



## **Terms of Service**

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## **TERMS OF SERVICE**

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

## SECTION A - GENERAL PROVISIONS

1. **DEFINITIONS.** Definitions used within this TOS are listed alphabetically in the “Glossary”.
2. **RULES OF CONSTRUCTION.** Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words “hereof,” “herein,” and “hereunder,” and words of similar import when used in the TOS shall refer to the TOS and not to any particular provision of the TOS. The word “day” shall mean “calendar day,” unless specifically stated otherwise. In the event of a conflict between the terms of Section (A) – General Provisions, and any subsequent Section of the TOS, the terms of the subsequent Section shall prevail.
3. **ACCEPTANCE OF PAYMENT DEVICES.** Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices it will agree to accept as a form of payment from its Customers. The terms and conditions for the acceptance of the applicable Payment Devices and Merchant’s use of the Payment Device Processing Services are set forth in the Agreement and in the Merchant Operating Guide (the “MOG”), incorporated herein and located at our website <https://key.com/cashmanagement>. Each schedule, exhibit, addendum or attachment to the Agreement shall be governed by the TOS and the applicable provisions of the MOG, as well as by the terms set forth in the Merchant Application.
4. **TRANSACTIONS.**
  - a. **Merchant Compliance.** Merchant must comply with all the requirements under the Agreement. Merchant must also comply with the procedures set forth in the MOG and any other guides, manuals, or rules provided in writing to Merchant by KeyBank from time to time.
  - b. **Settlement of Transactions.**
    - i. **Deposits.** Merchant agrees that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Subject to this Section, KeyBank will deposit to the DDA all funds evidenced by Transaction Receipts complying with the terms of the Agreement and the Payment Network Regulations and will provide Merchant provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, and other payments due under the Agreement). Merchant acknowledges that its obligation to KeyBank for all amounts owed under the Agreement arises out of the same transaction as KeyBank’s obligation to deposit funds to the DDA and such amounts are owed in the ordinary course of business.
    - ii. **Provisional Credit.** Merchant acknowledges that all credits for funds provided to it are provisional and subject to reversal in the event that KeyBank does not receive payment of corresponding settlement amounts from the Payment Networks. Merchant further acknowledges that all credits are subject to adjustments for inaccuracies and errors (including rejects) and Chargebacks in accordance with the Agreement and the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer or Customer. Merchant authorizes KeyBank to initiate reversal or adjustment (debit or credit) entries and to initiate or suspend such entries in accordance with the Agreement as may be necessary to grant or reverse provisional credit for any Transaction. Further, KeyBank may delay Merchant-issued Customer credits for up to five (5) business days for accounting verification. Customer credits issued by Merchant to PIN-Debit Cards will not be subject to this delay. KeyBank may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit

for Transaction Receipts will be granted within KeyBank's sole discretion.

- iii. **Original Transaction Receipts.** Under no circumstances will KeyBank be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by KeyBank.
- c. **Processing Limits.** KeyBank may impose a cap on the dollar amount of Transaction Receipts that it will process for Merchant as indicated on the Merchant Application as Merchant's annual volume or as otherwise established by KeyBank. This limit may be changed by KeyBank from time to time, without prior notice to Merchant. If Merchant exceeds the established limit, KeyBank may suspend the processing of Transaction Receipts, and either return all Transaction Receipts evidencing funds over the cap to Merchant or hold those deposits in a separate account or Reserve Account.
- d. **Chargebacks.** Merchant is fully liable to KeyBank for all Transactions returned to KeyBank for whatever reason including all Chargebacks. Merchant will pay KeyBank for all Chargebacks. Merchant agrees to accept for Chargeback, and will be liable to KeyBank in the amount of any Transaction for which the Customer or Issuer disputes the validity of the Transaction for any reason. Merchant authorizes KeyBank to offset from funds due Merchant for Transaction activity or to debit the DDA, the Reserve Account, or any other account held at KeyBank or at another financial institution for the amount of all Chargebacks including, as applicable, any currency fluctuations. Merchant will fully cooperate with KeyBank in complying with the Payment Network Regulations regarding all Chargebacks. Guarantors are personally liable to KeyBank for all Chargebacks.

## 5. DEMAND DEPOSIT ACCOUNT (DDA).

- a. **DDA and ACH Authorization.** Merchant will establish and maintain with KeyBank (or with another ACH participating financial institution acceptable to KeyBank) one or more DDAs to facilitate payment for Transactions. Merchant will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, and other payments due under the Agreement. Merchant irrevocably authorizes KeyBank, and its authorized vendors and agents who provide services under the Agreement, to initiate ACH debit and credit entries to the DDA, the Reserve Account or any other account maintained by Merchant at any institution that is a receiving member of the ACH network, in order to make payments to or collect payments from Merchant due under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Merchant's obligations to KeyBank have been paid in full. Merchant also authorizes KeyBank's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement. Merchant must obtain prior consent from KeyBank to change the DDA. If Merchant does not get that consent, KeyBank may immediately and without notice terminate the Agreement and may take any other action it deems necessary in their discretion. KeyBank has the right to rely upon written instructions submitted by Merchant requesting changes to the DDA. In the event Merchant changes the DDA, the ACH debit and credit authorization established hereunder will apply to the new account and Merchant shall provide KeyBank such information regarding the new DDA as it deems necessary to effect payments to and from the new DDA. It may take KeyBank up to ten (10) business days after KeyBank's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA. Merchant may request from KeyBank written confirmation of KeyBank's consent to change the DDA. If the DDA is maintained with Keybank, KeyBank will deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (A)(4) of the TOS. KeyBank has the right to delay, within its discretion, crediting the DDA with funds evidenced by submitted Transaction Receipts. To the extent required, Merchant authorizes KeyBank to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant provisional credit for any entry.

KeyBank will make deposits to the DDA pursuant to the Agreement and the ACH authorization. To the extent required, Merchant authorizes and appoints KeyBank to act as its agent to collect Transaction amounts from the Issuer, the Customer or the Customer's financial institution. KeyBank, in its sole discretion, may grant Merchant provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by KeyBank and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, and any other payments due under the Agreement.

- b. **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from KeyBank, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. Merchant must promptly examine all statements relating to the DDA and immediately notify KeyBank in writing of any errors in the statement Merchant received from KeyBank. Merchant's written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by KeyBank within forty-five (45) days after the month end date on the statement containing the asserted error. If Merchant fails to provide such notice to KeyBank within said forty-five (45) days, KeyBank shall not be liable to Merchant for any errors Merchant asserts at a later date. Merchant may not make any claim against KeyBank for any loss or expense relating to any asserted error for sixty (60) days immediately following KeyBank's receipt of Merchant's written notice. During that sixty (60) day period, KeyBank will be entitled to investigate the asserted error, and Merchant shall not incur any cost or expense in connection with the asserted error without notifying KeyBank.
- c. **Depository Institution.** Merchant authorizes its depository institution to grant KeyBank access to any and all information or records regarding the DDA. Merchant authorizes KeyBank to direct the depository institution to hold funds in the DDA in an amount which KeyBank, in its discretion, deems sufficient to fully protect KeyBank's rights under the Agreement or to block or restrict Merchant's or others' access to funds in the DDA (whether or not such funds are specifically related to any previous deposit for any Transaction Receipt). Merchant directs the depository institution to immediately comply with any such direction from KeyBank.
- d. **Indemnity.** Merchant will indemnify and hold harmless KeyBank for any action it takes against the DDA or Reserve Account pursuant to the Agreement. Merchant will also indemnify and hold harmless the depository institution at which it maintains its DDA for acting in accordance with any instruction from KeyBank regarding the DDA.

## 6. SECURITY INTERESTS; RESERVE ACCOUNT; RECOUPMENT AND SET-OFF.

### a. Security Interests.

- i. **Security Agreement.** The Agreement constitutes a security agreement under the Uniform Commercial Code. Merchant grants to KeyBank a security interest in and lien upon (a) all funds at any time in the Reserve Account or DDA, regardless of the source of such funds, and (b) all funds underlying present and future Transaction Receipts; and (c) any amount which may be due to Merchant under the Agreement, including, without limitation, all rights to receive any payments or credits under the Agreement (collectively, the "Secured Assets"). Merchant agrees to provide other security to KeyBank upon request, to secure its obligations under the Agreement. These security interests and liens will secure all of Merchant's obligations under the Agreement and any other agreements now existing or later entered into between Merchant and KeyBank including Merchant's obligation to pay any amounts due and owing to KeyBank. KeyBank may execute this security interest, without notice or demand of any kind, by

making an immediate withdrawal or by restricting Merchant's access to the Secured Assets.

- ii. **Perfection.** Upon request of KeyBank, Merchant will execute one (1) or more control agreements or other documents to evidence or perfect this security interest. Merchant represents and warrants that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, KeyBank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from KeyBank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and KeyBank is not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by KeyBank. Merchant authorizes and appoints KeyBank as Merchant's attorney in fact to sign Merchant's name to any control agreement used for the perfection of any security interest or lien granted hereunder.

b. **Reserve Account.**

- i. **Establishment.** KeyBank may establish a Reserve Account at any time for the purpose of providing a source of funds to pay KeyBank for any and all amounts owed by Merchant. The Reserve Account shall be maintained with sums sufficient to satisfy Merchant's current and/or future obligations as determined by KeyBank. KeyBank shall have sole control of the Reserve Account. KeyBank may, at any time, require that the amount on deposit in the Reserve Account be increased.
- ii. **Funding.** KeyBank may fund the Reserve Account by any one or more of the following means.
  - aa. KeyBank may require Merchant to deposit into the Reserve Account funds in an amount determined by KeyBank;
  - bb. KeyBank may debit the DDA in any amount; or
  - cc. KeyBank may deposit into the Reserve Account funds it would otherwise be obligated to pay Merchant.
- iii. **Use of Funds in Reserve Account.** KeyBank may, without notice to Merchant, apply funds in the Reserve Account against any outstanding amounts Merchant owes or future amounts Merchant will owe under the Agreement or any other agreement between Merchant and KeyBank. Also, KeyBank may debit the Reserve Account to exercise its rights under the Agreement including, without limitation, its rights of set-off and recoupment to collect any amounts due to KeyBank. Further, Merchant agrees that KeyBank may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.
- iv. **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (1) the Agreement has been terminated; and (2) Merchant has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustment, fees, fines, penalties, assessments from the Payment Networks, and any other payments due under the Agreement. In no event shall Merchant be entitled to a return of any funds remaining in the Reserve Account before two-hundred-seventy (270) days following the effective date of termination of the Agreement.

- c. **Recoupment and Set-off.** KeyBank has the right of recoupment and set-off. This means that it may offset any outstanding or uncollected amounts owed to it from: (i) any amounts it would

otherwise be obligated to deposit into the DDA; and (ii) any other amounts it may owe Merchant under the Agreement or any other agreement. Merchant acknowledges that in the event of a Bankruptcy Proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code Section 362 or applicable law to KeyBank, and in order to ensure that KeyBank does not and is not obliged to advance credit to Merchant, Merchant must create or maintain the Reserve Account as required by KeyBank and KeyBank shall have the right to offset against the Reserve Account for any and all obligations Merchant may owe to KeyBank, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the initiation of the Bankruptcy Proceeding or the filing of the petition, motion, request for stay or other proceeding in connection with a Bankruptcy Proceeding.

- d. **Remedies Cumulative.** The rights conferred upon KeyBank in this Section are not intended to be exclusive of each other or of any other rights and remedies of KeyBank under the Agreement, at law or in equity. Rather, each and every right of KeyBank under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.

## 7. FEES; OTHER AMOUNTS OWED; TAXES.

- a. **Fees.** Merchant will pay KeyBank fees for services, supplies, and equipment in accordance with the Agreement and any additional application or setup form(s). Such fees will be calculated and debited from the DDA or the Reserve Account once each day or month for the previous day's or month's activity as applicable, or will be deducted from the funds due Merchant under the Agreement. In addition, Merchant will pay KeyBank at its standard rates for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on Merchant's account. KeyBank may adjust the fees in accordance with Section (A)(18)(p) below.
- b. **Other Amounts Owed.** Merchant will immediately pay KeyBank any amount incurred by KeyBank attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of Merchant's Transaction processing), assessments from the Payment Networks, and any other payments due under the Agreement. KeyBank may offset these amounts from funds otherwise owed by KeyBank to Merchant or may debit these amounts from Merchant's DDA or Reserve Account by ACH, and in the event such offset or ACH debit does not fully reimburse KeyBank for the amount owed, Merchant will immediately pay KeyBank such amount. KeyBank will charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.
- c. **Taxes.** Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement. If Merchant is a tax-exempt entity, Merchant will provide KeyBank with an appropriate certificate of tax exemption.

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

- a. **Accuracy of Information.** Merchant represents and warrants to KeyBank that all information provided to KeyBank in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement is true and complete and properly reflects the business, financial condition and principal partners, owners, officers, or ownership of Merchant. Merchant must promptly notify KeyBank in writing of any changes to such information, including, without limitation, any additional location or new business at which Merchant desires to accept Payment Devices, the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship,



partnership, etc.), type of goods and services provided, and how Transactions are completed (i.e., by telephone, mail, electronic commerce, or in person at Merchant's place of business). The notice must be received by KeyBank at least ten (10) business days prior to the change. Merchant will provide any additional information requested by KeyBank within a reasonable time. KeyBank has the right to rely upon written instructions submitted by Merchant to request changes to Merchant's business information. Merchant may request written confirmation of KeyBank's consent to the changes to Merchant's business information. Merchant will defend, indemnify, and hold harmless KeyBank for all losses and expenses incurred by KeyBank arising out of any such change, whether or not reported to KeyBank, or Merchant's failure to provide requested information. Merchant will not submit Transactions for processing to KeyBank for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of KeyBank. KeyBank may immediately terminate the Agreement upon notification by Merchant of a change to the information in the Merchant Application. Merchant authorizes KeyBank to contact credit reporting agencies and Merchant's creditors to make inquiries and obtain reports regarding Merchant's credit standing upon KeyBank's receipt of the Merchant Application.

- b. **Indemnification.** Merchant will be liable for and indemnify, defend, and hold harmless KeyBank and its respective employees, officers, directors, and agents against all claims, including claims made by third parties, losses, damages, liabilities or expenses arising out of the Agreement and for all reasonable attorneys' fees and other costs and expenses paid or incurred by KeyBank in the enforcement of the Agreement, including those resulting from any Transaction processed under the Agreement or any breach by Merchant of the Agreement and those related to any Bankruptcy Proceeding.
- c. **Limitation of Liability.** Merchant acknowledges that KeyBank's fees for the Processing Services provided to Merchant by KeyBank are very small in relation to the funds advanced to Merchant for Transactions and consequently KeyBank's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on KeyBank's liability that may be provided elsewhere, any liability of KeyBank under the Agreement, whether to Merchant or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the fees paid by Merchant during the last three (3) months. In no event will KeyBank, or its agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.
- d. **Performance.** KeyBank will perform all services in accordance with the Agreement. KeyBank makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **KeyBank disclaims all implied warranties, including those of merchantability and fitness for a particular purpose.** KeyBank shall not be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of KeyBank and without the fault or negligence of KeyBank.

9. **REPRESENTATIONS AND WARRANTIES.** Merchant represents and warrants to KeyBank as of the time the Agreement is effective, and reaffirms to KeyBank each time a Transaction is effected during the Initial Term or any Renewal Term of the Agreement, the following:
- a. **Organization.** Merchant is a corporation, company, limited liability company, unlimited liability company, limited liability partnership, limited partnership, general partnership, business trust, association or sole proprietorship validly existing and organized in the United States.
  - b. **Corporate Power.** Merchant and the persons signing the Agreement have the power to execute and perform the Agreement. Merchant represents and warrants that the person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in the Agreement to all provisions of the Agreement and that such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by KeyBank, now or in the future. Further, Merchant represents and warrants that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which Merchant is subject.
  - c. **No Litigation.** There is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened which if decided adversely would impair Merchant's ability to carry on Merchant's business substantially as now conducted or which would adversely affect Merchant's financial condition or operations. Merchant has never (i) been placed on the MasterCard MATCH<sup>TM</sup> system (formerly known as the Combined Terminated Merchant File), (ii) been named to the Consortium Merchant Negative File maintained by Discover, or (iii) been placed on or named to any other negative or terminated merchant file of any other Payment Network, or, if Merchant has, Merchant has disclosed that fact to KeyBank in writing.
  - d. **Transactions.** All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from Merchant or a return or adjustment related to such purchase. Merchant will not submit unlawful or illegal Transactions. Merchant has all power and authority to provide all Customer information, Cardholder Data and Transaction information that Merchant provides to KeyBank. No Transaction involves a Customer obtaining cash from Merchant unless allowed by the Payment Network Regulations and agreed to in writing with KeyBank.
  - e. **Compliance with Laws and Regulations.** Merchant will comply with all Laws and Payment Network Regulations.
  - f. **Business Use.** Merchant is obtaining and using the Processing Services from KeyBank for business purposes only and to facilitate lawful business Transactions between Merchant and Merchant's Customers. Merchant will not submit Transactions for processing to KeyBank for any businesses, materially different products, or methods of selling other than those set forth in the Merchant Application without the prior written consent of KeyBank. Merchant also acknowledges that the DDA into which debits and credits are made is being used for lawful business purposes only.
  - g. **Responsibility for Actions.** Merchant is responsible for any violations of the Agreement that result from the actions of or failure to act by Merchant's officers, directors, employees, agents, Value Added Servicers, business invitees, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to information related to Transactions from Merchant or access to systems under Merchant's control.

10. **AUDIT AND INFORMATION.**

- a. **Audit.** Merchant authorizes KeyBank to perform an audit of its business to confirm compliance with the Agreement. Merchant will obtain and submit a copy of an audit from a third party acceptable to KeyBank of the financial, physical security, information security, and operational facets of Merchant's business at its expense when requested by KeyBank. Further, Merchant acknowledges and agrees that the Payment Networks have the right to audit Merchant's business to confirm compliance with the Payment Network Regulations.
- b. **Information.**
  - i. **Authorizations.** Merchant authorizes KeyBank and/or its Service Provider to make, from time to time, any business and personal credit or other inquiries it considers necessary to review the Merchant Application or continue to provide services under the Agreement. Merchant also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to KeyBank and/or its Service Provider.
  - ii. **Financial Information.** Upon the request of KeyBank, Merchant will provide KeyBank ~~–~~audited financial statements prepared by an independent certified public accountant selected by Merchant. Merchant further agrees to provide to KeyBank such other information regarding Merchant's financial condition as KeyBank may request from time to time. Within one-hundred twenty (120) days after the end of each fiscal year, Merchant will furnish KeyBank, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.
  - iii. **Merchant Information.** Merchant agrees that any Merchant financial information, Transaction Data, and other information regarding Merchant, its principles, affiliates, or agents that Merchant or Merchant principle provides to KeyBank on the Merchant Application or otherwise obtained by KeyBank in connection with the Agreement may be: (i) used by KeyBank and its respective service providers, affiliates, agents, and referral partners, (a) in order to provide the Processing Services and related functions to Merchant and to respond to any further application for services, or (b) for administrative purposes and to maintain Merchant's account pursuant to this Agreement; (ii) disclosed and shared for reporting purposes to credit rating agencies, under the Payment Network Regulations, to Issuers and to the financial institution where the DDA is maintained; (iii) utilized to enhance or improve KeyBank's products or services, generally; (iv) used or disclosed in the course of any actual or potential sale, reorganization or other change to KeyBank's business; (v) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (vi) retained for such periods of time as required by KeyBank to perform its obligations and exercise its rights under the Agreement. KeyBank may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of KeyBank's customers or specific segments of KeyBank's Customers.
- c. **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, Merchant must provide certain information and identifying documents to allow KeyBank to identify Merchant.

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

KeyBank is under no duty to monitor Merchant's transactions for fraudulent or other suspicious

activity.

12. **BUSINESS CONTINUITY.** Merchant is solely responsible for developing and maintaining a disaster recovery plan. Merchant should test the operation of such plan, or parts thereof, on a periodic basis to ensure its effectiveness in providing disaster recovery capability to Merchant. Merchant is solely responsible for all Transactions and Transaction Receipts until such time as the Transaction Receipts have been received and validated by KeyBank. Merchant will maintain sufficient “backup” information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction. KeyBank has no duty to recreate lost Transactions.
13. **PERSONAL GUARANTY.** As a primary inducement to KeyBank to enter into the Agreement and in consideration of the services and accommodations of any kind given or continued at any time and from time to time by KeyBank to or for the benefit of Merchant, the designated Guarantor(s), jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance by Merchant of each of its duties and obligations to KeyBank pursuant to the Agreement, as the same may be amended by either of them from time to time, with or without notice. No act or thing, except full payment and discharge of all of Merchant’s duties and obligations to KeyBank, which but for this provision could act as a release or impairment of the liability of the Guarantor(s), shall in any way release, impair, or affect the liability of the Guarantor(s). The Guarantor(s) waives any and all defenses of Merchant pertaining to Merchant’s duties and obligations to KeyBank, any evidence thereof, and any security therefore, except the defense of discharge by payment. Guarantor(s) understands further that KeyBank may proceed directly against Guarantor(s) without first exhausting its remedies against Merchant or any other person or entity responsible therefore or any security held by KeyBank or Merchant. The Guarantor(s) waives: (i) notice of acceptance of this Personal Guaranty and of the creation and existence of Merchant’s duties and obligations to KeyBank ; (ii) presentment, demand for payment, notice of dishonor, notice of non-payment, and protest of any instrument evidencing Merchant’s duties and obligations; (iii) all other demands and notices to the Guarantor(s) or any other person and all other actions to establish the liability of the Guarantor(s); and (iv) **the right to trial by jury in action in connection with this Personal Guaranty.** This Personal Guaranty will not be discharged or affected by the death of the Guarantor(s), will bind all heirs, administrators, representatives, and assigns, and may be enforced by or for the benefit of any successors in interest to KeyBank . Guarantor(s) understands that the inducement to KeyBank to enter into the Agreement and give or continue services and accommodations of any kind to or for the benefit of Merchant, is consideration for the Personal Guaranty and that each Personal Guaranty remains in full force and effect even if the Guarantor(s) receives no additional benefit from the Personal Guaranty.
14. **THIRD PARTIES.**
  - a. **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to KeyBank previously in writing, and unless such Value Added Servicer is fully compliant with all Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to the Agreement, Merchant will be bound by the acts and omissions of any Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will indemnify and hold harmless KeyBank from and against any loss, cost, or expense incurred in connection with or by reason of Merchant’s use of any third parties, including Value Added Servicers. Merchant’s use of any Value Added Servicer is at Merchant’s risk. KeyBank is not responsible for any Value Added Servicer or for the

products or services offered by such Value Added Servicer, nor is it responsible for any Transaction until KeyBank receives data for the Transaction in the format required by KeyBank. A Value Added Servicer's access to or ability to integrate with the products, services, and systems of KeyBank may terminate at any time and KeyBank shall have no obligation to advise Merchant of such termination.

- b. **Use of POS Devices Provided by Others.** In addition to the foregoing, if Merchant uses a Value Added Servicer for the purposes of data capture and/or authorization, Merchant agrees: (i) that the third party providing such services will be Merchant's agent in the delivery of Transactions to KeyBank via a data processing system or network compatible with KeyBank's; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement. KeyBank will not be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or by a malfunction in a third party POS Device. KeyBank is not responsible for any Transaction until KeyBank receives data for the Transaction in the format required by KeyBank.
- c. **Liability for Direct Agreement with Third Party.** KeyBank has no responsibility for, and shall have no liability to Merchant in connection with, any hardware, software or services Merchant receives subject to a direct agreement (including any sale, warranty or end-user license agreement) between Merchant and a third party, including any Value Added Servicer, even if KeyBank collects fees or other amounts from Merchant with respect to such hardware, software or services.

## 15. TERM AND TERMINATION.

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

- iii. **Notice of Termination.** Notice of termination by Merchant or KeyBank may be given orally or in writing, but if given orally, must be confirmed in writing as soon as practical. Merchant's termination request shall be completed on a form available from KeyBank, but at a minimum, must include the name of the Merchant and Merchant Identification Number, and must be signed by the principal owner(s) of Merchant. Termination shall be effective on the date specified by the oral or written notice; provided, however Merchant agrees that closing Merchant's account with KeyBank may take up to thirty (30) days following KeyBank's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by KeyBank following termination by either Merchant or KeyBank in the Initial or any Renewal Term, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive two (2) year Renewal Terms effective on the date of reinstatement.

c. **Action Upon Termination.**

- i. **Accounts.** All Merchant's obligations regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until Merchant pays all amounts Merchant owes KeyBank or amounts for which Merchant is liable under the Agreement. Merchant must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other amounts due under the Agreement for a reasonable time, but in any event, not less than one-hundred-eighty (180) days from termination. If a Reserve Account is established by KeyBank, then any balance remaining after Chargeback rights have expired and all other amounts owed by Merchant has been paid will be disbursed to Merchant.
- ii. **Leased Equipment.** If Merchant's Leased Equipment is owned by KeyBank, Merchant must return all equipment owned by KeyBank within ten (10) business days after termination of the Agreement and immediately pay KeyBank any amounts Merchant owes for such Leased Equipment.
- iii. **Return to KeyBank.** All Confidential Information, promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to Merchant and not purchased by Merchant or consumed in use will remain the property of KeyBank and must be returned to KeyBank or destroyed within ten (10) business days after termination of the Agreement. Merchant will be fully liable for any and all loss, cost, and expense suffered or incurred by KeyBank arising out of any failure to return or destroy such materials following termination.

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

- a. **Compliance with Laws and Payment Network Regulations.** Merchant agrees to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account, and with any policies and procedures provided by KeyBank. The Payment Network Regulations are incorporated into the Agreement by reference as if they were fully set forth in the Agreement. Merchant further agrees to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic funds transfers; (iii) confidential treatment of information; and (iv) the Fair and Accurate Credit Transactions Act of 2003 (FACTA), including its requirements relating to the content of Transaction Receipts provided to Customers. Merchant will assist KeyBank in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. Merchant will execute and deliver to KeyBank all documents it may from time to time reasonably deem necessary to verify Merchant's



compliance with this provision.

- b. **Privacy Laws in the United States (if applicable).** In addition to Section (A)(17)(b), Merchant must take all commercially reasonable steps to protect the confidentiality of Customer and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Customer and Transaction information and in a manner that complies with applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act, the federal Gramm-Leach-Bliley Act, FACTA or other applicable privacy laws.
- c. **MATCH™ and Consortium Merchant Negative File.** Merchant acknowledges that KeyBank is required to report Merchant's business name and the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed and updated by Visa and American Express, to the Consortium Merchant Negative File maintained by Discover, if applicable, or to any other negative or terminated merchant file of any other Payment Network, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to the fulfillment of the obligations related to the listing by KeyBank, the listing itself and Merchant waives and holds harmless KeyBank from all claims and liabilities Merchant may have as a result of such reporting.
- d. **Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry Data Security Standard (PCI DSS) including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI DSS regulations of Discover Network, and the security programs of any other Payment Network regarding which Merchant accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time (collectively, "Security Programs"). Merchant also shall ensure that all Value Added Servicers and third parties from whom Merchant procures third party POS Devices comply with the requirements of the Security Programs. Upon request, KeyBank will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. Merchant is responsible for Merchant's own actions or inactions, those of Merchant's officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, "Merchant's Agents"). Merchant shall indemnify and hold KeyBank harmless from any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by any of Merchant's Agents. Should Merchant participate in a program with any other Credit Card Association or Issuer, or accept a Payment Device of any other Payment Network that has a security program in place, Merchant must comply therewith and ensure that Merchant's officers, directors, shareholders, employees, and agents, including Value Added Servicers or third party POS Devices, also comply with the program requirements of such Payment Network.
- e. **Data Compromise.**
  - i. **Notice and Investigation.** Merchant acknowledges and agrees that Cardholder Data and bank account information obtained by Merchant in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Merchant must notify KeyBank within twenty-four (24) hours (and if notice is given orally, it must be confirmed in writing within the same twenty-four hour period), if Merchant knows or suspects that Cardholder Data, Customer information, or Transaction information has been accessed or used without authorization from Merchant, Merchant's Agents or systems within Merchant's or its agent's control (a "Data Incident"). The notice must include: (a) a detailed written statement about the Data Incident including the contributing circumstances; (b) the form, number and range of compromised account information; (c) specific account numbers compromised; and (d) details about the ensuing investigation and Merchant's security personnel who may be contacted in connection with the Data Incident. Merchant must fully cooperate with

the Payment Networks and KeyBank in the forensic investigation of the Data Incident. Within seventy-two (72) hours of becoming aware of the Data Incident, Merchant must engage the services of a data security firm acceptable to the Payment Networks and/or to KeyBank to assess the vulnerability of the compromised data and related systems. Merchant must provide weekly written status reports to KeyBank until the forensic audit is complete. Merchant must promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks and/or KeyBank may request. In addition, Merchant must provide all audit reports to KeyBank, and such audits must be completed to the satisfaction of the Payment Networks and/or of KeyBank. If Merchant fails to supply the forensic audits or other information required by the Payment Networks and/or by KeyBank, Merchant will allow KeyBank to perform or have performed such audits at Merchant's expense.

- ii. **Preservation of Records.** In the event of a Data Incident, Merchant must take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Merchant shall cooperate with KeyBank to rectify, correct and resolve any issues that may result from the Data Incident, including providing KeyBank with (and obtaining any necessary waivers for) all relevant information to verify Merchant's ability to prevent future data incidents in a manner consistent with the Agreement.
  - iii. **Liability for Data Incident.** Without waiving any of KeyBank's rights and remedies, Merchant is liable for all fraudulent transactions related to any Data Incident and all costs KeyBank or any of its Service Providers incur as a result of such Data Incident, including any fees, fines, penalties, or assessments by the Payment Networks, claims from third parties, all costs related to the notification of Cardholders or Customers and cancellation, re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI DSS review for a report of compliance.
- f. **Office of Foreign Assets Control Compliance.** KeyBank is an entity governed by the Laws of the United States of America and as such, KeyBank may not provide any products or services to Merchant or its Customers that contravene the Laws of the United States of America, including, without limitation, the Laws promulgated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") or any successor thereto.

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

- a. **Use of Trademarks.** Merchant will prominently display the promotional materials provided by KeyBank in Merchant's place of business as may be required or requested by the Payment Networks. Merchant's use of Visa, MasterCard, and Discover Network marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Merchant's right to use all such marks will terminate upon termination of the Agreement or upon notice by a Payment Network to discontinue such use. Merchant's use of promotional materials, provided by Visa, MasterCard, Discover Network, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, Discover Network, or such other Payment Networks endorse any goods or services other than their own and Merchant may not refer to Visa, MasterCard, Discover Network, or any other Payment Networks in stating eligibility for Merchant's products or services.
- b. **Confidentiality.**
  - i. **Customer and Transaction Information.** Merchant shall, at all times protect the confidentiality of Customer and Transaction information in accordance with all applicable Laws and Payment Network Regulations. Merchant will not disclose Customer or Transaction information to any third party, except to an agent of Merchant approved by



KeyBank that is assisting in completing a Transaction, or as required by Laws or Payment Network Regulations. Merchant must maintain all systems and media containing Customer and Transaction information in a secure manner to prevent access by or disclosure to anyone other than Merchant's authorized personnel. Merchant must maintain Customer and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy in a manner that will render the data unreadable all such media that Merchant no longer deems necessary or appropriate to maintain. Further, Merchant must take all steps reasonably necessary to ensure that Customer and Transaction information is not disclosed or otherwise misused. Merchant may not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose, including record keeping or additional authorization processing. After authorization, Merchant may only retain the Customer account number, name, and Card expiration date if Merchant has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement. Merchant may not print on any Transaction Receipt or other document that is given to the Customer, retained by Merchant, or transferred to a third party, the entire contents of the magnetic stripe or the CVV2/CVC2/CID data elements. In accordance with Section (A)(16)(e), Merchant shall immediately notify KeyBank if Merchant knows or suspects that any Customer or Transaction information has been accessed by unauthorized persons or has been used for any purpose not permitted herein whether such access or use occurred at: (i) Merchant; (ii) a Value Added Servicer; (iii) KeyBank; or (iv) elsewhere.

- ii. **Bankruptcy.** In the event of failure or other suspension of Merchant's business operations, including bankruptcy or insolvency, Merchant must not sell, transfer, or disclose any materials that contain Customer or Transaction information to third parties, and Merchant must:
  - aa. Return this information to KeyBank; or
  - bb. Provide acceptable proof of destruction of this information to the KeyBank.
- iii. **KeyBank Confidential Information.** Merchant agrees to protect KeyBank's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and shall not use, reproduce, distribute, disclose, or otherwise disseminate KeyBank's Confidential Information, except in connection with the performance of its obligations under this Agreement. The obligations of non-disclosure provided hereunder shall continue during the term of the Agreement and (i) with respect to Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and (ii) with respect to Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter.
- c. **Passwords.** If Merchant receives a password from KeyBank to access any of KeyBank's databases or services Merchant will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to KeyBank's databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify KeyBank if Merchant believes the KeyBank's databases or services or Merchant's information has been compromised by use of the password. If Merchant receives passwords from a third party, Merchant must protect such passwords in the manner required by such third party and indemnify, defend, and hold KeyBank harmless from any losses, costs, or expenses that arise from Merchant's use or misuse of such third party passwords.
- d. **Proprietary Interest.** Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by KeyBank. Nothing in the Agreement

shall be construed as granting Merchant any patent rights or patent license in any patent which KeyBank may obtain in respect to KeyBank's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of KeyBank's services, equipment, or software.

## 18. MISCELLANEOUS PROVISIONS.

- a. **Entire Agreement.** The Agreement (including all attachments, exhibits, addenda and other documents incorporated by reference into the Agreement, attachments, exhibits or addenda), Payment Network Regulations, and any amendment or supplement to either, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement; provided, however the Agreement shall not supersede any Personal Guaranty signed by a Guarantor, which Personal Guaranty shall be deemed to remain an agreement separate and distinct from the Agreement. In the event of a conflict between the documents comprising the Agreement, excluding any Personal Guaranty, the following order of priority will apply: (i) any amendment to the Agreement; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Application; (v) any Merchant Agreement or Merchant Processing Agreement; (vi) the Merchant Operating Guide; and (vii) any other guides or manuals provided to Merchant from time to time.
- b. **Governing Law in the United States.** The Agreement will be governed by and construed in accordance with the Laws of the State of Ohio with respect to Transactions occurring in the United States, except that Section (A)(18)(f) shall be governed by the Federal Arbitration Act. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the State of Ohio and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the State of Ohio. Any challenge to the enforceability of the agreement to arbitrate contained in Section (A)(18)(f) of the Agreement, on any ground, shall be brought in either the Court of Common Pleas of Cuyahoga County, Ohio or in the United States District Court for the Northern District of Ohio, and in no other court, and each of the parties to the Agreement consents to the exercise of personal jurisdiction by these courts and waives all objections based on a lack of personal jurisdiction, venue or the inconvenience of the forum. Merchant hereby waives any and all right to trial by jury in any action or proceeding relating to the Agreement. Merchant represents that this waiver is knowingly, willingly and voluntarily given.
- c. **Exclusivity.** During the Initial Term and any Renewal Term of the Agreement, Merchant will not enter into an agreement with any other entity that provides processing services similar to those provided by KeyBank as contemplated by the Agreement without KeyBank's written consent.
- d. **Construction.** Any alteration or strikeover in the text of the Agreement will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.
- e. **Assignability.** The Agreement may be assigned by KeyBank, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of KeyBank. If Merchant, nevertheless, assigns the Agreement without KeyBank's consent, the Agreement will be binding on the assignee as well as Merchant. If Merchant sells its business and the new owners incur Chargebacks, the original owner(s) and all original Guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners.
- f. **Arbitration.** All claims or controversies, or other matters in question, between the parties arising out of or related to the Agreement or the relationship between the parties that are not otherwise settled by agreement of parties will be submitted to and decided by arbitration held in Cleveland, Ohio in accordance with the rules of the American Arbitration Association as modified by the Agreement. The arbitration proceeding shall be conducted before one (1) neutral arbitrator, who shall be a member of the bar of the State of Ohio, actively engaged in the practice of law for at least ten (10) years. The arbitrator will have the authority to award any remedy or relief that a court in Ohio could order or grant, including, without limitation, specific

performance, issuance of an injunction or imposition of sanctions for abuse or frustration of the arbitration process. The arbitrator shall have no authority to decide claims on a class action basis. An arbitration can only decide KeyBank's or Merchant's claim and may not consolidate or join the claims of other persons who may have similar claims. Merchant may not assert a claim in arbitration on behalf of any third party or represent any class of claimants in an arbitration brought pursuant to the Agreement. The parties agree that anything communicated, exchanged, said, done, or occurring in the course of the arbitration, including any private caucus between the arbitrator and any party before or after any joint arbitration session, will be kept confidential. The parties agree that the underlying agreement between the parties involves interstate commerce and that, notwithstanding the choice of law provision in Section (A)(18)(b), any arbitration shall be governed by the Federal Arbitration Act.

- g. **Notices.** Any written notice to Merchant under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or with a nationally recognized overnight carrier, and addressed to the last address shown on the records of KeyBank. Any written notice to KeyBank shall be sent by U.S. mail or a nationally recognized overnight carrier to: Merchant Services, 127 Public Square, Cleveland, Ohio 44114, and shall be deemed received only upon actual receipt.
- h. **Bankruptcy in the United States.** Merchant will immediately notify KeyBank of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant or any of its principals. Merchant will include KeyBank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of the Agreement and shall allow the pursuit of any other action available to KeyBank under applicable Payment Network Regulations or Laws. Merchant acknowledges that the Agreement constitutes a contract to extend credit or other financial accommodations to, or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy. Such financial accommodations include, but may not be limited to, the incurrence by KeyBank from time to time of credit risk associated with funds transfers and KeyBank's compliance with Payment Network Regulations relating to Chargebacks. Merchant further acknowledge that such financial accommodations constitute an integral part of the Agreement.
- i. **Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse KeyBank for all reasonable attorneys' fees and other costs and expenses paid or incurred by KeyBank: (i) in the enforcement of the Agreement; (ii) in collecting any amounts due from Merchant to KeyBank; (iii) resulting from any breach by Merchant of the Agreement; or (iv) in defending against any claim, proceeding or cause of action brought against KeyBank arising out of Merchant's obligations under this Agreement.
- j. **Customer Contact.** Merchant authorizes KeyBank to contact its Customers or their Issuer if KeyBank determines that such contact is necessary to obtain information about any Transaction between Merchant and a Customer.
- k. **Telephone Recording.** Merchant authorizes KeyBank to monitor and record telephone conversations at any time without further notice to the parties to such conversations. The decision to record any conversation shall be solely in KeyBank's discretion.
- l. **Information Sharing.** Merchant understands and agrees that KeyBank may disclose any information gathered by KeyBank to (i) KeyBank's "affiliates" (i.e., companies related to KeyBank by common control or ownership) that offer financial products or services, including those identified in the Agreement and to KeyBank's administrative or service units that perform such functions; (ii) to non-affiliated companies to assist KeyBank in providing the products and services Merchant has requested; (iii) to credit rating agencies; and (iv) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).

- m. **Communication with Merchant.** Merchant agrees that KeyBank may provide Merchant with information about their services including, without limitation, information about new products and/or services by telephone, electronic mail, and/or facsimile.
- n. **Amendments.** KeyBank may propose amendments or additions to the Agreement. KeyBank will inform Merchant of a proposed change in a periodic statement or other notice. Merchant will be deemed to have agreed to the change if Merchant continues to present Transactions to KeyBank after thirty (30) days following the issuance of the notice. Notwithstanding any limitations set forth in the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Merchant, unless a later effective date is provided. Further, KeyBank is entitled to pass through to Merchant any fee increases imposed upon KeyBank by Visa, MasterCard, Discover Network, any other Payment Network, and any other third party including telecommunications vendors.
- o. **Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby if the essential terms and conditions of the Agreement for each party remain valid, legal and enforceable. Neither the failure, the delay by KeyBank to exercise, nor the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by Merchant must be signed by KeyBank.
- p. **Independent Contractors.** KeyBank and Merchant will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. The Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.
- q. **Survival.** All of Merchant's obligations to KeyBank shall survive termination of the Agreement, including, without limitation, Sections (A)(4)(a)-(d), (A)(5)(a)-(d), (A)(6)(a)-(d), (A)(7)(a)-(c), (A)(8)(a)-(d), (A)(9)(g), (A)(13), (A)(14), (A)(15), (A)(17)(a)-(d), (A)(18)(b), (A)(18)(g), and (A)(18)(k) of the TOS.
- r. **Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.
- s. **Force Majeure.** None of the parties hereto shall be considered in default in performance of its obligations to the extent such performance is delayed by force majeure affecting the party's ability to so perform. Force majeure shall include, but not be limited to, hostilities, restraint of rulers or peoples, revolution, civil commotion or riots, strike, lockout, epidemic, accident, fire, flood, earthquake, windstorm, explosion, lack of or failure of telecommunication facilities, regulation or ordinance, demand or requirement of any government or governmental agency, or any court, tribunal or arbitrator(s), having or claiming to have jurisdiction over the subject matter of the Agreement or over the parties hereto, or any act of God or any act of government or any cause whether of the same or different nature existing now or in the future which is beyond the reasonable control of the parties hereto.
- t. **Expenses.** Except as otherwise specifically provided in the Agreement, each party shall pay its own costs and expenses in connection with the Agreement and the transactions contemplated hereby, including all attorneys' fees, accounting fees and other expenses.

- u. **No Third Party Beneficiaries.** No provisions of the Agreement shall be construed to confer any rights or benefits on any Person not a party to the Agreement or a permitted assignee or successor of a party to the Agreement, unless such rights or benefits are expressly extended to third parties.

## 19. ELECTRONIC GIFT CARDS

- a. **Electronic Gift Card Services.** The following terms and conditions apply to KeyBank's provision of Electronic Gift Card Services to Merchant:
  - i. **Merchant Responsibilities.**
    - aa. Merchant will comply with the Agreement and with all applicable provisions of the MOG in connection with Merchant's receipt and use of the EGC Services.
    - bb. Merchant acknowledges and agrees that it is Merchant's sole responsibility to comply with any and all applicable Laws governing the issuance, sale, distribution, use, and acceptance of Electronic Gift Cards (including all laws relating to purchase, service and dormancy fees, laws relating to expiration dates, and laws governing the treatment of unused or unclaimed funds or other property). Further, Merchant agrees to comply in a complete and timely manner with any such Laws, including but not limited to all escheatment, unclaimed property, money transmission and consumer protection laws, now or hereafter applicable to the issuance, sale, distribution, use or acceptance of Electronic Gift Cards.
    - cc. Until such time as Cardholder Data and Transaction data has been received and validated by KeyBank, Merchant will maintain sufficient "backup" information and data (e.g. Transaction Receipts or detailed reporting) with respect to Electronic Gift Cards sold to reconstruct any information or data loss due to any system malfunction or error in transmission.
    - dd. KeyBank must participate in all Electronic Gift Card Transactions. In the event that a third party must also participate in such a Transaction, Merchant will only use such third parties as have been approved by KeyBank for such purposes.
    - ee. All Electronic Gift Cards must be printed by KeyBank or a KeyBank-approved vendor.
    - ff. Merchant agrees to comply with the Graphic Specifications and Procedures provided by KeyBank and incorporated herein by reference as such may be amended from time to time by KeyBank in its sole discretion.
    - gg. Merchant shall pay the fees for the EGC Services as set forth in the Merchant Application, and in any additional application and setup forms. In addition to any other applicable fees, Merchant is responsible for all card production and delivery costs.
  - ii. **Direct Settlement.** Merchant authorizes KeyBank to initiate credit and debit entries among Merchant's individual chain locations for any Transactions that change the balance of an Electronic Gift Card. In the event KeyBank is unable to accomplish a credit or debit entry to reflect the effect of a Transaction, Merchant further authorizes KeyBank to credit and/or debit the designated Master Account or Primary Merchant. Merchant also understands that KeyBank may, in its sole discretion, offset any debits against the related credit Transactions of the applicable chain or merchant location. Merchant also agrees to notify KeyBank in writing of any asserted errors within forty-five (45) days of the

statement date on which the asserted error first appeared and understands that any failure to do so will preclude further claims or assertion of the error. Both Merchant and the individual chain locations agree to pay related direct settlement fees.

iii. **Warranties/Liability.**

aa. KeyBank is not responsible for lost, stolen or fraudulent Electronic Gift Cards.

bb. KeyBank makes no warranty, express or implied, with respect to the products or Processing Services provided hereunder including, without limitation, any express or implied warranty regarding merchantability, fitness for purpose or compliance of the Processing Services or Electronic Gift Cards with any applicable Laws governing the issuance, sale, distribution, use, and acceptance of Electronic Gift Cards. This includes but is not limited to all escheatment, unclaimed property, money transmission and consumer protection Laws.

iv. **Post Termination.** Following termination, Merchant will pay KeyBank a transfer fee based in part on, but not limited to, the number of issued Electronic Gift Cards that must be converted to another processor and the data specifications required.

v. **Additional Fees.** Merchant agrees to pay KeyBank for Electronic Gift Card production once Merchant has approved the Electronic Gift Card design proof. Merchant accepts full responsibility for all Electronic Gift Card production costs. Merchant acknowledges that one proof per Electronic Gift Card order is included in the cost of Electronic Gift Card production and Merchant agrees to pay thirty-five dollars (\$35) for additional proofs. If any order is cancelled prior to Electronic Gift Card production, Merchant agrees to pay KeyBank a one hundred dollar (\$100) cancellation fee.

vi. **Additional Locations.** Locations, including chain locations, added to this processing relationship will be boarded on KeyBank's system pursuant to the paperwork submitted by Merchant to KeyBank. However, in the event of an error or omission of fees payable by Merchant on the submitted paperwork, the Processing Services fees and other monthly fees applied to the locations during the initial set up or subsequent negotiations will be applied to such locations.

vii. **Closing Locations.** In the event that a particular location closes or changes its MID, Merchant agrees that KeyBank may bill the Primary Merchant for any fees associated with subsequent Transactions processed on Electronic Gift Cards activated by the closed MID. This would apply to any system generated Transactions including, but not limited to, deduction and points conversion Transactions. Monthly fees billed for Loyalty Cards/members activated at the closed location may also be billed to the Primary Merchant.

b. **WebSuite Services.** The following terms and conditions apply to KeyBank's provision of WebSuite Services to Merchant:

i. **Processing Services.** Merchant acknowledges that KeyBank will engage third party service providers to assist with the performance of the WebSuite Services.

ii. **Merchant Responsibilities.**

aa. Merchant will comply with the Agreement and with all applicable provisions of the MOG in connection with Merchant's receipt and use of the WebSuite Services, including, as applicable, provisions regarding the acceptance of Payment Devices and the use of EGC Services.



- bb. Merchant shall pay the fees for the WebSuite Services as set forth in the Agreement. In addition, for orders placed using a Payment Device, Merchant shall pay the applicable processing fee for such Payment Device, as set forth in the Agreement. KeyBank is entitled to pass through to Merchant any fee increases or new fees imposed upon KeyBank by any Payment Network and any other third party vendor used by KeyBank to provide the WebSuite Services.
- cc. Merchant must timely provide to KeyBank specifications for the customization of Merchant's WebSuite site, including Customer options, web and e-mail content. Merchant modifications subsequent to the initial submission are subject to change fees.
- dd. To the extent that Merchant posts any Electronic Gift Card information to Merchant's WebSuite site, KeyBank is not responsible for any such information.
- ee. Merchant acknowledges that KeyBank is not responsible for incomplete or inaccurate payment information that may be provided by any Customer in connection with the WebSuite Services. Merchant further acknowledges that additional Transaction verification and fraud prevention data elements and processes may be available through a particular Payment Network, including address verification, to reduce Transaction risk and that KeyBank shall only be responsible for implementing any such Transaction risk controls as are specifically requested in writing by Merchant. The use of such Transaction risk controls does not constitute a guarantee of payment or prevent a Transaction from being disputed or subject to Chargeback.
- ff. Merchant acknowledges that KeyBank may provide sample terms of use, privacy policy, and other content and disclosure for use on WebSuite site. Merchant agrees that it has an opportunity to review such sample disclosure and revise or replace such sample disclosure with language of Merchant's choice. Merchant's use of the WebSuite site confirms that Merchant has had an opportunity to review the sample disclosures and agrees to be solely responsible for all content and disclosures on the WebSuite site.
- gg. Merchant is fully responsible for all Retrieval Requests and Chargebacks under the Payment Network Regulations in connection with Transactions processed using the WebSuite Services. Upon receipt of a Retrieval Request or documentation related to a Chargeback from a Payment Network, KeyBank will forward such request or documentation to Merchant. Merchant is responsible for responding, as appropriate, to each Retrieval Request or Chargeback.
- iii. **Electronic Gift Card Order Fulfillment.** KeyBank will fulfill all WebSuite Electronic Gift Card orders, and include with each order a Merchant-approved standardized letter customized with the order detail. All orders will be shipped pursuant to the method directed by the Customer.
- iv. **Electronic Gift Card Loss Protection Program.** Merchant shall determine which data elements it will require its Customers to provide to establish an account or register an Electronic Gift Card on Merchant's WebSuite site. Merchant is responsible for notifying its Customers that in order to take advantage of the Electronic Gift Card loss protection program, the Electronic Gift Card must be registered prior to the loss. Once a registered Electronic Gift Card is reported lost or stolen via the WebSuite site, KeyBank will notify Merchant and freeze the unused balance of the Electronic Gift Card. Merchant is responsible for transferring the unused balance to a new Electronic Gift Card, sending a replacement Electronic Gift Card to the Customer, and notifying KeyBank of the replacement Electronic Gift Card via the WebSuite site.



- v. **Reloading of Electronic Gift Cards.** Merchant shall determine all Electronic Gift Card reloading options available to its Customers. While the WebSuite Services permit the anonymous reloading of Electronic Gift Cards, KeyBank recommends that Merchant require its Customers to register the Electronic Gift Card in order to reload value onto the Electronic Gift Card.
- vi. **Customer Information.** The WebSuite Services will permit Merchant to have access to Customer information and other data that Merchant determines is required to establish an account or register an Electronic Gift Card. Merchant is responsible for maintaining the appropriate safeguards to protect such Customer information, and to properly disclose the use of such information and its privacy policies on Merchant's WebSuite site or website. Merchant must maintain the confidentiality of all Transaction and Cardholder Data as set forth in the Agreement.
- vii. **E-Certificates.** Merchant may choose to use the E-Certificate module, which delivers a "virtual gift card" electronically. The terms applicable to Electronic Gift Cards herein equally apply to E-Certificates.

## 20. BILLER DIRECT SERVICES

The following terms and conditions apply to KeyBank's provision of Biller Direct Services to Merchant:

### a. General Provisions.

- i. **Acceptance of Payment Devices.** In connection with its sale of goods or services or its receipt of bill payments, Merchant desires to accept Payment Devices in an online environment through the KeyBank-sponsored Biller Direct Services. KeyBank offers two types of Biller Direct Services: Bill Payment Portal (BPP) and Enterprise Billing Solutions (EBS). Merchant has selected its desired Biller Direct Services, including the desired fee funding model, if applicable, on the Biller Direct Services Enrollment Form, and in any additional application and setup forms. The terms and conditions for Merchant's use of the Biller Direct Services are set forth in the Agreement and in the MOG and the ECS MOG.
- ii. **Transactions.**
  - aa. **Merchant Compliance.** Merchant must comply with all requirements under Laws (including, without limitation, the Electronic Signatures in Global and National Commerce Act), Payment Network Regulations and the Agreement in connection with the Biller Direct Services. Merchant must also comply with the applicable procedures set forth in the MOG, the ECS MOG, and any other guides, manuals, or rules provided in writing by KeyBank from time to time. For purposes of the Biller Direct Services only, Merchant will not receive Payment Device Transaction information and therefore Merchant is not obligated to comply with the requirements governing Merchant's receipt and handling of payment information from Customers.
  - bb. **Transaction Requirements.** Before KeyBank will process a Transaction on Merchant's behalf, the Customer must affirmatively agree to engage in the Transaction through the Biller Direct Services web site or via the telephone, as applicable.
    - 1. **Customer Authentication.** In addition to satisfying the applicable requirements set forth in the Agreement, the MOG, the ECS MOG (as applicable) and any other guides, manuals or materials provided to Merchant by KeyBank, Merchant must provide to KeyBank such Customer information as may reasonably be required for KeyBank to perform its obligations under the Agreement. KeyBank will authenticate the identity of each Customer, on Merchant's behalf, based solely on

the Customer information provided by Merchant to KeyBank and using the authentication criteria as directed by Merchant. Merchant agrees that KeyBank is entitled to rely on the accuracy of the Customer information provided by Merchant and that KeyBank shall only be responsible for authenticating each Customer as and to the extent directed by Merchant in writing. Merchant shall be responsible for, and shall indemnify KeyBank against, any losses that may result from: (a) errors in the authentication of a Customer or in the processing of Transactions that result from incorrect Customer information provided to KeyBank; and (b) inaccurate or incomplete authentication of a Customer that does not result from KeyBank's errors or omissions. Merchant grants KeyBank and its designated agents access to and use of Customer information and such other data as is reasonably necessary for KeyBank to perform its obligations under the Agreement. Merchant's provision of such Customer information to KeyBank will not breach any agreement to which Merchant is a party or violate Laws.

2. **Transaction Risk.** KeyBank will attempt to collect from each Customer the payment-related information necessary for KeyBank to process a payment Transaction from the Customer to Merchant in connection with the Biller Direct Services. Merchant acknowledges that KeyBank is not responsible for incomplete or inaccurate payment information that may be provided by any Customer in connection with the Biller Direct Services. Merchant further acknowledges that additional Transaction verification and fraud prevention data elements and processes may be available through a particular Payment Network, including address verification, to reduce Transaction risk and that KeyBank shall only be responsible for implementing any such Transaction risk controls as are specifically requested in writing by Merchant. The use of such Transaction risk controls does not constitute a guarantee of payment or prevent a Transaction from being disputed or subject to Chargeback. Regardless of any additional Transaction risk mitigation options elected by Merchant, Merchant shall remain responsible for monitoring Customer account activity for suspicious or fraudulent activity, as more fully described in Section (A)(20)(a)(iv) hereof.
- cc. **Transaction Controls.** Merchant will notify KeyBank of any material change or anticipated material change in daily dollar activity or type of Transaction processing in connection with the Biller Direct Services, and Merchant will obtain KeyBank's consent to any such change. KeyBank is not responsible for any losses or expenses incurred by KeyBank or Merchant arising out of any material change or anticipated material change in Transaction activity that is not promptly reported to KeyBank by Merchant.
- dd. **Processing Limits.** KeyBank may impose a cap on the aggregate dollar amount or individual dollar amount of Transactions that it will process for Merchant as established by KeyBank from time to time. This limit may be changed by KeyBank, from time to time, in its sole discretion, without prior notice to Merchant. If Merchant exceeds the established limit, KeyBank may suspend the processing of Transactions in excess of the cap or may process Transactions in excess of the cap but hold the excess funds in a separate account or Reserve Account.
- ee. **Recurring Transactions.** For recurring Transactions (e.g., recurring or preauthorized payment of insurance premiums or subscriptions), the Customer must consent to the initiation of the recurring charges using the Customer's designated Payment Device. Recurring Transactions will not be processed by KeyBank after KeyBank receives: (i) a cancellation notice from the Customer provided through the Biller Direct Services interface; (ii) a notice from Merchant through the Biller Direct Services interface that authority to accept recurring Transactions has been revoked; or (iii) a response from

the issuer of a Payment Device that the Payment Device is not to be honored. Merchant must immediately notify KeyBank if any Customer advises Merchant that the Customer wishes to revoke its recurring payments authorization by cancelling the recurring payment instruction through the Biller Direct Services interface. Any such notices described in this paragraph that are not fully processed through the Biller Direct Services interface prior to 5:00 p.m. Eastern time one (1) business day before the day a Transaction is scheduled to be processed will not affect such Transaction but will be effective for subsequent Transactions.

- ff. **Retrieval Requests and Chargebacks.** Merchant is fully responsible for all Retrieval Requests and Chargebacks under the Payment Network Requirements in connection with Transactions processed using the Biller Direct Services. Upon receipt of a Retrieval Request or documentation related to a Chargeback from a Credit Card Association, an ECS Association or an EFT Network, as applicable, KeyBank will forward such request or documentation to Merchant. Merchant is responsible for responding, as appropriate, to each Retrieval Request or Chargeback, including by retrieving a copy of the relevant Transaction Receipt from the Biller Direct Services interface. In addition, Merchant will cooperate with KeyBank in complying with the Payment Network Requirements regarding Retrieval Requests and Chargebacks.
- iii. **Biller Direct Services; Fees; Other Amounts Owed; Taxes.** KeyBank will provide Merchant with the Biller Direct Services in accordance with the Agreement. Merchant will compensate KeyBank for the Biller Direct Services as indicated on the Biller Direct Services Enrollment Form, and in any additional application and setup forms.
- iv. **Fraud Controls and Responsibility for Fraud.** KeyBank may suspend processing of Transactions or decline to process one or more individual Transactions if, based upon fraud detection and prevention controls or other security or Transaction verification or validation procedures, KeyBank reasonably believes that such Transactions submitted to KeyBank are the result of fraud or error. Merchant agrees that KeyBank may, within its sole discretion, suspend the disbursement of funds related to any Transaction for any reasonable period of time required to investigate suspicious or unusual Transaction or deposit activity and that KeyBank will have no liability for any losses Merchant may attribute to any suspension of funds disbursement. Notwithstanding the foregoing, Merchant shall be responsible for all fraudulent Transactions unless such fraud results from KeyBank's failure to authenticate a purported Customer as required under the Agreement using information provided to KeyBank by Merchant under Section (A)(20)(a)(ii)(bb) hereof. KeyBank undertakes monitoring of certain Transactions on a systematic basis utilizing fraud and risk parameters in order to minimize KeyBank's own financial exposure and such monitoring may result in a financial benefit for Merchant. Perpetrators of fraudulent Transactions may be referred to law enforcement officials.
- v. **Suspension of Biller Direct Services.** KeyBank reserves the right to suspend Merchant's or a Customer's access to the Biller Direct Services or to temporarily restrict any use thereof, in whole or in part, if, in KeyBank's sole judgment, there is a security, credit or legal risk that may interfere with the continued provision of such Biller Direct Services. KeyBank also reserves the right to permanently terminate a Customer's access to the Biller Direct Services upon notice to Merchant if, in KeyBank's reasonable discretion, such Customer is misusing the Biller Direct Services or is engaged in suspicious or possible illegal activity. KeyBank reserves the right to refuse any Transaction where KeyBank believes, in its reasonable discretion, that the Transaction involves a material probability of fraud, credit, or legal risk. Merchant shall cooperate in resolving any claims or errors alleged by a Customer and in investigating any claims of fraud consistent with Laws and Payment Network Regulations.

- vi. **Amendments.** KeyBank is entitled to pass through to Merchant any fee increases or new fees imposed upon KeyBank by any Payment Network and any other third party vendor used by KeyBank to provide the Biller Direct Services.

b. **Payment Card Services Provisions.**

- i. **General Description.** This Section sets forth additional terms and conditions of the Biller Direct Services applicable to the processing of Transactions conducted using Payment Cards, as more fully described below. KeyBank will process Payment Card Transactions only if Merchant has elected Processing Services with respect to Payment Cards on the Biller Direct Services Enrollment Form, and in any additional application and setup forms, and subject to the terms and conditions set forth in Section (A)(20)(a) above and this Section (A)(20)(b).

- ii. **Authorization.**

- aa. **Transaction Authorization.** KeyBank will attempt to obtain an Authorization Code before completing a Transaction. KeyBank will only process Transactions that receive a positive Authorization.

- bb. **Effect.** An Authorization Code does not: (i) guarantee Merchant final payment for a Transaction; (ii) guarantee that the Transaction will not be disputed later by the Cardholder as all Transactions are subject to Chargeback; or (iii) protect Merchant in the event of a Chargeback regarding unauthorized Transactions or disputes involving the quality of goods or services. Authorization Codes will not waive any provision of the Agreement or otherwise validate a fraudulent Transaction.

- iii. **Credits.**

- aa. **Credit Transaction Receipt.** If Merchant agrees to grant a Cardholder a refund of a Credit Card, Debit Card, or Prepaid Card Transaction processed by KeyBank, Merchant must request a Credit Transaction Receipt through the Biller Direct Services interface and must issue the credit using the Credit Transaction Receipt. Merchant may not issue cash or a check as a refund for any previous Transactions processed on a Credit Card, Debit Card, or Prepaid Card. KeyBank will debit the DDA for the total face amount of each Credit Transaction Receipt processed by KeyBank. KeyBank will not process a Credit Transaction Receipt relating to any Transaction Receipt not originally processed by KeyBank, and KeyBank will not process a Credit Transaction Receipt that exceeds the amount of the original Transaction Receipt.

- iv. **Interchange.** KeyBank bears no responsibility for the interchange category or pricing, including discount rate, fees and surcharges, applied by the Credit Card Associations, EFT Networks or otherwise owed by Merchant with respect to any Transaction processed using the Biller Direct Services, except to the extent that Merchant is obligated to pay greater Interchange with respect to a Transaction solely on account of KeyBank's failure to comply with the Transaction processing requirements agreed to between Merchant and KeyBank.

c. **Electronic Check and Automated Clearing House Services Provisions.**

- i. **General Description.** This Section sets forth additional terms and conditions of the Biller Direct Services applicable to processing of Transactions originated and presented for clearing and payment via the ACH Network in accordance with the ECS Rules, as more fully described below. KeyBank will process ECS and ACH Transactions only if Merchant has elected ACH / ECS on the Biller Direct Services Enrollment Form, and in any additional application and setup forms. Processing of ECS and ACH Transactions shall be

subject to the terms and conditions set forth in Section (A)(20)(a) above and this Section (A)(20)(c).

- ii. **Electronic Check and Automated Clearing House Services Generally.** All costs and fees related to the Electronic Check and Automated Clearing House Services chosen by Merchant are as provided in the Merchant Application, except as otherwise provided in the Biller Direct Services Enrollment Form, and in any additional application and setup forms. The Customer must provide authorization to KeyBank prior to KeyBank initiating an ACH debit to the Customer's account, in accordance with the ECS MOG. KeyBank will make a record of the Customer's authorization for the ACH debit. KeyBank will either retain the original or a duplicate record of the Customer's authorization for the period required by the applicable ECS Rules, and will make a copy of such record available to Merchant for a fee as indicated on the Biller Direct Services Enrollment Form, and in any additional application and setup forms.
- iii. **Additional Representations and Warranties.** Merchant represents and warrants, with respect to all ECS and ACH Transactions accepted and processed by KeyBank under the Agreement, that (i) for prearranged payment and deposit (PPD) entries or recurring debit entries, the Customer has duly authorized the debiting of the Customer's account in writing in accordance with applicable law and ECS Rules, (ii) the business transaction represents an obligation of the Customer who is initiating the ECS or ACH Transaction, and (iii) the ECS or ACH Transaction is for amounts actually owed by Customer to Merchant (including tax) and does not involve any element of credit.

## SECTION B – ELECTRONIC CHECK SERVICES

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

1. Merchant shall comply with and be bound by (a) the ECS Rules, including the ACH Rules, the ECS MOG and the ECS Primer, and (b) Laws, including, but not limited to, the Check Clearing for the 21<sup>st</sup> Century Act and Regulation CC, Article 3 and Article 4 of the Uniform Commercial Code as in effect in the applicable state(s), the Electronic Fund Transfer Act and Regulation E, and the Fair Credit Reporting Act as amended by the Fair and Accurate Credit Transactions Act.
2. Merchant shall pay the fees for ECS as set forth in the Merchant Application, and in any additional application and setup forms.
3. In the event Merchant accepts for ECS certain types of Customer payments that are ineligible as specified in the ECS MOG for any reason, such Transaction is subject to Chargeback. Merchant may be liable for the face value of the Transaction and any actual damages related to or arising out of processing a Transaction that has been charged back.
4. Merchant shall cause a Check Reader/Imager to be readily available for use at all Merchant locations where Merchant will accept Paper Checks for ECS processing.
5. Merchant must use commercially reasonable procedures to verify the identity of each Customer that submits a payment.
6. Merchant shall be solely responsible for providing Customers with notifications and disclosures in connection with ECS, including, but not limited to, posting all point of sale signage and distributing all Customer takeaways and all notices and disclosures required to be provided under the ECS Rules and Laws.
7. Merchant may use the ECS only in connection with the presentment and acceptance of certain types of Customer payments in payment for goods or services sold by Merchant, or in payment for an obligation owed to Merchant, and only in compliance with the ECS Rules. Merchant shall be the sole user of the ECS, and Merchant may not resell or otherwise transfer any portion of ECS (or any associated information) in whole or in part to any other Person.
8. Merchant represents and warrants, with respect to all ECS Transactions submitted for processing by KeyBank, that (i) the Customer has duly authorized the debiting of the Customer’s account for the amount of the ECS Transaction in accordance with Laws and ECS Rules, (ii) the Transaction represents an obligation of the Person who is submitting a Customer payment, and (iii) the ECS Transaction is for merchandise actually sold or rented, for services actually rendered, or for the actual amount due and owing from the Customer to Merchant, in each case for the actual price of such merchandise or services (including tax) or for the actual amount due and owing to Merchant. Merchant represents and warrants that no portion of any ECS Transaction involves any element of Merchant’s extension of credit.
9. Merchant may not use ECS for merchandise returns or refunds, as ECS does not support this function. Merchandise returns or refunds must be handled outside ECS by direct negotiation between Merchant and the Customer.
10. Merchant is responsible to KeyBank for any Transaction charged back by KeyBank or its agent in accordance with the Agreement, including the ECS MOG, and for any fines, penalties or assessments incurred as a result of Merchant’s non-compliance with Laws or the ECS Rules. Merchant agrees to immediately pay to KeyBank or its agent (by means of debit or set-off initiated by KeyBank or its agent, submission of payment by Merchant, or otherwise, at the sole option of

KeyBank), an amount equal to the amount of any ECS Transaction that is stopped, not settled, or charged back, as well as any related fees and charges.

- 11.** Merchant must fully cooperate with all parties in the resolution of Customer disputes, as well as Chargebacks, returns, adjustments, representments, and errors in accordance with the ECS Rules and Laws.
- 12.** Merchant is responsible for and will ensure that all information, including MICR data and payment amounts, are accurately captured from a Paper Check in accordance with the applicable ECS Rules, and that all such information is accurately reflected in the related Item Merchant sends to KeyBank for processing through ECS. Merchant will not submit for clearing or settlement any physical Paper Check unless and until KeyBank have processed and settled a Chargeback to Merchant with respect to any Items created from such Paper Check.
- 13.** Merchant will not disclose to third parties any information related to ECS Transactions including, but not limited to, Customer DDA information, driver's license number, telephone number, or social security number except as specified in the Agreement, including the ECS MOG. Merchant shall keep all such information confidential and secure, in accordance with the Agreement and Laws.
- 14.** Merchant does not have the right to use ECS data for any purpose other than to support the ECS itself.
- 15.** Merchant must treat all ECS documents, including, but not limited to, the Agreement, including the ECS Rules, the ECS MOG and ECS collateral material or related guides, as confidential and proprietary information and must protect it with the same degree of care as Merchant would protect its own confidential and proprietary information and as further specified in the Agreement.
- 16.** Merchant's Agreement and use of the ECS may be terminated immediately by KeyBank for failure to comply with the terms of the TOS, the Agreement or Laws.



## SECTION C – TOKENIZATION SERVICES

If Merchant has selected Tokenization Services, Merchant shall be subject to this Section C in addition to the terms and conditions of Section A of this TOS. The terms and conditions for Tokenization Services are set forth in the Agreement and the MOG, incorporated herein. In the course of its acceptance and use of the Tokenization Services, Merchant hereby agrees to the following terms and conditions governing the Tokenization Services:

1. For the payment of fees for the Tokenization Services, KeyBank shall provide Tokenization Services to Merchant, which shall consist of a tokenization feature pursuant to which KeyBank will provide Merchant with randomized numerical tokens (each a “Token”) in substitution for Credit Card and Debit Card account numbers (each such number, a “Card Account Number”; such services, the “Tokenization Services”). More specifically, under the Tokenization Services, when a Card Account Number associated with a Transaction is transmitted from Merchant to KeyBank, KeyBank will:
  - a. generate a Token;
  - b. associate the Token with the Card Account Number; and
  - c. send the Token, instead of Card Account Number, back to Merchant in the Transaction authorization response message.
2. The Card Account Number associated with each Token under the Tokenization Services will be available to Merchant until three (3) years after the expiration or termination of the Agreement (the “Token Validity Period”). During the Token Validity Period, the Token, rather than the associated Card Account Number, may be submitted by Merchant to KeyBank to process additional Transactions to the Credit Card or Debit Card associated with such Token across all Merchant locations. Merchant acknowledges that the Tokens will be formatted in KeyBank’s reasonable discretion and may not be compatible with other Merchant systems, equipment, communications devices, databases and/or services.
3. Merchant shall cause the appropriate hardware, including POS Devices and any hardware provided by or on behalf of KeyBank from time to time, to be readily available for use at all Merchant locations that are the recipients or users of the Tokenization Services (the “Hardware”).
4. Merchant acknowledges that KeyBank does not store Credit Card or Debit Card expiration dates. In order to use a Token to process a Transaction, Merchant must provide the Token (in lieu of a Card Account Number) together with the expiration date for the original Credit Card or Debit Card.
5. Merchant may request a reversal of the Tokenization process as follows:
  - a. To reverse the Tokenization process on an individual Token basis, Merchant may access a KeyBank web portal and, with appropriate authentication credentials, retrieve the Card Account Number associated with any Token.
  - b. To reverse the Tokenization process on a bulk basis (i.e., in excess of 100 Tokens at a time), an officer of Merchant must make a request in writing to KeyBank and provide KeyBank with the Tokens for which Merchant wishes to reverse the Tokenization process. KeyBank will provide Merchant with an encrypted file containing the Card Account Numbers associated with such Tokens within thirty (30) days of receiving the request.
6. **DISCLAIMER OF WARRANTIES. WITH RESPECT TO THE TOKENIZATION SERVICES, THE HARDWARE, AND LICENSED PRODUCTS (INCLUDING ANY SOFTWARE), IF ANY, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. THE TOKENIZATION SERVICES, HARDWARE AND LICENSED PRODUCTS (INCLUDING ANY SOFTWARE), IF ANY, PROVIDED TO MERCHANT ARE PROVIDED “AS IS”. MERCHANT ACKNOWLEDGES**



AND AGREES THAT IT IS NOT RELYING ON ANY STATEMENT, PROMISE, OR REPRESENTATION, EITHER ORAL OR WRITTEN, MADE BY OFFICERS, SALES PERSONNEL, OR AGENTS OF KEYBANK, EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, INCLUDING THIS SECTION C, WHICH WOULD SUPPLEMENT, EXPLAIN, INTERPRET, MODIFY OR EXPAND THE TERMS AND CONDITIONS OF THIS AGREEMENT, THIS SECTION C, OR ANY SALES LITERATURE OR WRITTEN PROPOSALS. MERCHANT ACKNOWLEDGES AND UNDERSTANDS THAT NO EXPRESS WARRANTY WITH RESPECT TO THE TOKENIZATION SERVICES, THE HARDWARE AND LICENSED PRODUCTS (INCLUDING ANY SOFTWARE), IF ANY, IS CONTAINED OR CREATED IN ANY ORAL STATEMENT OR IN ANY WRITING OTHER THAN THE EXPRESS WRITTEN PROVISIONS OF THIS SECTION C.

7. **LIABILITY.** Except as otherwise expressly provided herein, in no event shall KeyBank be liable hereunder for (a) any loss of profits or other economic loss of whatever nature, or any indirect, special, consequential, incidental or other similar damages arising out of any claim of whatever nature relating to the Tokenization Services provided pursuant to this Agreement or to any obligations, acts, events, or occurrences pursuant to, preliminary to or incidental to the Tokenization Services provided pursuant to this Agreement, or (b) any liabilities of Merchant to third parties resulting from any failure of KeyBank, any Hardware or any software, documentation or other related materials (whether provided by KeyBank or a third party) to perform as required under the terms of this Section C to the Agreement. In no event shall KeyBank's licensors, contractors, service providers or third party beneficiaries have any indemnification obligations or be liable pursuant to this Section C for any damages, including, without limitation, any indirect, special, consequential, incidental or other similar damages arising out of any claim of whatever nature relating to the Tokenization Services provided pursuant to this Agreement or to any obligations, acts, events, or occurrences pursuant to, preliminary to or incidental to the Tokenization Services provided pursuant to this Agreement.

## SECTION D – FANFARE SERVICES

If Merchant has selected Fanfare Services, Merchant shall be subject to, and shall comply with, this Section D in addition to the terms and conditions of Section A of this TOS. The terms and conditions for Fanfare Services are set forth in the Agreement and the MOG, incorporated herein. In the course of its acceptance and use of the Fanfare Services, Merchant hereby agrees to the following terms and conditions governing the Fanfare Services:

### 1. GENERAL PROVISIONS

- a. KeyBank will host and make available to Merchant the Fanfare Web Portal.
- b. Merchant must use Supported Hardware in order to make full use of the Fanfare Services, and certain or all Fanfare Services may be unavailable or may function improperly if Merchant does not use them in connection with Supported Hardware. Merchant may obtain a current list of Supported Hardware from KeyBank upon request, which KeyBank may update from time to time. KeyBank shall have no responsibility or liability in connection with the performance or non-performance of the Fanfare Services, including in connection with any errors or malfunctions that may occur in connection with the Fanfare Services, if Merchant uses the Fanfare Services with any POS Devices that are not Supported Hardware.
- c. Merchant shall not acquire any intellectual property rights and/or any goodwill, know-how or any other proprietary rights in any form whatsoever or howsoever in the Fanfare Platform or the Fanfare Services. Any and all intellectual property rights in and to the Fanfare Platform or the Fanfare Services, and related goodwill, know-how and other proprietary rights are and shall remain the absolute exclusive property of KeyBank and/or its licensors.
- d. Merchant will (i) cooperate with KeyBank in connection with the Fanfare Services, and (ii) provide KeyBank with reasonably requested information and access (which may be remote access) to equipment and to Merchant's personnel for purposes of facilitating setup of POS Devices for use in connection with the Fanfare Services.
- e. Merchant shall use all reasonable means to prevent any unauthorized access to or use of the Fanfare Platform and the Fanfare Services, and if such access or use occurs, Merchant shall notify KeyBank immediately.
- f. Merchant acknowledges and agrees that it is Merchant's sole responsibility to comply with all Laws related to its use of the Fanfare Services and all Laws governing its relationships with Customers and use of any Customer Data in connection with the Fanfare Services, including (i) the collection, storage and use of Customer Data for promotional or marketing purposes (including the compliance of any such storage or use with Merchant's applicable privacy policies and terms and conditions), (ii) the distribution (including by e-mail or short message service (SMS)) of marketing or promotional materials to Customers (including through any use of communication or marketing services made available to Merchant through the Fanfare Platform), and (iii) the issuance, sale, distribution, use and acceptance of gift cards, gift certificates, Stored Value Cards or Prepaid Cards that may be applicable to Fanfare Gift Cards (including all laws related to purchase, service and dormancy fees, Laws relating to expiration dates, Laws governing the treatment of unused or unclaimed funds or other property and Laws related to money transmission). Further, Merchant agrees to comply in a timely manner with any such Laws.
- g. Merchant acknowledges and agrees that KeyBank has no responsibility for recording or storing any Customer Data or information related to the sale of any Fanfare Gift Card until such information has been received and validated by KeyBank.
- h. Merchant understands and agrees that its data security obligations under the Agreement apply to any Customer Data it collects or receives in connection with the Fanfare Services, and Merchant agrees to comply with such data security obligations with respect to all Customer Data Merchant may collect, access or receive in connection with the Fanfare Services.

- i. Merchant will exclusively use KeyBank (including KeyBank-designated service providers) for services similar to the Fanfare Services, and Merchant will not receive services similar to the Fanfare Services from any third parties not approved by KeyBank in writing.
- j. Merchant or KeyBank may terminate the Fanfare Services for any of the reasons that KeyBank or Merchant, as applicable, may terminate the Agreement.
- k. **DISCLAIMER OF WARRANTIES. MERCHANT UNDERSTANDS AND AGREES THAT THE FANFARE PLATFORM AND THE FANFARE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WITHOUT LIMITING THE FOREGOING, KEYBANK DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE FANFARE PLATFORM OR FANFARE SERVICES WILL COMPLY WITH ANY APPLICABLE LAWS GOVERNING THE COLLECTION OF CUSTOMER INFORMATION, THE USE OF CUSTOMER INFORMATION FOR MARKETING OR PROMOTIONAL PURPOSES, OR THE ISSUANCE, SALE DISTRIBUTION, USE OR ACCEPTANCE OF ANY FANFARE GIFT CARD. KEYBANK WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY HARM TO MERCHANT’S COMPUTER SYSTEM, LOSS OF DATA, OR OTHER HARM THAT RESULTS FROM MERCHANT’S ACCESS TO OR USE OF THE FANFARE PLATFORM OR THE FANFARE SERVICES. KEYBANK MAKES NO WARRANTY THAT THE FANFARE PLATFORM OR THE FANFARE SERVICES WILL MEET MERCHANT’S REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM KEYBANK OR THROUGH THE FANFARE SERVICES, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. KEYBANK IS NOT RESPONSIBLE FOR THE UNAUTHORIZED ACCESS TO OR USE OF ANY PROMOTIONAL OFFER, REWARDS VALUE, OTHER FANFARE LOYALTY PROGRAM OFFER, OR ANY FANFARE GIFT CARD. FURTHER, KEYBANK MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE SUITABILITY OR PROFITABILITY FOR MERCHANT OF ANY (I) OFFER, PROMOTION OR REWARD ADOPTED BY MERCHANT IN CONNECTION WITH ITS FANFARE LOYALTY PROGRAM, OR (II) FANFARE GIFT CARD ARRANGEMENT OR SOLUTION ADOPTED BY MERCHANT IN CONNECTION WITH ITS FANFARE GIFT CARD PROGRAM, IN EACH CASE EVEN IF KEYBANK PROMOTES SUCH A SOLUTION AS COMMON OR HISTORICALLY SUCCESSFUL IN MERCHANT’S INDUSTRY OR MARKET.**
- l. **LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KEYBANK AND EACH OF ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS, DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM MERCHANT’S ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE FANFARE PLATFORM OR THE FANFARE SERVICES, OR RESULTING FROM MERCHANT’S PROVISION OF PROMOTIONS, OFFERS, REWARDS OR FANFARE GIFT CARDS TO CUSTOMERS IN CONNECTION WITH THE FANFARE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT KEYBANK HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THE PROVISIONS OF THIS SECTION SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING THE EXPIRATION OR ANY TERMINATION OF THE AGREEMENT FOR ANY REASON WHATSOEVER AND EACH OF THE PROVISIONS OF THIS SECTION SHALL OPERATE SEPARATELY IN ITSELF AND SURVIVE INDEPENDENTLY OF OTHERS.**
- m. All Merchant locations, including chain locations, will be boarded on KeyBank’s system pursuant to the paperwork submitted by Merchant to KeyBank. However, in the event of an error or omission of fees payable by Merchant on the submitted paperwork, the setup fees and other monthly fees applied to the locations during the initial set up or subsequent negotiations will be applied to such locations.

- n. In the event that a particular location closes or changes its Merchant Identification Number (MID), Merchant agrees that KeyBank may bill the Primary Fanfare Merchant for any fees associated with subsequent transactions processed on Fanfare Gift Cards activated by the closed MID. This would apply to any system generated transactions including, but not limited to, deduction and points conversion transactions. Monthly fees billed for Fanfare Services provided with respect to the closed location may also be billed to the Primary Fanfare Merchant.
- o. Fanfare Services are not available to Merchants located in Canada or Puerto Rico.

## **2. FANFARE LOYALTY SERVICES PROVISIONS**

- a. KeyBank will host the Fanfare Loyalty Website.
- b. Merchant acknowledges that, to enroll in the Fanfare Loyalty Program and receive promotional offers and/or rewards, a Customer must enroll with Merchant during a point-of-sale transaction at Merchant or by visiting Merchant's Fanfare Loyalty Program Website, in each case in accordance with the Customer enrollment procedures described in the MOG.
- c. Merchant is responsible for creating (i) a set of terms and conditions governing its Fanfare Loyalty Program, and (ii) a privacy policy addressing Merchant's collection and usage of Customer Data. KeyBank will post (which may be by cross-reference link) Merchant's terms and conditions and privacy policy, on Merchant's behalf, on the Fanfare Loyalty Website hosted by KeyBank. KeyBank will provide Merchant with Model Documents that Merchant may adapt and use to govern its Customers' participation in the Fanfare Loyalty Program. KeyBank makes no warranties with respect to the legality or legal sufficiency of the Model Documents. In addition, Merchant acknowledges that it has sole responsibility for ensuring compliance with all applicable Laws and any pre-existing commitments or obligations of Merchant to Customers in connection with (i) Merchant's use of the Model Documents; (ii) the content of the Model Documents, and (iii) any adaptations that Merchant may make to the Model Documents in developing its own Customer-facing terms and conditions and privacy policy regarding the Fanfare Loyalty Program. Merchant acknowledges that KeyBank will not review Merchant's privacy policy or terms and conditions governing its Fanfare Loyalty Program for any purpose, including specifically for purposes of assessing the legality or legal sufficiency of such disclosures, regardless of whether Merchant uses the Model Documents, in whole or in part. Merchant represents, warrants and covenants to KeyBank that the Customer terms and conditions and privacy policy governing Merchant's Fanfare Loyalty Program will (i) establish sufficient rights for Merchant and KeyBank to exercise all rights and perform all obligations contemplated under the Agreement, including the MOG, (ii) prevent Merchant from sharing Customer Data with any third party, affiliated or unaffiliated, except as permitted by applicable Law and (iii) not be inconsistent with any provision included in the Model Documents provided by KeyBank unless KeyBank has granted its prior written consent to any such inconsistency. Merchant must notify KeyBank, in writing prior to the launch of Merchant's Fanfare Loyalty Program, of the Customer-facing terms and conditions and privacy policy Merchant wishes KeyBank to post (by cross-reference link) to Merchant's Fanfare Loyalty Website. If Merchant does not so notify KeyBank of modified or different Customer-facing terms and conditions and/or privacy policy that should govern Merchant's Fanfare Loyalty Program prior to the launch of Merchant's Fanfare Loyalty Program, Merchant will be deemed to have instructed KeyBank to post the Model Documents, in the form provided by KeyBank to Merchant, as Merchant's Customer-facing terms and conditions and privacy policy. Merchant agrees that it has fully reviewed and approved, as appropriate for Merchant and its Customers, the Model Documents KeyBank posts to Merchant's Fanfare Loyalty Website.
- d. Merchant represents and warrants that it will only use Customer Data in accordance with its Fanfare Loyalty Program privacy policy and terms and conditions. In addition, Merchant shall obtain for the benefit of KeyBank and its licensor(s) any necessary consents, approvals or notifications required for KeyBank or its licensor(s) to use any Customer Data for the purpose of providing Customers with services related to the Fanfare Loyalty Program. Merchant understands that KeyBank will have the

authority to use and share Customer Data as described in the KeyBank Fanfare Privacy Policy available at [www.KeyBank.com](http://www.KeyBank.com).

- e. Merchant understands and agrees that KeyBank may use the Fanfare Loyalty Website for purposes of obtaining Customer consent to use Customer Data in accordance with the KeyBank Fanfare Privacy Policy. Merchant further agrees that KeyBank may use Customer Data for any of the purposes permissible under the KeyBank Fanfare Privacy Policy.
- f. Merchant agrees that it will not share Customer Data with any third parties, including any Merchant affiliates, without KeyBank's prior written consent.
- g. Merchant agrees that it will not collect or receive Customer Data from any source other than directly from the Customer (including as a result of any Customer transactions at Merchant) or KeyBank, and Merchant agrees that it shall not supplement or enhance any Customer Data collected in connection with the Fanfare Loyalty Program with any data or information from sources other than the Customer or KeyBank.

### **3. FANFARE GIFT CARD SERVICES PROVISIONS**

- a. Merchant agrees that all Fanfare Gift Cards will be printed by KeyBank or an KeyBank-approved vendor.
- b. Merchant agrees to comply with the Graphic Specifications and Procedures provided by KeyBank, as the same may be updated by KeyBank in its sole discretion from time to time.
- c. Merchant authorizes KeyBank to initiate credit and debit entries among Merchant's individual chain locations for any Transactions that change the balance of a Fanfare Gift Card. In the event KeyBank is unable to accomplish a credit or debit entry to reflect the effect of a Transaction, Merchant further authorizes KeyBank to credit and/or debit the designated Master Account or Primary Fanfare Merchant. Merchant also understands that KeyBank may, in its sole discretion, offset any debits against the related credit Transactions of the applicable chain or Merchant location. Both Merchant and the individual chain locations agree to pay related direct settlement fees.

## SECTION E – AMERICAN EXPRESS OPTBLUE PROGRAM

If Merchant has elected to accept American Express Payment Devices through the OptBlue Program, Merchant shall be subject to, and shall comply with, this Section E in addition to the terms and conditions of Section A of the TOS, the MOG, and the OptBlue Operating Guide, which are incorporated herein. In the course of its acceptance of American Express Payment Devices, Merchant hereby agrees to the following terms and conditions:

### 1. GENERAL PROVISIONS

- a. **Relationship to Remainder of Agreement.** Except as set forth herein, the terms of this Section E supplement, rather than displace, the terms of the remainder of the Agreement. To the extent there is any direct conflict between the terms of this Section E and the MOG or TOS, the terms of this Section E shall govern solely with respect to the Merchant's acceptance of American Express Payment Devices and solely to the extent necessary to resolve the conflict. For the avoidance of doubt, in the event that compliance with this Section E would cause you to violate the OptBlue Operating Guide and/or Laws, you should comply with the OptBlue Operating Guide and/or Laws.
- b. **Glossary.** As used in this Section E, the capitalized terms set forth below shall have the following definitions:
  - i. **Advance Payment Charge:** A Charge for which full payment is made in advance of Merchant providing the goods and/or rendering the services to the Cardholder.
  - ii. **Affiliate:** 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 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.
  - iii. **Agency:** Any Entity or line of business that uses Merchant's Marks or holds itself out to the public as a member of Merchant's group of companies.
  - iv. **Aggregated Charge:** A Charge that combines multiple small purchases or refunds (or both) incurred on a Card into a single, larger Charge before submitting the Charge for payment.
  - v. **American Express Payment Device:** (i) Any Card, account access device, or Payment Device or service bearing American Express or American Express Affiliate's Mark and issued by an Issuer or (ii) a Card Number.
  - vi. **American Express Brand:** The American Express name, trademarks, service marks, logos, and other proprietary designs and designations and the imagery owned by American Express or an American Express Affiliate and the goodwill associated with all of the foregoing and with all the goods and services now and in the future provided, marketed, offered, or promoted by American Express or an American Express Affiliate.
  - vii. **Card Number:** The unique identifying number that the Issuer assigns to an American Express payment Device when it is issued.
  - viii. **Charge:** A payment or purchase made on an American Express Payment Device.
  - ix. **Credit:** The amount of the Charge that you refund to Cardholders for purchases or payments made on American Express Payment Devices.



- x. **Customer Activated Terminals (CATs):** An unattended POS Device(e.g., gasoline pump, vending machine, check-out kiosk).
  - xi. **Disputed Charge:** A Charge about which a claim, complaint, or question has been brought.
  - xii. **Entity:** A corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.
  - xiii. **Establishment:** Any or all of a Merchant’s locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that the Merchant adopts in the future.
  - xiv. **Expiration Date:** The month and year on which a Payment Device expires (sometimes referred to as “valid thru” or “active thru” date).
  - xv. **Fraud Full Recourse Program:** one of American Express’ Chargeback programs.
  - xvi. **Internet Electronic Delivery:** The delivery of goods or services purchased on the internet via an internet download or another file transfer process (e.g., images or software download).
  - xvii. **Marks:** The names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.
  - xviii. **OptBlue Program:** The program pursuant to which a Merchant is permitted to accept Transactions initiated with American Express Payment Devices through KeyBank.
  - xix. **OptBlue Operating Guide:** The Merchant Operating Guide published by American Express containing the rules and regulations of American Express applicable to the OptBlue Program, together with all technical specifications, documentation, and other policies or procedures incorporated therein and currently located at <http://www.americanexpress.com/merchantopguide>. For all purposes of this Agreement, the OptBlue Merchant Operating Guide is considered to be part of the Credit Card Rules.
  - xx. **Oil Fraud Protection Program:** American Express’ program providing Establishments in the oil/petroleum industry protection from counterfeit fraud Chargebacks, provided both the Establishment and Charge meet certain criteria.
  - xxi. **Partial Immediate Chargeback Program:** One of American Express’ Chargeback programs.
  - xxii. **Pre-Authorization:** An Authorization request that Merchant submits in advance of providing the goods or services, allowing them to submit the Approved Charge (e.g., fuel pump CATs).
  - xxiii. **Recurring Billing Charges:** An option offered to Cardholders to make recurring Charges automatically on their American Express Payment Device (e.g., membership fees to health clubs, magazine subscriptions, and insurance premiums).
  - xxiv. **Submission:** The collection of Transaction Data sent to American Express.
  - xxv. **Telecommunications:** The communication services, including personal communication services; cellular, paging, long distance, etc.
- c. **Assignment.** Merchant shall not assign to any third party any payments due to it pursuant to this Agreement, and all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both), free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future Transaction receivables to KeyBank without consent of American Express.

- d. **Payment Device Parity.** Merchant's policies for accepting American Express Payment Devices, including but not limited to its refund policies, must be at least as favorable as its policies for accepting any other Payment Devices. Where Merchant displays signage representing or promoting its acceptance of any Payment Device, Merchant must display American Express signage with equal representation and visibility to the signage of other Payment Devices.
- e. **Establishment Closing.** If a Merchant closes any of its Establishments, Merchant must follow these guidelines:
- i. Notify KeyBank immediately;
  - ii. If Merchant is not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction Receipt and on websites and catalogs); and
  - iii. For Advance Payment Charges or Delayed Delivery Charges, delivery of the goods or services which have already charged to the Cardholder is required or Credit must be issued for any portion of the Charge for the goods or services not delivered.
- f. **Chargebacks.** Any Transaction not in compliance with the requirements of this chapter may be subject to Chargeback. Further, American Express may, at its sole discretion, place Merchant in any of American Express' Chargeback programs at any time, which will result in Chargebacks occurring automatically for certain Transactions. If KeyBank is notified that Merchant has been placed in a Chargeback program, KeyBank will communicate that information to Merchant.
- i. **Immediate Chargeback Program.** American Express may Chargeback a Charge without first sending a Retrieval Request any time a Cardmember disputes a Charge for any reason other than actual or alleged fraud. Without limiting American Express's discretion to place any Merchant in a Chargeback program, Merchant may be placed in this program for any one of the following reasons:
    - Merchant chooses to enroll in this program;
    - American Express determines that the Merchant has submitted a disproportionate number of Disputed Charges or has been subject to a disproportionate number of Chargebacks.
    - American Express determines that the Merchant's industry has had historically high occurrences of Disputed Charges.
  - ii. **Partial Immediate Chargeback Program.** American Express may Chargeback any Charge below a predetermined amount without first sending a Retrieval Request any time a Cardmember disputes a Charge for any reason other than actual or alleged fraud. All disputed amounts above the predetermined amount will be processed under American Express' standard Retrieval Request and Chargeback policy. Without limiting American Express's discretion to place any Merchant in a Chargeback program, Merchant may be placed in this program for any one of the following reasons:
    - Merchant chooses to enroll in this program to avoid receiving Retrieval Requests below a specific dollar amount.
    - American Express determines that the Merchant's industry has had historically high occurrences of Disputed Charges.
  - iii. **Fraud Full Recourse Program.** American Express may Chargeback without first sending a Retrieval Request anytime a Cardmember disputes a Charge based on actual or alleged fraud. Without limiting American Express's discretion to place any Merchant in a Chargeback program, Merchant may be placed in this program for any one of the following reasons:



- American Express receives a disproportionately high number of Disputed Charges relative to Merchant's prior history or industry standards.
  - Merchant engages or participates in illegal, fraudulent, deceptive, unfair or abusive business practices, illegal activities, or prohibited uses of American Express Payment Devices.
- g. Disputed Charges.** If Merchant submits disproportionate amounts or numbers of Disputed Charges, Merchant may be placed in a Chargeback program or Merchant's acceptance of American Express Payment Devices may be limited or terminated.

## 2. ACCEPTANCE.

- a. American Express Payment Device Acceptance.** Merchant must accept American Express Payment Devices as payment for goods and services (other than those goods and services prohibited under this Agreement) sold, or (if applicable) for charitable contributions made, at all of its Establishments, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant's Establishments under the Agreement.
- b. Treatment of the American Express Brand.** Except as expressly permitted by Applicable Law, Merchant must not:
- indicate or imply that it prefers, directly or indirectly, any other Payment Device over American Express Payment Devices,
  - try to dissuade Cardholders from using American Express Payment Devices,
  - criticize or mischaracterize American Express Payment Devices or any of American Express' services or programs,
  - try to persuade or prompt Cardholders to use any other Payment Device or any other method of payment (e.g., payment by check),
  - impose any restrictions, conditions, disadvantages or fees when American Express Payment Devices are accepted that are not imposed equally on all other Payment Devices, except for electronic funds transfer, or cash and check,
  - suggest or require Cardholders to waive their right to dispute any American Express Transaction,
  - engage in activities that harm American Express's business or the American Express Brand (or both),
  - promote any other Payment Devices (except Merchant's own private label card that Merchant issues for use solely at Merchant's Establishments) more actively than Merchant promotes American Express Payment Devices, or
  - convert the currency of the original sale Transaction to another currency when requesting Authorization or submitting Transactions (or both).

Merchant may offer discounts or in-kind incentives from Merchant's regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by applicable Laws): (i) Merchant clearly and conspicuously discloses the terms of the discount or in-kind incentive to Merchant's customers, (ii) the discount or in-kind incentive is offered to all of Merchant's prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not

constitute a violation of the provisions set forth above in this Section E(2)(b), “Treatment of the American Express Brand”.

- c. **Treatment of American Express Marks.** Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant’s acceptance of American Express Payment Devices and display American Express Marks (including any American Express Payment Device application forms provided to Merchant) as prominently and in the same manner as any other Payment Devices. Merchant must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the Mark, nor (without prior written consent from KeyBank) indicate that American Express endorses Merchant’s goods or services. Merchant shall only use the American Express Marks as permitted by the Agreement and shall cease using American Express’s Marks upon termination of the Agreement.

For additional guidelines on the use of the American Express Marks, contact KeyBank.

- d. **Prohibited Uses of American Express Payment Devices.** Merchant must not accept American Express Payment Devices for any of the following:

- adult digital content sold via Internet Electronic Delivery,
- amounts that do not represent bona fide sales of goods or services (or, if applicable, amounts that do not represent bona fide charitable contributions made) at Merchant’s Establishments; for example, purchases at Merchant’s Establishments by Merchant’s owners (or their family members) or employees contrived for cash flow purposes, or payments that Merchant have accepted in order to advance cash to Cardholders in connection with the Transaction,
- amounts that do not represent bona fide, direct sales by Merchant’s Establishment to Cardholders made in the ordinary course of Merchant’s business,
- cash or cash equivalent; for example, purchases of gold, silver, platinum and palladium bullion and/or bars (collectible coins and jewelry are not prohibited), or virtual currencies that can be exchanged for real currency (loyalty program currencies are not prohibited),
- charges that the Cardholder has not specifically approved,
- costs or fees over the normal price of the goods or services (plus applicable taxes) that the Cardholders has not specifically approved,
- damages, losses, penalties, or fines of any kind,
- gambling services (including online gambling), gambling chips, gambling credits, or lottery tickets,
- unlawful/illegal activities, fraudulent business transactions or when providing the goods or services is unlawful/illegal (e.g. unlawful/illegal online internet sales of prescription medications or controlled substances; sales of any goods that infringe the rights of a Rights-holder under laws applicable to American Express, Merchant, or the Cardholders),
- overdue amounts or amounts covering returned, previously dishonored or stop-payment checks (e.g., where American Express Payment Devices are used as a payment of last resort),
- amounts that represent repayment of a cash advance including, but not limited to, payday loans, pawn loans or payday advances,
- sales made by third parties or Entities conducting business in industries other than Merchant’s, or
- other items of which American Express or KeyBank notifies Merchant.

Merchant must not use American Express Payment Devices to verify a customer’s age.

- e. **Treatment of Cardholder Data.** Any and all Cardholder Data is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not

disclose Cardholder Data, nor use nor store it, other than to facilitate Transactions at Merchant's Establishments in accordance with the Merchant Agreement.

### 3. TRANSACTION PROCESSING

- a. Completing a Transaction at the Point of Sale.** To accept American Express Payment Devices for Charges at Merchant's Establishments, at the point of sale, Merchant must:
- clearly and conspicuously, disclose all material terms of sale prior to obtaining an Authorization, and
  - clearly and conspicuously inform the Cardholder at all points of interaction (e.g., sales conducted in person, over the internet, mobile or via mail or telephone order) what Entity is making the sales offer, so that the Cardholder can clearly distinguish Merchant from any other party involved in the interaction (e.g., a vendor of goods or provider of services Merchant may engage, or another Merchant seeking to conduct business with the Cardholder).
- b. Contact Chip Charges.** When presented with a Chip Card to be inserted into a Chip Card reader, Merchant must:
- i. Verify that the Card is not visibly altered or mutilated;
  - ii. Verify that the customer is the Cardholder;\*
  - iii. Capture Chip Card Data by inserting the Chip Card into the Chip Card reader;
  - iv. The POS Device will advise the Cardholder to enter the PIN (a Chip and PIN Charge) or sign for the Charge (a Chip and signature Charge);
    - Chip and PIN Charges: the Cardholder will enter the PIN into the POS Device using the keypad. If the Chip and PIN Charge is unable to be completed due to a technical problem, the POS Device will show an error message.
    - Chip and signature Charge: Obtain the Cardholder's signature on the Transaction Receipt and compare the signature on the Transaction Receipt to the name and signature on the American Express Payment Device. Obtaining a signature may not be required if Merchant's Establishment and the Charge qualify for the No Signature Program.
  - v. Obtain an Approval Code,
  - vi. Verify the Expiration Date on the American Express Payment Device,
  - vii. Match the Card Number and the Expiration Date on the American Express Payment Device to the same information on the Transaction Receipt, and
  - viii. Ensure the name that prints on the Transaction Receipt matches the name on the front of the American Express Payment Device.\*
- \* Except when the Cardholder name is not captured on the Transaction Receipt or for Prepaid Cards that do not show a name on their face.
- c. Mobile Contactless Charges.** A mobile contactless Transaction is a Transaction initiated through a contactless-enabled mobile phone at a contactless-enabled POS Device. These mobile phones contain a payment application which can initiate a contactless Transaction when the phone is waved in close proximity to a contactless-enabled POS Device. Merchant must be approved by KeyBank to accept mobile contactless Transactions.

When presented with a contactless-enabled mobile phone, Merchant must:

- i. Capture Magnetic Stripe or Chip Card data by waving the contactless-enabled mobile phone in close proximity to the contactless reader,
- ii. Obtain an Approval Code,

- iii. Obtain the Cardholder's signature (excluding Charges at CATs), unless the Charge qualifies for the No Signature Required Program,
  - iv. Compare the signature (when obtained) on the Transaction Receipt with the signature on the companion physical American Express Payment Device or a valid form of formal identification (e.g. driver's license). Merchant must not record or store the information from such formal identification in any way.
- d. Customer Activated Terminals.** Charges for purchases at Merchant's Customer Activated Terminals (CATs) must meet the requirements for Transaction Receipts in the MOG as well as comply with all Payment Network Regulations and specifications. Without limiting the foregoing, Merchant must include:
- Full Magnetic Stripe data stream or Chip Card Data in all Authorization requests, and
  - CAT indicator on all Authorization requests and Submissions.
- American Express will not be liable for actual or alleged fraudulent Charges occurring through Customer Activated Terminals. Such Charges may be subject to Chargeback.
- e. Processing a Credit.** In addition to the procedures set forth in Chapter 2 of the MOG, follow these steps to issue a Credit:
- i. Create a Credit Transaction Receipt.
  - ii. Compare the last four digits on the Transaction Receipt against the American Express Payment Device presented (when applicable).
  - iii. Have the Cardholder sign the Credit Transaction Receipt (when applicable).
  - iv. Provide a copy of the Credit Transaction Receipt to the Cardholder.
- Merchant must submit all Credits under the Establishment where the Credit originated.
- A Credit must be issued in the currency in which the original Charge was submitted. Merchant must issue Credits to the American Express Payment Device used to make the original purchase; however, if the Credit is for the return of a gift by someone other than the Cardholder who made the original purchase, apply Merchant's usual refund policy.
- If the Cardholder indicates that the American Express Payment Device on which the purchase was originally made is no longer active or available, do the following:
- For all American Express Payment Devices except Prepaid Cards, advise the Cardholder that Merchant must issue the Credit to that American Express Payment Device. If the Cardholder has questions, advise him or her to call the customer service number on the back of the American Express Payment Device in question.
  - If the inactive or unavailable American Express Payment Device is a Prepaid Card, apply Merchant's usual refund policy for returns.
- If Merchant issues a Credit, KeyBank will not refund the Discount or any other fees or assessments previously applied on the corresponding Charge. The Discount on Chargebacks will not be refunded.
- f. Credit Transaction Receipts.** Merchant must create a Credit Transaction Receipt for any Credit Merchant issues.
- i. *In General.* For all Credit Transaction Receipts, Merchant must:
    - Submit the credit through KeyBank;
    - Retain the original Credit Transaction Receipt (as applicable) and all documents evidencing the Transaction, or reproducible records thereof, for the timeframes listed below; and
    - Provide a copy of the Credit Transaction Receipt to the Cardholder.

- ii. *Paper Credits.* If Merchant submits Credits on paper, Merchant must create a Credit Transaction Receipt containing all of the following required data:
- full Card Number and Expiration Date (pursuant to applicable Laws), and if available, Cardholder name,
  - the date the Credit was issued,
  - the amount of the Credit, and
  - Merchant's Establishment name and address and, if applicable, store number.

The retention time frame for Credit Transaction Receipts is twenty-four (24) months from the date of the Credit.

- g. **Advance Payment Charges.** An Advance Payment Charge is a Charge for which full payment is made in advance of Merchant's providing the goods and/or rendering the services to the Cardholder. Purchases involving Advance Payment Charges generally carry a higher level of risk than other Charges, due to the fact that goods and services are not provided at the time the Charge is processed. For this reason, American Express may withhold settlement for part or all of such Charges until it is determined that the risk has diminished.

Merchant must follow the procedures in this Section E(3)(g), in addition to all other applicable procedures in the MOG and Section A of the TOS, if Merchant offers the Cardholder the option or requires the Cardholder to make Advance Payment Charges, including, without limitation, for the following types of goods and/or services:

- Custom orders (e.g., orders for goods to be manufactured to a customer's specifications);
- Entertainment/ticketing (e.g., sporting events, concerts, season tickets);
- Tuition, room and board, and other mandatory fees (e.g., library fees) of higher educational institutions; and
- Travel-related services (e.g., tours, guided expeditions).

For an Advance Payment Charge, Merchant must:

- State Merchant's full cancellation and refund policies, clearly disclose Merchant's intent and obtain written consent from the Cardholder to bill the American Express Payment Device for an Advance Payment Charge before Merchant request an Authorization. The Cardholder's consent must include:
  - his or her agreement to all the terms of the sale (including price and any cancellation and refund policies), and
  - a detailed description and the expected delivery date of the goods and/or services to be provided;
- Obtain an Approval Code; and
- Complete a Transaction Receipt. If the Advance Payment Charge is a Card Not Present Charge, Merchant must also:
  - ensure that the Transaction Receipt contains the words "Advance Payment," and
  - within twenty-four (24) hours of the Charge being incurred, provide the Cardholder written confirmation (e.g., email or facsimile) of the Advance Payment Charge, the amount, the confirmation number (if applicable), a detailed description and expected delivery date of the goods and/or services to be provided and details of Merchant's cancellation/refund policy.

If Merchant cannot deliver goods and/or services (e.g., because custom-ordered merchandise cannot be fulfilled), and if alternate arrangements cannot be made, Merchant must immediately issue a Credit for the full amount of the Advance Payment Charge which cannot be fulfilled.

- h. Aggregated Charges.** An Aggregated Charge is a Charge that combines multiple small purchases or refunds (or both) incurred on an American Express Payment Device into a single, larger Charge before submitting the Charge for payment. If Merchant is classified in an internet industry, Merchant may process Aggregated Charges provided that Merchant complies with the following procedures, as well as all other applicable procedures for Transaction acceptance set forth in this Agreement:
- Merchant must clearly disclose Merchant's intent and obtain written consent from the Cardholder that purchases or refunds (or both) on the American Express Payment Device may be aggregated and combined with other purchases or refunds (or both) before Merchant requests an Authorization.
  - Each individual purchase or refund (or both) that comprises the Aggregated Charge must be incurred under the same Establishment and on the same American Express Payment Device.
  - Obtain a pre-Authorization of no more than \$15.
  - Create a Transaction Receipt for the full amount of the Aggregated Charge.
  - The amount of the Aggregated Charge must not exceed \$15 or the amount for which Merchant obtained pre-Authorization.
  - Merchant must submit each Transaction Receipt within the Submission timeframe.
  - Merchant must provide the Cardholder with an email containing:
    - the date, amount, and description of each individual purchase or refund (or both) that comprises the Aggregated Charge, and
    - the date and the amount of the Aggregated Charge.
- i. Delayed Delivery Charges.** A Delayed Delivery Charge is a single purchase for which Merchant must create and submit two separate Transaction Receipts. The first Transaction Receipt is for the deposit or down payment and the second Transaction Receipt is for the balance of the purchase, which is paid after the goods or services have shipped or been provided, as applicable and as agreed by Merchant and the Cardholder. To accept an American Express Payment Device for Delayed Delivery Charges, Merchant must comply with the following procedures, as well as all other applicable procedures for Transaction acceptance set forth in this Agreement:
- Clearly disclose Merchant's intent and obtain written consent from the Cardholder to perform a Delayed Delivery Charge before Merchant requests an Authorization,
  - Obtain a separate Approval Code for each of the two Delayed Delivery Charges on their respective Charge dates,
  - Clearly indicate on each Delayed Delivery Transaction Receipt that the Charge is either for the deposit or for the balance of the Delayed Delivery Charge,
  - Submit the Delayed Delivery Transaction Receipt for the balance of the purchase only after the goods have been shipped, provided or services rendered,
  - Submit each Delayed Delivery Transaction Receipt within the Submission timeframes. For these purposes, the Charge will be deemed "incurred":
    - for the deposit - on the date the Cardholder agreed to pay the deposit for the purchase.
    - for the balance - on the date the goods are shipped, provided or services are rendered.
  - Submit and Authorize each Delayed Delivery Charge under the same Establishment, and
  - Treat deposits paid using an American Express Payment Device no differently than Merchant treats deposits on all other Payment Devices.
- j. Keyed No Imprint Program.** The Keyed No Imprint Program allows Merchant to submit In-Person Charges without taking an imprint of an American Express Payment Device if Merchant



complies with the procedures set forth in this Section E(3)(j), as well as all other applicable procedures for Transaction acceptance set forth in this Agreement:

- the Charge must be key-entered,
- the Charge Submission must include the appropriate indicator to reflect that the American Express Payment Device and the Cardholder were present at the point of sale,
- the Charge Submission must include a valid Approval Code, and
- the CID Number must be confirmed as a positive match.

All American Express Payment Devices qualify for the Keyed No Imprint Program. Under the Keyed No Imprint Program, Charges will not be subject to Chargeback based solely on the Establishment's failure to obtain an imprint of the American Express Payment Device.

**k. No Signature Program.** Qualifying Merchants may participate in the American Express No Signature Program. For eligibility requirements and other information about participating in the American Express No Signature Program, refer to the OptBlue Operating Guide.

**l. Recurring Billing Charges.** If Merchant offers Cardholders the option to make Recurring Billing Charges, Merchant must comply with the following procedures, as well as all other applicable procedures for Transaction acceptance set forth in this Agreement:

- Before submitting the first Recurring Billing Charge, Merchant must obtain the Cardholder's express written consent for Merchant to bill the American Express Payment Device and must notify the Cardholder that he or she can withdraw consent at any time.
- Merchant must ensure that Merchant's process for cancellation of Recurring Billing is simple and expeditious. Merchant must fulfill Cardholders' requests that Merchant discontinue the Recurring Billing Charges immediately and provide cancellation numbers to them.
- Merchant must clearly and conspicuously disclose all material terms of the option, including, if applicable, the fact that Recurring Billing will continue until the option is cancelled by the Cardholder.
- Before submitting a Recurring Billing Charge, Merchant must obtain Authorization and complete a Transaction Receipt, except with the words "signature on file," if applicable, on the signature line and the appropriate electronic descriptor on the Transaction Receipt.
- Within twenty-four (24) hours of incurring the first Recurring Billing Charge, Merchant must provide the Cardholder written confirmation (e.g., email or facsimile) of such Charge, including all material terms of the option and details of Merchant's cancellation/refund policy, and
- Where the material terms of the option to make Recurring Billing Charges change after Submission of the first Recurring Billing Charge, promptly notify the Cardholder in writing of such change and obtain the Cardholder's express written consent to the new terms prior to submitting another Recurring Billing Charge.

If Merchant's Recurring Billing Charge amounts vary, Merchant must offer the Cardholder the right to receive written notification of the amount and date of each Recurring Billing Charge:

- at least ten (10) days before submitting each Charge, or
- whenever the amount of the Charge exceeds a maximum Recurring Billing Charge amount specified by the Cardholder.

If a Cardholder withdraws consent to Recurring Billing Charges or does not consent to a given variable-amount Recurring Billing Charge of which such Cardholder has been notified, such Charge may be subject to Chargeback. If an American Express Payment Device is cancelled, or if a Cardholder withdraws consent to Recurring Billing Charges, Merchant is responsible for arranging another form of payment (as applicable) with the Cardholder.



If Merchant's acceptance of American Express Payment Devices terminates for any reason, then Merchant must notify all Cardholders for whom Merchant have submitted Recurring Billing Charges that Merchant no longer accept American Express Payment Devices.

The cancellation of an American Express Payment Device constitutes immediate cancellation of that Cardholder's consent for Recurring Billing Charges. KeyBank will not notify Merchant of such cancellation, and neither American Express nor KeyBank will have any liability to Merchant arising from such cancellation.

Merchant must retain evidence of consent to receive updated American Express Payment Device account information from the Issuer for twenty-four (24) months from the date Merchant submits the last Recurring Billing Charge.

**m. Processing American Express Prepaid Cards.** American Express Prepaid Cards are valid through the date on the American Express Payment Device. An American Express Prepaid Card must be tendered for an amount that is no greater than the funds available on the American Express Prepaid Card. In addition to all other applicable requirements in this Agreement regarding acceptance of Transactions, when accepting Prepaid Cards, Merchants should:

- Instruct Cardholders that, before making a purchase, they must check their remaining funds by calling the twenty-four (24) hour, toll-free number on the back of the Card or checking online; and
- If Merchant receives a Declined Code when seeking Authorization, ask the customer to call the toll-free number on the back of the Prepaid Card to confirm that the purchase price does not exceed the available funds on the American Express Prepaid Card.

**n. Processing Travels/Gift Cheques.** To accept American Express Travelers and Gift Cheques:

- Watch the Customer countersign in the lower left corner of the cheque, and compare the countersignature to the signature in the upper left corner for American Express Travelers Cheques and Gift Cheques. For Cheques for Two, the customer's countersignature must match either one of the two signatures on top.
- Validate Security Features.
- Obtain authorization - American Express recommends obtaining an authorization to reduce the chances of accepting fraudulent cheques. American Express offers a variety of authorization tools. See authorization methods in the following table to determine Merchant's course of action:

If	Then
The signature and countersignature are a reasonable match (they look alike, but may not be identical)	Accept the cheque. There is no need to obtain any identification.
Merchant suspects that the countersignature may be false, or Merchant did not watch the customer countersign	Ask the customer to turn the cheque over and sign again across the left-hand side (in the same manner one typically endorses a check). Then take the cheque and fold up the bottom right-hand corner so that Merchant can compare the original signature with the new one.
The signatures are not the same, or if there is a question regarding the validity of the cheque	Call the Travelers Cheque/Gift Cheque Customer Service.
Merchant suspects that the Travelers cheque being presented is fraudulent	Use any of the following methods to verify that the cheque Merchant is accepting is authentic: <ul style="list-style-type: none"> <li>o Perform a smudge test (see chapter 9 of the OptBlue Operating Guide, "Fraud Prevention" for details).</li> <li>o Obtain online Authorization at</li> </ul>

[www.americanexpress.com/verifyamextc](http://www.americanexpress.com/verifyamextc).

Additional information regarding Travelers Cheques and Gift Cheques, including a description of security features associated with such cheques, is available in the OptBlue Operating Guide.

#### 4. AUTHORIZATIONS

- a. General.** For every Charge, Merchant is required to obtain an Authorization Approval Code. The Authorization must be for the full amount of the Charge except for Merchants that are classified in the restaurant industry.

An Authorization Approval does not guarantee that (i) the person making the Charge is the Cardholder, (ii) the Charge is in fact valid or bona fide, (iii) Merchant will be paid for the Charge, or (iv) Merchant will not be subject to a Chargeback.

- b. Card Identification (CID) Number.** If, during the Authorization, a response is received that indicates the CID Number given by any person attempting the Charge does not match the CID Number printed on the Card, re-prompt the customer at least one more time for the CID Number. If it fails to match again, Merchant should follow its own internal policies for processing Charges without a CID match.

**Note:** CID Numbers must not be stored for any purpose. They are available for real time Charges only.

- c. Authorization Time Limit.** Authorization Approvals are valid for seven (7) days after the Authorization date. Merchant must obtain a new Approval if Merchant submits the Charge to KeyBank more than seven (7) days after the original Authorization date.

For Charges of goods or services that are shipped or provided more than seven (7) days after an order is placed, Merchant must obtain an Approval for the Charge at the time the order is placed and again at the time Merchant ship or provide the goods or services to the American Express Cardholder.

The new Approval must be included in the Transaction Receipt. If either of the Authorization requests is Declined, do not provide the goods or services or submit the Charge. If Merchant does, Merchant will be subject to a Chargeback.

#### 5. SUBMISSIONS.

- a. Submission Requirements – Electronic.** Merchant must submit transactions electronically except under extraordinary circumstances.

When Merchant transmits Charge Data and Transmission Data electronically, Merchant must still complete and retain Transaction Receipts and Credit Transaction Receipts.

Merchant's Establishments must submit Charges and Credits only in U.S. Dollars

- b. Charge Submissions.** Merchant must submit all Charges to us within seven (7) days of the date they are incurred. Charges are deemed "incurred" on the date the American Express Cardholder indicates to Merchant that they will pay for the goods or services purchased with the American Express Payment Device. Charges must not be submitted to us until after the goods are shipped, provided, or the services are rendered. Merchant must submit all Charges under the Establishment where the

Charge originated.

For Aggregated Charges, the Charge must be submitted within seven (7) days of the date of the last purchase (and/or refund as applicable) that comprises the Aggregated Charge.

Delayed Delivery Charges and Advance Payment Charges may be submitted before the goods are shipped, provided or the services are rendered.

- c. **Credit Submissions.** Merchant must submit all Credits to us within seven (7) days of determining that a Credit is due. Merchant must submit each Credit under the Establishment where the Credit originated.

## 6. FRAUD PREVENTION.

Chapter 9 of the OptBlue Operating Guide contains important information for Merchants regarding fraud deterrence and mitigation, including tips for recognizing fraudulent activity, a description of the security features associated with various types of American Express Payment Devices, means of verifying the authenticity of American Express Travelers Cheques and Gift Cheques, and additional fraud mitigation tools available to Merchants.

## 7. SPECIFIC INDUSTRIES

a. **Auto dealers.** This section applies to Merchants classified in an auto dealer industry.

The following requirements will apply to Charges for the down payment or the entire purchase price of new and used motor vehicles. Merchant may accept American Express Payment Devices for the down payment or the entire purchase price of a new or used motor vehicle, subject to the following limitations:

- Merchant must not submit a Charge for the down payment or entire purchase price of a motor vehicle unless and until Merchant has a written agreement/bill of sale signed by the Cardholder setting forth the terms of the sale, including down payment price (if any), purchase price, and Merchant's cancellation policy.
- Any portion of the Charge for the down payment price or purchase price of a motor vehicle which is disputed by the Cardholder may be subject to Chargeback if such Disputed Charge cannot be resolved in Merchant's favor based upon unambiguous language contained in the written agreement/bill of sale.
- Should a Cardholder exercise his or her right to rescind the written agreement/bill of sale during any rescission period set forth in the Cardholder's agreement with Merchant or at law, Merchant shall submit a Credit promptly.
- If Merchant is classified as an auto dealer of used motor vehicles exclusively, the down payment must not exceed 50% of the full purchase price of the motor vehicle.
- The amount of the Charge must not exceed the total price of the motor vehicle after deduction of applicable discounts, taxes, rebates, cash down payments, and trade-in values.
- If the Cardholder denies making or authorizing the Charge, the Charge may be subject to Chargeback.

- b. **Business-to-Business (B2B)/Wholesale Distribution.** If Merchant is classified in the business-to-business (B2B) or wholesale distribution industries, and KeyBank determines that Merchant is not in the Telecommunications industry, then notwithstanding the prohibition in Section E(2)(d), "Prohibited Uses of the Card", Merchant may accept the Card for overdue amounts to the extent that acceptance of overdue amounts is a common practice in Merchant's industry and does not constitute an attempt to obtain payment from the Cardholder whose prior methods of payment have, in

American Express' reasonable judgment, been difficult to collect or uncollectible. An indicator of such difficulty, for example, may be the fact that Merchant has sent an overdue customer account to collections.

For the purposes of Section E(5)(a), "Submission Requirements - Electronic", a Charge submitted by Merchant's Establishments classified in the foregoing industries will be deemed "incurred" on the date the Cardholder indicates to Merchant that the Cardholder will pay for the goods or services purchased with the Card.

Notwithstanding the restriction in Section E(5)(a), "Submission Requirements - Electronic", Merchant must not submit any Charge until the goods have been shipped or services have been provided to the Cardholder. To the extent that Merchant has clearly disclosed Merchant's intentions to the Cardholder and the Cardholder agrees, then Merchant may submit the following types of Charges before Merchant ships the goods to the Cardholder:

- Charges representing deposits on custom and special orders (so long as Merchant complies with Applicable Law) or goods not in inventory at the time the order is placed.
- Charges representing advance, partial, or full payment for goods that the Cardholder requests Merchant to ship at a later date.

- c. **Insurance.** This section contains provisions specific to Establishments that are classified in the insurance industry. If any of Merchant's goods or services are sold or billed by independent Agencies, then Merchant must provide to KeyBank a list of such independent Agencies and notify KeyBank of any subsequent changes in the list.

KeyBank may provide this list to American Express, which may use this list to conduct mailings that encourage such independent Agencies to accept American Express Payment Devices. American Express may mention Merchant's name in such mailings, and Merchant must provide American Express with a letter of endorsement or assistance as American Express may require.

Merchant must use Merchant's best efforts to encourage independent Agencies to accept the Card. From time to time, and subject to Section E(2)(A), "American Express Payment Device Acceptance", American Express may establish joint marketing campaigns that promote American Express Payment Device acceptance specifically at Merchant's Establishments or, generally, at insurance companies. A necessary purpose for which Merchant submits Cardholder Data that is responsive to such joint marketing campaigns includes American Express' use of that information to perform back-end analyses to determine the success of such joint marketing campaigns.

American Express undertakes no responsibility on Merchant's behalf for the collection or timely remittance of premiums. American Express will not be subject to any liability, under any circumstances, for any claim arising from, or related to, any insurance policy issued by Merchant or Merchant's Agencies.

If American Express Payment Devices are accepted as payment for fixed rate cash value life insurance policies or fixed rate annuities under the Agreement, Merchant represents and warrants that the fixed rate cash value life insurance policies and fixed rate annuities for which the American Express Payment Device will be accepted for premium payments are not securities requiring registration under the Securities Act of 1933, Merchant must indemnify, defend, and hold harmless American Express and its Affiliates, successors, assigns and Issuers from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from Merchant's breach of this representation and warranty.

- d. **Oil/Petroleum.** This section applies to Merchants that are classified in the oil and petroleum industry.

- i. **Requirements.** Merchants in the oil and petroleum industry must:
- Obtain a unique Merchant Identification Number for Merchant's CAT gas pump sales. If Merchant conducts any other business at Merchant's Establishment, Merchant must obtain a unique Merchant Identification Number for those lines of Merchant's business.
  - Submit dealer location data along with each Authorization request and each Submission file. Dealer location data consists of Merchant's business's:
    - Dealer number (store number),
    - Name ,
    - Street address,
    - City, and
    - Postal code.
- ii. **Fraud Full Recourse Program.** Merchants in the oil and petroleum industry may be placed in the Fraud Full Recourse Program if Merchant accepts Charges originating at a CAT gas pump. However, even if a Merchant has been placed in the Fraud Full Recourse Program, American Express will not exercise Chargeback up to a certain dollar amount for Charges that qualify under the Oil Fraud Protection Program.
- iii. **Oil Fraud Protection Program.** An Establishment qualifies for the Oil Fraud Protection Program, if it (i) authorizes and submits Transactions under the unique Merchant Identification Number assigned to the Establishment, and (ii) in a given month, has a counterfeit fraud to Charge volume ratio below 1%. An Establishment whose counterfeit fraud to Charge volume ratio rises to or exceeds 1% in a given month will not qualify for the Oil Fraud Protection Program until the ratio falls below 1% for three (3) consecutive months. Notwithstanding the foregoing, the Oil Fraud Protection Program does not apply to any Merchant that submits under one Merchant Identification Number consolidated Charges from multiple Establishments (i.e., central submitters) or to the Establishments that such a Merchants submits on behalf of.

Under the Oil Fraud Protection Program, Charges up to \$100 will not be subject to Chargeback, provided that both the Establishment and each Charge meet the following criteria:

- the Authorization request meets the American Express data requirements listed in Section 4.3of the OptBlue Operating Guide,
- the Authorization request must include the correct Merchant Category Code (MCC) for "automated fuel dispensers" (5542), and
- the Issuer determines that the American Express Payment Device used to initiate the Charge was counterfeit.

Section 12.5.2 of the OptBlue Operating Guide contains recommendations for Merchants regarding mitigation of fraud associated with CAT gas pumps.

- e. **Restaurants.** With respect to Transactions submitted by Merchants in the restaurant or bar industry. If the final restaurant or bar Charge is no greater than the amount for which Merchant obtained

Authorization plus 20% of that amount, no further Authorization is necessary. If the final restaurant or bar Charge exceeds the amount for which Merchant obtained Authorization by more than 20%, Merchant must obtain Authorization for any amount in excess of the original Authorization. When submitting the Charge, only include the initial Approval.

- f. Telecommunications.** If Merchant is classified in the Telecommunications industry, notwithstanding anything to the contrary in the Agreement, Merchant may be placed in one or more of the following Chargeback programs:

- i. Partial Immediate Chargeback Program for an amount of \$50 or less; or
- ii. Fraud Full Recourse Program.

Merchant must comply with any audit procedures that may be established regarding the submission of Recurring Billing Charges under the correct Merchant Identification Number.

- g. Government/Utilities/Education.** This section applies to Merchants classified in the government, utilities, or certain education industries (i.e. higher education, private school - kindergarten to grade 12).

Merchants in the government, utilities and applicable education sectors may assess convenience fees on Charges, subject to the following limitations, as well as all other applicable provisions of this Agreement:

- Merchants classified as government Entities, including government utilities, and privately owned utilities may assess convenience fees on all Charges.
- Merchants classified as educational institutions may assess convenience fees only on Charges for tuition, room and board, school lunch payments or other mandatory fees.

Any explanation, verbal or written, describing why the convenience fee is being assessed, or how it is calculated, must characterize the convenience fee as an assessment to cover the Merchant's administrative costs and not as an assessment to cover the Merchant's cost of accepting the American Express Payment Device.

- h. Internet/Online Pharmacies.** If KeyBank determines that Merchant is an internet/online pharmacy Merchant that accepts American Express Payment Devices for sales of prescription medications (as defined by Applicable Law) in the Card Not Present environment:

- Merchant must be certified by the Verified Internet Pharmacy Practice Sites program of the National Association of Boards of Pharmacy ([www.nabp.net](http://www.nabp.net)), or
- Merchant or Merchant's authorized representative must attest that Merchant comply with the licensing and inspection requirements of (i) U.S. federal law and the state in which Merchant are located and (ii) each state to which Merchant dispense pharmaceuticals.

- i. Online/Mail Order Tobacco.** If Merchant is classified or it is otherwise determined that Merchant is an online or mail order (or both) tobacco or e-cigarette Merchant, then Merchant must provide the website address of the online store from which Merchant sell Merchant's tobacco products. If Merchant's website facilitates tobacco sales, Merchant will be required on request to provide an executed and notarized Affidavit of Compliance with Laws - Online/Mail Order Tobacco. If Merchant fails to complete the Affidavit, American Express Payment Device Acceptance privileges may be suspended.



## 8. DISPUTE RESOLUTION

### **ARBITRATION AGREEMENT (as to Claims involving American Express)**

In the event that Merchant or KeyBank is not able to resolve a Claim against American Express, or a claim against KeyBank or any other entity that American Express has a right to join in resolving a Claim, this section explains how Claims can be resolved through arbitration. Merchant or American Express may elect to resolve any Claim by individual, binding arbitration. Claims are decided by a neutral arbitrator.

**If arbitration is chosen by any party, neither Merchant nor KeyBank nor American Express will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, Merchant, KeyBank, and American Express will not have the right to participate in a representative capacity or as a member of any class pertaining or be a named party to a class-action with respect to any Claim for which any party elects arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights Merchant, KeyBank, or American Express would have in court may also not be available in arbitration.**

i. **Initiation of Arbitration.** Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with the Merchant Agreement. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (*FAA*). Any arbitration hearing that Merchant attends shall take place in New York, New York unless all parties agree to an alternate venue.

ii. **Limitations on Arbitration.** **If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There will be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other merchants or other persons or entities similarly situated.** The arbitrator's authority is limited to Claims between Merchant, KeyBank, and American Express. Claims may not be joined or consolidated unless all parties to this agreement agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, KeyBank or American Express and cannot be used in any other case except to enforce the award as between Merchant, KeyBank and American Express. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.

iii. **Previously Filed Claims/No Waiver.** Merchant, KeyBank, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Merchant, KeyBank, or American Express may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Payment Device acceptance agreement, that was filed against American Express prior to the effective date of the Merchant Agreement.

iv. **Arbitrator's Authority.** The arbitrator shall have the power and authority to award any relief that would have been available in court, including 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 Merchant Agreement or any of its separate provisions, including this section, nor to determine any matter or make any award except as provided in this section.



v. Split Proceedings for Equitable Relief. Merchant, KeyBank, or American Express may seek equitable relief in aid of 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 reasonable attorneys' fees and costs, including legal fees, to be paid by the party against whom enforcement is ordered.

vi. Small Claims. American Express shall not elect to use arbitration under this section for any Claim Merchant properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

vii. Governing Law/Arbitration Procedures/Entry of Judgment. This arbitration section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and shall honor claims of privilege recognized by law. 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, provided that any party may request that the arbitrator to expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen (15) days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty (20) days of any objecting party's submission. If a Claim is for \$10,000 or less, Merchant or American Express may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA. If a Claim is for \$100,000 or more, or includes a request for injunctive relief, (a) any party to this Merchant Agreement shall be entitled to reasonable document and deposition discovery, including (x) reasonable discovery of electronically stored information, as approved by the arbitrator, who shall consider, *inter alia*, whether the discovery sought from one party is proportional to the discovery received by another party, and (y) no less than five depositions per party; and (b) within sixty (60) days of the initial award, either party can file a notice of appeal to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider *de novo* any aspect requested of that award and whose decision shall be final and binding. If more than sixty (60) days after the written arbitration decision is issued the losing party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where Merchant's headquarters or Merchant's assets are located.

viii. Confidentiality. 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 Claim resolution process, including but not limited to any related negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential 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, mediation, or arbitration.

ix. Costs of Arbitration Proceedings. Merchant will be responsible for paying Merchant's share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees Merchant would have incurred if Merchant had brought a Claim in court. American Express will be responsible for any additional arbitration fees. At Merchant's written request, American Express will consider in good faith making a temporary advance of Merchant's share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

x. Additional Arbitration Awards. If the arbitrator rules in Merchant's favor against American Express for an amount greater than any final settlement offer American Express made before any arbitration award, the arbitrator's award will include: (1) any money to which Merchant is entitled as determined by the

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arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by Merchant.

**xi. Definitions.** For purposes of this section E(8) only, (i) *American Express* includes any of its affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) *Merchant* includes any of Merchant's affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) *Claim* means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or against KeyBank or any other entity that American Express has the right to join in resolving a Claim, including, a transaction using an American Express product or network or regarding an American Express policy or procedure.

## SECTION F – SAFE-T FOR SMB SERVICES

If Company has elected to receive SAFE-T for SMB Gold or SAFE-T for SMB Silver, Company shall be subject to, and shall comply with, this Section F in addition to the terms and conditions of Section A of this TOS in connection with its receipt such services. For the avoidance of doubt, this Section F shall not apply to any tokenization or encryption solution offered by Elavon other than the SAFE-T for SMB Gold and SAFE-T for SMB Silver offerings, and to the extent terms governing any other such tokenization or encryption solution are separately provided to Company, those terms, rather than this Section F, shall apply. In the course of its acceptance and use of the SAFE-T for SMB Services (as defined below), Company hereby agrees to the following terms and conditions:

1. **DESCRIPTION OF SAFE-T FOR SMB SERVICES.** Subject to the terms and conditions of this Section F and the Agreement, Elavon shall provide Company with the following services (collectively, the “SAFE-T for SMB Services”):
  - a. **Encryption Services.** Transaction Receipts properly encrypted by Company using Elavon-provided encryption software and Elavon-approved Hardware (as defined below) will be decrypted by Elavon in accordance with the terms and conditions of this Section F and the Agreement (such services, the “Encryption Services”).
  - b. **Tokenization Services.** Elavon will provide Company with Tokens in substitution for Credit Card, Debit Card and Gift Card account numbers. More specifically, when a Credit Card, Debit Card or Gift Card account number associated with a Transaction is transmitted from Company to Elavon, Elavon will:
    - i. Generate a Token;
    - ii. Associate the Token with the account number in a secure manner; and
    - iii. Send the Token, instead of the account number, back to the Company in the Transactions authorization response message.

As long as Company is receiving the SAFE-T for SMB Services, Company may submit the Token, rather than the associated account number, to Elavon to process additional Transactions to the Credit Card, Debit Card or Gift Card associated with such Token at any of Company’s locations.

2. **COMPANY RESPONSIBILITIES.**
  - a. Company shall cause the appropriate Hardware, including POS Devices and any other Hardware provided by or on behalf of Elavon from time to time, to be readily available for use at all Company locations that are the recipients or users of the SAFE-T for SMB Services. Company shall be solely responsible for ensuring that, for every Transaction, (i) it utilizes only such Hardware that is included on Elavon’s then-current list of Hardware compatible with the SAFE-T for SMB Services for every Transaction and (ii) the SAFE-T for SMB Services are enabled on such Hardware.
  - b. Company acknowledges that Elavon does not store Payment Device expiration dates. In order to use a Token to process a Transaction, Company must provide the Token (in lieu of an account number) together with the expiration date for the original Payment Device, if available.
  - c. Company must cooperate with Elavon to promptly take any action necessary to enable the SAFE-T for SMB Services on Company’s Hardware, including promptly downloading, installing and implementing any software or updates thereto in accordance with Elavon’s instructions. Company acknowledges and agrees that it may not be able to receive the benefits of the SAFE-T for SMB Services to the extent that it does not take such actions in accordance with Elavon’s instructions.

3. **LIABILITY; DISCLAIMER OF WARRANTIES.**

- a. COMPANY EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES CONTAINED IN SECTION A OF THIS TOS SHALL APPLY WITH RESPECT TO THE SAFE-T FOR SMB SERVICES AND TO ANY HARDWARE AND SOFTWARE PROVIDED IN CONNECTION WITH THE SAFE-T FOR SMB SERVICES. ALL HARDWARE AND SOFTWARE PROVIDED IN CONNECTION WITH THE SAFE-T FOR SMB SERVICES IS PROVIDED “AS IS”. NOTWITHSTANDING THE FOREGOING, THE TERMS OF ANY EXPRESS LIMITATION OF LIABILITY OR DISCLAIMER OF WARRANTIES CONTAINED IN ANY ADDENDUM TO THE AGREEMENT SHALL CONTROL WITH RESPECT TO THE SERVICES AND PRODUCTS (INCLUDING HARDWARE AND SOFTWARE), IF ANY, PROVIDED PURSUANT TO SUCH ADDENDUM TO THE AGREEMENT.
- b. Notwithstanding the forgoing, subject to the eligibility requirements provided in Section A of this TOS, companies that have selected the Silver level of the SAFE-T for SMB Services will be eligible for Data Breach Reimbursement up to a maximum amount of \$100,000, and companies that have selected the Gold Level of SAFE-T for SMB Services will be eligible for Data Breach Reimbursement of up to a maximum amount of \$250,000, provided that such companies have properly installed all software and updates made available by Elavon in connection with the SAFE-T for SMB Services and the SAFE-T for SMB Services are actually enabled on the Company’s Hardware.

4. **TERM AND TERMINATION.**

- a. **Term.** Unless terminated as set forth below, the terms of this Section F will remain in effect from the date of acceptance of the Company Application or other form by which Company elects to receive the SAFE-T for SMB Services, as applicable, by Elavon and Member until the expiration or termination of the Agreement.

## SECTION G: GLOSSARY

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

**ACH:** Automated Clearing House.

**ACH Network:** The funds transfer system governed by the ACH Rules. The ACH Network allows participating depository financial institutions to clear interbank entries electronically. A Merchant's DDA is debited and credited via ACH.

**ACH Rules:** The NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.

**Agreement:** The TOS, including the Merchant Application, the Merchant Operating Guide, the Electronic Check Service Merchant Operating Guide (if applicable), any Merchant Agreement or Merchant Processing Agreement, and any other guides or manuals provided to Merchant from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.

**American Express:** The American Express Company.

**Authorization Code:** The code sent by the Issuer in response to an Authorization request that indicates whether the Transaction is approved. Responses may include: "Approved," "Declined," "Declined Pick-Up," or "Referral" ("Call Auth").

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

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

**Biller Direct Services:** The services offered by KeyBank described herein pursuant to which Transactions are presented for authorization, clearing and settlement in accordance with the Agreement.

**Bill Load File:** A file of data in a Biller Direct Services-specified format that is provided by Merchant to KeyBank via upload to the Biller Direct Services platform on a schedule determined by Merchant. The data passed to the Biller Direct Services platform will include information used to identify the Customer, amount due, and other data relevant to the effective processing of the Transaction.

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

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

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

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

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

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

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

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

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

**Credit Transaction Receipt:** A document, in paper or electronic form, evidencing a Merchant's refund or price adjustment to be credited to the Cardholder's account and debited from Merchant's DDA. This is also known as a credit slip or credit voucher.

**Customer:** A client of Merchant who elects to conduct a payment Transaction with Merchant through presentation of a Payment Device (including a Cardholder) and/or who participates in Merchant's Fanfare Loyalty Program.

**Customer Data:** Any information or data related to a Customer, including personal information, personally identifying information and Customer Transaction Information, collected by Merchant and provided to KeyBank or received by KeyBank from a Customer in connection with the Fanfare Loyalty Program or KeyBank's provision of the Fanfare Loyalty Services.

**Customer Transaction Information:** Information about a Customer's purchase Transactions at Merchant.

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

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

**Demand Deposit Account (DDA):** The commercial checking account at a financial institution acceptable to KeyBank designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, and other payments due under the Agreement. In the instance of a Debit Card or ATM Card, this refers to the Cardholder's deposit account.

**Diners:** Diners Club International Ltd.

**Discover:** DFS Services LLC.

**Discover Network:** Discover Network, Inc.

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

**EFT Networks:** (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE Network LLC, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; and (ii) any other organization or association that hereafter authorizes ~~the~~ KeyBank to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

**KeyBank Fanfare Privacy Policy:** KeyBank's privacy policy applicable to KeyBank's use of Customer Data obtained from consenting Customers in connection with Merchant's Fanfare Loyalty Program.

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



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

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

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

**Electronic Gift Card (EGC):** A special card purchased by a Customer or provided by Merchant to a Customer that is redeemable for merchandise, services or other Transactions, and includes any electronic gift card, gift certificate, Loyalty Card or Stored Value Card, as may be applicable, and/or as offered by Merchant to Customers from time to time.

**Electronic Gift Card Services:** The Processing Services provided by KeyBank to Merchants with respect to Electronic Gift Cards offered by such Merchants, as more fully described herein and the MOG.

**Fanfare Enrolled Customer:** A Customer of Merchant that has enrolled (as further described herein) to participate in Merchant's Fanfare Loyalty Program.

**Fanfare Gift Card:** A special card, code or device purchased by or provided to a Customer that is redeemable for merchandise, services or other Transactions with Merchant.

**Fanfare Gift Card Program:** A program established and managed by Merchant using the Fanfare Platform in accordance with the Agreement, including applicable provisions of the MOG.

**Fanfare Gift Card Services:** Fanfare Gift Card Program setup and Processing Services provided by KeyBank to Merchant as described in the Agreement and in the MOG.

**Fanfare Loyalty Program:** A program established and managed by Merchant, using the Fanfare Platform, through which Merchant may endeavor to promote Customer loyalty and increased spending by offering promotions, rewards and incentives to Fanfare Enrolled Customers.

**Fanfare Loyalty Services:** A loyalty program platform that supports Merchant establishment of a Fanfare Loyalty Program, Customer enrollment in the Fanfare Loyalty Program at Merchant's point-of-sale, establishment and maintenance of the Fanfare Loyalty Website, the ability to generate marketing campaigns and offer promotions to Customers, and Processing Services related to redemption of Customer rewards, in each case as described in the Agreement, including applicable provisions of the MOG.

**Fanfare Loyalty Website:** A Customer-facing website hosted by KeyBank and co-branded by KeyBank (Fanfare) and Merchant through which (i) Customers that have not enrolled in Merchant's Fanfare Loyalty Program may enroll online as part of the registration process, (ii) Fanfare Enrolled Customers may access Merchant's Fanfare Loyalty Program disclosures, (iii) Fanfare Enrolled Customers may un-enroll in the Fanfare Loyalty Program, or (iv) Fanfare Enrolled Customers that have registered through the website may manage their Fanfare Loyalty Program accounts, in each case as described in the Agreement, including the MOG.

**Fanfare Platform:** The systems hosted directly or indirectly by KeyBank through which (i) Merchant establishes its Fanfare Loyalty Program and/or Fanfare Gift Card Program, and (ii) the Fanfare Services are provided to Merchant.

**Fanfare Services:** The Fanfare Loyalty Services and/or Fanfare Gift Card Services provided by KeyBank and used by Merchant in accordance with the Agreement.

**Fanfare Web Portal:** A web-based portal provided by KeyBank through which Merchant may obtain information and guides pertaining to the Fanfare Services and Fanfare Platform, and may access Merchant-specific program metrics via dashboards, view Customer Transaction Information, create additional Customer offers and retrieve reports regarding Merchant's Fanfare Gift Card Program and/or Fanfare Loyalty Program, in each case as applicable to the Fanfare Services elected by Merchant.

**Glossary:** This Section F of the TOS.

**Graphic Specifications and Procedures:** The requirements, specifications and procedures applicable to standard and custom Electronic Gift Cards, including all artwork appearing or permitted to appear on Electronic Gift Cards, as may be provided by KeyBank to Merchant from time to time.

**Guarantor:** A Person that executes a Personal Guaranty for the benefit of KeyBank.

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

**JCB:** JCB International Co., Ltd.

**KeyBank:** KeyBank National Association, a national banking association, and any affiliate or subsidiary of KeyBank that provides Processing Services, directly or indirectly, to Merchants related to Transactions. KeyBank may exercise any of its rights or perform any of its obligations hereunder through its Service Provider, in KeyBank's sole discretion. KeyBank and/or any Service Provider may also be referred to as "Servicer" in the Agreement, the MOG or other documents provided to Merchant in connection with the Processing Services.

**Laws:** All applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.

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

**Master Account:** The account (e.g. funds pool) that is used to hold the value of Electronic Gift Cards or Fanfare Gift Cards, as applicable, that has been issued among a group or chain of merchants. Alternatively, this may refer to the back-up account used to offset electronic payment, or ACH rejects or returns, if applicable.

**MasterCard:** MasterCard International Incorporated.

**MasterCard Merchant Agreement:** The Merchant Agreement that is a part of the Agreement and is between Merchant and KeyBank. The MasterCard Merchant Agreement is contained within the Agreement and is identical to the Visa Merchant Agreement except as set out herein.

**Member:** The sponsoring Member designated on the Merchant application or Merchant Agreement, as applicable. KeyBank may serve as the Member and KeyBank may change the Member at any time and the Merchant will be provided notice of the same.

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

**Merchant Agreement (Merchant Processing Agreement):** Any agreement that Merchant has entered into for Processing Services, which agreement is either with KeyBank or another entity that, directly or indirectly, transferred its rights under such agreement to KeyBank.

**Merchant Application:** The Merchant Application and any additional document containing information regarding Merchant's business that is submitted to KeyBank in connection with Merchant's application for

Processing Services, including any additional location form(s) and any documents submitted by Merchant as a part of the bid process, if applicable.

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

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

**Model Documents:** A sample set of customer terms and conditions and a privacy policy provided by KeyBank to Merchant for Merchant's use in developing its own Customer-facing terms and conditions and privacy policy governing Customer participation in the Fanfare Loyalty Program.

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

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

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

**Payment Device:** Any device used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device, including an Electronic Gift Card, check (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, Stored Value Card, "smart" card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Merchants.

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

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

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

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

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

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

**Prepaid Card:** A card having available funds paid for in advance by the Cardholder.

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

**Primary Fanfare Merchant:** The Merchant Identification Number (MID)/location originally enrolled for the Fanfare Services and set up to be billed for all Fanfare Services provided by KeyBank.

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

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

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

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

**Service Provider:** Elavon, Inc. or such other third party service provider(s) as KeyBank may select from time to time to exercise any rights or perform any obligations of KeyBank in connection with this Agreement or the Processing Services.

**Servicer:** See "KeyBank National Association."

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

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

**Supported Hardware:** The equipment, systems and hardware, including POS Devices, necessary for Merchant to make use of Merchant's selected Fanfare Services.

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

**Tokenization Services:** Those services described in paragraph 1 of Section C of this Agreement.

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

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

**UnionPay:** China UnionPay Co., Ltd.

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

**Visa:** As applicable, Visa U.S.A., Inc.

**Visa Merchant Agreement:** The Merchant Agreement that it a part of the Agreement and is between Merchant and Keybank. The Visa Merchant Agreement is contained within the Agreement and is identical to the MasterCard Merchant Agreement except as set out herein.

**WebSuite Services:** An electronic commerce solution provided by KeyBank's third party service providers that permits Customers to purchase or add value to Electronic Gift Cards through Merchant's WebSuite site. Customers submit payment for the Electronic Gift Card via a Payment Device via the Processing Services.

