Opelika Power Services; and

**WHEREAS**, Derek S. Lee has the necessary education, experience, skills and expertise to serve as Manager of Distribution Serves / Assistant Director of Opelika Power Services; and

**WHEREAS**, the City Council of the City of Opelika desires to employ Derek S. Lee to serve as Manager of Distribution Services / Assistant Director of Opelika Power Services; and

**WHEREAS**, the City Council has been furnished an Employment Contract between the City and Derek S. Lee, and the City Council has determined that the terms of said Contract are acceptable to the City.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council (the “Council”) of the City of Opelika as follows:

1. That the Employment Contract (the “Contract”) to be entered into between the City and Derek S. Lee, a copy of which is attached hereto and marked as Exhibit “A”, be and the same is hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution), as the Mayor shall approve, which approval shall be conclusively evidenced by the execution and delivery of said Contract.

2. That the Mayor is hereby authorized and directed to execute and deliver said Contract in the name of and on behalf of the City of Opelika and the City Clerk is hereby authorized and directed to attest the same.

3. That this Resolution shall take effect upon its passage and adoption by the City Council.

ADOPTED AND APPROVED this the \_\_\_\_\_ day of May, 2015.

---

PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

---

CITY CLERK

STATE OF ALABAMA     )  
                                      :  
 COUNTY OF LEE         )

## EMPLOYMENT CONTRACT

**THIS AGREEMENT** made and entered into this the \_\_\_\_ day of May, 2015, by and between the **CITY OF OPELIKA, ALABAMA**, a municipal corporation (hereinafter called the “Employer”), and **DEREK S. LEE** (hereinafter called “Employee”), as party of the second part,

### RECITALS

**WHEREAS**, Employer desires to employ the services of Derek S. Lee as Manager of Distribution Services / Assistant Director for Opelika Power Services (“OPS”); and

**WHEREAS**, it is the desire of the City Council of the City of Opelika (hereinafter called “Council”), to provide certain benefits, establish certain conditions of employment and to set working conditions of said Employee; and

**WHEREAS**, it is the desire of the Council to (1) secure and retain the services of Employee and to provide inducement for his to remain in such employment, (2) make possible full work productivity by assuring Employee’s morale and peace of mind with respect to future security, (3) act as a deterrent against misconduct or dishonesty on the part of Employee, and (4) provide a just means for terminating Employee’s services at such time as he may be unable to fully discharge his duties due to disability or when Employer may otherwise desire to terminate his employ.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Attachment: Employment Contract Derek Lee 050515 (1090 : Resolution for Derek S. Lee Contract)

## SECTION I. DUTIES.

Employer has agreed to employ said Derek S. Lee as Manager of Distribution Services / Assistant Director of Opelika Power Services public utility. The essential duties of the position are set out in the job description for such position, a copy of which is attached hereto as Exhibit "A". Employee hereby accepts and agrees to such employment, subject to the general supervision and pursuant to the orders, advice and direction of the Director of OPS. Employee shall perform such duties as are customarily performed by one holding such a position in other, same or similar positions as that engaged in by the Employer, and shall also additionally render such other and related services and duties as may be assigned to him from time to time by the Director of OPS.

## SECTION II. TERM.

The term of this Agreement shall begin on the 1<sup>st</sup> day of June, 2015, and shall terminate on the 31<sup>st</sup> day of May, 2018; subject, however, to Sections III and IV hereof. Neither party shall have any further obligation to the other.

## SECTION III. TERMINATION BY EMPLOYER

- (A) DEATH OF EMPLOYEE. If Employee dies before his employment is otherwise terminated, this Contract shall terminate on the date of the Employee's death and all payments of compensation to which the Employee would have been entitled shall cease as of the date of the Employee's death.
- (B) ILLNESS OR INCAPACITY. If the Employee is prevented from performing his duties due to illness or incapacity for an aggregate of sixty (60) days in any one year during the term of this Contract, the Employer is hereby given the option to terminate this Contract. Such option shall be exercised by the Employer giving

written notice to the Employee of the Employer's intention to terminate said Contract. On the giving of such notice, this Contract shall terminate 30 days after the date of said notice of termination. Upon the effective date of termination, neither party shall have any further obligation to the other. Notwithstanding the provisions of this paragraph, the Employee shall be afforded the same rights and privileges, as any other employee of the City to participate in any group disability insurance policy or other disability plan of the City which may be now in effect or may be hereinafter adopted.

(C) MISCONDUCT. This Contract may, at the option of Employer, be terminated immediately by Employer upon the occurrence of any of the following acts:

- (1) The Employee being indicted or convicted for any misdemeanor involving moral turpitude, or a felony.
  - (2) The Employee conducting himself in a fraudulent or dishonest manner with respect to his duties of employment if, in the opinion of the Director of Opelika Power Services that such conduct discredits Employer or is detrimental to the reputation and standing of Employer. Such option shall be exercised by the Employer giving written notice to Employee of the Employer's intent to terminate and the grounds for such termination.
  - (3) Employee having been disciplined by the Employer repeatedly and/or having serious unacceptable conduct in accordance with the provisions of Section 8 of the Personnel Policies and Procedures Manual of the City of Opelika.
- Employee shall comply with all policies and procedures of Employer which shall, from time to time, be reasonably promulgated.



#### SECTION IV. TERMINATION BY EMPLOYEE

Employee may voluntarily resign his position with Employer before the expiration of the term of his employment, by giving sixty (60) days advance notice of his intent to terminate. Upon termination by voluntary resignation, neither party shall have any further obligation to the other beyond the effective date of termination.

#### SECTION V. COMPENSATION

The Employer shall pay the Employee, as compensation for his services, an annual salary of \$120,000.00 payable in installments at the same time as classified employees of the City are paid. All compensation paid to Employee by Employer shall be subject to customary withholding and employment taxes as required by law. Beginning fiscal year 2015-2016, the Employee shall be eligible for merit increases on an annual basis from 0% to 10% per year based on his job performance. All merit increases shall be awarded at the discretion of the Director of Opelika Power Services and will become effective on or about the anniversary date of his contract.

In addition to the base salary noted above, Employer will provide an annual automobile allowance in the amount of \$5,400.00 from which Employee will be responsible for gasoline, car maintenance, and other expenses. This allowance will be paid along with the Employee's salary and is a taxable benefit under IRS guidelines. This allowance is paid to Employee in lieu of the provision of a City vehicle and is intended to compensate Employee for routine business travel within Lee County. The Employee shall be responsible for maintaining liability and comprehensive insurance on the vehicle with limits approved by the Director of Opelika Power Services.

If at any time during the term of this Contract, the annual automobile allowance paid to other employees of the Employer shall be adjusted upward, the automobile allowance provided to the Employee shall be increased in the same proportion as the allowance paid to the other employees.

#### SECTION VI. EMPLOYEE BENEFITS

During each twelve (12) month period of the term of this Contract, Employee shall be entitled to fifteen (15) paid days of vacation. Except for vacation leave, this Contract shall not be in lieu of all employee benefits to which Employee may be entitled as an employee of the City relating to holidays, sick leave, retirement, insurance, medical and life, or other plans which may now be in effect or which may hereafter be adopted. Employee shall have the same rights and privileges to participate in such plans and benefits as any other employee during his period of employment. The Employer's rights with respect to such benefits shall be subject to (i) the provisions of the relevant contracts, policies or plans providing such benefits, and (ii) the right of the Employer to amend, modify, or terminate any of such benefits if that occurs with respect to all classes of employees covered by a given benefit.

#### SECTION VII. WORKING FACILITIES.

The Employee shall have a private office and other facilities, equipment, and services that are suitable to his position and appropriate for the performance of his duties.

#### SECTION VIII. EXTENT OF SERVICES.

The Employee agrees that he will at all times faithfully, industriously and to the best of his ability, experience, and talents, perform all of the duties that may be required of and from his pursuant to the express and implicit terms of this Contract and shall assume and perform all additional responsibilities and duties related to his job description that the Director of Opelika

Power Services from time to time may assign him. With approval of the Director of Opelika Power Services, the Employee shall be permitted to enroll in professional development courses to enhance the performance of his job during normal business hours.

#### SECTION IX. ANNUAL EVALUATION.

Annually, the Director of Opelika Power Services, in consultation with the Employee, shall define such goals and performance objectives as he determines necessary for the proper operation of Opelika Power Services. The Director of Opelika Power Services shall identify obtainable goals within the time limitations as specified in the annual operating and capital budgets and appropriations provided. Moreover, the Director of Opelika Power Services shall review and evaluate the performance of the Employee at least once annually. Said evaluation and review shall be in accordance with the established rules and regulations of the Personnel Policies and Procedures Manual. Further, the Director of Opelika Power Services shall provide the Employee with an adequate opportunity for the Employee to discuss his evaluation with the Director of Opelika Power Services.

#### SECTION X. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The Director of Opelika Power Services, in consultation with Employee, shall fix any other terms and conditions of employment as he may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with the provisions of this Contract, the Employee's job description or any other law.

#### SECTION XI. NO REDUCTION OF BENEFITS.

The Employer shall not at any time during the term of this Contract reduce the salary, compensation, or other financial benefits of Employee, except to the degree as such a reduction across-the-board for all employees of the Employer. Notwithstanding anything to the contrary

the Employee's rights with respect to compensation and benefits shall be subject to the provisions of Sections V and VI herein, and his rights to salary compensation and other financial benefits may be terminated in accordance with said provisions of this Contract.

#### SECTION XII. SEVERABILITY.

If any term, covenant, or condition of this Contract or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Contract and all other terms shall be valid and enforceable to the fullest extent permitted by law.

#### SECTION XIII. NO ASSIGNMENT.

No assignment of this Contract or the rights and obligations hereunder shall be valid without the specific written consent of both parties hereto.

#### SECTION XIV. GOVERNING LAW.

This Contract has been executed and delivered in, and shall be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of Alabama.

#### SECTION XV. GENDER AND NUMBER.

Whenever the context is hereof required, the gender of all words shall include the masculine, feminine and neuter, and the number of all words shall include singular and plural.

#### SECTION XVI. AMENDMENTS AND CONTRACT EXECUTION

This Contract and amendments thereto shall be in writing and executed in multiple copies. Each multiple copy shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

## SECTION XVII. NOTICES.

Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered or mailed by prepaid, certified mail, return receipt requested, addressed as follows:

Employee:     Derek S. Lee  
                   1109 Mockingbird Lane  
                   Opelika, AL 36801

Employer:     City of Opelika  
                   P.O. Box 390  
                   Opelika, AL 36803-0390  
                   ATTN: Director of Opelika Power Services

## SECTION XVIII. WAIVER OF BREACH.

The waiver of either party of a breach or violation of any provision of this Contract shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

## SECTION XIX. TIME OF ESSENCE.

Time shall be of the essence with respect to this Contract.

## SECTION XX. ENTIRE CONTRACT.

This Contract (including attachments) supersedes all previous contracts and constitutes the entire Contract between the parties hereto.

## SECTION XXI. HEADINGS.

Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.

IN WITNESS WHEREOF, the City of Opelika has caused this Contract to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Contract the day and year first above written.



**THE CITY OF OPELIKA, ALABAMA**

By: \_\_\_\_\_  
**GARY FULLER, ITS MAYOR**

ATTEST:

\_\_\_\_\_  
**ROBERT G. SHUMAN, CITY CLERK**

\_\_\_\_\_  
**DEREK S. LEE**

STATE OF ALABAMA  
COUNTY OF LEE

I, the undersigned authority, a Notary Public in and for said county and state, hereby certify that GARY FULLER and ROBERT G. SHUMAN, whose names as Mayor and City Clerk, respectively, of the City of Opelika, Alabama, a municipal corporation, are signed to the foregoing instrument who are known to me, acknowledged before me on this day, that, being informed of the contents of said instrument they, in their capacity as Mayor and City Clerk for the City of Opelika, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_

STATE OF ALABAMA  
COUNTY OF LEE

Before me, the undersigned authority, a Notary Public in and for said county and state, hereby certify that DEREK S. LEE, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said conveyance, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_

Attachment: Employment Contract Derek Lee 050515 (1090 : Resolution for Derek S. Lee Contract)

## RESOLUTION NO. (ID # 1070)

Authorizing Agreement for Installation And/Or Maintenance of Traffic Control Signal With the Alabama Department of Transportation

**WHEREAS**, current traffic counts at the intersection of Fox Run Parkway (US Highway 431) and Jeter Street are sufficient to warrant the installation of a traffic control signal at said intersection; and

**WHEREAS**, the US Highway 431 right-of-way is maintained by the Alabama Department of Transportation (“ALDOT”) and all traffic signal installations within said right-of-way must be approved by ALDOT; and

**WHEREAS**, a proposed Agreement (the “Agreement”) for installation and maintenance for traffic control signals between the City of Opelika, Alabama (the “City”) and the State of Alabama, acting by and through ALDOT, has been prepared and submitted to the City Council for approval and the City Council has determined that it is now in the best interest of the City and its citizens to approve said Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. That the proposed Agreement to be entered into between the City and ALDOT, a copy of which is attached hereto and marked as Exhibit “A”, be and the same is hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve which approval shall be conclusively evidenced by execution and delivery of said Agreement.

2. That the Mayor is hereby authorized and directed to execute and deliver the

Agreement in the name and on behalf of the City and to execute and deliver or cause to be executed or delivered in the name and on behalf of the City such other agreements, contracts, change orders, notices, certificates, assurances or other instruments or other communications as he deems necessary or appropriate in order to carry into effect the intent of the provisions of this Resolution.

3. That the City Clerk is hereby authorized and directed to attest said Agreement and to fix the seal of the City thereto.

4. That the officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal of the City or otherwise, as they or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Agreement.

5. That this Resolution shall take effect upon its passage and adoption by the City Council.

**ADOPTED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
 PRESIDENT OF THE CITY COUNCIL OF THE  
 CITY OF OPELIKA, ALABAMA

ATTEST:

---

CITY CLERK

## RESOLUTION NO. (ID # 1102)

Approving the Installation of Traffic Control Signal at the Intersection of Fox Run Parkway and Jeter Street

**WHEREAS**, current traffic counts at the intersection of Fox Run Parkway (US Highway 431) and Jeter Street are sufficient to warrant the installation of a traffic control signal (the “traffic control signal”) at said intersection; and

**WHEREAS**, the City of Opelika, Alabama, (the “City”) desires to obtain reimbursement for the cost of the installation of the traffic control signal through an industrial access grant; and

**WHEREAS**, the estimated project cost is approximately \$110,000.00; and

**WHEREAS**, the City desires to solicit bids for the construction and installation of the traffic control signal at the earliest practical time; and

**WHEREAS**, the City desires to furnish to the successful bidder the poles, equipment and/or the associated hardware to be utilized in the project in order to expedite the completion of the project; and

**WHEREAS**, the controller cabinet and associated hardware can be purchased without competitive bidding by the City under State contracts made for the benefit of counties and municipalities; and

**WHEREAS**, the poles can be purchased without competitive bidding because the cost will be less than \$15,000.00.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase



order under the State contract for the purchase of the controller cabinet and associated hardware.

2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order for the poles pursuant to the relevant provisions of the City's Purchasing Policy.

3. That the City Engineer and Purchasing-Revenue Manager are hereby authorized to prepare bid documents and solicit competitive bids for the installation of the traffic control signal utilizing the equipment and poles to be furnished by the City.

4. That the Mayor and the Controller are hereby authorized and directed to transfer sufficient funds from the unassigned fund balance account to cover all costs associated with the installation of said traffic control signal and equipment, including the purchase of the poles, equipment and associated hardware and to make the appropriate budgeting and accounting entries. All reimbursements received from the State shall be applied to the unassigned fund balance.

5. That the officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal of the City or otherwise, as they or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution.

6. That this Resolution shall take effect upon its passage and adoption by the City Council.

**ADOPTED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
PRESIDENT OF THE CITY COUNCIL  
OF THE CITY OF OPELIKA

ATTEST:

\_\_\_\_\_  
CITY CLERK

## RESOLUTION NO. (ID # 1073)

Amending Resolution No. 035-15, Adopted on February 3, 2015, Allocating Additional Funds to Reimburse Aldot For the Installation of Traffic Control Signal

**WHEREAS**, on October 24, 2014, the City Council (the “City Council”) of the City of Opelika, Alabama, (the “City”) authorized and approved an Agreement with the Alabama Department of Transportation (“ALDOT”) for the installation and maintenance of a traffic control signal at the intersection of US Highway 280/431 and South Uniroyal Road; and

**WHEREAS**, pursuant to said agreement ALDOT agreed to install the traffic control signal, and the City agreed to reimburse ALDOT for all labor and materials associated with the installation of the traffic control signal; and

**WHEREAS**, the City Engineering Department estimated that the total invoice from ALDOT for the installation of the traffic signal would not exceed \$25,000; and

**WHEREAS**, pursuant to Resolution No. 035-15, the City Council authorized the Purchasing-Revenue Manager to issue a purchase order in the amount of \$25,000 to ALDOT for the installation of the traffic control signal with funds taken from the 2011 Road Construction Fund; and

**WHEREAS**, the Engineering Department is in receipt of two invoices from ALDOT totaling the sum of \$30,790.40 for the installation of said traffic control signal; and

**WHEREAS**, the City Council desires to amend Resolution No. 035-15 to allocate additional funds for the installation of said traffic control signal.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. That paragraph 3 of Resolution 035-15 is hereby amended to read as follows:

“That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order in an amount of up to \$30,800.00 for the installation of the traffic control signal with funds taken from the 2011 Road Construction Fund.”

2. That paragraph 4 of Resolution 035-15 is hereby amended to read as follows:

“That the Mayor and the Controller are hereby authorized and directed to transfer the sum of \$70,800.00 from the 2011 Road Construction Fund to the appropriate accounts to cover the cost overruns and to make the necessary accounting and budgetary entries to carry into effect the intent of this Resolution.”

3. That the provisions of this Resolution shall amend and supplement Resolution No. 035-15.

4. That this Resolution shall take effect upon its passage and adoption by the City Council.

**ADOPTED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
 PRESIDENT OF THE CITY COUNCIL OF THE  
 CITY OF OPELIKA, ALABAMA

ATTEST:

\_\_\_\_\_

CITY CLERK



W. HARRIS 1/12

13.17.a

DATE: 12/31/2014

ALABAMA DEPARTMENT OF TRANSPORTATION  
SPECIAL WORK AUTHORIZATION PROJECT BILLING  
INVOICE # SWA006023

**BILLED TO:**

CITY OF OPELIKA  
P O BOX 390  
OPELIKA, AL 36803-0390

**VENDOR:** 636001334 01

**PROGRAM/PROJECT:** CSWA1/100020011

---

DESCRIPTION OF PROJECT: CITY OF OPELIKA STANDING PROJECT FOR REPAIR OF TRAFFIC SIG

|                                           |                    |
|-------------------------------------------|--------------------|
| TOTAL CHARGED TO PROJECT AS OF 12/31/2014 | \$111,921.80       |
| TOTAL CASH RECEIVED AS OF 12/31/2014      | \$89,002.22        |
| TOTAL PROJECT OVERRUN AS OF 12/31/2014    | \$22,919.58        |
| UNPAID BALANCE FORWARD                    | \$0.00             |
| <b><u>TOTAL DUE THIS INVOICE</u></b>      | <b>\$22,919.58</b> |

PLEASE REMIT **\$22,919.58** TO:  
ALABAMA DEPARTMENT OF TRANSPORTATION  
1409 COLISEUM BOULEVARD  
ROOM P101 ATTN: BILL A. FLOWERS  
MONTGOMERY, AL 36130-3050

PLEASE DIRECT FINANCIAL QUESTIONS TO:  
TAMIKO JORDAN AT (334) 242-6364

PLEASE DIRECT QUESTIONS PERTAINING TO WORK PERFORMED TO:  
THE RESPONSIBLE DIVISION OFFICE

Attachment: ALDOT Signal Invoice 1 (1073 : Amending Resolution No. 035-15, Traffic Signal 280/S Uniroyal Rd)

S. PARKER 2/9/15

13.17.b

DATE: 1/31/2015

ALABAMA DEPARTMENT OF TRANSPORTATION  
SPECIAL WORK AUTHORIZATION PROJECT BILLING  
INVOICE # SWA006071

**BILLED TO:**

CITY OF OPELIKA  
P O BOX 390  
OPELIKA, AL 36803-0390

**VENDOR:** 636001334 01

**PROGRAM/PROJECT:** CSPA1/100020011

DESCRIPTION OF PROJECT: CITY OF OPELIKA STANDING PROJECT FOR REPAIR OF TRAFFIC SIG

|                                          |              |
|------------------------------------------|--------------|
| TOTAL CHARGED TO PROJECT AS OF 1/31/2015 | \$119,792.62 |
| TOTAL CASH RECEIVED AS OF 1/31/2015      | \$89,002.22  |
| TOTAL PROJECT OVERRUN AS OF 1/31/2015    | \$30,790.40  |
| UNPAID BALANCE FORWARD                   | \$22,919.58  |

|                                      |                   |
|--------------------------------------|-------------------|
| <b><u>TOTAL DUE THIS INVOICE</u></b> | <b>\$7,870.82</b> |
|--------------------------------------|-------------------|

PLEASE REMIT **\$7,870.82** TO:  
ALABAMA DEPARTMENT OF TRANSPORTATION  
1409 COLISEUM BOULEVARD  
ROOM P101 ATTN: BILL A. FLOWERS  
MONTGOMERY, AL 36130-3050

PLEASE DIRECT FINANCIAL QUESTIONS TO:  
TAMIKO JORDAN AT (334) 242-6364

PLEASE DIRECT QUESTIONS PERTAINING TO WORK PERFORMED TO:  
THE RESPONSIBLE DIVISION OFFICE

Attachment: ALDOT Signal Invoice 2 (1073 : Amending Resolution No. 035-15, Traffic Signal 280/S Uniroyal Rd)

**RESOLUTION NO. 035-15****RESOLUTION APPROVING ALLOCATIONS FROM THE 2011 ROAD CONSTRUCTION FUND FOR PAYMENT OF COSTS ASSOCIATED WITH SOUTH UNIROYAL ROAD DRIVE INTERSECTION IMPROVEMENTS**

**WHEREAS**, in 2014 the City Council of the City of Opelika, Alabama, (the “City”) authorized and approved a construction contract to improve South Uniroyal Road by realigning it with North Uniroyal Road at the intersection of Columbus Parkway (US Highway 280/431) (the “Project”); and

**WHEREAS**, the City submitted a grant application to the Alabama Department of Transportation (“ALDOT”) to realign South Uniroyal Road; and

**WHEREAS**, the City was awarded a grant from ALDOT and allocated \$250,000 towards the South Uniroyal Road Project; and

**WHEREAS**, on March 18, 2014, the City Council awarded Bid No. B14-09 to D & J Enterprises, Inc., in the amount of \$535,623 for US 280 and South Uniroyal Drive intersection improvements; and

**WHEREAS**, in May of 2014 a previous change order signed by the Mayor, increased the total budgeted contract amount to \$540,793 due to a previously reported change; and

**WHEREAS**, after crediting the \$250,000 ALDOT grant, a City project budget was established in the amount of \$290,793.00; and

**WHEREAS**, during the actual construction phase of the Project because of various unforeseen causes, such as unsuitable site materials needing mitigation, the final construction costs for the road improvements will exceed budgeted funds by no more than \$40,000.00, and

**WHEREAS**, during the construction phase, it was determined by the City and ALDOT



that a traffic signal was necessary at the intersection in order to obtain a safer and more expeditious flow of traffic at said intersection; and

**WHEREAS**, on October 24, 2014, the City Council authorized and approved an agreement with ALDOT for the installation and maintenance of a traffic control signal at the intersection of US Highway 280/431 and South Uniroyal Road; and

**WHEREAS**, pursuant to said agreement, ALDOT agreed to install the traffic control signal, and the City agreed to reimburse ALDOT for all labor and material costs associated with the installation of the traffic signal; and

**WHEREAS**, ALDOT will ultimately invoice the City the sum of not more than \$25,000 for the installation of the traffic signal; and

**WHEREAS**, it is anticipated that there will be total cost overruns of approximately \$65,000 for the South Uniroyal Road construction project; and

**WHEREAS**, City staff have identified dollars from the 2011 Road Construction Fund that could be made available to cover the cost overrun for the South Uniroyal Road construction project.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. That the Mayor and Controller are hereby authorized to increase the South Uniroyal Road project budget by \$65,000 to a revised budget of \$355,793 to cover the cost overrun for the project.
2. That a change order in the amount of \$40,000 is approved to the Contract between the City and D & J Enterprises for extra work associated with the South Uniroyal Road project, including mitigation of site materials. The Mayor is hereby authorized to execute said change

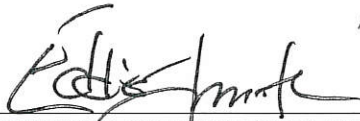
order on behalf of the City with funds taken from the 2011 Road Construction Fund. The Mayor and the Purchasing-Revenue Manager are hereby authorized to increase the contract amount awarded to D & J Enterprises from \$540,793 to a revised contract amount not to exceed \$580,793.

3. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order in the amount of \$25,000 to ALDOT for the installation of the traffic control signal with funds taken from the 2011 Road Construction Fund.

4. That the Mayor and the Controller are hereby authorized to transfer \$65,000 from the 2011 Road Construction Fund to the appropriate accounts to cover the cost overruns and to make the appropriate budget and accounting entries.

5. That this Resolution shall take effect upon its passage and adoption by the City Council.

**ADOPTED AND APPROVED** this the 3<sup>rd</sup> day of February, 2015.

  
 \_\_\_\_\_  
 PRESIDENT OF THE CITY COUNCIL OF THE  
 CITY OF OPELIKA, ALABAMA

ATTEST:

  
 \_\_\_\_\_  
 CITY CLERK



RESOLUTION NO. (ID # 1097)

Approving Agreement Between the City of Opelika and Building & Earth to Provide Construction Testing Services to Assist in Completing Various Construction Projects for the City.

**WHEREAS**, The City of Opelika, (the “City”) is in the process of awarding various construction projects throughout the year in the City; and,

**WHEREAS**, the Engineering Department staff is able and qualified to inspect and manage the construction of these projects; and,

**WHEREAS**, professional geotechnical engineering and testing services are needed to perform the required construction testing on the material compaction, concrete strength, and asphalt pavement quality; and,

**WHEREAS**, Building and Earth Geotechnical, Environmental and Material Engineers is an experienced, certified, and qualified firm that has the requisite knowledge, skill and resources to assist the City with these construction testing requirements; and,

**WHEREAS**, a proposed agreement for Professional Services (the “Agreement”), has been prepared and is submitted to the City Council for approval to obtain this data, for a fee not to exceed \$ 25,000 and to remain open for an entire calendar year; and,

**WHEREAS**, the City Council has determined that it is now in the best interest of the City and its citizens to approve said Agreement, a copy of which is attached hereto as Exhibit “A”.

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Opelika, Alabama as follows:

1. That the proposed Agreement to be entered into between the City and Building and Earth, is hereby approved, authorized, ratified and confirmed in the form submitted to the City Council.

2. That the Mayor is hereby authorized and directed to hereby execute and deliver said Agreement and such other ancillary documents as may be necessary to engage Building and Earth, Inc. for the above stated services.

3. That compensation for Building and Earth's services shall be paid from the City's Unassigned Fund Balance.

4. That the Purchasing-Revenue Manager is authorized to issue a Purchase Order to Building and Earth.

5. That the Comptroller is authorized to make the appropriate budget adjustments to execute this Agreement.

6. This resolution shall take effect upon its passage and adoption by the City Council.

**ADOPTED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
C. E. 'Eddie' Smith, Jr.  
President of the City Council  
City of Opelika, Alabama

ATTEST:

\_\_\_\_\_  
Robert G. Shuman, CMC

City Clerk - Treasurer



Geotechnical, Environmental, and Materials Engineers

2124 Moore's Mill Road, Suite 30 • Auburn, AL 36830 • Ph: (334) 821-1445 • Fax: (334) 821-1448  
[www.BuildingAndEarth.com](http://www.BuildingAndEarth.com)

May 13, 2015

Mr. Scott Parker, P.E.  
 City of Opelika  
 700 Fox Trail  
 Opelika, Alabama 36801

Subject: City of Opelika 2015 Annual Projects  
 Construction Materials Testing Estimated Budget  
 Opelika, Alabama  
 Building & Earth Proposal Number: AU 17027

Dear Mr. Parker:

**Building & Earth Sciences, Inc.** is pleased to submit this proposal to provide construction materials testing services for the 2015 City of Opelika Annual projects. This estimate and attached fee schedule will include services for the completion of the Oak Bowery Road Bridge Replacement project as well as any future projects that the City of Opelika deems necessary to require our services.

The scope of work includes density testing, via a nuclear density gauge, for subgrades, base placement, and asphalt placement. Concrete inspections and testing, where applicable, include reinforcing steel inspections, slump and air content testing, and compressive strength testing of molded specimens. Laboratory testing includes standard/modified proctor analysis for soils and base material, wash #200 sieve analysis, and gradations. Also included is the collection of asphalt cores to determine bulk specific gravity of compacted mixtures.

The personnel times noted in the attached estimates will vary dependent on the actual implementation of the work in the field and coordination of activities of subcontractors.

Actual time and testing will be scheduled by City of Opelika personnel and billed in accordance with the attached 2015 Standard Fee Schedule.

No allowance has been made for undercutting, overtime, weekends, or holidays for the technician.

No allowance has been made for re-testing or re-inspections.

The frequency of testing is assumed on call during all phases of work. On call services typically would be scheduled by the GC.

We anticipate an estimated budget of \$25,000.00 for the construction materials testing portions of the projects listed above.

Please note that this is a cost estimate and the cost for our services will be dependent upon the actual quantities of services scheduled. The final construction testing cost will be based on the type and quantity of services rendered which are directly influenced by the contractor's schedule.

We appreciate the opportunity to be of service to you on this project. If you have any questions, please feel free to call at (706) 527-6892.

Very truly yours,

**BUILDING & EARTH SCIENCES, INC.**

Jeff Richardson

Jeff Richardson, P.G.

Auburn Office Manager





### INFORMATION SHEET

**PROJECT NAME/LOCATION:** Annual Service Agreement 2015

**PROPOSAL/PROJECT NO.** 2015 Fee Schedule (NTE \$25,000.00) **DATE:** 05/13/14

**CLIENT:** City of Opelika Attention: Mr. Scott Parker

**FOR PAYMENT OF CHARGES:**

Charge invoice to the account of:

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_ Email address \_\_\_\_\_

Attention: \_\_\_\_\_ Title \_\_\_\_\_

**FOR APPROVAL OF CHARGES:**

If the invoice is to be mailed to someone other than the account charges, please indicate where to mail the invoice in the space below:

Firm: \_\_\_\_\_

Address \_\_\_\_\_

Zip Code \_\_\_\_\_ Phone No. \_\_\_\_\_ Attention: \_\_\_\_\_

**REPORT DISTRIBUTION:**

Firm \_\_\_\_\_ Firm \_\_\_\_\_ Firm \_\_\_\_\_

Address \_\_\_\_\_ Address \_\_\_\_\_ Address \_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

**SERVICES:** See Consultant's Proposal

**PAYMENT:** See Consultant's Proposal

**PROJECT NAME/LOCATION:** Annual Service Agreement 2015

**PROPOSAL/PROJECT NO.** 2015 Fee Schedule (NTE \$25,000.00) **DATE:** 05/13/15

**CLIENT:** City of Opelika Attention: Mr. Scott Parker

#### ACCEPTANCE OF CONTRACT:

The Contract consists of the Information Sheet, the Consultant's Proposal, and the attached General Terms and Conditions (the "Contract"), including all additions, deletions, and modifications as agreed upon in writing by Consultant. The Contract sets forth the entire agreement between the parties pertaining to the services and supersedes all inquiries, proposals, agreements, negotiations and commitments, whether written or oral, prior to the execution of the Contract. The provisions of the Contract may be changed only by a writing executed by Consultant and Client.

THIS CONTRACT is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CLIENT:

\_\_\_\_\_  
[Company Name]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_



## GENERAL TERMS AND CONDITIONS

### SECTION 1: STANDARD OF CARE

- 1.1** The standard of care for all services performed or furnished by Building & Earth Sciences, Inc. ("Consultant") under this Contract will be that level of care and skill ordinarily exercised by members of Consultant's profession practicing under similar conditions at the same time and in the same geographical region. Consultant makes no warranties, express or implied, under this Contract or otherwise, in connection with the Consultant's services.

### SECTION 2: CONSULTANT'S SERVICES

- 2.1** Services. Consultant shall perform the services described in Consultant's Proposal in accordance with this Contract, which may include construction materials testing services or subsurface exploration and geotechnical consultation services.

- 2.2** Subsurface Exploration and Geotechnical Consultation Services. If Consultant's Proposal includes services for subsurface exploration and geotechnical consultation, then this Section 2.2 shall apply:

(a) Subsurface Risks. Client recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Site exploration may fail to detect unknown or undocumented conditions such as sinkholes, underground mines, caverns, hazardous materials, etc. Subsurface sampling may also result in unavoidable contamination of certain subsurface areas, or bodies of water if unknown contaminated zones exist at the site. The passage of time also must be considered, and Client recognizes that, due to natural occurrence or other direct or indirect human intervention at the site or distance from it, actual conditions may quickly change. Client understands that elimination of these risks is not possible and therefore waives any claim against Consultant, for injury or loss or property liability that may arise from such subsurface conditions.

(b) Site Clearing/Erosion Control. When clearing of vegetation or benching into the earth is required to provide access for exploration equipment, rough-cleared access roads and some felled trees may result. Consultant shall not be responsible for restoring the site to its original condition, and Consultant shall not conduct any regrading, revegetation or erosion control.

(c) Utilities/Existing Man Made Objects. Prior to Consultant commencing the services, Client shall disclose the presence and accurate location of any utilities and any hidden or obscure man-made objects to Consultant in writing. Consultant shall not be responsible for any damages to subterranean structures or objects that were not specifically identified to Consultant in writing prior to Consultant commencing the services and/or which were not correctly shown on the plans furnished to Consultant. The Client agrees to waive any and all claims against the Consultant Group and to defend, indemnify and hold harmless the Consultant Group from and against all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to damage to subsurface conditions or structures, whether owned by Client or third parties.

(d) Samples. Consultant will retain all soil and rock samples for thirty (30) days. Further storage or transfer can be made at the Client's expense upon written request.

(e) Construction Estimates/Bid Documents/Plans and Specifications.

(1) Any reports prepared by Consultant in connection this Contract are for general geotechnical design purposes only, and Client shall not rely on these reports to prepare accurate bids or estimates for excavation and rock quantities, dewatering, removal of unsuitable materials or excavation support. An entirely different work scope will be required for quantity estimation purposes.

(2) Client agrees to retain Consultant to review the plans and specifications and work with other design professionals who are affected by any report furnished by Consultant in connection with this Contract. The review of plans and specifications is to assure that the geotechnical issues have been dealt with properly and that geotechnical findings and recommendations are properly interpreted and incorporated in design.

(3) Misinterpretation or improper use of Consultant's reports by contractors or others in preparing cost and quantity estimates or bid documents is a major cause of construction claims. Client agrees to defend, indemnify and hold harmless the Consultant Group from and against all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to cost or quantity estimates or bid documents prepared by others without Consultant's written approval.

**2.3** Time. Unless specific periods of time or specific dates are specified in this Contract, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services. If in this Contract specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are changed through no fault of Consultant, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.

**2.4** Changes. If Client requests changes in the scope of Consultant's services, the time of performance of Consultant's services shall be adjusted equitably and the rates and amounts of compensation provided for herein shall also be subject to equitable adjustment.

### **SECTION 3: OWNERSHIP OF DOCUMENTS**

**3.1** All reports, boring logs, field notes, laboratory test data, calculations, estimates, proprietary information and other documents or information ("Instruments of Service") prepared, developed, or acquired by Consultant shall be the property of Consultant, and Consultant shall retain an ownership and property interest therein.

**3.2** Client agrees that all Instruments of Service or other work furnished to the Client or its agents, which are not paid for in accordance with the Contract, shall be returned to Consultant upon demand and shall not be used by the Client for any purpose whatever.

**3.3** Consultant hereby grants to Client a nonexclusive license to use the Instruments of Service furnished by Consultant only for the purpose of the operation and maintenance of the Project for which the Instruments of Service were provided. Client may make and retain copies of the Instruments of Service only for use on the Project by Client. The Instruments of Service are not suitable for reuse by Client or others on extensions, modifications, or expansions of the Project or any other project. Any such reuse or modification without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, shall be at Client's sole risk and without liability or legal exposure to Consultant, or to Consultant's officers, directors, partners, employees, agents, or representatives (the "Consultant Group").

**3.4** Client agrees to waive any and all claims against the Consultant Group and to defend, indemnify and hold harmless the Consultant Group from and against any and all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to Client's use of the Instruments of Service in violation of the Contract.

### **SECTION 4: PAYMENT TERMS**

**4.1** Client shall pay Consultant for the services performed or furnished on the basis set forth on the Information Sheet.

**4.2** Invoices will be submitted monthly to Client and upon Consultant's completion of services. Invoices are due and payable within thirty (30) days of receipt. If Client fails to make any payment due Consultant for services or expenses within thirty (30) days after receipt of Consultant's invoice, the amounts due Consultant will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Consultant may, after giving seven (7) days written notice to Client, suspend the services until Consultant has been paid in full all amounts due. Payments will be credited first to interest and then to principal.

- 4.3** In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and Client shall pay to Consultant the undisputed portion.
- 4.4** Client agrees to pay all collection costs and expenses, including attorneys' fees, incurred by Consultant in collecting or attempting to collect any past due account.

#### **SECTION 5: INSURANCE & LIMITATION OF LIABILITY**

- 5.1** Consultant shall procure and maintain the following insurance coverage:

|                                               |                            |
|-----------------------------------------------|----------------------------|
| (a) Worker's Compensation Insurance           | statutory limit            |
| (b) Employer's Liability                      | \$1,000,000                |
| (c) Comprehensive General Liability Insurance |                            |
| General Aggregate                             | \$2,000,000                |
| Bodily injury & property damage               | \$1,000,000 per occurrence |
| (d) Automobile Liability Insurance            | \$1,000,000 per occurrence |

- 5.2** Limitation of Professional Liability. Notwithstanding anything in the Contract to the contrary, and to the fullest extent permitted by law, Client agrees that the total liability of the Consultant Group to Client and anyone claiming by, through, or under Client for any cost, loss, or damages caused by the acts or omissions of Consultant shall not exceed \$100,000.00 or Consultant's total fee for the services, whichever is less.
- 5.3** Waiver of Consequential Damages. Notwithstanding anything herein to the contrary, neither Consultant nor Client shall be liable to the other for any consequential, special, or indirect losses or damages, whether arising in contract, warranty, tort, strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

#### **SECTION 6: RIGHT OF ENTRY**

- 6.1** Client and/or property owner shall provide access to and make all provisions for right of entry to Consultant and all equipment necessary for Consultant to perform the services. It is understood by Client that in the normal course of services some damage may occur, the correction of which is not part of this Contract. Client shall not be responsible whatsoever for any such damage or for the correction of any damage.

#### **SECTION 7: SAMPLING OR TEST LOCATION**

- 7.1** Unless otherwise specified in writing, the Consultant's fees set forth on the Information Sheet do not include costs associated with surveying the site for the accurate horizontal and vertical locations of boreholes, test pits or other field tests performed. Client shall be responsible for such additional costs. Field tests or boring locations described in Consultant's report or shown on sketches are based on information furnished by others or estimates made in the field by Consultant's representatives. Client acknowledges and agrees that such dimensions, depths, or elevations are approximations only. Client shall not rely upon such information, and Consultant makes no warranties, express or implied, as to this information.

#### **SECTION 8: MONITORING OF FIELD ACTIVITIES**

- 8.1** The presence of Consultant's field personnel, either full-time or part-time, at the Project will be for the purpose only of providing periodic observation and field testing of specific aspects of the Project as authorized by the Client. Client acknowledges and agrees that Consultant will not be responsible for the supervision or direction of the contractor's work, or the work of contractor's employees, agents, or subcontractors. The presence or absence of Consultant's field representatives, or Consultant's observation or testing, shall not relieve the contractor of its responsibilities to perform its work in accordance with the plans and specifications. Consultant shall not have any control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the contractor's work or of any other persons or entities performing portions of the work at the Project.
- 8.2** The observations and tests performed by Consultant's field representative are valid only for the time and location the test is performed. The Client acknowledges that outside factors such as construction activity, weather and the passage of time can alter condition of the material tested or observed.



- 8.3** Client agrees that the contractor will be solely and completely responsible for working conditions at the Project, including safety of all persons and property during performance of its work, and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Client acknowledges and agrees that Consultant will not be responsible for job or site safety on the Project, and that Consultant does not have the duty or right to stop the work of the contractor.
- 8.4** Client waives any and all claims against the Consultant Group and agrees to indemnify, defend and hold harmless the Consultant Group from and against all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to contractor's failure to perform its work in accordance with plans and specifications or contractor's failure to comply with the applicable safety requirements and regulations.

## SECTION 9: HAZARDOUS SUBSTANCES

- 9.1** Client agrees to comply with all applicable laws related to Hazardous Substances. Consultant shall not be responsible in any way for any Hazardous Substances uncovered, revealed, or discovered at the Project site.
- 9.2** The term "Hazardous Substance" means any substance or material: (i) the presence of which requires management, reporting, investigation or remediation under any federal, state or local law, statute, rule, regulation, ordinance, order, action, policy or common law; (ii) which is or becomes regulated by any federal, state or local governmental authority, including without limitation, any substance or waste material which is defined or listed as a "hazardous waste," "acutely hazardous waste," "extremely hazardous substance," "restricted hazardous waste," "industrial waste," "hazardous substance," "hazardous material," "pollutant" "hazardous air pollutant," "criteria pollutant," "volatile organic compound," "priority pollutant," "special waste," "SARA 313 chemical" or "contaminant" under any law; (iii) which contains gasoline, diesel fuel or other petroleum hydrocarbons or a petroleum derivative; (iv) which contains polychlorinated biphenyls ("PCBs"), asbestos or urea formaldehyde; or (v) which poses an unreasonable risk of injury to human health or the environment.
- 9.3** If any Hazardous Substance is discovered at the Project site, the Client shall be solely responsible for all costs and expenses associated with the discovery of such Hazardous Substance. To the fullest extent permitted by law, the Client shall defend, indemnify and hold harmless the Consultant Group from and against any and all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or related to Consultant's performance of the services in an area where a Hazardous Substance is discovered.

## SECTION 10: DISPUTES

- 10.1** In the event of a dispute arising out of or relating to this Contract or the services to be rendered hereunder, Client and Consultant agree to attempt to resolve such disputes in the following manner:
- (a) Amicable Resolution. The parties agree to first attempt to resolve such disputes amicably through direct negotiations between the appropriate representatives of each party.
- (b) Mediation. If such negotiations are not fully successful, the parties agree to attempt to resolve any remaining disputes by mediation conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Birmingham, Alabama. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- (c) Arbitration. The parties acknowledge and agree that the Contract and the subject matter hereof are substantially connected with and involved with interstate commerce. Any controversy, dispute or claim arising out of or related to the Contract, or the breach thereof, not otherwise resolved in accordance with this Section shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The arbitration hearing shall be held in Birmingham, Alabama. The provisions of this section to arbitrate and any judgment rendered upon the award by the arbitrator or arbitrators may be enforced in any court having jurisdiction thereof. The prevailing party shall be entitled to have its reasonable attorneys' fees and related costs and expenses paid by the non-prevailing party.

## SECTION 11: THIRD PARTY CLAIMS

- 11.1** To the fullest extent permitted by law, Client agrees to defend, indemnify and hold harmless the Consultant Group from and against any and all third party claims whatsoever (including, but not limited to, all attorneys' fees and dispute resolution costs) arising from any act, error, or omission of Client relating to the Project. To the fullest extent permitted by law, Consultant agrees to defend, indemnify and hold harmless the Client from and against any and all third party claims whatsoever (including, but not limited to, all attorneys' fees and dispute resolution costs) arising from any act, error, or omission of Consultant relating to the Project.

## SECTION 12: TERMINATION

- 12.1** This Contract may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with this Contract, and provided that the defaulting party has not cured such failure within five (5) days after receiving such written notice. In the event of termination, Consultant shall be paid for services performed to the termination date plus reasonable termination expenses.
- 12.2** In the event Client terminates or suspends Consultant's services for three (3) months or more prior to Consultant's completion of all reports contemplated by this Contract, Consultant may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of termination or suspension. Client shall be responsible for the expenses of such termination or suspension, which shall include, without limitation, all costs of Consultant to complete such analyses, reports or records.
- 12.3** Consultant may terminate the Contract by written notice to Client if Client fails to pay Consultant's undisputed invoices in the manner required by this Contract, if such failure continues for a period of ten (10) days after written notice is given to Client.

## SECTION 13: ASSIGNS

- 13.1** Neither the Client nor Consultant may delegate, assign, sublet or transfer any obligation or interest in this Contract without the written consent of the other party.

## SECTION 14: CERTIFICATIONS, GUARANTEES AND WARRANTIES

- 14.1** Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant having to certify, guarantee or warrant the existence of conditions whose existence Consultant cannot ascertain. Client shall not make resolution of any dispute with Consultant or payment of any amount due to Consultant in any way contingent upon signing any such certification, guarantee, or warranty.

## SECTION 15: MISCELLANEOUS

- 15.1 Governing Law.** This Contract shall be governed by the law of the state in which the Project is located.
- 15.2 Notices.** Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally, by certified mail (return receipt requested), or by Federal Express, UPS, or other nationally recognized overnight carrier. All notices shall be effective upon the date of receipt.
- 15.3 Waiver.** Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Contract.
- 15.4 Headings.** This Contract may be executed in one or more counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument. All signatures need not appear on the same counterpart.
- 15.5 Severability.** The determination of the invalidity of all or any provision in this Contract shall not render the remaining provisions void or unenforceable, and this Contract shall thereafter be construed as though such invalid provision were not a part hereof.



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/13/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|                                                                                                                     |                                                                  |                                      |
|---------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|--------------------------------------|
| <b>PRODUCER</b><br>Insurance Office of America, Inc.<br>3800 Colonnade Parkway<br>Suite 650<br>Birmingham, AL 35243 | <b>CONTACT NAME:</b> Taylor Cargal                               |                                      |
|                                                                                                                     | <b>PHONE (A/C, No, Ext):</b> (205) 968-3440                      | <b>FAX (A/C, No):</b> (205) 968-3528 |
|                                                                                                                     | <b>E-MAIL ADDRESS:</b> Taylor.Cargal@ioausa.com                  |                                      |
| <b>INSURED</b><br><br>Building & Earth Sciences, Inc<br>5545 Derby Drive<br>Birmingham, AL 35210                    | <b>INSURER(S) AFFORDING COVERAGE</b>                             |                                      |
|                                                                                                                     | <b>INSURER A:</b> Travelers Property Casualty Company of America |                                      |
|                                                                                                                     | <b>INSURER B:</b> Travelers Indemnity Company                    |                                      |
|                                                                                                                     | <b>INSURER C:</b> Travelers Casualty & Surety Company            |                                      |
|                                                                                                                     | <b>INSURER D:</b>                                                |                                      |
|                                                                                                                     | <b>INSURER E:</b>                                                |                                      |
|                                                                                                                     | <b>INSURER F:</b>                                                |                                      |

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                                  | ADDL INSD | SUBR WVD | POLICY NUMBER     | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                       |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|-------------------|-------------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC<br>OTHER: |           |          | 6303B604479TIL15  | 03/01/2015              | 03/01/2016              | EACH OCCURRENCE \$ 1,000,<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,<br>MED EXP (Any one person) \$ 5,<br>PERSONAL & ADV INJURY \$ 1,000,<br>GENERAL AGGREGATE \$ 2,000,<br>PRODUCTS - COMP/OP AGG \$ 2,000,<br>\$ |
| B        | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY<br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS                                          |           |          | 8103B6044779TIA15 | 03/01/2015              | 03/01/2016              | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$                                                                 |
| A        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br><input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000                                                   |           |          | CUP3B604479TIL15  | 03/01/2015              | 03/01/2016              | EACH OCCURRENCE \$ 4,000,<br>AGGREGATE \$ 4,000,<br>\$                                                                                                                                                                       |
| C        | <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below<br>Y / N <input type="checkbox"/> N / A                                                 |           |          | UB3B61798515      | 03/01/2015              | 03/01/2016              | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$ 1,000,<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,                             |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Projects: AU14021, AU14022 &amp; AU14023 &amp; AU16019

## CERTIFICATE HOLDER

## CANCELLATION

|                                                                             |                                                                                                                                                                |
|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| City of Opelika<br>700 Fox Trail<br>PO Box 390 (36803)<br>Opelika, AL 36801 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|                                                                             | AUTHORIZED REPRESENTATIVE<br>                                               |

## RESOLUTION NO. (ID # 1101)

Annual Appropriation Contract, American Red Cross

**BE IT RESOLVED** by the City Council of the City of Opelika as follows:

) That the proposed CONTRACT FOR SERVICES to be entered into between the City

of Opelika and the American Red Cross - East Alabama Chapter, a copy of which is hereto

attached as Exhibit "A", be and the same is hereby approved, adopted, authorized, ratified and

confirmed,

) That Gary Fuller, Mayor of the City of Opelika is hereby authorized and empowered to execute the foregoing agreement in the name and on behalf of the City of Opelika and the City Clerk is hereby authorized to affix the corporate seal of the City of Opelika thereto and to attest the same, and the Mayor shall deliver one copy to the American Red Cross - East Alabama Chapter, and retain one copy.

**ADOPTED and APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

C. E. "Eddie" Smith, Jr.  
President of the City Council  
City of Opelika, Alabama

Attest:

---

Robert G. Shuman, CMC  
City Clerk - Treasurer





**American  
Red Cross**

**East Alabama Chapter**  
206 26th Street  
Opelika, AL 36801

### AGREEMENT

This agreement made and entered into this 1<sup>st</sup> day of October 2014 between **American Red Cross, East Alabama Chapter**, a non-profit organization, hereinafter referred to as "**Agency**" and **City of Opelika**, a municipal corporation, hereinafter referred to as "**City**" shall be binding for the period of October 1, 2014, through September 30, 2015.

The **City** has approved an appropriation in the amount of \$8,000.00 for the **Agency** to be used for:

*Local disaster services and training in Opelika, Alabama.*

The **Agency** shall use funds from the **City** for the reasons stated above. The **City** shall pay the **Agency** the sum of \$8,000.00 for budget year October 1, 2014, through September 30, 2015, with said sums to be quarterly payments commencing October 2014. This agreement shall be binding upon the parties hereto, their successors and assigns.

**American Red Cross, East Alabama Chapter**

Non-Profit Organization

Derek Boulware, Executive Director

**City of Opelika**

Municipal Corporation

Gary Fuller, Mayor

Attest:

By

Ed Adams, Chairman, Board of Trustees

Attest:

By

Attachment: Contract, American Red Cross, FY 2014-15, 5-13-15 (1101 : Annual Appropriation Contract, American Red Cross)

## RESOLUTION NO. (ID # 1089)

Special Appropriation, GEM Empowered, Juneteenth Celebration.

**WHEREAS**, it has been determined that the GEMS Empowered, Inc. has a need for additional funding to assist with Juneteenth Celebration on May 20, 2015, and

**WHEREAS**, Council President Eddie Smith Ward 4, President pro-tem Patricia Jones Ward 1, Councilman Larry Gray Ward 2, Councilman Dozier Smith T Ward 3 and Councilman David Canon Ward 5 would like to donate a portion of their discretionary funds to GEMS Empowered, Inc. to assist with the cost of the Juneteenth Celebration.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, a municipal corporation, as follows:

1. That following City Council member(s) wish to provide discretionary funds as detailed below, to assist with the cost of the Juneteenth Celebration:

|                |                            |        |          |
|----------------|----------------------------|--------|----------|
| Patricia Jones | Discretionary reserve fund | Ward 1 | \$200.00 |
| Larry Gray     | Discretionary reserve fund | Ward 2 | \$200.00 |
| Dozier Smith T | Current year account       | Ward 3 | \$200.00 |
| Eddie Smith    | Discretionary reserve fund | Ward 4 | \$200.00 |
| David Canon    | Current year account       | Ward 5 | \$200.00 |

2. That the Council hereby declares and determines that the expenditure of these public funds will serve a public purpose for the City of Opelika.
3. That Mayor Fuller is hereby authorized and directed to execute an agreement hereto attached and designated "Exhibit A".
4. That Mayor Fuller and the Controller are hereby authorized and directed to transfer a total of \$1,000.00 as designated in No. 1 above to the appropriate account(s).
5. That the City Clerk-Treasurer is hereby authorized to process the required documents so a check for \$1,000.00 payable to GEMS Empowered, Inc. can be prepared and mailed.

**ADOPTED and APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2015.

---

C. E. "Eddie" Smith, Jr.  
President City Council  
City of Opelika, Alabama

ATTEST:

---

Robert G. Shuman, CMC  
City Clerk - Treasurer

## AGREEMENT FOR SERVICES

**THIS AGREEMENT** is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Opelika, Alabama, a municipal corporation (hereinafter referred to as the “City”) and GEM Empowered, Inc., a non-profit corporation (hereinafter referred to as “GEM”).

### RECITALS

**WHEREAS**, GEM is a 501(c)(3) non-profit organization; and

**WHEREAS**, GEM will host and sponsor the annual Juneteenth celebration event (the “Event”) in Opelika, Alabama; and

**WHEREAS**, the Juneteenth celebration provides Opelika’s diverse community an opportunity to enhance cultural awareness; and

**WHEREAS**, this year’s Event will take place between June 14-20, 2015, and will provide information and entertainment for the public, and children will be able to participate in the celebration; and

**WHEREAS**, the City desires GEM to provide and conduct the Event for the purpose of public education, recreation and cultural awareness; and

**WHEREAS**, Juneteenth celebration week will include a unity parade on Saturday, June 20, 2015; and

**WHEREAS**, GEM has requested that the City assist with the expenses of this worthwhile community event.

### WITNESSETH:

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **GEM's obligations and duties.** GEM shall sponsor and host the Juneteenth celebration week which will take place between June 14 - June 20, 2015. The Event will be free to the public and will provide an opportunity for local citizens to become educated about the history of Juneteenth, African American history and culture in the local area. Event activities will include the following:

Sunday, June 14, 2015 -- MAE Productions Theater Camp (children ages 12-17)  
Friday, June 19, 2015 – MAE Productions Performance at Opelika Sportsplex  
Saturday, June 20, 2015 – Unity Parade

2. **Compensation.** As compensation for its services hereunder, the City agrees to pay to GEM the sum of \$1,000.00.

3. **Compliance with rules and regulations.** GEM will comply with all applicable federal, state and local rules and regulations with regard to its obligations under this Agreement.

4. **Relationship of the parties.** GEM is acting herein as an independent contractor. Nothing herein contained will create or be construed as creating a partnership, joint venture or agency relationship between the parties. Each party acknowledges and agrees that it neither has nor will give the appearance or impression of having any legal authority to bind or commit the other party in any way.

5. **Indemnification.** GEM agrees to defend, indemnify and hold the City and its respective officers, agents, employees, successors and assigns, harmless from all claims, liabilities, costs, losses, demands, injuries, judgments, settlements, expenses and damages, including reasonable attorney's fees, arising out of or in connection with (a) any breach or alleged breach of any provision of this Agreement by GEM; (b) any negligent act or omission of GEM or its respective officers, directors, agents, employees and licensees; or (c) arising out of or in connection with the Event.



6. **No fiduciary responsibility.** The City has no fiduciary responsibility for the Event and assumes no liability for its planning or execution, including all promotion, set-up, staffing and management of events.

7. **No political activity.** GEM shall not use any funds received from the City to promote or support a political party or candidate or to endorse political activity.

8. **Assignment.** This Agreement may not be assigned by GEM without the prior written consent of the City.

9. **Severability.** If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

10. **No oral modifications.** No modifications to this Agreement shall be binding upon the parties unless modified, amended, cancelled, renewed or extended in writing and signed by both parties.

11. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral, between the parties except as specifically provided herein. Except as set forth herein, there are no promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducement to the execution hereof or in effect between the parties.

12. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original binding document but all of which shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and date first above written.

CITY OF OPELIKA, ALABAMA

By: \_\_\_\_\_  
ITS MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

GEM EMPOWERED, INC.

By: \_\_\_\_\_  
ITS PRESIDENT

## RESOLUTION NO. (ID # 1098)

Resolution Approving Sidewalk Improvements On South Railroad Avenue in Front of City Cafe

**WHEREAS**, B&T Restaurant Enterprises, LLC (the “Owner”) is doing business as City Café and operates a restaurant located on South Railroad Avenue in the block between 8<sup>th</sup> Street and 9<sup>th</sup> Street; and

**WHEREAS**, the Owner has heretofore applied to the Opelika Planning Department for a sidewalk café permit in compliance with the provisions of Article VII of Chapter 26 of the *Code of Ordinances* of the City of Opelika; Alabama (the “City”); and

**WHEREAS**, the Owner heretofore submitted a plan for the extension of the sidewalk in front of City Café; and

**WHEREAS**, said plan for extension of the sidewalk has been prepared by the Owner and submitted to the City Council for its approval; and

**WHEREAS**, said plan consists of removing the east ramp in front of the building; building a retaining wall and constructing a concrete patio to the same grade as the entrance to the restaurant; and

**WHEREAS**, the Owner has agreed to pay all costs associated with the construction of said sidewalk improvements; and

**WHEREAS**, the City Engineer has approved the plan submitted by the Owner.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. The plan for sidewalk improvements on South Railroad Avenue prepared by the Owner of City Café, a copy of which is attached hereto as Exhibit “A”, is hereby approved,

authorized, ratified and confirmed.

2. The Owner shall bear all costs associated with the sidewalk improvements in front of City Café on South Railroad Avenue.

3. Upon certification by the City Engineer that said sidewalk improvements have been completed in accordance with the said plan and all municipal requirements, the City shall accept said improvements as a part of the City's sidewalk system.

4. No sidewalk dining shall be permitted in the area of the expanded sidewalk until the Owner complies with all of the provisions of the City's Outdoor Café Ordinance codified in Article VII of Chapter 26 of the *Code of Ordinances* of the City of Opelika.

5. The Owner shall comply with all OSHA regulations, all applicable state and federal rules and regulations and all applicable municipal ordinances. The Owner shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the construction work for the sidewalk improvements (the "work").

6. The Owner shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery necessary for the proper execution and completion of the construction work and shall hold the City harmless therefrom.

7. The Owner shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. It shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the work and (2) all motorists and pedestrians using the street and sidewalk in front of City Café.

8. The Owner shall indemnify and hold harmless the City and its respective officials, officers, agents and employees from and against all liability, claims and demands on account of injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out or in way connected with the sidewalk improvements in front of City Café, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by the act, omission, error, mistake, negligence or other fault of the Owner or any contractor, subcontractor or employee of the Owner.

9. The Owner shall procure and maintain at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations incurred by the Owner pursuant to its obligations under this Resolution. The Owner shall cause any contractor or subcontractor to procure and maintain minimum insurance coverages as approved by the City. Required coverages shall include worker's compensation insurance and general commercial liability insurance with a minimum combined single limits of \$1,000,000 each occurrence and \$3,000,000 aggregate. The policies of insurance required by this section shall be endorsed to include the City as an additional insured.

**ADOPTED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
 PRESIDENT OF THE CITY COUNCIL OF THE  
 CITY OF OPELIKA, ALABAMA



ATTEST:

---

CITY CLERK

⑈001076⑈ ⑆251170876⑆ 20 97 6791⑈

CharterBank



Pay to the  
Order of

CITY OF OPELIKA

Dollars

One hundred and 00/100

\$ 100.00

Date

5/11/15

B&T RESTAURANT ENTERPRISES LLC

817 S RAILROAD AVE  
OPELIKA, AL 36801

CHECK NUMBER

64-7087/2611

1076

Security Features  
Check on  
Back

MP

# Sidewalk Café Application

City of Opelika  
Opelika Planning Department  
700 Fox Trail, Opelika, AL 36801  
(334) 705-5156, Fax (334) 705-5159

## OWNER/APPLICANT INFORMATION

Owner of Property: Marsh Real Estate Investments, LLC.  
Address: 1001 Ave B  
Phone 334-749-5616

## BUSINESS INFORMATION

Business Name: City Cafe  
Business Owner's Name: Anthony Ang  
Address of Business: 817 South Railroad Ave  
Current Zoning: C2  
Number of Tables Used: \_\_\_\_\_ Number of Chairs Used: 30  
Describe Equipment and Furnishings Used Outside: Metal outdoor furniture and canvas umbrellas

What are the hours of operation of the sidewalk café? 7:00am-10:00pm CST

Will alcoholic beverages be served in the sidewalk café area? Not at this time

What hours will alcoholic beverages be served in the sidewalk café area? NA

Current Liquor License Number: NA

Name and Address of Insurer: Farmers Insurance

- Attach Diagram of the Proposed Area including location of the Divider
- Provide a Description on the diagram of the Divider and any other information that is appropriate to fully describe the proposed operation of the sidewalk café.

## STATEMENT OF UNDERSTANDING

I Marsh Real Estate Investments, Inc. am the property owner, legal entity, and/or authorized representative (**underline your title**) responsible for the operations of the proposed sidewalk cafe. I understand that an annual fee for a permit to operate a sidewalk café in the district is \$100.00 per year. I understand that I must comply with all regulations concerning sidewalk cafes including the following regulations:

(1) Limitation on Area. (a) When the sidewalk cafe is operated on a public sidewalk or public right-of-way, the area in which the sidewalk cafe is operated shall be adjacent to the business of which it is an extension and shall not extend parallel in either direction beyond the outside front wall of the business. The operation of the sidewalk cafe shall be such that there is at least four (4) feet from the outermost edge of the sidewalk cafe to the street curb, that also includes a minimum of four (4) feet of clear and unobstructed passageway between the sidewalk cafe and street trees, lamp posts, signposts, traffic control devices and any other fixtures or obstructions. The Planning Director may require increased clearance distances if necessary to protect the public safety. (b) When the sidewalk cafe is operated on other City owned property, the outdoor dining area must be adjacent to the restaurant to which it is associated. The dining area shall be approved by the Planning Director as part of the permit approval process. The area permitted for



outdoor dining shall not impinge upon or adversely affect the operation of any other business.

**1-13 Amended March 20, 2012 Ord. No. 104-12**

(2) Divider Required. The area permitted for a sidewalk cafe shall be separated from the remaining sidewalk area by a divider constructed of a sturdy material such as wrought iron, metal or wood posts and chain, or such other materials as the Planning Department may deem safe and appropriate to the location. Depending upon the circumstances, the Planning Department may require the divider to be removable. Such divider shall not be less than three (3) feet nor more than four (4) feet in height. All tables and chairs and other associated equipment or furnishings shall be located totally within the limits of the divider.

(3) Sanitation. A covered trash container of at least thirty-two (32) gallons' capacity containing a disposable plastic liner or bag shall be provided within each sidewalk cafe area and shall be emptied as often as necessary by the business to prevent overflow or other unsanitary conditions. It shall be the responsibility and duty of the business to which the sidewalk cafe permit is issued to maintain such area and all equipment and furnishings in such conditions so as to be clean, sanitary and safe at all times. The sidewalk cafe area and the adjoining sidewalks shall remain clear of litter, food scraps and soiled dishes at all times.

(4) Fire Exit. No area permitted for a sidewalk cafe may block or obstruct any fire exit or fire lane.

(5) Smoking. Smoking shall not be allowed in approved sidewalk cafe areas.

(6) Signs. No signs shall be attached to any furniture, umbrellas, awnings or other structure related to the operation of the sidewalk cafe. Signs advertising the sale of goods or services at a sidewalk cafe shall be prohibited. A sign shall be posted in a visible location if the business dispenses alcoholic beverages, which states: "It is unlawful to remove alcoholic beverages from the sidewalk cafe".

(7) Supervision. Sidewalk cafes shall be continuously supervised by employees of the business.

(8) Animals. No animals shall be allowed within the sidewalk cafe area, except seeing eye dogs.

(9) Audio/Video Devices. Sidewalk cafes shall be prohibited from playing amplified music, whether live or recorded. No speakers, microphones, televisions or other audio or video devices shall be permitted at a sidewalk cafe.

(10) Utilities and Other Public Facilities. Sidewalk cafes shall not interfere with any utilities or other facilities such as telephone poles, fire hydrants, signs, traffic control devices, or street trees located on the sidewalk or public right-of-way.

(11) Vending Machines Prohibited. No vending machines, carts, or objects for the sale of goods shall be permitted in a sidewalk cafe.

(12) Lighting. Lighting for sidewalk cafes may be utilized if approved by the Planning Department. Any such lighting shall compliment the existing building and sidewalk cafe design and shall not cause glare to passing pedestrians or vehicles.

(13) Outdoor Heaters. Outdoor heaters may be utilized upon the approval of the Planning Department and the Fire Marshall.

**1-13 Amended March 20, 2012 Ord. No. 104-12**



(14) I understand that if I am issued a permit to serve Alcoholic Beverages at the proposed sidewalk café that I must comply with the following regulations:

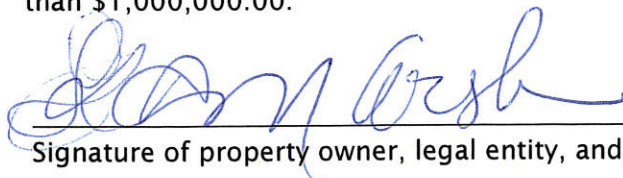
The issue of a permit allows the consumption of alcoholic beverages to the extent that it would not violate Section 3-15 of the *Code of Ordinances* (see Section 3-15, last page). Provided, however, a sidewalk café permit issued pursuant to the provisions of the article shall not, in and of itself, authorize, permit or allow the serving and/or dispensing of alcoholic beverages. Any dispensing and/or serving or consuming of alcoholic beverages in the sidewalk café area must be strictly in accordance with all applicable laws, ordinances and regulations including those of the State

Alcoholic Beverage Control Board. To the extent that any such license has been issued and alcoholic beverages may be served, then the same may not be taken outside of the permitted area of the sidewalk café. Failure to comply with this section shall terminate the permit issued by the Planning Department.

(15) Sec. 26-234. - Revocation and suspension. The planning director may revoke or suspend a permit for any sidewalk café at any time upon a determination that the requirements of this article are not met. The director of planning may impose conditions on reinstatement of a suspended permit. (Ord. No. 103-10, § 1, 2-16-2010)

(16) I UNDERSTAND I MUST HAVE PUBLIC LIABILITY, LIQUOR LIABILITY, AND PROPERTY DAMAGE INSURANCE FOR THE SIDEWALK CAFÉ AT ALL TIMES OR I WILL NOT BE ALLOWED TO OPERATE.

I understand that I must provide the following concerning the insurance: The name and address on the insurance documents must be identical to that of the sidewalk café. Submit the ORIGINAL insurance certificate. Each insurance policy must name the City of Opelika as an "additional insured". Each insurance policy must have a clause indicating that the insurance policy may not be cancelled, terminated or modified, nor may the insurer's intention not to renew or reinstated until thirty (30) days after the Planning Director of the City of Opelika receives a written notice delivered by the insurer via certified mail announcing the insurer's intention to cancel, terminate, modify or not renew the policy. The insurance policy must protect the applicant and the City of Opelika from all claims for damages to property or bodily injury, including death, which may arise from operations under the sidewalk café permit or in connection therewith. Such insurance shall provide coverage for each occurrence of not less than \$1,000,000.00.



Signature of property owner, legal entity, and/or authorized representative

Attachment: City Cafe sidewalk cafe' application (1098 : City Cafe' Sidewalk Cafe' Application)



INDEMNIFICATION STATEMENT

The applicant hereby covenants with the City of Opelika to indemnify and save harmless the City against all claims and demands of all persons for damages, costs, expenses or compensation, including legal fees and costs of defending any actions or lawsuits thereon, for, on account of, or any way growing out of the use of occupancy by the applicant, his patrons, and/or invitees of the sidewalk café area or by reason of any act or neglect of said applicant, its officers, agents and employees, or by reason of any violation of any term of the City's Sidewalk Café Ordinance or any license or permit necessary in the said use and occupancy of the licensed premises.

\_\_\_\_\_  
(Date)



\_\_\_\_\_  
(Signature of Property Owner/Authorized Rep)

Katherine A Marsh

(Print Name)

NOTARY

Shelby Atwell

Attachment: City Cafe sidewalk cafe' application (1098 : City Cafe' Sidewalk Cafe' Application)

### SECTION 3-15 CONSUMPTION IN PUBLIC

It shall be unlawful for any person to consume alcoholic beverages in or on any public place as herein defined. For the purposes of this section, the phrase "public place" shall have the following meaning:

- (1) Any street, highway, thoroughfare, alley or sidewalk owned by government, either directly or through a public corporation or authority, that is designed for the use, enjoyment or transportation of the general public.
- (2) Any building with all appurtenances (including grounds and yards), owned or operated by government, either directly or through a public corporation or authority, that is designed for the use or enjoyment of the general public. City hall, libraries, school buildings, auditoriums, courthouses, judiciary building, post offices and public administrative buildings are included within the meaning of the phrase "public place".
- (3) Any parks, playgrounds, athletic fields, golf courses, tennis courts and recreational facilities owned or operated by government, either directly or through a public corporation or authority, that is designed for the use or enjoyment of the general public, which are not licensed for the sale of alcoholic beverages.
- (4) Any place or location used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or other method, which is not licensed for the sale of alcoholic beverages.
- (5) Any place or location, whether public or private, that may be readily seen by normal unaided vision viewing from a public street, highway, sidewalk, thoroughfare, park or other public property. Provided that no private dwelling (including appurtenances, yards, and grounds) and no place engaged for a private gathering is included within the meaning of public place with respect to the owners or occupants of such dwelling or place or to any persons specifically invited therein.
- (6) Any parking lot that is designed for the use of the general public.

Provided, however, the term "public place" shall not mean or include premises which have been duly licensed by the City for the sale thereon of alcoholic beverages. **Notwithstanding the provisions of this Section, alcoholic beverages may be served in approved sidewalk cafes provided the provisions of Article VII of Chapter 26 are met and the business operator holds a valid alcoholic beverage license.**

#### **Sidewalk Café Application Fee**

Annual Fee : \$100.00

Items to include with Application:

- ☐ Fee payment made payable to the City of Opelika
- ☒ ORIGINAL insurance certificate
- ☒ Diagram locating all items that will be used for sidewalk café
- ☒ Description on the diagram to fully describe the proposed operation





ANTHONY ANG <citycafeopelika@gmail.com>

## Information requested

2 messages

**Julie Davis** <julie.tjones2@farmersagency.com>

To: citycafeopelika@gmail.com

Fri, May 8, 2015 at 3:43 PM

Attached is your certificate of insurance. Spoke with our underwriter and he stated that the liability you currently have extends out to the front of the building as well as the parking lot. Please let me know if you need anything else.

Julie



**Julie Davis**  
124 N Dean Rd  
Auburn, AL 36830-5673  
334-826-6888 (Office)  
334-821-8848 (Fax)  
[julie.tjones2@farmersagency.com](mailto:julie.tjones2@farmersagency.com)  
<http://www.farmersagent.com/tjones2>



**B&T 001.tif**  
1758K

**ANTHONY ANG** <citycafeopelika@gmail.com>

To: John Marsh <jmarshopelika@gmail.com>

Fri, May 8, 2015 at 4:25 PM

[Quoted text hidden]

**Attachment: City Cafe sidewalk cafe' application (1098 : City Cafe' Sidewalk Cafe' Application)**



**B&T 001.tif**  
1758K

**Attachment: City Cafe sidewalk cafe' application (1098 : City Cafe' Sidewalk Cafe' Application)**

| <b>PRODUCER</b><br>Timothy Jones(5005302)<br>124 N Dean Rd<br><br>Auburn AL 36830-5673<br><br><b>INSURED</b><br>B & T RESTAURANT ENTERPRISES<br>817 S RAILROAD AVE<br><br>OPELIKA AL 36801 |  | <b>CONTACT NAME:</b><br>PHONE (A/C, No, Ext): 334-826-6888<br>FAX (A/C, No): 334-821-6646<br>E-MAIL ADDRESS: tjones2@farmersagent.com<br><br><table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td colspan="2">INSURER A : Truck Insurance Exchange</td> <td>21709</td> </tr> <tr> <td colspan="2">INSURER B : Farmers Insurance Exchange</td> <td>21652</td> </tr> <tr> <td colspan="2">INSURER C : Mid Century Insurance Company</td> <td>21687</td> </tr> <tr> <td colspan="2">INSURER D :</td> <td></td> </tr> <tr> <td colspan="2">INSURER E :</td> <td></td> </tr> <tr> <td colspan="2">INSURER F :</td> <td></td> </tr> </table> |  | INSURER(S) AFFORDING COVERAGE |  | NAIC # | INSURER A : Truck Insurance Exchange |  | 21709 | INSURER B : Farmers Insurance Exchange |  | 21652 | INSURER C : Mid Century Insurance Company |  | 21687 | INSURER D : |  |  | INSURER E : |  |  | INSURER F : |  |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------|--|--------|--------------------------------------|--|-------|----------------------------------------|--|-------|-------------------------------------------|--|-------|-------------|--|--|-------------|--|--|-------------|--|--|
| INSURER(S) AFFORDING COVERAGE                                                                                                                                                              |  | NAIC #                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                               |  |        |                                      |  |       |                                        |  |       |                                           |  |       |             |  |  |             |  |  |             |  |  |
| INSURER A : Truck Insurance Exchange                                                                                                                                                       |  | 21709                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                               |  |        |                                      |  |       |                                        |  |       |                                           |  |       |             |  |  |             |  |  |             |  |  |
| INSURER B : Farmers Insurance Exchange                                                                                                                                                     |  | 21652                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                               |  |        |                                      |  |       |                                        |  |       |                                           |  |       |             |  |  |             |  |  |             |  |  |
| INSURER C : Mid Century Insurance Company                                                                                                                                                  |  | 21687                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                               |  |        |                                      |  |       |                                        |  |       |                                           |  |       |             |  |  |             |  |  |             |  |  |
| INSURER D :                                                                                                                                                                                |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |                               |  |        |                                      |  |       |                                        |  |       |                                           |  |       |             |  |  |             |  |  |             |  |  |
| INSURER E :                                                                                                                                                                                |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |                               |  |        |                                      |  |       |                                        |  |       |                                           |  |       |             |  |  |             |  |  |             |  |  |
| INSURER F :                                                                                                                                                                                |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |                               |  |        |                                      |  |       |                                        |  |       |                                           |  |       |             |  |  |             |  |  |             |  |  |

13.21.a

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR                                                                                                                                        | TYPE OF INSURANCE                                                                                                                                                                                                                            | ADDL SUBR INSR WVD               | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|---------------|-------------------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| B                                                                                                                                               | <b>GENERAL LIABILITY</b><br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                                                               | Y Y                              | 605896053     | 02/27/2015              | 02/27/2016              | EACH OCCURRENCE \$ 1,000,000                                                                                                                          |
|                                                                                                                                                 | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 75,000                                                                                                                                                                                          |                                  |               |                         |                         |                                                                                                                                                       |
|                                                                                                                                                 | MED EXP (Any one person) \$ 5,000                                                                                                                                                                                                            |                                  |               |                         |                         |                                                                                                                                                       |
|                                                                                                                                                 | PERSONAL & ADV INJURY \$ 1,000,000                                                                                                                                                                                                           |                                  |               |                         |                         |                                                                                                                                                       |
|                                                                                                                                                 | GENERAL AGGREGATE \$ 2,000,000                                                                                                                                                                                                               |                                  |               |                         |                         |                                                                                                                                                       |
| GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC |                                                                                                                                                                                                                                              |                                  |               |                         |                         | PRODUCTS - COMP/OP AGG \$ 2,000,000                                                                                                                   |
|                                                                                                                                                 | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS |                                  |               |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$ |
|                                                                                                                                                 | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br>DED RETENTION \$                                                                                                           |                                  |               |                         |                         | EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$                                                                                                              |
|                                                                                                                                                 | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                | Y/N <input type="checkbox"/> N/A |               |                         |                         | WC STATU-TORY LIMITS OTH-ER<br>E.L. EACH ACCIDENT \$<br>E.L. DISEASE - EA EMPLOYEE \$<br>E.L. DISEASE - POLICY LIMIT \$                               |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

817 S RAILROAD AVE, OPELIKA, AL 36801

|                                                                 |                                                                                                                                                                                                                            |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CERTIFICATE HOLDER</b><br><div style="height: 100px;"></div> | <b>CANCELLATION</b><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br> |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

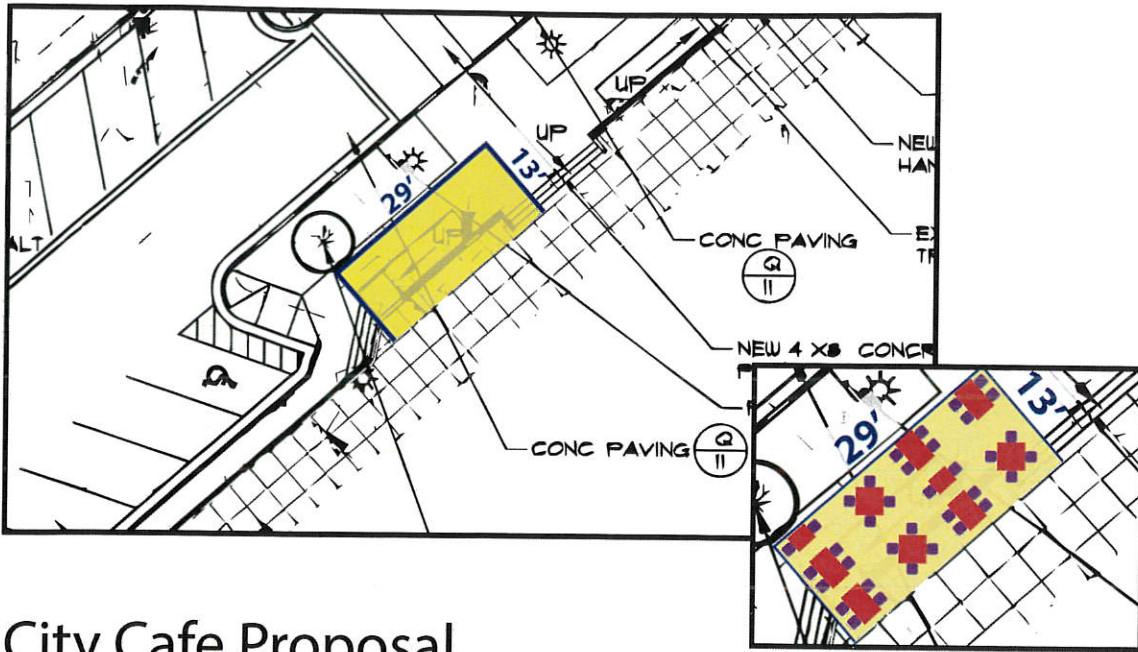
ACORD 25 (2010/05)

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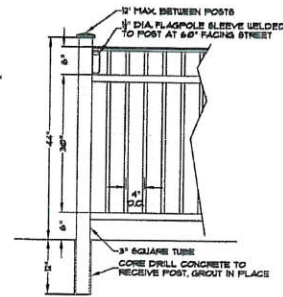
Attachment: City Cafe sidewalk cafe' application (1098 : City Cafe' Sidewalk Cafe' Application)





## City Cafe Proposal

We have proposed the following design to planning, engineering and the building department and all are in favor in the design. The handicap ramp to the east will remain for public use. The public will also have access to the ramp to the west that runs along the sidewalk path in front of Irish Bred Pub. We believe that the proposed patio will allow the City Cafe to add 36 seats to their restaurant capacity. Based on Mafia's outdoor patio sales, we believe the City Cafe patio will add an additional taxable revenue of between \$150,000 and \$200,000 per year resulting in up to \$18,000 in additional sales-tax revenue.



## RESOLUTION NO. (ID # 1100)

Resolution Approving Sidewalk Improvements On South Railroad Avenue in Front of Niffer's Place

**WHEREAS**, Eat Here, Inc. (the "Owner") is doing business as Niffer's Place and operates a restaurant located on South Railroad Avenue in the block between 9<sup>th</sup> Street and 10<sup>th</sup> Street; and

**WHEREAS**, the Owner has heretofore applied to the Opelika Planning Department for a sidewalk café permit in compliance with the provisions of Article VII of Chapter 26 of the *Code of Ordinances* of the City of Opelika; Alabama (the "City"); and

**WHEREAS**, the Owner heretofore submitted a plan for the extension of the sidewalk in front of Niffer's Place; and

**WHEREAS**, said plan for extension of the sidewalk has been prepared by the Owner and submitted to the City Council for its approval; and

**WHEREAS**, said plan for extension consists of removing two existing parking places in front of Niffer's Place and building an elevated deck to the same elevation as the entrance to Niffer's Place; and

**WHEREAS**, the Owner has agreed to pay all costs associated with the construction of said sidewalk improvements; and

**WHEREAS**, the City Engineer has approved the plan submitted by the Owner.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. The plan for sidewalk improvements on South Railroad Avenue prepared by the Owner of Niffer's Place, a copy of which is attached hereto as Exhibit "A", is hereby approved,

authorized, ratified and confirmed.

2. The Owner shall bear all costs associated with the sidewalk improvements in front of Niffer's Place on South Railroad Avenue.

3. Upon certification by the City Engineer that said sidewalk improvements have been completed in accordance with the said plan and all municipal requirements, the City shall accept said improvements as a part of the City's sidewalk system.

4. No sidewalk dining shall be permitted in the area of the expanded sidewalk until the Owner complies with all of the provisions of the City's Outdoor Café Ordinance codified in Article VII of Chapter 26 of the *Code of Ordinances* of the City of Opelika.

5. The Owner shall comply with all OSHA regulations, all applicable state and federal rules and regulations and all applicable municipal ordinances. The Owner shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the construction work for the sidewalk improvements (the "work").

6. The Owner shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery necessary for the proper execution and completion of the construction work and shall hold the City harmless therefrom.

7. The Owner shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. It shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the work and (2) all motorists and pedestrians using the street and sidewalk in front of Niffer's Place.

8. The Owner shall indemnify and hold harmless the City and its respective officials, officers, agents and employees from and against all liability, claims and demands on account of injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out or in way connected with the sidewalk improvements in front of Niffer's Place, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by the act, omission, error, mistake, negligence or other fault of the Owner or any contractor, subcontractor or employee of the Owner.

9. The Owner shall procure and maintain at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations incurred by the Owner pursuant to its obligations under this Resolution. The Owner shall cause any contractor or subcontractor to procure and maintain minimum insurance coverages as approved by the City. Required coverages shall include worker's compensation insurance and general commercial liability insurance with a minimum combined single limits of \$1,000,000 each occurrence and \$3,000,000 aggregate. The policies of insurance required by this section shall be endorsed to include the City as an additional insured.

**ADOPTED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
 PRESIDENT OF THE CITY COUNCIL OF THE  
 CITY OF OPELIKA, ALABAMA

ATTEST:

---

CITY CLERK



EAT HERE, INC.  
DBA NIFFER'S PLACE

PH. (334) 821-3118  
1151 OPELIKA HWY.  
AUBURN, AL 36830

61-397/620

2015

13.22.a

DATE 5-6-15

PAY TO THE  
ORDER OF

City of Opelika

\$ 100 -

one hundred

100

DOLLARS



Secu  
Featu  
Inclu  
Detail



BancorpSouth

ES FOR

Non-conforming use permit

[Signature]

AUTHORIZED SIGNATURE

⑈ 201582⑈ ⑆ 062003977⑆ 72588825⑈

THE FACE OF THIS DOCUMENT CONTAINS HEAT-SENSITIVE INK. TOUCH OR RUB RED IMAGE. IT WILL DISAPPEAR WITH HEAT.

Attachment: Niffer's sidewalk cafe' application (1100 : Niffer's Sidewalk Cafe' Application)



5-6-15

City Of Opelika

Attached please find the Sidewalk Cafe application, a proposed color rendering of the deck we propose to build, a framing plan and a drawing of the spaces in relation to the property. We seek permission to have the City approve this project. We would request that the City remove the black metal railing that is currently on the edge of the sidewalk as we would build the deck to secure to the sidewalk in that area.

We would use all pressure treated deck materials and build to city standards.

We will have sufficient area for drainage to pass under the deck to existing drains. We will skirt the rim joists with a metal mesh material to prohibit animals from living under deck.

All work will be permitted and completed in a timely manner.

We would like to begin building June 1, 2015 or as soon as permission is granted.

Thank you for your consideration.

Sincerely,

Keely A. Beasecker





# Sidewalk Café Application

City of Opelika  
Opelika Planning Department  
700 Fox Trail, Opelika, AL 36801  
(334) 705-5156, Fax (334) 705-5159



13.22.a

## OWNER/APPLICANT INFORMATION

Owner of Property: Duke Searcy  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

## BUSINESS INFORMATION

Business Name: Niffer's at the tracks  
Business Owner's Name: Keely A BEASECKER  
Address of Business: 917 56 Railroad Ave Opelika AL 36801  
Current Zoning: \_\_\_\_\_

Number of Tables Used: 4 Number of Chairs Used: 20

Describe Equipment and Furnishings Used Outside: Outdoor Tables/chairs with umbrellas.

Attach Diagram of the Proposed Area including location of the Divider  
Provide a Description on the diagram of the Divider and any other information that is appropriate to fully describe the proposed operation of the sidewalk café.

What are the hours of operation of the sidewalk café? 3-close

Will alcoholic beverages be served in the sidewalk café area? yes

What hours will alcoholic beverages be served in the sidewalk café area? Closing 8:00 AM UNTIL

→ Current Liquor License Number: 010127041

Name and Address of Insurer: University Agency, Auburn, AL

## STATEMENT OF UNDERSTANDING

I Keely A BEASECKER am the property owner, legal entity, and/or authorized representative (underline your title) responsible for the operations of the proposed sidewalk café. I understand that an annual fee for a permit to operate a sidewalk café in the district is \$100.00 per year. I understand that I must comply with all regulations concerning sidewalk cafés including the following regulations:

(1) Limitation on Area. The area in which a sidewalk café is operated shall be adjacent to the business of which it is an extension and shall not extend parallel in either direction beyond the outside front wall of the business. The operation of the sidewalk café shall be such that there is at least four (4) feet from the outermost edge of the sidewalk café to the street curb, that also includes a minimum of four (4) feet of clear and unobstructed passageway between the sidewalk café and street trees, lamp posts, signposts, traffic control devices and any other fixtures or obstructions. The Planning Director may require increased clearance distances if necessary to protect the public safety.

(2) Divider Required. The area permitted for a sidewalk café shall be separated from the remaining sidewalk area by a divider constructed of a sturdy material such as wrought iron, metal or wood posts and chain, or such other materials as the Planning Department may deem safe and appropriate to the location. Depending upon the circumstances, the Planning Department may require the divider to be removable. Such divider shall not be less than three (3) feet nor more than four (4) feet in height. All tables and chairs and other associated equipment or furnishings shall be located totally within the limits of the divider.



(3) Sanitation. A covered trash container of at least thirty-two (32) gallons' capacity containing a disposable plastic liner or bed shall be provided within each sidewalk café area and shall be emptied as often as necessary by the business to prevent overflow or other unsanitary conditions. It shall be the responsibility and duty of the business to which the sidewalk café permit is issued to maintain such area and all equipment and furnishings in such conditions so as to be clean, sanitary and safe at all times. The sidewalk café area and the adjoining sidewalks shall remain clear of litter, food scraps and soiled dishes at all times.

(4) Fire Exit. No area permitted for a sidewalk café may block or obstruct any fire exit or fire lane.

(5) Removal of Furnishings. All tables, chairs, trash containers and other associated equipment or furnishings of a sidewalk café shall be removed from the public sidewalk area at the close of the business every day.

(6) Smoking. Smoking shall not be allowed in approved sidewalk café areas.

(7) Signs. No signs shall be attached to any furniture, umbrellas, awnings or other structure related to the operation of the sidewalk café. Signs advertising the sale of goods or services at a sidewalk café shall be prohibited. A sign shall be posted in a visible location if the business dispenses alcoholic beverages, which states: "It is unlawful to remove alcoholic beverages from the sidewalk café".

(8) Supervision. Sidewalk cafes shall be continuously supervised by employees of the business.

(9) Animals. No animals shall be allowed within the sidewalk café area, except seeing eye dogs.

(10) Audio/Video Devices. Sidewalk cafes shall be prohibited from playing amplified music, whether live or recorded. No speakers, microphones, televisions or other audio or video devices shall be permitted at a sidewalk café.

(11) Utilities and Other Public Facilities. Sidewalk cafes shall not interfere with any utilities or other facilities such as telephone poles, fire hydrants, signs, traffic control devices, or street trees located on the sidewalk or public right-of-way.

(12) Vending Machines Prohibited. No vending machines, carts, or objects for the sale of goods shall be permitted in a sidewalk café.

(13) Lighting. Lighting for sidewalk cafes may be utilized if approved by the Planning Department. Any such lighting shall compliment the existing building and sidewalk café design and shall not cause glare to passing pedestrians or vehicles.

(14) Outdoor Heaters. Outdoor heaters may be utilized upon the approval of the Planning Department and the Fire Marshall.

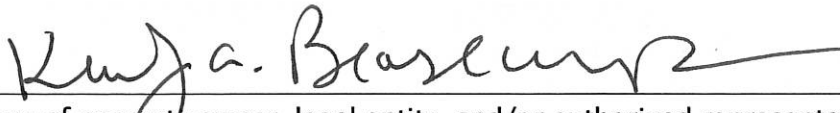
(15) I understand that if I am issued a permit to serve Alcoholic Beverages at the proposed sidewalk café that I must comply with the following regulations:

The issue of a permit allows the consumption of alcoholic beverages to the extent that it would not violate Section 3-15 of the *Code of Ordinances* (see Section 3-15, last page). Provided, however, a sidewalk café permit issued pursuant to the provisions of the article shall not, in and of itself, authorize, permit or allow the serving and/or dispensing of alcoholic beverages. Any dispensing and/or serving or consuming of alcoholic beverages in the sidewalk café area must be strictly in accordance with all applicable laws, ordinances and regulations including those of the State

Alcoholic Beverage Control Board. To the extent that any such license has been issued and alcoholic beverages may be served, then the same may not be taken outside of the permitted area of the sidewalk café. Failure to comply with this section shall terminate the permit issued by the Planning Department.

**(16) I UNDERSTAND I MUST HAVE PUBLIC LIABILITY, LIQUOR LIABILITY, AND PROPERTY DAMAGE INSURANCE FOR THE SIDEWALK CAFÉ AT ALL TIMES OR I WILL NOT BE ALLOWED TO OPERATE.**

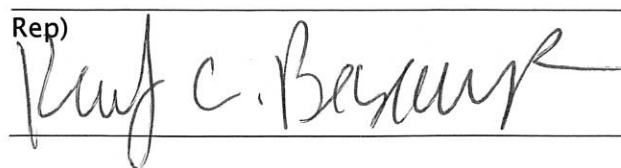
I Understand that I must provide the following concerning the insurance: The name and address on the insurance documents must be identical to that of the sidewalk café. Submit the ORIGINAL insurance certificate. Each insurance policy must name the City of Opelika as an "additional insured". Each insurance policy must have a clause indicating that the insurance policy may not be cancelled, terminated or modified, nor may the insurer's intention not to renew or reinstated until thirty (30) days after the Planning Director of the City of Opelika receives a written notice delivered by the insurer via certified mail announcing the insurer's intention to cancel, terminate, modify or not renew the policy. The insurance policy must protect the applicant and the City of Opelika from all claims for damages to property or bodily injury, including death, which may arise from operations under the sidewalk café permit or in connection therewith. Such insurance shall provide coverage for each occurrence of not less than \$1,000,000.00.

  
\_\_\_\_\_  
Signature of property owner, legal entity, and/or authorized representative

**INDEMNIFICATION STATEMENT**

The applicant hereby covenants with the City of Opelika to indemnify and save harmless the City against all claims and demands of all persons for damages, costs, expenses or compensation, including legal fees and costs of defending any actions or lawsuits thereon, for, on account of, or any way growing out of the use of occupancy by the applicant, his patrons, and/or invitees of the sidewalk café area or by reason of any act or neglect of said applicant, its officers, agents and employees, or by reason of any violation of any term of the City's Sidewalk Café Ordinance or any license or permit necessary in the said use and occupancy of the licensed premises.

\_\_\_\_\_(Date)

\_\_\_\_\_(Signature of Property Owner/Authorized Rep)  
  
\_\_\_\_\_(Print Name)

NOTARY

\_\_\_\_\_



Applicant: \_\_\_\_\_

Planning: \_\_\_\_\_

Revenue: \_\_\_\_\_

1  
ama

### SECTION 3-15 CONSUMPTION IN PUBLIC

It shall be unlawful for any person to consume alcoholic beverages in or on any public place as herein defined. For the purposes of this section, the phrase "public place" shall have the following meaning:

(1) Any street, highway, thoroughfare, alley or sidewalk owned by government, either directly or through a public corporation or authority, that is designed for the use, enjoyment or transportation of the general public.

(2) Any building with all appurtenances (including grounds and yards), owned or operated by government, either directly or through a public corporation or authority, that is designed for the use or enjoyment of the general public. City hall, libraries, school buildings, auditoriums, courthouses, judiciary building, post offices and public administrative buildings are included within the meaning of the phrase "public place".

(3) Any parks, playgrounds, athletic fields, golf courses, tennis courts and recreational facilities owned or operated by government, either directly or through a public corporation or authority, that is designed for the use or enjoyment of the general public, which are not licensed for the sale of alcoholic beverages.

(4) Any place or location used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or other method, which is not licensed for the sale of alcoholic beverages.

(5) Any place or location, whether public or private, that may be readily seen by normal unaided vision viewing from a public street, highway, sidewalk, thoroughfare, park or other public property. Provided that no private dwelling (including appurtenances, yards, and grounds) and no place engaged for a private gathering is included within the meaning of public place with respect to the owners or occupants of such dwelling or place or to any persons specifically invited therein.

(6) Any parking lot that is designed for the use of the general public.

Provided, however, the term "public place" shall not mean or include premises which have been duly licensed by the City for the sale thereon of alcoholic beverages. **Notwithstanding the provisions of this Section, alcoholic beverages may be served in approved sidewalk cafes provided the provisions of Article VII of Chapter 26 are met and the business operator holds a valid alcoholic beverage license.**

Attachment: Niffer's sidewalk cafe' application (1100 : Niffer's Sidewalk Cafe' Application)





NIFFERS AT THE TRACKS  
DECK ADDITION PROJECT  
OPELIKA, ALABAMA

Proprietary Information & Cannot Be Used  
Without the Written Consent of Auburn Deck Masters, LLC

5-6-15  
City Of Opelika

Attached please find the plans we  
propose to build. We seek permission  
the black metal railing to be  
secure to the side of the building.  
We would use all proper fasteners.  
We will have sufficient bracing.  
rim joists with a metal plate.  
All work will be permitted.  
We would like to begin construction.

Thank you for your consideration.

Sincerely,

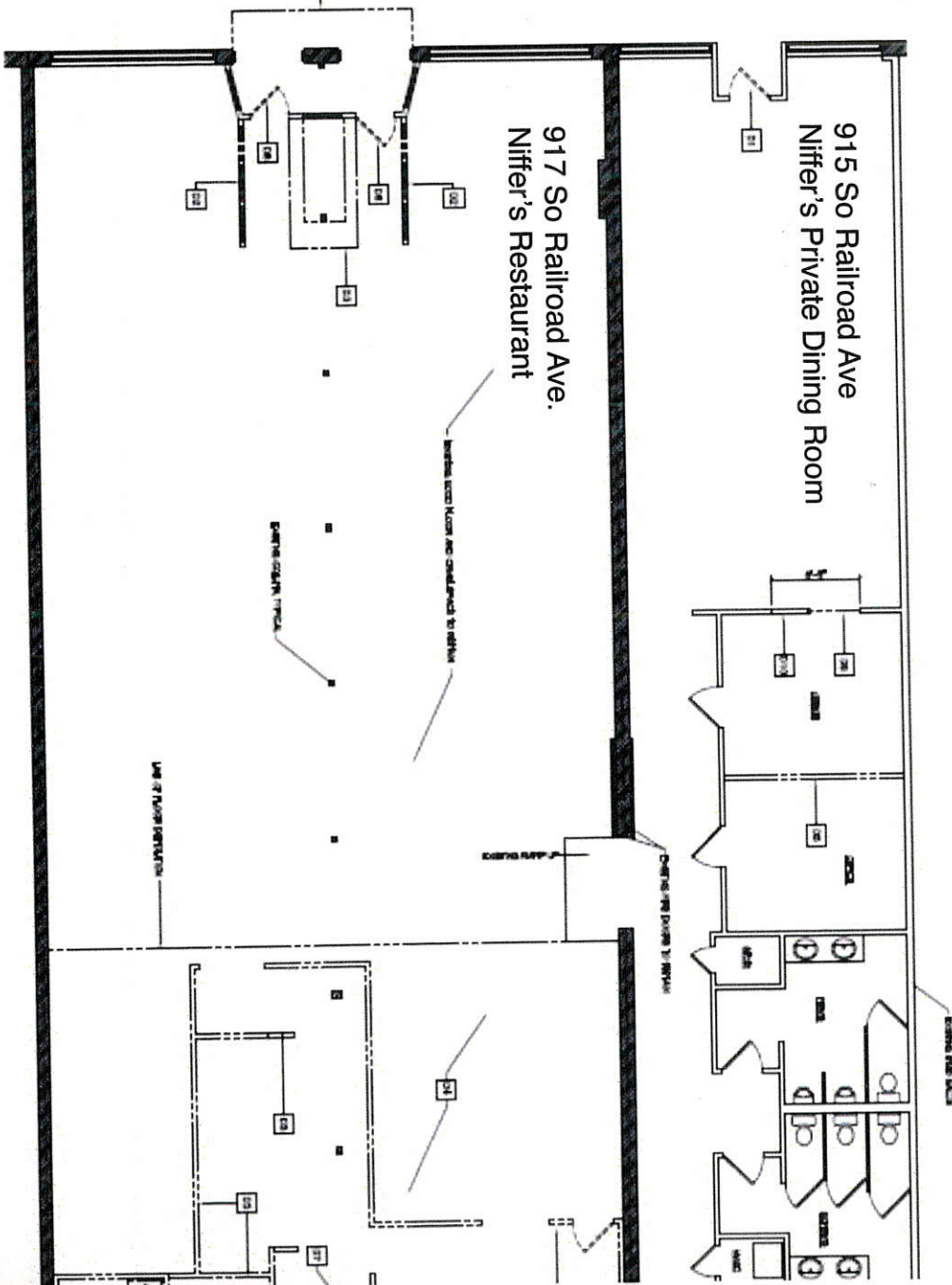
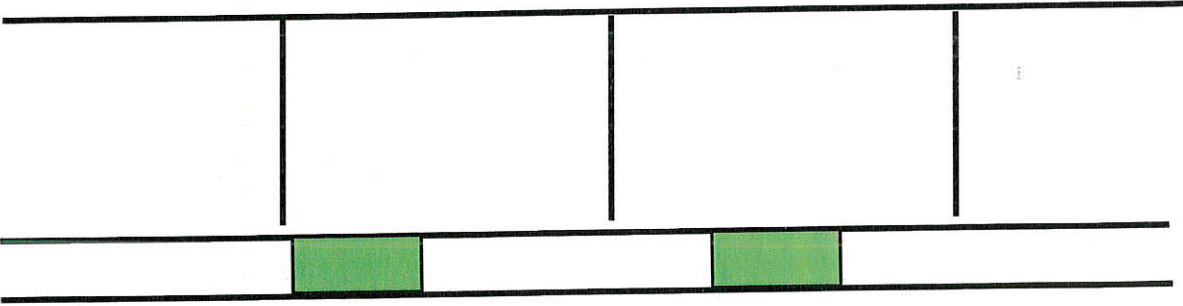
*Keely A. Beasecker*  
Keely A. Beasecker





Niffer's  
917 So Railroad Ave.  
Opelika  
Contact: John Alexander  
256-749-6777

Existing  
9" x 22' parking spaces

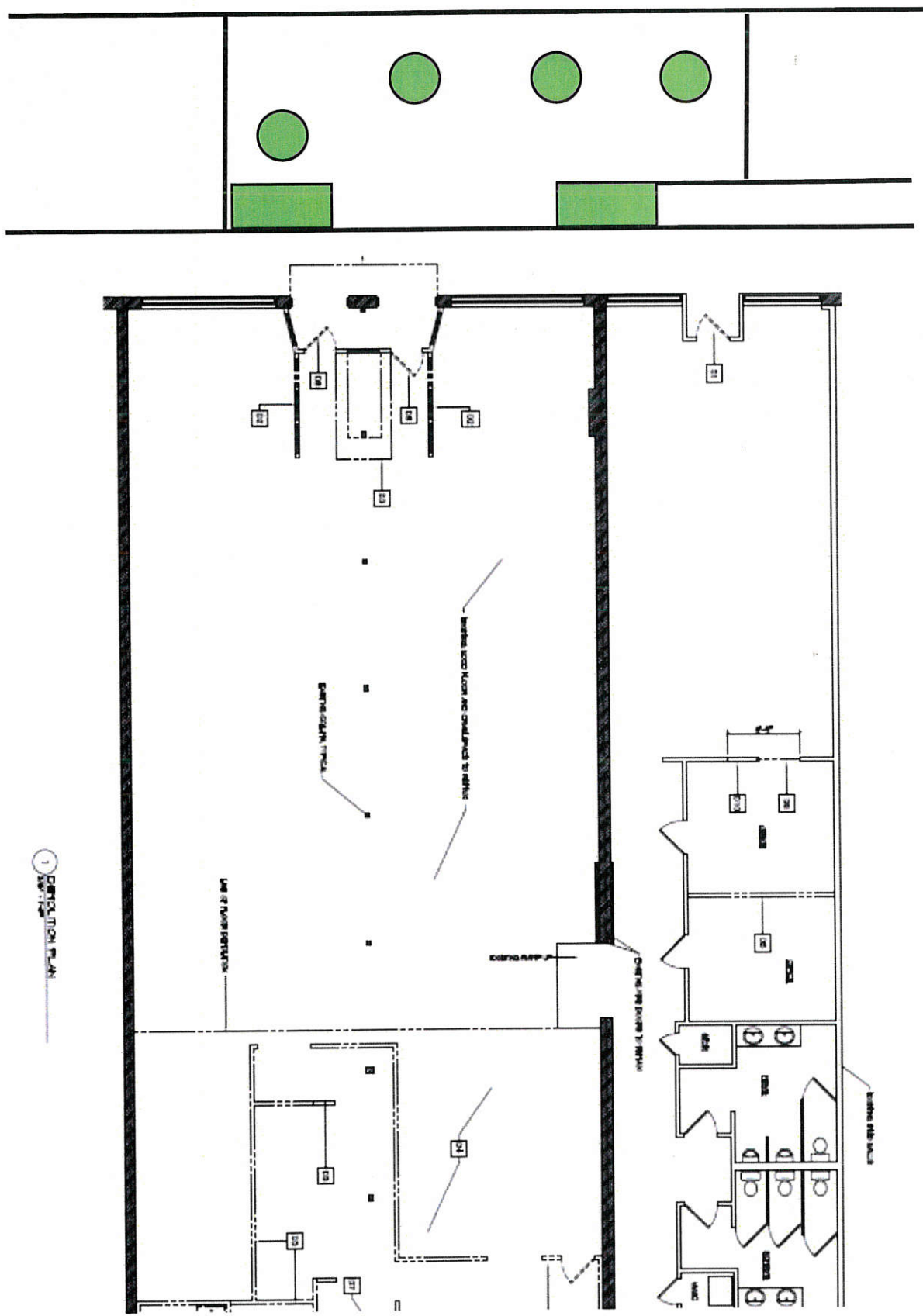


1. DETAIL PLAN

Proposed removal of  
(2) 9" x 22' parking spaces

**Attachment: Niffer's sidewalk cafe' application (1100 : Niffer?s Sidewalk Cafe' Application)**

**Nitter's**  
917 So Railroad Ave.  
Opelika  
Contact: John Alexander  
256-749-6777





|                                                                                                                      |  |                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>                                                                     |  | DATE (MM/DD/YYYY)<br>05/08/2015                                                                                                                                                                             |
| PRODUCER (334) 887-6569<br>UNIVERSITY AGENCY, INC.<br>611 EAST GLENN AVENUE<br>P.O. BOX 3067<br>AUBURN AL 36831-3067 |  | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. |
| INSURED<br>Eat Here Inc., DBA Niffers At The Tracks<br>1151 Opelika Rd.<br>Auburn AL 36830-                          |  |                                                                                                                                                                                                             |
|                                                                                                                      |  | INSURERS AFFORDING COVERAGE<br>INSURER A: Travelers Ins. Co.<br>INSURER B:<br>INSURER C:<br>INSURER D:<br>INSURER E:                                                                                        |
|                                                                                                                      |  | NAIC #                                                                                                                                                                                                      |

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR | ADD'L LTR | TYPE OF INSURANCE                                                                                                                                                                                             | POLICY NUMBER         | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS                                                                                                                                                                                                                                   |
|------|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------------------------------|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A    | X         | GENERAL LIABILITY                                                                                                                                                                                             | I-680-8864B162-14-42  | 05/19/2014                       | 05/19/2015                        | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000 |
|      |           | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR                                                            |                       | / /                              | / /                               |                                                                                                                                                                                                                                          |
|      |           | GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC                                                                          |                       | / /                              | / /                               |                                                                                                                                                                                                                                          |
|      |           | AUTOMOBILE LIABILITY                                                                                                                                                                                          |                       | / /                              | / /                               | COMBINED SINGLE LIMIT (Ea accident) \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$                                                                                          |
|      |           | <input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS |                       | / /                              | / /                               |                                                                                                                                                                                                                                          |
|      |           | GARAGE LIABILITY                                                                                                                                                                                              |                       | / /                              | / /                               | AUTO ONLY - EA ACCIDENT \$<br>OTHER THAN EA ACC \$<br>AUTO ONLY: AGG \$                                                                                                                                                                  |
|      |           | <input type="checkbox"/> ANY AUTO                                                                                                                                                                             |                       | / /                              | / /                               |                                                                                                                                                                                                                                          |
| A    |           | EXCESS/UMBRELLA LIABILITY                                                                                                                                                                                     | ISF-CUP-1161Y912-1542 | 05/19/2014                       | 05/19/2015                        | EACH OCCURRENCE \$ 1,000,000<br>AGGREGATE \$ 1,000,000                                                                                                                                                                                   |
|      |           | <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE<br><input type="checkbox"/> DEDUCTIBLE<br><input checked="" type="checkbox"/> RETENTION \$5,000                                |                       | / /                              | / /                               |                                                                                                                                                                                                                                          |
|      |           | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY                                                                                                                                                                 |                       | / /                              | / /                               | E.L. EACH ACCIDENT \$<br>E.L. DISEASE - EA EMPLOYEE \$<br>E.L. DISEASE - POLICY LIMIT \$                                                                                                                                                 |
|      |           | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?<br>If yes, describe under SPECIAL PROVISIONS below                                                                                                  |                       | / /                              | / /                               |                                                                                                                                                                                                                                          |
| A    |           | OTHER                                                                                                                                                                                                         | I6808864B1621442      | 05/19/2014                       | 05/19/2015                        | \$1,000,000 occurrence<br>\$2,000,000 aggregate                                                                                                                                                                                          |
|      |           | Liquor Liability                                                                                                                                                                                              |                       | / /                              | / /                               |                                                                                                                                                                                                                                          |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
 City of Opelika is named as additional insured.

**CERTIFICATE HOLDER**

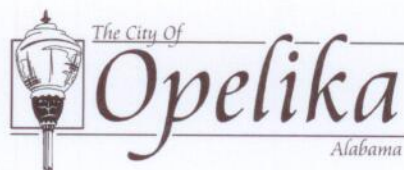
( ) - ( ) -  
 City of Opelika  
 P.O. Box 390  
 Opelika AL 36803-

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Myna Johnson*



## CITY OF OPELIKA Certificate of Appropriateness

The Opelika Historic Preservation Commission on **05/14/15** Granted a  
**Certificate of Appropriateness** to **Niffer's** for the property located at:

**917 S. Railroad Ave**

for the following:

***1. Sidewalk Café deck with wood railings.***

According to Opelika Ordinance 110-97, a Certificate of Appropriateness shall become void unless construction is commenced within six (6) months of date of issuance. Certificates of Appropriateness shall be issued for a period of eighteen (18) months and are renewable.

All work performed pursuant to an issued Certificate of Appropriateness shall conform to the requirements of such certificate. In the event work is performed not in accordance with such certificate, the Commission shall issue a cease and desist order and all work shall cease.

The City Council or the Commission with the consent of the City Council shall be authorized to institute an appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in the exterior appearance of a building or structure which is either a historic structure or is located in a historic district, except those changes made in compliance with the provisions of this ordinance or to prevent any illegal act or conduct with respect to such historic property or historic district.

**Issuance of a Certificate of Appropriateness does not verify that above project meets with City of Opelika regulations for Planning, Engineering or Building Codes. Contact the appropriate departments for assistance with these regulations and any other applicable regulations.**

*L. Harrelson*  
City of Opelika  
Community Development Administrator

*5/15/15*  
Date

Attachment: Historic COA (1100 : Niffer's Sidewalk Cafe' Application)

## ORDINANCE NO. (ID # 1083)

Amend City Code, Chapter 16, Add Article IX, Skateboards, Etc. (Second Reading)

BE IT ORDAINED by the City Council (the “Council”) of the City of Opelika, Alabama (the “City”) as follows:

Section 1. **Amendment.** That Chapter 16 of the *Code of Ordinances* of the City of Opelika, Alabama, is hereby amended to add a new Article IX entitled “Skateboards, Rollerskates and Coasters” to read as follows:

**ARTICLE IX****SKATEBOARDS, ROLLERSKATES AND COASTERS****SEC. 16-325. DEFINITIONS**

The following words and phrases when used in this article, have the meanings respectively ascribed to them in this section:

(a) “**Business**” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other legal entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

(b) “**Coasters**” means a footboard mounted upon two or more wheels and controlled by an upright steering handle. This device is propelled by the user and usually in an upright position.

(c) “**Nonprofit establishment**” means any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not for private financial gain. A public agency is not a nonprofit establishment within the meaning of this Section.

(d) **“Public Property”** means any property owned, operated or leased by a federal, state or local public entity, including the City of Opelika, Alabama.

(e) **“Rollerskates”** means a pair of shoes, mounted upon two or more wheels and is most often propelled by the user in an upright, standing position or kneeling.

(f) **“Skateboard”** means a footboard mounted upon two or more wheels and is usually propelled by the user who sometimes stands, sits, kneels, or lays upon the device while it is in motion.

## **SEC. 16-326. PROHIBITED AREAS**

It is unlawful for any person to operate or ride upon any skateboard, rollerskates or coaster upon the following prohibited areas:

(a) Any street, alley, sidewalk or publicly owned parking lot in the downtown business district of the City. For purposes of this article, the downtown business district is the area bounded by the following streets: 2<sup>nd</sup> Avenue, 10<sup>th</sup> Street, 6<sup>th</sup> Street and Avenue C.

(b) Any street, alley, sidewalk or publicly or privately owned parking lot in the Tiger Town business district. For purposes of this article, the Tiger Town business district is the area bounded by the following streets: Frederick Road, Gateway Drive, Interstate Drive and Corporate Drive.

(c) Tennis courts on public property.

(d) Any portion of construction projects, whether or not completed, located on public or private property.

(e) Walls, steps, driveways or parking lots on public property, provided that the area is clearly and conspicuously posted by signs stating that “skating and skateboarding prohibited”.



(f) Any private property opened to the public which is specifically hereinafter listed, provided that the area is clearly and conspicuously posted by signs stating that “skating and skateboarding prohibited”.

(1) Parking lots of a shopping center, business or nonprofit establishment.

(2) Driveways of a shopping center, business or nonprofit establishment.

(3) On walls, steps or railings of a shopping center, business or nonprofit establishment.

(4) Sidewalks and pedestrian ways within a shopping center.

#### **SEC. 16-327. GUIDELINES FOR SIGNS**

The following guidelines are provided for any signs required by this Article:

(a) Size. The size of the sign(s) should be no greater than one foot by one foot.

(b) Language. The wording on the sign(s) shall be as follows: “Skating and Skateboarding Prohibited”. The first two words should ordinarily be considerably larger than the remaining part of the message.

(c) Location. The sign(s) should appear at all entrances and around the periphery of the area of prohibition. The spacing of signs should be frequent enough to alert prospective violators but



not so many as to constitute an eyesore. Usually signs should be at least once every sixty feet, but not more often than every thirty feet.

#### **SEC. 16-328. REGULATIONS FOR ROADWAYS.**

It is unlawful for any person to ride in or on a skateboard, rollerskates, rollerblades, coaster or similar device, on or across any road, street or highway in such a manner as to interfere with the movement of vehicles thereon, or in such a way as to create an unreasonable risk of harm to vehicular or pedestrian traffic. The following rules and regulations shall apply to riding or propelling of skateboards or other listed devices on roadways. Skateboards and other listed devices must

- (A) Stop at all stop signs and red signals;
- (B) Yield to all vehicles at yield signs;
- (C) Yield to all pedestrians at marked and unmarked crosswalks;
- (D) Not impede traffic or interfere with the flow of vehicular traffic;
- (E) Yield to approaching vehicles when entering any roadway;
- (F) Not be towed by a motor vehicle at any speed or a bicycle at an unsafe speed;
- (G) Yield bicycle lanes to bicycles and not use bicycle lanes in any manner contrary to the free and open use of those lanes by bicycles;
- (H) Not suddenly leave a curb or other place of safety and travel into the path of a vehicle which is so close as to constitute an immediate hazard;
- (I) Operate the skateboard or other listed device in such a way that endangers or is likely to endanger themselves or others.

#### **SEC. 16-329. REGULATIONS FOR SIDEWALKS.**

When riding a skateboard, rollerskates, rollerblades, coaster or similar device on sidewalks or other areas that are not prohibited, those person(s) riding or propelling such devices shall

- (A) Yield to all other pedestrians;
- (B) Proceed with due care and at a safe speed when in the presence of pedestrians or on any sidewalk where there is the possibility of a pedestrian suddenly emerging onto the sidewalk from a business or residence.

#### **SEC. 16-330. SEIZURE AND FORFEITURE.**

Whenever a law enforcement officer has probable cause to believe that a skateboard, rollerskates, coaster or similar device was used or intended to be used in violation of this article, such skateboard or similar device is subject to seizure and forfeiture. In the event of seizure pursuant to this article, forfeiture shall be deemed complete unless the owner requests a hearing before a municipal judge. At such hearing, the forfeiture shall be ordered upon the City's showing of probable cause as provided herein.

#### **SEC. 16-331. PENALTY FOR VIOLATION AND ENFORCEMENT**

(A) Any person violating any provision of this article shall be guilty of a misdemeanor and shall be punished as follows:

- (1) First offense, fine of \$50.00 and impoundment of device for 10 days
- (2) Second offense, fine of \$100.00 and impoundment of device for 30 days
- (3) Third or subsequent offenses, fine of \$200.00 and impoundment of device for 60 days.

(B) Court magistrates are authorized to accept such fines and adjudicate all offenses in cases where the party receiving a citation wishes to pay a fine without

a court appearance.

(C) Property owners are responsible for posting the signs required by this article, for being willing to sign citations and for assisting with prosecution with citation.

Section 2. **REPEAL OF CONFLICTING PROVISIONS.** All other ordinances or parts thereof which are in conflict with this ordinance and the article hereby adopted are hereby repealed.

Section 3. **SEVERABILITY.** The provisions of this article are severable. If any section, clause, sentence or phrase of this article is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. **CONSTRUCTION.** If any section, paragraph or sentence or word of this Ordinance or the article hereby adopted be declared for any reason to be invalid, it is the intent of the City Council that it would have passed all other portions of this Ordinance and the article hereby adopted independent of the elimination therefrom of such portion that may be declared invalid.

Section 5. **EFFECTIVE DATE.** This Ordinance and the article hereby adopted shall take effect and be enforced immediately upon its adoption, approval and publication as required by law.

Section 6. **PUBLICATION.** The City Clerk of the City of Opelika, Alabama is hereby authorized and directed to cause this Ordinance to be published one (1) time in a newspaper of general circulation published in the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2015.

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PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

\_\_\_\_\_

CITY CLERK

TRANSMITTED TO MAYOR on this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_

CITY CLERK

ACTION BY MAYOR

APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_

MAYOR

ATTEST:

\_\_\_\_\_

CITY CLERK

## ORDINANCE NO. (ID # 1084)

Annexation, 1070 Lee Rd 389, Gallahan Property (Second Reading)ORDINANCE ASSENTING TO ANNEXATION

WHEREAS, Carla A. Gallahan (hereinafter referred to as the “Petitioner”), heretofore filed with the Clerk of the City of Opelika, Alabama, a municipal corporation, a petition for the annexation into the corporate limits of the property described below; and

WHEREAS, the Petitioner is the owner of all the land described in her petition; and

WHEREAS, the territory to be annexed is contiguous to the existing corporate limits of the City of Opelika and does not embrace any territory within the corporate limits of another municipality, and when annexed into the City of Opelika will form a homogenous part of the City; and

WHEREAS, the City Council of the City of Opelika hereby finds and determines that the public good requires that it would be to the best interest of the City of Opelika that the hereinafter described territory be brought within the city limits of the City of Opelika; and

WHEREAS, the City Council of the City of Opelika herewith adopts this ordinance assenting to the annexation of the territory described below pursuant to the provisions of Section 11-42-20, et seq. of the *Code of Alabama* (1975).

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Opelika, Alabama as follows:

Section 1. That the following described territory be annexed into the corporate limits of the City of Opelika, Alabama and the boundary lines and the corporate limits of the City of Opelika shall be extended, altered, and rearranged to include within the corporate limits of the



City of Opelika, in addition to the territory now included therein, all the following territory, to-wit:

Commencing at the Northeast corner of Section 20, Township 20 North, Range 27 East, in Lee County, Alabama; thence South  $87^{\circ}30'00''$  West, 326.30 feet to the Southeasterly R/W line of Lee County road No. 67 (Cusseta Road); thence South  $35^{\circ}10'00''$  West, along said R/W line, 695.37 feet to the true point of beginning of the parcel of land herein described; thence, leaving said R/W line, South  $78^{\circ}59'38''$  East, 147.18 feet; thence South  $20^{\circ}15'20''$  West, 322.24 feet; thence North  $24^{\circ}54'10''$  West, 250.63 feet to the Southeasterly R/W line of said Lee County Road No. 67; thence North  $35^{\circ}10'00''$  East, along said R/W line, 126.10 feet to the true point of beginning.

Section 2. That a map or plat of a survey describing the territory annexed and showing its relation to the corporate limits of the City of Opelika shall be attached to this ordinance, marked Exhibit "A" and made a part hereof.

Section 3. That the Clerk of the City of Opelika is hereby authorized and directed to file with the Judge of Probate of Lee County, Alabama, a copy of this ordinance, together with a copy of the petition for annexation and the Clerk is further directed to take all necessary and proper steps to perfect the annexation of this territory herein described.

Section 4. That the annexation of the above-described property is subject to the following conditions:

- (a) In the event a fire tax is being charged against the above-described territory under Section 8, Act No. 89-390, the owners of the property shall pay all such costs.
- (b) The annexed territory shall be subject to all zoning ordinances, subdivision regulations, building codes and other land use laws and regulations of the City of Opelika.

Section 5. That this ordinance shall be published in a newspaper of general circulation in the City of Opelika, Alabama.

Section 6. That this ordinance shall become effective upon adoption and publication as required by law.

ADOPTED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2015.

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PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

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CITY CLERK

TRANSMITTED TO MAYOR on this the \_\_\_\_ day of \_\_\_\_\_, 2015.

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CITY CLERK

ACTION BY MAYOR

APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2015.

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MAYOR

ATTEST:

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CITY CLERK

## City of Opelika

### Planning Commission Report

**Action Requested:** Annexation

**Property Owner(s):** Carla A. Gallahan

**Location of Property:** 1070 Lee Road 389 (Cusseta Road)

**Current Zoning:** PJ (Planning Jurisdiction)

**Zoning Request:** R-1(Rural District)

**Existing Land Use:** Single Family Residence

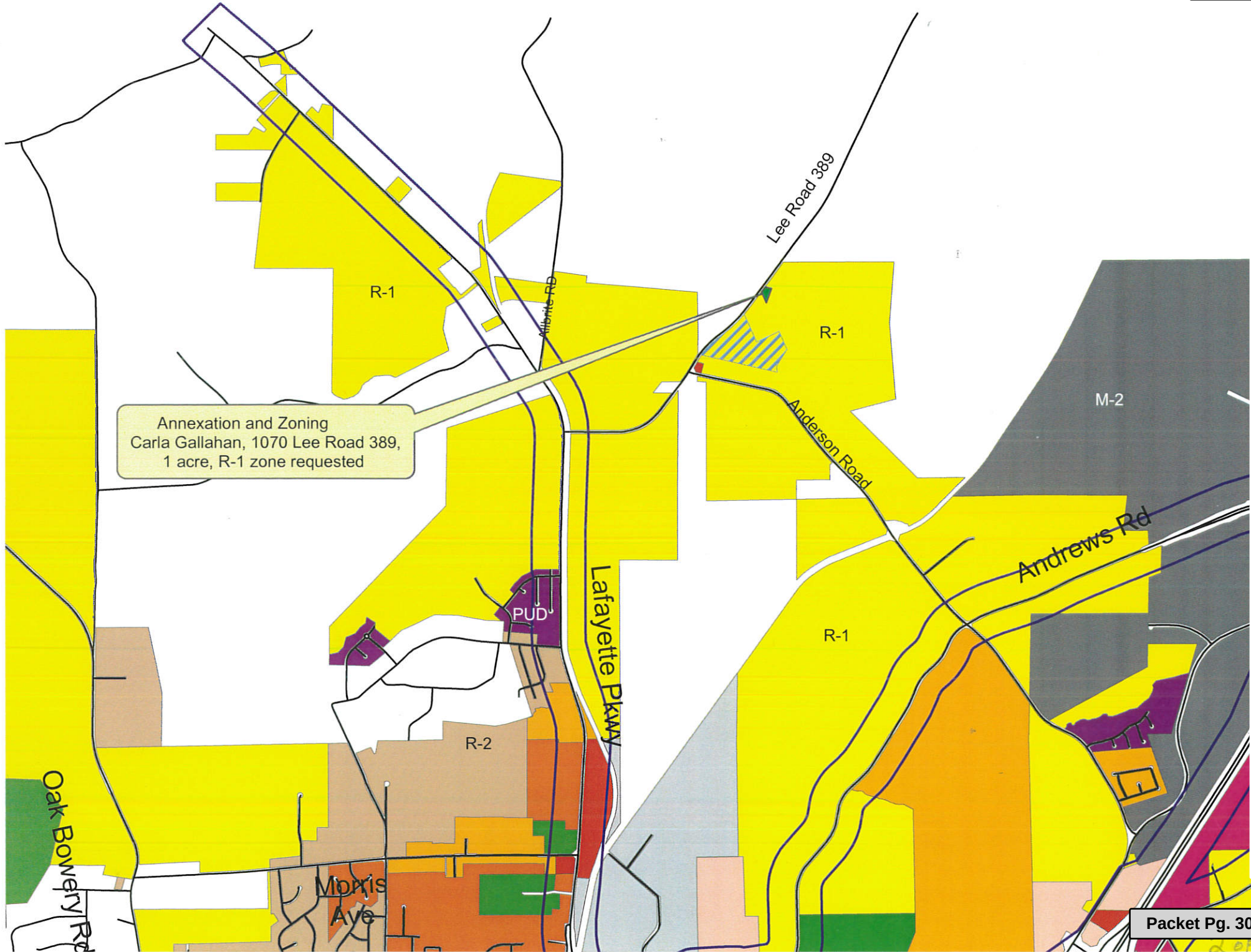
**Adjacent Zoning/Land Use:** N: PJ/Single Family Residence  
S: R-1/Single Family Residence  
E: R-1/Single Family Residence  
W: R-1/Single Family Residence

**Proposal:** The petition speaks for itself; as the applicant, Carla Gallahan, desires to live in Opelika. (Opelika Power Service serves the property.

**Recommendation:** Approve the petition to annex with a R-1 zoning classification and send to City Council.

*At the April 28<sup>th</sup> meeting, the Planning Commission voted to recommend annexation of the property and to zone the property R-1.*

*This is a request to forward information to the City Attorney to prepare an ordinance to annex the 1 acre property and zone the property R-1.*





## ORDINANCE NO. (ID # 1085)

Amend City Code, Chapter 4, Humane Traps and Capture Methods in Animal Control (First Reading)

**AN ORDINANCE AMENDING CHAPTER 4 OF THE *CODE OF ORDINANCES* OF THE CITY OF OPELIKA, ALABAMA BY ADDING SECTIONS 4-28.1 AND 4-28.2; AUTHORIZING HUMANE TRAPS AND CHEMICAL CAPTURE METHODS; AND PROHIBITING ANY PERSON TO INTERFERE WITH, HINDER OR MOLEST AN ANIMAL CONTROL OFFICER**

BE IT ORDAINED by the City Council (the “Council”) of the City of Opelika, Alabama (the “City”) as follows:

Section 1. **Amendment; adding Sections 4-28.1 and 4-28.2 to Chapter 4 of the *Code of Ordinances*.** That Chapter 4 of the *Code of Ordinances* of the City of Opelika, Alabama, is hereby amended by adding Sections 4-28.1 and 4-28.2, which said sections shall read as follows:

**Sec. 4-28.1 Authority to utilize humane traps and/or chemical capture methods.**

(a) Any animal control officer is authorized, in order to apprehend animals in violation of this chapter, which are otherwise difficult to apprehend, to use traps designed to humanely capture such animals by placing the traps upon any public property of the City, upon the right-of-way of any public street or highway, upon any public easements, or upon any private property of any person granting permission.

(b) It shall be unlawful for any person to molest or tamper with any such trap, or to remove any animal captured in any such trap or to interfere with any animal control officer in setting or servicing any such trap.

(c) Any animal control officer is hereby authorized to use chemical capture methods to capture animals in violation of this chapter when in the animal control officer’s opinion the use of humane traps would be ineffective and the animal is diseased or poses a danger to public safety.

**Sec. 4-28.2 Interference prohibited.**

(a) It shall be unlawful for any person to interfere with, hinder or molest an animal control officer in the performance of any duties prescribed in this chapter, or seek release of any animal in the custody of an animal control officer except as provided in this chapter.

(b) It shall be unlawful for any person to:

(1) Remove, take, damage, destroy, tamper or interfere with any vehicle, equipment, tool or property of the animal control division or animal control officer used in the administration or enforcement of this chapter.

(2) Remove or take, or attempt to remove or take, an animal from the custody of the animal control division or an animal control officer.

(3) Refuse or fail to surrender any animal or carcass of any dead animal upon lawful demand by the animal control division or an animal control officer.

Section 2. **Conflict.** All former ordinances or parts thereof which are in conflict with this Ordinance are repealed in their entirety to the extent they are in conflict.

Section 3. **Severability Clause.** If any section, subsection, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of valid jurisdiction, then such holding shall in no way affect the validity of the remaining portion of this Ordinance.

Section 4. **Effective Date.** This ordinance and the section adopted shall become effective and enforced immediately upon its passage and publication as required by law.

Section 5. **Publication.** The City Clerk of the City of Opelika, Alabama is hereby authorized and directed to cause this Ordinance to be published one (1) time in a newspaper of general circulation published in the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
PRESIDENT OF THE CITY COUNCIL OF THE  
CITY OF OPELIKA, ALABAMA

ATTEST:

\_\_\_\_\_  
CITY CLERK

TRANSMITTED TO MAYOR on this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
CITY CLERK  
ACTION BY MAYOR

APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK