

Second Amendment to Contract No. C-114564

Between
The City of Los Angeles
and
Wells Fargo Bank, N.A.

 DRAFT

 DRAFT

This Second Amendment to Contract No. C-114564 between the City of Los Angeles (hereinafter "City") and Wells Fargo Bank, N.A. (hereinafter "Bank") is entered into with reference to the following:

WHEREAS on July 1, 2008, Wachovia Bank and City entered into Contract No. C-114564 (hereinafter "Contract") wherein Wachovia Bank agreed to provide general banking services as described in the Contract; and

WHEREAS Bank acquired Wachovia Bank effective December 31, 2008; and

WHEREAS the term of the current Contract expires June 30, 2014; and

WHEREAS the Contract allows the City the option to extend the term of the contract on a year to year basis for up to five years; and

WHEREAS the City continues to require the above-mentioned services provided by the Bank; and

WHEREAS the parties hereto desire to exercise the second option to extend the term of the current Contract by one year.

AGREEMENT

NOW THEREFORE, the parties hereby covenant and agree that this Contract shall be amended effective July 1, 2014, as follows:

I. Article 2, Term, on page 1 of contract C-114564 is hereby amended in its entirety to read:

"This AGREEMENT shall commence July 1, 2008 and end on June 30, 2015, subject to the termination provisions herein. The CITY has the option to extend this AGREEMENT for three additional years, in one-year increments, on the same terms and conditions."

II. Except as amended by this Second Amendment, all other terms and conditions of Contract, No. C-114564 shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be executed by their respective duly authorized representatives.

Approved Corporate Signature Methods (please sign in blue ink):

- a) Two signatures: one by Chairman of Board of Directors, President or Vice President; **and** one by Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer.
- b) One signature by Corporate designated individual **together with** properly attested resolution of Board of Directors authorizing person to sign on the company behalf.

City of Los Angeles

Wells Fargo Bank, N.A.

By: _____
Antoinette D. Christovale, CPA
Director of Finance / City Treasurer

Date: _____

By: _____
Signature

Name: _____
Printed / Typed

Title: _____
Printed / Typed

Date: _____

By: _____
Signature

Name: _____
Printed / Typed

Title: _____
Printed / Typed

Date: _____

Approved as to Form:
MICHAEL N. FEUER
City Attorney

Attest:
HOLLY L. WOLCOTT
Interim City Clerk

By _____
Deputy City Attorney

By _____
Deputy City Clerk

Date _____

Date _____

First Amendment to Contract No. C-114564
Between
The City of Los Angeles
and
Wells Fargo Bank, N.A.

This First Amendment to Contract No. C-114564 between the City of Los Angeles (hereinafter "City") and Wells Fargo Bank, N.A. (hereinafter "Bank") is entered into with reference to the following:

WHEREAS on July 1, 2008, Wachovia Bank and City entered into Contract No. C-114564 (hereinafter "Contract") wherein Wachovia Bank agreed to provide general banking services as described in the Contract; and

WHEREAS Bank acquired Wachovia Bank effective December 31, 2008; and

WHEREAS the term of the current Contract expires June 30, 2013; and

WHEREAS the Contract allows the City the option to extend the term of the contract on a year to year basis for up to five years; and

WHEREAS the City continues to require the above-mentioned services provided by the Bank; and

WHEREAS the parties hereto desire to exercise the first option to extend the term of the current Contract by one year.

AGREEMENT

NOW THEREFORE, the parties hereby covenant and agree that this Contract shall be amended effective July 1, 2013, as follows:

I. The opening paragraph on page 1 of Contract C-114564 is hereby amended in its entirety to read:

"This Agreement for Government Banking Services (the "AGREEMENT") is made and entered into by and between the City of Los Angeles (the "CITY") and Wells Fargo Bank, N.A. (the "BANK"), a national association. All subsequent references to "BANK" or Wachovia Bank, N.A. are understood to now refer to Wells Fargo Bank, N.A."

II. Article 2, Term, on page 1 of contract C-114564 is hereby amended in its entirety to read:

"This AGREEMENT shall commence July 1, 2008 and end on June 30, 2014, subject to the termination provisions herein. The CITY has the option to extend this AGREEMENT for four additional years, in one-year increments, on the same terms and conditions."

III. Article 19, Notices, on page 5 of contract C-114564, is hereby updated to read in its entirety:

"Any notice of communication given under this AGREEMENT shall be effective when deposited, postage prepaid, with the United State Postal Service and addressed to the parties as follows:

City:

Antoinette D. Christovale
Director of Finance/City Treasurer
City of Los Angeles
Office of Finance
200 North Spring Street, Room 220
Los Angeles, CA 90012

Bank:

Mark C. Hewlett
Senior Vice President/Regional Manager
Wells Fargo Bank, Government and
Institutional Banking
707 Wilshire Blvd., 11th Floor
Los Angeles, CA 90017

Either party may change the address to which notice or communication is to be sent by providing advance written notice to the other party."

IV. The contractor agrees to comply with all terms and conditions set forth in the City's *Standard Provisions for City Personal Services Contracts – March 2009 Revision*, a copy of which is attached hereto as Exhibit A, and which supercedes and replaces the earlier version of the *Standard Provisions for City Contracts – October 2003 Revision*, originally attached to contract C-114564.

V. Notwithstanding section IV, above, the following paragraphs modify the *Standard Provisions for City Personal Services Contracts – March 2009 Revision*, a copy of which is attached hereto as Exhibit A, as follows:

A. PSC-12. CONTRACTOR'S PERSONNEL is hereby modified in its entirety to read:

"Unless otherwise provided or approved by the CITY, CONTRACTOR shall use its own employees to perform the services described in this Contract. The CITY shall have the right to review any personnel who are assigned to work under this Contract. CONTRACTOR agrees to remove personnel from performing work under this Contract if requested to do so by the CITY provided that no such request may be based on any characteristic or status of personnel which is protected by law.

CONTRACTOR shall not use subcontractors to assist in performance of this Contract without the prior approval of the CITY. If the CITY permits the use of subcontractors, CONTRACTOR shall remain responsible for performing all aspects of this Contract. The CITY has the right to review CONTRACTOR'S subcontractors, and the CITY reserves the right to request replacement of subcontractors provided that no such request may be based on any characteristic or status of personnel which is protected by law. The CITY does not have any obligation to pay CONTRACTOR'S subcontractors, and nothing herein creates any privity between the CITY and the subcontractors."

B. PSC- 17. RETENTION OF RECORDS, AUDITS AND REPORTS is hereby modified in its entirety to read:

"CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with CONTRACTOR'S record retention policy, which is a rolling seven-year basis. Said

records shall be subject to examination and audit by authorized CITY personnel or by the CITY'S representative at any time during the term of this Contract or within the three years following final payment made by the CITY hereunder or the expiration date of this Contract, whichever occurs last. CONTRACTOR shall provide any reports requested by the CITY regarding performance of this Contract. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract."

C. PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION is hereby modified in part to read:

"CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and costs of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, or any intellectual property rights, including, without limitation, patent, copyright trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, methods application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its subcontractors or any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Produce Rights and remedies available to the CITY under this provision are cumulative of those rights provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of PSC-21 shall survive expiration or termination of this Contract.

If any product(s) furnished by CONTRACTOR becomes the subject of a claim of infringement, CONTRACTOR will, at its option: a) procure for the right to continue using the applicable product; b) replace the product with a non-infringing product substantially complying with the product's specifications; or c) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item."

D. PSC-23. OWNERSHIP AND LICENSE is hereby modified in part to read:

"Unless otherwise provided for herein, all Work Products originated and prepared by CONTRACTOR or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONTRACTOR hereby assigns and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONTRACTOR

under this Contract. CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

For all Work Products delivered to the CITY that are not originated or prepared by CONTRACTOR or its subcontractors of any tier under this Contract, CONTRACTOR hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the CITY.

Any subcontract entered into by CONTRACTOR relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that CITY'S ownership and license rights for all Work Products are preserved and protected as intended herein. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its subcontractors with such obligation shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S contract with the CITY.

Notwithstanding the foregoing, CONTRACTOR will provide customary data and reports associated with the requested services. CONTRACTOR will retain all ownership and related rights in its intellectual property (including, but not limited to, systems, software and hardware) used or developed in connection with the requested services, now and hereafter. CITY shall own that portion of the copyright in all reports, studies, and other tangible materials delivered hereunder that contain information specifically related to CITY that are first created by CONTRACTOR and delivered to CITY under this Contract."

- VI. *Schedule A, Schedule of Fees*, dated July 15, 2008, of Exhibit D of the Contract, *Elavon Government Terms of Service* is hereby replaced in its entirety by *Schedule A, Schedule of Fees*, updated September 24, 2008, including rates for tax payments.
- VII. In the event of any inconsistency between any of the provisions of the Agreement (including amendments thereto) and the documents incorporated by reference, the inconsistency shall be resolved by giving precedence in the following order:
1. Sections of this Agreement (including amendments);
 2. Standard Provision for City Contracts (revised March 2009), attached at Exhibit A;
 3. City contract Number C-114564;
 4. The City's RFP relating to contract C-114564;
 5. Contractor's Response to the RFP relating to contract C-114564.
- VIII. Except as amended by this First Amendment, all other terms and conditions of Contract, No. C-114564 shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be executed by their respective duly authorized representatives.

Approved Corporate Signature Methods (please sign in blue ink):

- a) Two signatures: one by Chairman of Board of Directors, President or Vice President; and one by Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer.
- b) One signature by Corporate designated individual together with properly attested resolution of Board of Directors authorizing person to sign on the company behalf.

City of Los Angeles

Wells Fargo Bank, N.A.

By: Antoinette D. Christovale
 Antoinette D. Christovale, CPA
 Director of Finance / City Treasurer

By: [Signature]
 Signature

Date: 6/27/13

Name: CORRIE L. BOWMAN
 Printed / Typed

Title: Sr. VICE PRESIDENT
 Printed / Typed

Date: 6/27/2013

By: _____
 Signature

Name: _____
 Printed / Typed

Title: _____
 Printed / Typed

Date: _____



Approved as to Form:
 CARMEN A. TRUTANICH
 City Attorney

Attest:
 JUNE LAGMAY
 City Clerk

By: [Signature]
 Deputy City Attorney

By: [Signature]
 Deputy City Clerk

Date: 6/27/13

Date: 06-27-2013
C-114564-1

WELLS FARGO BANK, NATIONAL ASSOCIATION

ASSISTANT SECRETARY'S CERTIFICATE

I, Hope Armstrong Howe, an Assistant Secretary of Wells Fargo Bank, National Association, a national banking association (the "Bank"), hereby certify as follows:

1. The following is a true and correct extract from resolutions duly adopted by the Board of Directors of the Bank on November 25, 2003, as amended, and no modification, amendment, rescission or revocation of such resolutions has occurred affecting such extract as of the date of this certificate.

RESOLVED, that agreements, instruments, or other documents, including amendments and modifications thereto, relating to or affecting the property or business and affairs of the Bank, whether acting for its own account or in a fiduciary or other representative capacity, may be executed in its name by the persons hereinafter authorized;

FURTHER RESOLVED, that for the purposes of these resolutions, "Executive Officer" shall mean any person specifically designated as an Executive Officer of the Bank by resolution of the Board of Directors, and "Signing Officer" shall mean the Chairman of the Board, the President, any Senior Executive Vice President, any Executive Vice President, any Senior Vice President, the Treasurer, any Vice President, any Assistant Vice President, any person whose title includes the word "Officer" (e.g., Commercial Banking Officer, Personal Banking Officer, Trust Officer), or any other person whose title has been or is hereafter designated by the Board of Directors as a title for an officer of the Bank, and such officers are hereby authorized to sign agreements, instruments and other documents on behalf of the Bank in accordance with the signing authorities conferred in Parts A, B and C of these resolutions;

* * *

B. Vice Presidents and Above

FURTHER RESOLVED, that the Chairman, the President, any Senior Executive Vice President, any Executive Vice President, any Senior Vice President and any Vice President, acting alone, may execute on behalf of the Bank:

1. Deeds, leases, assignments, bills of sale, purchase agreements and other instruments of conveyance to purchase, sell, lease or sublease to or from a third party real property, or any interest therein, for the Bank's own account; provided, however, that such agreements, instruments and other documents may also be signed as hereinafter provided with respect to real property acquired by the Bank in connection with collateral for a loan.
2. Bonds of indemnity and powers of attorney; provided, however, that proxies to vote stock in a corporation or to vote other interests in other legal entities and stock and bond powers may also be signed as hereinafter provided.

C. Signing Officers

FURTHER RESOLVED, that any Signing Officer, acting alone, may execute on behalf of the Bank, whether acting for its own account or in a fiduciary or other representative capacity:

* * *

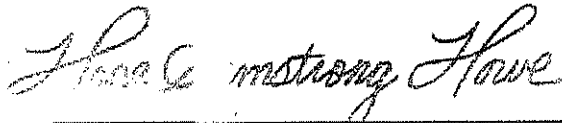
15. Agreements and proposals to provide services to or receive services from third parties.

* * *

2. The following person is duly appointed and is an acting officer of the Bank with the title opposite their name as of the date hereof, such officer is a "Signing Officer" within the meaning of the foregoing resolution.

Corrie L. Bowman Senior Vice President

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Bank this 4th day of November, 2011.



Hope Armstrong Howe
Assistant Secretary
Wells Fargo Bank, National Association

[Seal]



*** Redacted [Indicates portions of the resolution which have been omitted because they are not relevant to the transaction for which this certificate has been requested.]

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Contract shall be construed according to its fair meaning and not strictly for or against the **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" herein in this Contract includes the party or parties identified in the Contract. The singular shall include the plural; if there is more than one **CONTRACTOR** herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. NUMBER OF ORIGINALS

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party. At the **CITY'S** option, one or more additional original texts of this Contract may also be retained by the City.

PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

PSC-4. TIME OF EFFECTIVENESS

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR** hereto;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of the **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-5. INTEGRATED CONTRACT

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in paragraph PSC-6 hereof.

PSC-6. AMENDMENT

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-4.

PSC-7. EXCUSABLE DELAYS

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

PSC-8. BREACH

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights

and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

PSC-9. WAIVER

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-10. TERMINATION

A. TERMINATION FOR CONVENIENCE

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONTRACTOR thirty days written notice thereof. Upon receipt of said notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONTRACTOR to affect such termination. Thereafter, CONTRACTOR shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

B. TERMINATION FOR BREACH OF CONTRACT

1. Except for excusable delays as provided in PSC-7, if CONTRACTOR fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONTRACTOR'S breach of this Contract.
2. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
3. If CONTRACTOR engages in any dishonest conduct related to the performance or administration of this Contract or violates the

CITY'S lobbying policies, then the **CITY** may immediately terminate this Contract.

4. In the event the **CITY** terminates this Contract as provided in this section, the **CITY** may procure, upon such terms and in such manner as the **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to the **CITY** for all of its costs and damages, including, but not limited, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.
6. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-10(A) Termination for Convenience.
7. The rights and remedies of the **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

PSC-11. INDEPENDENT CONTRACTOR

CONTRACTOR is acting hereunder as an independent contractor and not as an agent or employee of the **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the **CITY**.

PSC-12. CONTRACTOR'S PERSONNEL

Unless otherwise provided or approved by the **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. The **CITY** shall have the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** agrees to remove personnel from performing work under this Contract if requested to do so by the **CITY**.

CONTRACTOR shall not use subcontractors to assist in performance of this Contract without the prior written approval of the **CITY**. If the **CITY** permits the use of subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of

this Contract. The **CITY** has the right to approve **CONTRACTOR'S** subcontractors, and the **CITY** reserves the right to request replacement of subcontractors. The **CITY** does not have any obligation to pay **CONTRACTOR'S** subcontractors, and nothing herein creates any privity between the **CITY** and the subcontractors.

PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

CONTRACTOR may not, unless it has first obtained the written permission of the **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-14. PERMITS

CONTRACTOR and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance hereunder and shall pay any fees required therefor. **CONTRACTOR** certifies to immediately notify the **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

PSC-15. CLAIMS FOR LABOR AND MATERIALS

CONTRACTOR shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), against **CONTRACTOR'S** rights to payments hereunder, or against the **CITY**, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

PSC-16. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, **CONTRACTOR** represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, **CONTRACTOR** shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC-17. RETENTION OF RECORDS, AUDIT AND REPORTS

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with

requirements prescribed by the **CITY**. These records shall be retained for a period of no less than three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized **CITY** personnel or by the **CITY'S** representative at any time during the term of this Contract or within the three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. **CONTRACTOR** shall provide any reports requested by the **CITY** regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

PSC-18. FALSE CLAIMS ACT

CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the **CITY** under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

PSC-19. BONDS

All bonds which may be required hereunder shall conform to **CITY** requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

PSC-20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the **CITY**, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, **CONTRACTOR** undertakes and agrees to defend, indemnify and hold harmless the **CITY** and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by **CONTRACTOR** or its subcontractors of any tier. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-20 shall survive expiration or termination of this Contract.

PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION

CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the **CITY**, and any of its Boards, Officers, Agents, Employees, Assigns,

and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the **CITY'S** actual or intended use of any Work Product furnished by **CONTRACTOR**, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-21 shall survive expiration or termination of this Contract.

PSC-22. INTELLECTUAL PROPERTY WARRANTY

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

PSC-23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the **CITY** for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. **CONTRACTOR** hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by **CONTRACTOR** under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.

For all Work Products delivered to the **CITY** that are not originated or prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract, **CONTRACTOR** hereby grants a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

PSC-24. INSURANCE

During the term of this Contract and without limiting **CONTRACTOR'S** indemnification of the **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by **CONTRACTOR**, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to **CITY** requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-25. DISCOUNT TERMS

CONTRACTOR agrees to offer the **CITY** any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

PSC-26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-27. NON-DISCRIMINATION

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the **CITY**. In performing this Contract, **CONTRACTOR** shall not

discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

PSC-28. EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this Contract, **CONTRACTOR** agrees and represents that it will provide equal employment practices and **CONTRACTOR** and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. **CONTRACTOR** agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, **CONTRACTOR** shall certify in the specified format that he or she has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of

race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of **CITY** contracts. On their or either of their request **CONTRACTOR** shall provide evidence that he or she has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of **CITY** contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has failed to comply with the Equal Employment Practices provisions of a **CITY** contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until **CONTRACTOR** shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the **CITY**, or when an individual bid or proposal is submitted, **CONTRACTOR** shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of **CITY** Contracts.



- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Hiring practices;
 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 3. Training and promotional opportunities; and
 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of the **CONTRACTOR'S** Contract with the **CITY**.

PSC-29. AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a **CITY** contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. **CONTRACTOR** shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to

their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, **CONTRACTOR** shall certify on an electronic or hard copy form to be supplied, that **CONTRACTOR** has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of **CITY** contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Affirmative Action Program provisions of **CITY** contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has breached the Affirmative Action Program provisions of a **CITY** contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that **CONTRACTOR** has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a **CITY** contract, there may be deducted from the amount payable to **CONTRACTOR** by the **CITY** under the contract, a penalty of ten dollars

- (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a **CITY** contract.
- H. Notwithstanding any other provisions of a **CITY** contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
 - I. Intentionally blank.
 - J. Nothing contained in **CITY** contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - K. **CONTRACTOR** shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the **CITY**. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, **CONTRACTOR** may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, **CONTRACTOR** must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. **CONTRACTOR** may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
 - L. The Office of Contract Compliance shall annually supply the awarding authorities of the **CITY** with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and **CONTRACTOR**.

- (-----)
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the **CITY'S** Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the **CITY** and may be used at the discretion of the **CITY** in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.

- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the **CITY** and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the **CITY**.

PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, **CONTRACTOR** will fully comply with all applicable State and Federal employment reporting requirements for **CONTRACTOR'S** employees. **CONTRACTOR** shall also certify (1) that the Principal Owner(s) of **CONTRACTOR** are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that **CONTRACTOR** will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.* of the California Family Code; and (3) that **CONTRACTOR** will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to obtain compliance of its subcontractors shall constitute a default by **CONTRACTOR** under this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

CONTRACTOR certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

PSC-31. LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

- A. Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:
1. **CONTRACTOR** assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
 2. **CONTRACTOR** further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. **CONTRACTOR** shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. **CONTRACTOR** shall deliver the executed pledges from each such subcontractor to the **CITY** within ninety (90) days of the execution of the subcontract. **CONTRACTOR'S** delivery of executed pledges from each such subcontractor shall fully discharge the obligation of **CONTRACTOR** with respect to such pledges and fully discharge the obligation of **CONTRACTOR** to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
 3. **CONTRACTOR**, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the **CITY** with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. **CONTRACTOR** shall post the Notice of Prohibition Against Retaliation provided by the **CITY**.
 4. Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO and the SCWRO.

5. **CONTRACTOR** shall comply with all rules, regulations and policies promulgated by the **CITY'S** Designated Administrative Agency which may be amended from time to time.
- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the **CITY** shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the **CITY** determines that the subject **CONTRACTOR** has violated provisions of either the LWO or the SCWRO, or both.
- C. Where under the LWO Section 10.37.6(d), the **CITY'S** Designated Administrative Agency has determined (a) that **CONTRACTOR** is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the **CITY** in such circumstances may impound monies otherwise due **CONTRACTOR** in accordance with the following procedures. Impoundment shall mean that from monies due **CONTRACTOR**, **CITY** may deduct the amount determined to be due and owing by **CONTRACTOR** to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether **CONTRACTOR** is to continue work following an impoundment shall remain in the sole discretion of the **CITY**. **CONTRACTOR** may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. **CONTRACTOR** shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). **CONTRACTOR** shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from **CONTRACTOR**.

PSC-32. AMERICANS WITH DISABILITIES ACT

CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations. **CONTRACTOR** will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. **CONTRACTOR** will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by **CONTRACTOR**, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires **CONTRACTOR** to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect **CONTRACTOR'S** fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, **CONTRACTOR** pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. **CONTRACTOR** further agrees to: (1) notify the **CITY** within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that **CONTRACTOR** is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the **CITY** within thirty calendar days of all findings by a government agency or court of competent jurisdiction that **CONTRACTOR** has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the **CITY**; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the **CITY** within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

PSC-34. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. **CONTRACTOR** certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. **CONTRACTOR** shall not change any of these designated subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of the **CITY**, provided that such approval shall not be unreasonably withheld.

PSC-35. EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** will comply with the EBO.
- B. The failure of **CONTRACTOR** to comply with the EBO will be deemed to be a material breach of this Contract by the **CITY**.
- C. If **CONTRACTOR** fails to comply with the EBO the **CITY** may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the **CITY**. The **CITY** may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
- E. If the **CITY'S** Designated Administrative Agency determines that a **CONTRACTOR** has set up or used its contracting entity for the purpose of evading the intent of the EBO, the **CITY** may terminate the Contract. Violation of this provision may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922."

PSC-36. SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. **CONTRACTOR** certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

1. Additional Insured/Loss Payee. The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

2. Notice of Cancellation. All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

3. Primary Coverage. CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.

4. Modification of Coverage. The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

5. Failure to Procure Insurance. All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

6. Workers' Compensation. By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-4, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Exhibit 1 (Continued) Required Insurance and Minimum Limits

Name: _____ Date: _____

Agreement/Reference: _____
Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

	<u>Limits</u>
<input type="checkbox"/> Workers' Compensation – Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u> EL _____
<input type="checkbox"/> Waiver of Subrogation in favor of City	<input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act

<input type="checkbox"/> General Liability	
<input type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> Sexual Misconduct _____
<input type="checkbox"/> Fire Legal Liability _____	
<input type="checkbox"/> _____	

Automobile Liability (for any and all vehicles used for this Contract, other than commuting to/from work) _____

Professional Liability (Errors and Omissions) _____

<input type="checkbox"/> Property Insurance (to cover replacement cost of building – as determined by insurance company)	
<input type="checkbox"/> All Risk Coverage	<input type="checkbox"/> Boiler and Machinery
<input type="checkbox"/> Flood _____	<input type="checkbox"/> Builder's Risk
<input type="checkbox"/> Earthquake _____	<input type="checkbox"/> _____

<input type="checkbox"/> Pollution Liability	
--	--

<input type="checkbox"/> Surety Bonds – Performance and Payment (Labor and Materials) Bonds	100 % of Contract Price
<input type="checkbox"/> Crime Insurance	

Other: _____

SCHEDULE A - SCHEDULE OF FEES

I. ASSUMPTIONS / MERCHANT PROFILE

Legal Entity Name	City of Los Angeles
Business Segment	Services - Government
Category Description	Government Services-Not Elsewhere Classified
MCC	9399
Multiple MCCs?	Yes (Reference Additional List)
Locations	168
Initial Contract Term (yrs)	5
Date Fees Last Updated	September 24, 2008

	Annual Volume	Average Ticket	Annual Transactions
VISA	\$ 131,431,795	\$ 29.93	4,391,306
MasterCard	\$ 53,100,298	\$ 35.46	1,497,470
Discover	\$ -	\$ -	0
American Express	\$ 47,954,518	\$ 55.99	856,484
JCB & Diners	\$ -	\$ -	0
PIN-Debit	\$ 2,453,825	\$ 98.98	24,811
Checks	\$ 5,615,321	\$ 908.33	6,182
EBT	\$ -	\$ -	0
Other	\$ -	\$ -	0
Total	\$ 240,557,757		6,776,254

II. ACCOUNT IMPLEMENTATION & MAINTENANCE FEES

	Merchant Fee	Application	Comments
Account Set-Up & Implementation Fee	\$ -		
Application Fee	\$ -		
Rush Fee	\$ -		
Monthly Statement Fee	\$ 2.00	Per MJD	
Supply Fee	\$ -		
Terminal reprogram Fee (per unit)	\$ -		
Onsite Training	\$ -		
Research Fee	TBD based on request	Per Hour	TBD based on request
Other Fee	\$ -		

III. CARD PROCESSING FEES

Pricing Type: Pass-Through

All Visa, MasterCard, Discover and debit network authorization and interchange fees, assessments, dues and other fees and charges are passed to Merchant at cost. Service Transaction processing fees include:

	Auth Fee (\$)	Settle Fee (\$)	Settle Fee (%)
Visa	\$ 0.0625	\$ -	0.0700%
MasterCard	\$ 0.0625	\$ -	0.0700%
Discover	\$ 0.0625	\$ -	0.0700%
PIN-Debit	\$ 0.0625	\$ -	0.0700%

Billing Method: Gross

Interchange, assessments, and dues will be assessed on all Visa, MasterCard, and Discover settled volume.

Service may adjust Merchant's pricing if (i) Merchant's annualized Visa/MasterCard/Discover average ticket or volume falls below projections by more than twenty percent (20%), or (ii) Merchant's Visa/MasterCard/Discover average ticket or volume for any month falls below fifty percent (50%) of such Visa/MasterCard/Discover average ticket or volume for any month falls below fifty percent (50%) of such Visa/MasterCard/Discover average ticket or volume during the same month the previous calendar year.

IV. AUTHORIZATION FEES - Service

Telecom Method	N/A
Additional Fee for Telecom	\$ -
American Express	\$ 0.0625
Diners	\$ -
JCB	\$ -
EBT	\$ -
Other Card Type	\$ - 0.0000%
Other Card Type	\$ - 0.0000%
Voice (VRU) Authorization	\$ 0.75
Voice Authorization with Address Verification	\$ 0.90
Operator-Assist Authorization	\$ 1.25
Bank Referral Authorization	\$ 4.00

V. OTHER TRANSACTION FEES & SERVICES

SCHEDULE A - SCHEDULE OF FEES

Batch Header Fee (per occurrence)	\$ -
AVS Fee (per occurrence)	\$ -
ACH Fee (per occurrence)	\$ -
ACH Returned Item Fee (per occurrence)	\$ -
FedWire Settlement (per occurrence, where available)	\$ -
Chargeback Fee (per occurrence)	\$ 10.00
Monthly Minimum (per location)	\$ 20.00
Monthly Minimum Start Date	contract execution date
Other Fee	N/A
Other Fee	\$ -

VI. OPTIONAL SERVICES

A. Reporting

Merchant Connect Premium		
Setup Fee		\$ -
Monthly Fee	1 User	\$ -
	2-5 Users	\$ -
	6-10 Users	\$ -
	11+ Users	\$ -

B. Foreign Networks & Gateways

Using a third party network or gateway below requires Servicer to add an additional fee per authorization. For foreign networks, this is a separate authorization fee, and for gateways, this Servicer fee will be added to the Servicer authorization fee noted in Section IV.

	Dial	IP	IP SSL
<input checked="" type="checkbox"/> TSYS Acquiring Solutions (Vital) Foreign Network	\$ 0.060	\$ 0.025	\$ 0.045
<input type="checkbox"/> ADS Foreign Network			
<input type="checkbox"/> BuyPass Foreign Network			
<input type="checkbox"/> Global (Mapp or NDC) Foreign Network			
<input type="checkbox"/> FDMS (Envoy or Nashville) Foreign Network			
<input type="checkbox"/> MerchantLink Gateway			
<input type="checkbox"/> Other			

C. Equipment/Software

SCHEDULE A - SCHEDULE OF FEES

VII. VALUE ADDED PRODUCTS

Electronic Check Service

A. Service-Level and Processing Fees:

Conversion with Guarantee***
 Guarantee Rate Per Transaction

Conversion with Verification
 Per Transaction*

Conversion with Verification and Collections**
 Per Transaction*

Conversion Only
 Per Transaction*

Conversion Only with Collections**
 Per Transaction*

Combination Service (Select any two)
 Conversion with Guarantee***
 Transactions from to
 Guarantee Rate Per Transaction

Conversion with Verification
 Transactions from to
 Per Transaction*

Conversion Only
 Transactions from to
 Per Transaction*

Returns Management*** Per Returned Item

*The Per Transaction fee applies to the original ECS transaction, voids/reversals, debits, and to any resubmissions of returned items.

**Collections service options are not available for WEB, TEL, PPO, or CCD Transactions

***No return or resubmission fees apply to returned conversion with guarantee transactions

Maximum Check Amount	\$ 15,000
Guarantee Check Limit	
ECS Monthly Minimum Fee (Per MID)	\$ 20.00
NSF Fee (per occurrence)	\$ 1.25

SCHEDULE A - SCHEDULE OF FEES

Payment Type Description: Tax Payments

Card Rate: 2.49%

Visa Consumer Debit Rate (Visa Tax Program Only): \$3.95

Implementation Fee: \$ -0-

Minimum Annual Fee: \$ 20.00

Agreement for Government Banking Services

This Agreement for Government Banking Services (the "AGREEMENT") is made as of this July 1, 2008 between the City of Los Angeles (the "CITY") and Wachovia Bank, (the "BANK"), a national banking association.

WHEREAS, the CITY issued a Request for Proposal ("RFP") dated January 2008; and

WHEREAS, the BANK was one of the successful bidders under the RFP having submitted its proposal dated March 7, 2008 (the "Proposal");

WHEREAS, the parties wish to enter into this AGREEMENT for the purpose of specifying the terms and conditions of the AGREEMENT between the CITY and the BANK regarding the Services;

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties hereby agree as follows:

1. Integrated AGREEMENT

The entire and integrated AGREEMENT between CITY and BANK related to the Services shall consist of this AGREEMENT, the City's Standard Provisions dated as of October 2003, the City's RFP and all addendum thereto, and the BANK'S proposal.

In the event of conflict among any of the preceding documents, such documents shall govern in the following order of precedence: (1) the paragraphs of this AGREEMENT, (2) the City's Standard Provisions dated October 2003 (Exhibit A) (3) the City's RFP dated January 2008 and all addendum thereto (Exhibit B), (4) the BANK'S proposal dated March 7, 2008, which includes the amended fee schedule dated June 5, 2008 (Exhibit C), the Elavon Government Terms of Service (Exhibit D), and the Deposit Agreement and Disclosures for Commercial Accounts dated October 12, 2007 (Exhibit E). The integrated AGREEMENT supersedes all prior negotiations, representations, statements, and agreements, whether written or oral, regarding the services.

2. Term

This AGREEMENT shall commence on July 1, 2008, and end on June 30, 2013, subject to the termination provisions herein. The CITY has the option to extend this AGREEMENT for five additional years, in one-year increments, on the same terms and conditions.

3. Scope of Work

CITY hereby engages BANK to provide general banking services, including but not limited to general account services, demand deposit accounts, State LAIF transfers, overnight sweeps, direct deposit services, payroll tax processing, information reporting, reconciliation, electronic fund transfers, positive pay, controlled disbursement, returned items processing, image capture, lockbox services, custody services, investment services, electronic receipt and payment platforms, purchasing cards, payroll cards, and services and products relating to business continuity planning. CITY further engages BANK to provide consulting services directly related to banking services.

4. First Three Months of Services

As to each new service or new account requested by the CITY, with the exception of Lock Box service, the Bank shall waive the fees for such new service or new account for the first three months that such service is performed or the account maintained. With regard to the Lock Box Service, lock box service fees shall receive a discount of 25% off of the fees listed in the amended fee schedule dated June 5, 2008 (Exhibit C) for the first 12 months of this contract.

5. Agreement Administrator

In performing services under this AGREEMENT, BANK shall coordinate all contact with CITY through its Agreement Administrator. For purposes of this AGREEMENT, CITY designates Ms. Joya C. De Foor as the Agreement Administrator.

6. Compensation

For complete and satisfactory performance of the terms of this AGREEMENT, the CITY will pay the BANK at the City's option, either by compensating balances or cash in accordance with the Fee Schedule set forth in Exhibit C which is attached hereto and made a part hereof, after City has received a monthly consolidated analysis and reviewed and approved the services performed. The foregoing amount represents the total compensation to be paid by CITY to BANK for services performed under this AGREEMENT. Settlement will be made monthly no later than 45 days following the date of the monthly consolidated analysis, or, if the 45th day is a Saturday, Sunday, or legal holiday, then no later than the first business day thereafter.

7. Audit

a. BANK shall be responsible for ensuring the accuracy and propriety of all billings and shall maintain all supporting documentation for the period specified below.

b. CITY will have the right to audit BANK's monthly analysis and all supporting documentation for the purposes of compliance with this AGREEMENT at any time during the term of this AGREEMENT for a period of three years following the completion of services under this AGREEMENT.

c. Upon reasonable notice from CITY, BANK shall cooperate fully with any audit of its billings conducted by CITY and shall permit access to its books, records and accounts as may be necessary to conduct such audits.

8. Successors and Assignment

This AGREEMENT covers professional services of a specific and unique nature. Except as otherwise provided herein, BANK shall not assign or transfer its rights in this AGREEMENT nor delegate its obligations to perform any services to be performed without CITY's prior written approval and without an appropriate amendment to this AGREEMENT.

9. Change in Ownership or Control

BANK shall notify the Agreement Administrator, in writing, of any change in structure or control of BANK. Change of structure of BANK will require an amendment to the AGREEMENT.

10. Use of Materials

- a. CITY will make available to BANK such materials from its files as may be required by Bank to perform services under this AGREEMENT. Such materials shall remain the property of CITY while in BANK's possession and shall be returned to City upon request and in no event later than completion of work described herein. Work produced in accordance with this AGREEMENT shall, upon termination of this AGREEMENT or completion of work under this AGREEMENT, be returned to CITY. Unless BANK is required under applicable federal or state laws and regulations to retain copies, BANK shall turn over to CITY any property of CITY in its possession and any calculations, notes, reports, electronic files, or other materials prepared by BANK in the course of performance of this AGREEMENT upon termination of this AGREEMENT, completion of work under this AGREEMENT, or when requested by CITY.
- b. All original written or recorded data, documents, graphic displays, reports or other material, which are originated and prepared for the City pursuant to this AGREEMENT shall be "Work Made for Hire" and shall become the property of the CITY. The BANK hereby assigns all of its right, title and interest therein to the CITY. In addition, the CITY reserves the right to use, duplicate and disclose, in whole or in part, in any manner and for any purpose whatsoever, all such data, documents, graphic displays, reports or other materials delivered to the CITY pursuant to this AGREEMENT and to authorize others to do so.

11. Intellectual Property

All right, title and interest in all intellectual property conceived or developed in the course of, and for the purpose of, BANK's work for CITY under this AGREEMENT shall be the property of the CITY. As used herein, the term "intellectual property" includes, but is not limited to, all inventions, patents, copyrightable subject matter, copyrights, test data, trade secrets, other confidential information and software.

- a. BANK shall not use or disclose any intellectual property conceived or developed in the course of, and for the purpose of, BANK's work for CITY, except: (i) intellectual property in the public domain through no fault of BANK (ii) intellectual property which BANK can prove was received by him or her from a third party owing no duty to CITY, (iii) intellectual property for which BANK has received express, written permission from the Agreement Administrator for CITY, or from the Agreement Administrator's designated agent, (iv) is authorized or required to use or disclose under the terms of this AGREEMENT or as is required by law.
- b. BANK shall promptly notify CITY, in writing, of all intellectual property conceived or developed in the course of, and for the purpose of, BANK's work for CITY under this AGREEMENT.
- c. BANK shall assign and does hereby assign to CITY all right, title and interest to intellectual property conceived or developed by BANK in course of, and for the purpose of, BANK's past and future work for CITY.
- d. BANK shall cooperate in the execution of all documents necessary to protect CITY's right to intellectual property under this AGREEMENT.
- e. When requested by CITY, or upon the completion of each work assignment or upon termination of this AGREEMENT, BANK shall return all documents and other tangible media containing intellectual property developed by BANK during the course of, and for the

purpose of, this AGREEMENT, including all prototypes and computer programs.

- f. When requested by CITY or upon termination of this AGREEMENT, BANK shall promptly erase copies of all CITY intellectual property from BANK's computers.

12. Nonuse of Intellectual Property of Third Parties

a. BANK shall not use, disclose or copy any intellectual property of any third parties in connection with work carried out under this AGREEMENT, except for intellectual property for which BANK has a license, or other authorization or permission. BANK shall indemnify and hold CITY harmless against all claims raised against CITY based upon allegations that BANK has wrongfully used intellectual property of others in performing work for CITY, or that CITY has wrongfully used intellectual property developed by BANK pursuant to this AGREEMENT.

b. BANK, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees, experts' fees and cost of litigation, damage or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by BANK in performing the work under this AGREEMENT; or (2) as a result of the CITY's actual or intended use of any Work Product furnished by BANK under this AGREEMENT. Rights and remedies available to the CITY hereinabove are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City of Los Angeles. This provision shall survive expiration or termination of this AGREEMENT.

c. Work Products are all works, tangible or not, created under this AGREEMENT including, but not limited to, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formula matters and combinations thereof, and all forms of intellectual property.

13. Legal Requirements

BANK shall secure and maintain all licenses or permits required by law and shall comply with all ordinances, laws, orders, rules, and regulations pertaining to the work.

14. Guarantees and Warranty

BANK guarantees and warrants that the work shall be performed and completed in accordance with generally accepted industry standards, practices, and principles applicable to the work. Among other things, and without waiver of CITY's other rights or remedies, CITY may require BANK to re-perform any of said services which were not performed accordance with these standards. BANK shall perform the remedial services at its sole expense. CITY's representatives shall at all times have access to the work for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this AGREEMENT.

15. Confidentiality

All documents, data, reports, computer codes, or information ("INFORMATION") that the CITY provides to BANK during the term of this AGREEMENT, or that BANK has access to during the term of this AGREEMENT shall be considered confidential and shall not be released or disclosed by the BANK unless authorized by the CITY or required to do so by law. BANK agrees that all documents or other information used or reviewed in connection with BANK's work for the CITY shall be used only for the purpose of carrying out City business and cannot be used for any other purpose. Such confidentiality shall survive termination of the AGREEMENT.

16. Release of Information

BANK shall not make public any such INFORMATION releases or otherwise publish any such INFORMATION without prior written authorization from the Agreement Administrator.

17. Use of CITY's Name and Seal

BANK shall not publish or use any advertising, sales promotion, or publicity in matters relating to services, equipment, products, reports, and material furnished by BANK in which CITY's name is used, or its identity implied without the Agreement Administrator's prior written consent approval

18. Termination

CITY may terminate this AGREEMENT with or without cause by providing written notice to BANK not less than ninety (90) days prior to an effective termination date. CITY's only obligation in the event of termination will be payment of fees for approved services incurred up to and including the effective date of termination. Bank shall assist in the orderly and timely transfer of funds and closure of services as requested by the City.

19. Notices

Any notice or communication given under this AGREEMENT shall be effective when deposited, postage prepaid, with the United States Postal Service and addressed to the parties as follows:

Client: Ms. Joya C. De Foor, CTP
City Treasurer
City of Los Angeles
200 N. Spring Street, Room 201, City Hall
Los Angeles, CA 90012

Bank: Ms. Joni Topper
Senior Vice President
Attn: Corrie Bowman
Wachovia Bank, National Association
333 South Hope Street
Suite 3700
Los Angeles, CA 90071

Either party may change the address to which notice or communication is to be sent by providing advance written notice to the other party.

20. Joint Drafting

Both parties have participated in the drafting of this AGREEMENT.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be executed by their respective duly authorized representatives.

TREASURER, CITY OF LOS ANGELES

Joya C. De Foor, CTP

Joya C. De Foor

Date 9/19/2008

WACHOVIA BANK, N.A.

By [Signature]

Print Name Joni K. Topper

Title Senior Vice President

Approved as to Form and Legality

Rocky Delgadillo, City Attorney

By Kelly [Signature]

Date 9-26-08

Attest: Karen E. Kalfayan, City Clerk

By Vera Mendez

Date 9.30.08

C-114564



Exhibit A

Standard Provisions For City Contracts (Rev. 10/03)

Exhibit B

City's Request For Proposal

Exhibit C

Bank's Proposal

EXHIBIT C

CITY OF LOS ANGELES, OFFICE OF THE TREASURER
 2008 WACHOVIA BANKING SERVICES - PRICING SCHEDULE
 BASED ON PRICING DISCUSSION ON JUNE 5, 2008

Codes	Item Description	Average Monthly Volume	Final Average Monthly Charge	Final Unit Cost
000210	Negative Collected Balance - Assessment		0.00	
000230	FDIC Assessment		0.00	
010000	Account Maintenance	65	520.00	8.00
010000	Depository Plus Sub Account Maintenance	24	72.00	3.00
010020	Zero Balance Account Maintenance - Master	1	12.00	12.00
010021	Zero Balance Account Maintenance - Sub-Account	14	112.00	8.00
010100	General Account Activity - Debit Posting	420	33.60	0.08
010101	General Account Activity - Credit Posting	8100	1053.00	0.13
010306	DDA Statement - Automated - Network	11	0.00	0.00
010310	Additional Paper Statements	28	0.00	0.00
010310	Facsimile Transmission	25	25.00	1.00
010320	DDA Statement - Custom	7	0.00	0.00
010406	Account Analysis - Automated - Network	1	15.00	15.00
010500	General Account Relationship Assistance - Inquiries/Requests	4	0.00	0.00
010510	General Account Relationship Assistance - Copies	29	0.00	0.00
050000	Wholesale Lockbox Image Lbx Maintenance	2	100.00	50.00
050000	Wholesale Lockbox Auto Paper Lbx Maintenance	23	1150.00	50.00
050100	Wholesale Lockbox Image Proc Per Item	350	94.50	0.27
050100	Wholesale Lockbox Auto Paper Proc Per Item	45000	15300.00	0.34
05011A	Wholesale Lockbox Photocopy	30421	3042.10	0.10
05011F	Wholesale Lockbox Return Envelope With Remittance Unassociated	40981	0.00	0.00
05011L	Wholesale Lockbox Delivery Preparation Charge	19	570.00	30.00
05011P	Wholesale Lockbox Negotiability Review	7050	0.00	0.00
05011P	Wholesale Lockbox Walk In Deposit	450	337.50	0.75
05011P	Wholesale Lockbox Balance Cks - Invoice	2143	0.00	0.00
05011P	Wholesale Lockbox Exception Proc - Per Item	23955	4791.00	0.20
05011R	Wholesale Lockbox Image	1100	44.00	0.04
050112	Wholesale Lockbox Detail Sorting - Rough Sort	26280	2628.00	0.10
050114	Wholesale Lockbox Detail Sorting - Fine Sort Alphanumeric	980	98.00	0.10
050117	Wholesale Lockbox Stapling - Attach Document	32652	3918.24	0.12
050121	Wholesale Lockbox Image Access Per Item	352	10.56	0.03
050121	Wholesale Lockbox Data Trans Per Item	10775	0.00	0.00
050126	Wholesale Lockbox Data Capture - Alphanumeric Single Entry	1000000	9000.00	0.01
05013A	Wholesale Lockbox Merchant Card Processing	1107	1660.50	1.50
05013B	Wholesale Lockbox Cash Payment Processing	1	1.50	1.50
05013F	Wholesale Lockbox Non-Standard Processing	7370	1474.00	0.20
050130	Wholesale Lockbox Early Morning Clearing	5	3.75	0.75
050130	Wholesale Lockbox Mid Morning Clearings	6	4.50	0.75
050131	Wholesale Lockbox 21-40 Acceptable Payees	445	44.50	0.10
050131	Wholesale Lockbox 11-20 Acceptable Payees	7735	773.50	0.10
050134	Wholesale Lockbox Special Detail Assembly	3439	275.12	0.08
050134	Wholesale Lockbox Reassoc W-O Staples	452	67.80	0.15
050300	Wholesale Lockbox Deposit Prep Per Deposit	1500	1125.00	0.75
050300	Lockbox Deposit	175	131.25	0.75
050320	Lockbox Deposit Reporting - Manual - Total	20	500.00	25.00
050321	Lockbox Deposit Reporting - Manual - Detail	16	400.00	25.00
050400	Lockbox Information Delivery - Automated - Maintenance	2	0.00	0.00
050401	Wholesale Lockbox Data Tran Maint 1st Box	15	450.00	30.00

CITY OF LOS ANGELES, OFFICE OF THE TREASURER
 2008 WACHOVIA BANKING SERVICES - PRICING SCHEDULE
 BASED ON PRICING DISCUSSION ON JUNE 5, 2008

Codes	Item Description	Average Monthly Volume	Final Average Monthly Charge	Final Unit Cost
050401	Wholesale Lockbox Non Business Day Trans	1	30.00	30.00
050404	Lockbox Information Delivery - Automated - Network	14	0.00	0.00
050412	Lockbox Information Delivery - Manual - Bundled	1	20.00	20.00
050410	Lockbox Information Delivery - Manual - Postage	1974	568.51	0.29
050413	Lockbox Information Delivery - Manual - Courier/Messenger		0.00	
050530	Lockbox Reject Items - Unprocessable	10015	1502.25	0.15
100000	Branch Deposit	4043	1212.90	0.30
100007	Branch Deposit - Delayed Processing	75	22.50	0.30
100012	Curr/Coin Dep/\$100-BKG CTR-CA	11599	1159.90	0.10
100012	Curr/Coin Dep/\$100-QBD-ND-CA	2193	219.30	0.10
100040	Branch Coin and/or Currency Order - Manual	45	90.00	2.00
100044	Coin Supplied / Roll -Box Bkg Ctr-CA	200	16.00	0.08
100044	Coin Supplied/Roll -Bkg Ctr-CA	299	23.92	0.08
100049	Currency Supp/\$100-Bkg Ctr-CA	413	144.55	0.35
100100	Vault Deposit	15	4.50	0.30
100112	Vault Deposited Coin and Currency - Bundled	114343	9147.44	0.08
100111	Vault Deposited Coin - Non-Standard Bag	125	187.50	1.50
100113	Vault Deposited Coin - Fed Standard Bag	3388	2710.40	0.80
100115	Vault Deposited Currency - Fed Standard Strap	145307	26155.26	0.18
10014A	Vault Furnished Currency - Fed Standard Strap	283	28.30	0.10
100141	Vault Coin and/or Currency Order - Automated	41	61.50	1.50
100144	Coin Supp/Roll-Box-Vit-CA	1704	170.40	0.10
100144	Coin Supplied-Per Roll-Vit-CA	883	88.30	0.10
100148	Vault Furnished Currency - Loose	110	0.44	0.00
100151	Vault Deposit - Extended Hours	2298	689.40	0.30
100154	Vault Deposit - Special	3400	10200.00	3.00
100200	Cash Letter/Item Proc Deposits	56	16.80	0.30
100200	ICL Transmission Deposit	253	63.25	0.25
100209	Transmission Maintenance	1	50.00	50.00
100210	Encoded Checks-On-Us	78690	1573.80	0.02
100212	Encoded Checks - Local Clearinghouse	71000	2130.00	0.03
100213	Encoded Checks - Local Fed	111530	3903.55	0.04
100214	Encoded Checks - Other Fed	37254	1862.70	0.05
100222	Unencoded Checks-Bundled	130630	9144.10	0.07
100229	IRD Deposited Items	188987	6614.55	0.04
100229	Image Deposited Items	228220	6846.60	0.03
100230	Checks Deposit Rejects-CA	18	9.00	0.50
100230	Checks Deposit Rejects>.8%-CA	0	0.00	
100249	Fixed Monthly Package Fee	1	0.00	0.00
100310	Non-U.S. Collection Item - U.S. Dollar/Non-U.S. Bank - Outgoing	2	10.00	5.00
100400	Return Item Processing - Regular	2000	8000.00	4.00
100401	Returns-Special Delivery	18	162.00	9.00
100401	Returns-Alternate Charge	21	63.00	3.00
100401	Returns-Dup Advice	18	54.00	3.00
100402	Return Item Processing - Reclear Item	2000	6000.00	3.00
100501	Deposit Adjustment Processing - Coin and/or Currency	68	340.00	5.00
100502	Deposit Adjustment Processing - Checks	95	190.00	2.00
101010	Special Depository Service - Armored Carrier Service		0.00	
150100	Checks Paid - Regular	6800	544.00	0.08
150102	Checks Paid - Regular - Truncated	33	2.64	0.08

CITY OF LOS ANGELES, OFFICE OF THE TREASURER
 2008 WACHOVIA BANKING SERVICES - PRICING SCHEDULE
 BASED ON PRICING DISCUSSION ON JUNE 5, 2008

Codes	Item Description	Average Monthly Volume	Final Average Monthly Charge	Final Unit Cost
150322	Returned Checks - Presented Without Issuance	1	4.00	4.00
150340	Non-Sufficient Funds (NSF) - Check Handling Fee	20	300.00	15.00
150400	Check Inquiries - Automated	17	6.80	0.40
150410	Bamtrac Stop Pay-Con Rpt Items	340	1700.00	5.00
150410	Stop Pay Automated<= 12 Months	171	855.00	5.00
150410	Stop Pay Automated> 12 Months	5	25.00	5.00
150420	Stop Payment - Manual	2	30.00	15.00
150500	Checks Cashed - Non-Customer	666	0.00	0.00
150511	Cashier's Check	4	8.00	2.00
150711	Payable Through Draft Notification - Transmission	60000	300.00	0.01
150799	PTD Rejected Electronic Items	5	2.50	0.50
150810	Check Supplies		0.00	
151100	Check Sorting-Fine	2350	235.00	0.10
151200	Paper Disbursement Information Delivery - Postage		0.00	
151341	Check Retrieval - Photocopy - Automated	4	2.00	0.50
151342	Check Retrieval - Photocopy - Manual	30	150.00	5.00
151350	Check Imaging - Maintenance	10	120.00	12.00
151351	CD Rom Per Image	62000	620.00	0.01
151351	Image Retrieval Direct	408	204.00	0.50
151353	Check Image - Retrieval - CD-ROM	3	24.00	8.00
200010	Paper Disbursement Reconciliation Maintenance - Full	3	180.00	60.00
200020	Paper Disbursement Reconciliation Maintenance - Partial	11	330.00	30.00
200120	Paper Disbursement Reconciliation Processing - Partial	63000	1890.00	0.03
200121	Partial AR-Credit Per Item	1300	39.00	0.03
200201	Check Issue Input-Transm Media	12	0.00	0.00
200201	Full Ppay Input Per Item Transm	2500	0.00	0.00
200301	Paper Disbursement Reconciliation Reports - Transmission	21	147.00	7.00
200305	Paper Disbursement Reconciliation Reports - Network	3	21.00	7.00
209999	Undefined Paper Disbursement Reconciliation Services	171	0.00	0.00
250000	ACH Monthly Maintenance	4	60.00	15.00
250000	ACH LV-Monthly Maintenance	2	0.00	0.00
250101	Corporate On US Credits	17	0.51	0.03
250101	Corporate Off US Credits	91	2.73	0.03
250102	ACH LV On-US Items	20	6.00	0.30
250102	ACH LV Off-US Items	100	30.00	0.30
250107	Consumer On US Credits	21000	630.00	0.03
250107	Consumer Off US Credits	87000	2610.00	0.03
250120	ACH Originated - Addenda Records	157	3.14	0.02
250150	ACH Account Block or Filter	68	340.00	5.00
250200	ACH Received - Debit	100	10.00	0.10
250201	ACH Received - Credit	1500	300.00	0.20
250300	ACH Return Item - Debit	45	33.75	0.75
250501	ACH Input - Automated - Transmission	5	50.00	10.00
250504	ACH Input - Automated - Network	9	90.00	10.00
250640	ACH Exception Processing - Item Reversal	32	64.00	2.00
250703	ACH Activity Reporting - Automated - Intraday - Detail	1	0.00	0.00
250800	ACH Master File - Origination	77000	2310.00	0.03
251070	Special ACH Service - Notification of Change - Automated	40	30.00	0.75
251110	ACH Software - Usage	1	20.00	20.00
259999	ACH Optional Reports - Electronic	2	0.00	0.00

CITY OF LOS ANGELES, OFFICE OF THE TREASURER
 2008 WACHOVIA BANKING SERVICES - PRICING SCHEDULE
 BASED ON PRICING DISCUSSION ON JUNE 5, 2008

Codes	Item Description	Average Monthly Volume	Final Average Monthly Charge	Final Unit Cost
259999	ACH Optional Reports - Fax	29	58.00	2.00
259999	ACH Optional Reports - Mail	27	81.00	3.00
259999	ACH Standard Reports - Mail	25	75.00	3.00
259999	ACH Standard Reports - Electronic	6	0.00	0.00
259999	ACH Standard Reports - Fax	35	0.00	0.00
259999	Manual Assisted Fedwire - EFTPS	3	0.00	0.00
30TTTT	Scanner Maintenance	1	0.00	0.00
30TTTT	RDS - Monthly Maintenance	1	15.00	15.00
30TTTT	RDS - Monthly License Fee	2	0.00	0.00
30TTTT	RDS - Image Processing	8573	857.30	0.10
300010	EDI Maintenance - Receiving	1	100.00	100.00
300100	EDI Origination Transmisson - Direct	3	225.00	75.00
300222	EDI Receiving Remittance Advising - Network	1	60.00	60.00
300223	EDI Receiving Remittance Advising - Direct	1	60.00	60.00
300522	EDI Remittance Advising-Network	7000	700.00	0.10
350103	Outgoing Fedwire Transfer - Automated - Freeform Straight-Thro	170	1020.00	6.00
350113	Outgoing CHIPS Transfer - Automated - Qualified	7	84.00	12.00
350123	Outgoing Book Transfer - Automated - Freeform Straight-Through	12	12.00	1.00
350300	Incoming Fedwire Transfer	112	672.00	6.00
350320	Incoming Book Transfer	27	27.00	1.00
350412	Wire Advice - Phone	1	5.00	5.00
350412	Wire Advice - Mail	13	13.00	1.00
350551	Bank Maintenance Template Storage	62	62.00	1.00
350551	Customer Maintenance Template Storage	230	0.00	0.00
350560	Funds Transfer Investigation	1	5.00	5.00
350600	Funds Transfer Software - Maintenance	1	0.00	0.00
400050	Domestic Information Maintenance - Internet - Previous Day - Sum	15	450.00	30.00
400051	Direct Previous Day Ext Item	21000	1050.00	0.05
400051	Direct Previous Day Std Item	2800	140.00	0.05
400052	Domestic Information Maintenance - Internet - Previous Day - Sum	2	60.00	30.00
400053	Domestic Information Maintenance - Internet - Intraday - Summa	7	280.00	40.00
400054	Domestic Information Maintenance - Internet - Intraday - Detail	17000	1360.00	0.08
400055	Domestic Information Maintenance - Internet - Intraday - Summa	2	80.00	40.00
400220	Domestic Reporting - Terminal/Network - Previous Day - Summar	2	60.00	30.00
400221	Domestic Reporting - Terminal/Network - Previous Day - Detail	15000	750.00	0.05
400224	Domestic Reporting - Terminal/Network - Intraday - Detail	4	160.00	40.00
		Total	\$174,175.91	

Exhibit D

Elavon Agreement

TERMS OF SERVICE

These Terms of Service are entered into as of the Effective Date by and among City of Los Angeles, CA, Elavon, Inc. and Wachovia Bank, National Association. The TOS and the other portions of the Agreement govern the Merchant's participation in the Program.

Section A – Definitions**1) DEFINITIONS.**

- a) **ACH:** Automated Clearing House.
- b) **Agreement:** The TOS, any Addendum, the Merchant Application, the Merchant Operating Guide, 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.
- c) **American Express:** The American Express Company.
- d) **Authorization:** Merchant's request for approval of a Transaction by an Issuer. Authorization is initiated by accessing the authorization center by telephone or electronic terminal.
- e) **Authorization Code:** The code sent by an Issuer in response to an Authorization request.
- f) **Automated Clearing House (ACH):** The funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.
- g) **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.
- h) **Card Not Present:** The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of sale. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.
- i) **Card Present:** The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction.
- j) **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.

- k) **Chargeback:** A sales Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.
- l) **Confidential Information:** All information or items proprietary to Elavon or Member, of which the Merchant obtains knowledge or access as a result of the Merchant's relationship with Elavon and Member, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.
- m) **Convenience Fee.** Any fee or charge for the use of a Payment Device in a Transaction.
- n) **Credit Card:** A: (i) Visa card or other card bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); or (iii) any card bearing the symbol of any other Credit Card Association.
- o) **Credit Card Associations:** (i) Visa U.S.A., Inc.; (ii) MasterCard International Incorporated; (iii) American Express; (iv) Discover; (v) Diners; (vi) JCB; and (vii) any other organization or association that hereafter contracts with Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.
- p) **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 Elavon from time to time, including, without limitation, all amendments, changes and revisions made thereto from time to time.
- q) **Credit Transaction Receipt:** A document, in paper or electronic form, evidencing a Merchant's refund or price adjustment to be credited to a Cardholder account.
- r) **Debit Card:** A card with a magnetic stripe bearing the symbol(s) of one or more EFT Networks which enables the holder to make a payment by authorizing an electronic debit to the Cardholder's designated deposit account, including PIN-based, online debit Transactions.
- s) **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 Elavon from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.
- t) **Demand Deposit Account (DDA):** The commercial checking account at a financial institution acceptable to Elavon and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement.
- u) **Diners:** Diners Club International Ltd.
- v) **Discover:** DFS Services, LLC.
- w) **EBT Card:** A card utilized for electronic benefits transfers.
- x) **Effective Date:** The date set forth in the signature block of Elavon herein.
- y) **EFT Networks:** (i) Interlink Network Inc., Maestro U.S.A., Inc., Visa, and MasterCard; and (ii) any other organization or association that hereafter authorizes Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
- z) **Electronic Check Service Association:** Visa, NACHA, and any other organization or association hereafter designated as an Electronic Check Service Association by Elavon from time to time.
- aa) **Electronic Check Service Rules:** All applicable rules and operating regulations of the Electronic Check Service Associations, and all rules, operating regulations, and guidelines for Electronic



- Check Service Transactions issued by Elavon from time to time, including without limitation, all amendments, changes, and revisions made thereto from time to time.
- bb) **Electronic Commerce Transaction:** A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant or a Merchant uses the Internet to submit the Transaction for processing to Elavon.
 - cc) **Electronic Gift Cards (EGC):** A special card purchased by a customer that is redeemable for in-store merchandise or services.
 - dd) **Interchange:** The clearing and settlement system for Visa and MasterCard Credit Cards and Debit Cards where data is exchanged between Elavon and the Issuer.
 - ee) **Issuer:** The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.
 - ff) **JCB:** JCB International Co., Ltd.
 - gg) **Laws:** All applicable state, federal and local laws, rules, regulations, orders and decrees, as amended from time to time.
 - hh) **Loyalty Cards:** A special card given to customers who are frequent shoppers of an establishment pursuant to which the customer may receive a discount or other reward.
 - ii) **Mail Order/Telephone Order (MO/TO) Transaction:** For MO, a Transaction that occurs when the Cardholder uses the mail to make a payment to a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a payment to a Merchant.
 - jj) **MasterCard:** MasterCard International Incorporated.
 - kk) **Member:** Wachovia Bank, National Association. The Member may be changed by Elavon at any time:
 - ll) **Merchant (or you):** City of Los Angeles, CA, and the affiliated entities listed on Schedule B attached hereto, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties, and Merchant may add additional accounts or locations that are owned by Merchant without the need to execute a new Schedule B.
 - mm) **Merchant Application:** Any document containing information regarding Merchant's business that is submitted to Elavon and Member in connection with Merchant's application for processing services, including documents submitted by Merchant as a part of the bid process, if applicable.
 - nn) **Merchant Operating Guide:** The operating manual provided by Elavon to its Merchants. The Merchant Operating Guide may be amended from time to time by Elavon in its sole discretion.
 - oo) **National Automated Clearing House Association (NACHA):** The national association that establishes standards, rules, and procedures to enable depository financial institutions that are members of regional ACH associations to exchange electronic payments.
 - pp) **Elavon:** As applicable, Elavon, Inc., a Georgia corporation, and any affiliate or subsidiary of Elavon, Inc. that provides processing services to a Merchant related to Transactions. Elavon is a registered member service provider of each Member.
 - qq) **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.
 - rr) **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.
 - ss) **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.
 - tt) **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.

- uu) **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 Elavon and the applicable Payment Network.
- vv) **Prepaid Cards:** A reloadable card having available funds to the Cardholder paid for in advance.
- ww) **Program:** The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.
- xx) **Reserve Account:** The account established pursuant to Section (B)(6).
- yy) **Reserve Amount:** The amount established pursuant to the calculation set forth in Section (B)(6).
- zz) **Reserve Event:** The events designated in Section (B)(6).
- aaa) **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.
- bbb) **TOS:** These Terms of Service and all additions to, amendments, and modifications of, and all replacements to the TOS, as applicable.
- ccc) **Transaction:** Any action by a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).
- ddd) **Transaction Receipt:** The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.
- eee) **Value Added Services:** Any product or service provided by a third party unaffiliated with Elavon or Member to assist Merchant in processing Transactions; including without limitation, Internet payment gateways, integrated POS Devices, inventory management and accounting tools, loyalty programs, fraud prevention programs, and any other product or service that participates, directly or indirectly, in the flow of Transaction data.
- fff) **Visa:** Visa U.S.A., Inc.

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

Section B - General Provisions

- 3) **ACCEPTANCE OF PAYMENT DEVICES.** Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices it will agree to accept as payment for goods and services. The terms and conditions for the acceptance of Credit Cards are set forth in the TOS. The terms and conditions for the acceptance of any Payment Devices or methods other than Credit Cards shall be set forth in one or more addenda (each an "Addendum"), which shall incorporate the TOS by reference. Each Addendum shall be governed by the TOS, as well as by the terms set forth in the Addendum.
- 4) **DEPOSIT OF TRANSACTION RECEIPTS.**
- a) **Funds.**
 - i) **Deposits.** You agree that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Subject to this Section, Elavon, and Member will deposit to the DDA all funds evidenced by Transaction Receipts complying with the terms of the Agreement and the Payment Network Regulations and will provide you provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement). You acknowledge that your obligation to Elavon and Member for all amounts



- owed under the agreement arises out of the same transaction as Elavon's and Member's obligation to deposit funds to the DDA.
- ii) **Provisional Credit.** All Transaction Receipts and deposits are subject to audit and final checking by Member and Elavon, and may be adjusted for inaccuracies or errors. You acknowledge that all credits for funds provided to you are provisional and subject to Chargebacks and adjustments in accordance with the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer. Member or Elavon may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and Elavon's sole discretion.
 - iii) **Original Transaction Receipts.** Under no circumstances will Member or Elavon be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Member and Elavon.
- b) **Chargebacks.** You are fully liable to Elavon and Member for all Transactions returned to Elavon or Member for whatever reason including all Chargebacks. You will pay Elavon and Member for all Chargebacks. You agree to accept for Chargeback, and will be liable to Member and Elavon in the amount of any Transaction for which the Cardholder or Issuer disputes the validity of the Transaction for any reason. You authorize Elavon and Member to offset from funds due the Merchant for Transaction activity and to debit the DDA and the Reserve Account for the amount of all Chargebacks. You will fully cooperate with Elavon and Member in complying with the Payment Network Regulations regarding Chargebacks.
- 5) **DEMAND DEPOSIT ACCOUNT (DDA).**
- a) **Establishment and Authority.** You will establish and maintain with Member (or with an ACH receiving depository institution acceptable to Member) one or more DDAs to facilitate payment for Transactions. You will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement. You irrevocably authorize Elavon and Member to debit the DDA for Chargebacks in accordance with the Payment Network Regulations and for returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You also authorize Elavon's or Member's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement. You must obtain prior consent from Member and Elavon to change the DDA. If you do not get that consent, Elavon or Member may immediately and without notice terminate the Agreement and may take any other action either of them deems necessary in their discretion. Elavon and Member have the right to rely upon written instructions submitted by you to request changes to the DDA. You may request from Elavon written confirmation of Elavon's and Member's consent to change the DDA.
 - b) **DDA.** If the DDA is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (B)(4) of the TOS. Elavon and Member have the right to delay, within their discretion, crediting the DDA with funds evidenced by submitted Transaction Receipts. You authorize Member or Elavon to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement and the ACH Authorization (defined below). To the extent required, you authorize and appoint Member to act as your agent to collect Transaction amounts from the Issuer. Member, in its sole discretion or at Elavon's direction, may grant you provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and Elavon and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You shall maintain sufficient funds on deposit in your DDA to pay all items as they come due in the ordinary course of business.
 - c) **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from Elavon, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. You must promptly examine all

statements relating to the DDA and immediately notify Elavon and Member in writing of any errors in the statement Merchant received from Elavon. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Elavon within thirty (30) days after you receive the statement containing the asserted error. If you fail to provide such notice to Elavon within said thirty (30) days, Elavon and Member shall not be liable to you for any errors you assert at a later date. You may not make any claim against Member or Elavon for any loss or expense relating to any asserted error for sixty (60) days immediately following Elavon's receipt of your written notice. During that sixty (60) day period, Elavon will be entitled to investigate the asserted error, and you shall not incur any cost or expense in connection with the asserted error without notifying Elavon.

- d) **Depository Institution.** Merchant authorizes its depository institution to grant Elavon and/or Member access to any and all information or records regarding the DDA. You hereby release Elavon and Member for any action they take against the DDA or Reserve Account pursuant to the Agreement. You also release the depository institution at which you maintain your DDA for acting in accordance with any instruction from Elavon and/or Member regarding the DDA.
 - e) **ACH Authorization.** You authorize Member, Elavon, and their respective vendors and agents to initiate debit/credit entries to the DDA and the Reserve Account, all in accordance with the Agreement. This authorization will remain in effect after termination of the Agreement and until all of your obligations to Elavon and Member have been paid in full. In the event you change the DDA, this authorization will apply to the new account and you shall provide Elavon and Member such information regarding the new DDA as they deem necessary. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from you to reflect in its system any change to your DDA.
- 6) **RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.**
- a) **Reserve Account.**
 - i) **Establishment.** Elavon may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing a source of funds to pay Member and Elavon for any and all amounts owed by you. Member and Elavon shall have sole control of the Reserve Account.
 - ii) **Reserve Amount.** The Reserve Amount is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period + average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [# days delayed delivery multiplied by the average day's processing volume]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the Cardholder receives and is satisfied with the product. Further, for purposes of this calculation, Elavon will determine, in its sole discretion, the applicable period considering factors such as Merchant's sales growth and seasonality.
 - iii) **Reserve Event.** The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equal or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed 1% of the total dollar value of incoming items to Elavon, (c) Elavon's reasonable belief that Merchant has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against you, (e) termination of the Agreement for any reason, (f) nonpayment of amounts owed to Elavon or Member, and (g) the occurrence of an adverse change in your financial condition.
 - iv) **Funding.** Member and Elavon may fund the Reserve Account up to the Reserve Amount by any one or more of the following means.



- (1) Member and Elavon may require you to deposit into the Reserve Account funds in an amount determined by Elavon;
 - (2) Member and Elavon may debit the DDA in any amount;
 - (3) Member and Elavon may deposit into the Reserve Account funds they would otherwise be obligated to pay you.
- v) **Use of Funds in Reserve Account.** Member or Elavon may, without notice to you, apply funds in the Reserve Account against any outstanding amounts you owe or future amounts you will owe under the Agreement or any other agreement between you and Member or Elavon. Also, Member or Elavon may debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to Member or Elavon. Further, you agree that Elavon or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.
- vi) **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (1) the Agreement has been terminated; and (2) Merchant has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustment, fees, fines, penalties, and any other payments due under the Agreement. In no event shall you be entitled to a return of any funds remaining in the Reserve Account before 270 days following the effective date of termination of the Agreement.
- b) **Recoupment and Set-off.** Member and Elavon have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe you under the Agreement or any other agreement. You acknowledge that in the event of a Bankruptcy Proceeding, in order for you to provide adequate protection under Bankruptcy Code Section 362 to Elavon and Member, you must create or maintain the Reserve Account as required by Elavon and/or Member and either of them shall have the right to offset against the Reserve Account for any and all obligations you may owe to Elavon and Member, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the filing of the bankruptcy petition.
- c) **Remedies Cumulative.** The rights conferred upon Member and Elavon in this section are not intended to be exclusive of each other or of any other rights and remedies of Member and Elavon under the Agreement, at law or in equity. Rather, each and every right of Member and Elavon under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.
- 7) **FEES; OTHER AMOUNTS OWED; TAXES.**
- a) **Fees.** You will pay Member and Elavon fees for services, supplies, and equipment in accordance with Schedule A, Schedule of Fees. Such fees will be calculated once each month for the previous month's activity. Elavon will send Member an invoice reflecting the amount of fees due, and Member will enter such amount in Merchant's compensating balance calculation. Member will pay Elavon such amount within thirty (30) days. Alternatively, Elavon may net out the fees due from any funds due you under this Agreement. In addition, you will pay Elavon at its standard rates for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on your account. The fees set forth in the Agreement will not be amended by Elavon for the Initial Term of the Agreement except to pass through to you increases in interchange, assessments, or fees imposed by a third party.
- b) **Other Amounts Owed.** You will immediately pay Elavon or Member any amount incurred by Elavon or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of your Transaction processing), and any other payments due under the Agreement. Elavon or Member may debit these amounts (including any fees outstanding for

more than sixty (60) days) from your DDA by ACH, and in the event such ACH does not fully reimburse Elavon or Member for the amount owed, you will immediately pay Elavon or Member such amount. Elavon will charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.

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

8) ACCURACY OF INFORMATION; HOLD HARMLESS; LIMITATION OF LIABILITY; PERFORMANCE.

- a) **Accuracy of Information.** You represent and warrant to Member and Elavon that all information provided to Elavon in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement is correct and complete. You must notify Elavon in writing of any changes to such information, including, without limitation, any additional location or new business at which you desire to accept payment services, type of goods and services provided, and how sales are completed (i.e., by telephone, mail, electronic commerce, or in person at your place of business). The notice must be received by Elavon at least ten (10) business days prior to the change: You will provide any additional information requested by Elavon within a reasonable time. You will hold harmless Member and Elavon for all losses and expenses incurred by Member or Elavon arising out of any such change, whether or not reported to Elavon, or your failure to provide requested information. Elavon may immediately terminate the Agreement upon notification by you of a change to the information in the Merchant Application. You authorize Elavon and Member to contact credit reporting agencies and your creditors to make inquiries and obtain reports regarding your credit standing upon Elavon's or Member's receipt of the Merchant Application.

- b) **Hold Harmless.** As between Merchant, Elavon and Member, Merchant will be responsible for, and will at its own expense, defend itself against any and all suits, claims, losses, demands or damages, arising out of or in connection with any dispute with any Cardholder or third party relating to any Transaction or any breach by Merchant of any of its obligations under this Agreement. Merchant hereby releases Elavon and Member from any and all liabilities, claims, losses, costs, expenses and demands of any kind or nature, arising out of or in connection with such Transactions and Merchant breaches.

- c) **Limitation of Liability.** Merchant acknowledges that Elavon and Member's fees for the services provided to Merchant are very small in relation to the funds advanced to Merchant for Transactions and consequently Elavon's and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on Elavon's or Member's liability that may be provided elsewhere, any liability of Elavon and Member under the Agreement, whether to you or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the fees paid by you during the last three (3) months. In no event will Elavon, Member, or their agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.

- d) **Performance.** Elavon and Member will perform all services in accordance with the Agreement. Elavon makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Elavon and Member disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. Neither Elavon nor Member shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of Elavon or Member and without the fault or negligence of Elavon or Member.

- 9) REPRESENTATIONS AND WARRANTIES.** You represent and warrant to Elavon and Member as of the time the Agreement is effective, and reaffirm to Elavon and Member each time a Transaction is effected during the initial term or any renewal term of the Agreement, the following:



- a) **Information.** All information provided in the Merchant Application, in the bid process if applicable, or any other document submitted to Elavon is true and complete and properly reflects the business, financial condition and officers of Merchant. Elavon has the right to rely upon written instructions submitted by you to request changes to your business information. You may request written confirmation of Elavon's consent to the changes to your business information. You will not submit Transactions for processing to Elavon or Member for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of Elavon.
 - b) **Authority to Execute.** 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 Schedule B to all provisions of the Agreement as if each affiliated entity had executed 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 Elavon, now or in the future. Further, you represent and warrant that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which you are subject.
 - c) **No Litigation.** There is no action, suit, or proceeding pending, or to your knowledge, threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never been placed on the MasterCard MATCHTM system (formerly known as the Combined Terminated Merchant File), or, if you have, you have disclosed that fact to Elavon in writing.
 - d) **Transactions.** All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from you or a return or adjustment related to such purchase. No Transaction involves a Cardholder obtaining cash from you unless allowed by the Payment Network Regulations and agreed to in writing with Elavon.
 - e) **Compliance with Laws and Regulations.** You will comply with all Laws and Payment Network Regulations.
 - f) **Business Use.** You are obtaining and using the processing services from Elavon for business purposes only and to facilitate lawful business Transactions between yourself and your customers. You also acknowledge that the DDA into which debits and credits are made is being used for lawful business purposes only.
- 10) **AUDIT AND INFORMATION.**
- a) **Audit.** You authorize Elavon and Member to perform an audit of your business, at Elavon's or Member's expense, to confirm compliance with the Agreement. You will obtain and submit a copy of an audit from a third party acceptable to Elavon of the financial, physical security, information security, and operational facets of your business at your expense when requested by the Payment Networks or required by the Payment Network Regulations. Further, you acknowledge and agree that the Payment Networks have the right to audit your business to confirm compliance with the Payment Network Regulations.
 - b) **Information.**
 - i) **Authority.** You authorize Elavon and Member to make, from time to time, any business or other inquiries they consider necessary to review the Merchant Application or continue to provide services under the Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Elavon.
 - ii) **Financial Information.** Upon the request of either Elavon or Member, you will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by you. You further agree to provide to Elavon and Member such other information regarding your financial condition as Elavon and/or Member may request from time to time. Within 120 days after the end of each fiscal year, you will furnish Elavon, as

requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

- c) **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, you must provide certain information and identifying documents to allow Elavon and Member to identify you.
- 11) **RESPONSIBILITY FOR ACTIONS.** You are responsible for the actions of or failure to act by your officers, directors, employees, agents, business invitees, and those of any other Person who, with or without your consent or cooperation, obtains access to information related to Transactions.
- 12) **FRAUD MONITORING.** You are solely responsible for monitoring your Transactions and the actions of your officers, directors, employees, agents, business invitees, third party vendors including Value Added Services, and those of any other Person who, with or without your consent or cooperation, obtains access to your Transactions, for fraudulent or other suspicious activity. Elavon and Member are under no duty to monitor Merchant's transactions for fraudulent or other suspicious activity.
- 13) **BUSINESS CONTINUITY.** Merchant is solely responsible for developing and maintaining a disaster recovery plan. Merchant should test the operation of such plan, or parts thereof, on a periodic basis to ensure its effectiveness in providing disaster recovery capability to Merchant. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction. Elavon is under no duty to recreate lost Transactions.
- 14) **THIRD PARTIES.**
- a) **Products or Services.** You may desire to employ Value Added Services to assist you. You shall not utilize any Value Added Services, unless you have disclosed such use to Elavon previously in writing, and unless such Value Added Services are fully compliant with all applicable Laws and Payment Network Regulations. You must ensure that any Value Added Service used by you is registered with the Payment Networks prior to the performance of any contracted services on your behalf. Further, you will be bound by the acts and omissions of the third party offering such Value Added Services and you will be responsible for ensuring compliance by the third party offering such Value Added Services with all applicable Laws and Payment Network Regulations. You will hold Elavon and Member harmless from and against any loss, cost, or expense incurred in connection with or by reason of your use of any Value Added Service. Neither Elavon nor Member is responsible for the Value Added Services provided by an unaffiliated third party and neither Elavon nor Member is responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.
- b) **Use of POS Devices Provided by Others.** In addition to the foregoing, if you use Value Added Services for the purposes of data capture and/or authorization, you agree: (i) that the third party providing such services will be your agent in the delivery of Transactions to Elavon and Member via a data processing system or network compatible with Elavon's; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement. Neither Member nor Elavon will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or by a malfunction in a third party POS Device. Neither Elavon nor Member is responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.

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 Effective Date. Thereafter, the Agreement will renew for successive two (2) year terms ("Renewal Term") unless terminated as set forth below.

b) **Termination.**

i) **Merchant.**

- (1) The Agreement may be terminated by you effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Elavon at least one hundred twenty (120) days prior to the expiration of the then current term.
- (2) The Agreement may be terminated by you in the event of a material breach of the terms of the Agreement by Member or Elavon, provided you give Member and Elavon written notice of any alleged breach and such breach remains uncured for a period of sixty (60) days following receipt of written notice by the party you claim to be in breach of the Agreement.
- (3) The Agreement may be terminated by you in the event that sufficient legislative appropriation is not available, provided that you give Elavon and Member sixty (60) days notice prior to termination.

ii) **Elavon or Member.**

- (1) The Agreement may be terminated by Member or Elavon effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to you at least one hundred twenty (120) days prior to the expiration of the then current term.
- (2) *The Agreement may be terminated by Elavon or Member immediately upon the occurrence of one or more of the following:*
 - (a) The occurrence of an adverse change in your financial condition.
 - (b) The garnishment or attachment of your deposit accounts with Member, the DDA, the Reserve Account, or any of your property in the possession of Elavon or Member.
 - (c) The assignment of your assets generally for the benefit of creditors.
 - (d) The commencement of a Bankruptcy Proceeding by or against you.
 - (e) Any representation and warranty by a party is or becomes false or misleading in any material respect as of the date made, or becomes false or misleading at any time during the term of this Agreement.
 - (f) Any Payment Network requires Member or Elavon to terminate this Agreement or cease processing transactions for you.
- (3) The Agreement may be terminated by Elavon or Member if, after providing thirty (30) days written notice, any of the following conditions remain:
 - (a) The occurrence of Excessive Activity (defined in Section C(24)(c)).
 - (b) The acceptance of Card Not Present Transactions without proper disclosure to Elavon and Member as set forth herein.
 - (c) The failure to pay Elavon or Member any amount you owe Elavon or Member.
 - (d) The failure by you to perform a material obligation of this Agreement.

Elavon's and Member's rights of termination under the Agreement are cumulative. A specific right of termination in this section shall not limit any other right of Elavon or Member to terminate the Agreement expressed elsewhere.

c) **Notice of Termination.** Notice of termination by Merchant, Elavon, or Member may be given orally or in writing, but if given orally, must be confirmed in writing as soon as practical. Termination shall be effective on the date specified by the oral or written notice; provided, however Merchant agrees that closing Merchant's account with Elavon may take up to thirty (30) days following Elavon's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by Elavon following termination by either Merchant or Elavon,

all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.

d) Action Upon Termination.

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

16) COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™.

- a) **Compliance with Laws and Payment Network Regulations.** You agree to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account, and with any policies and procedures provided by Member or Elavon. The Payment Network Regulations are incorporated into the Agreement by reference as if they were fully set forth in the Agreement. You further agree to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; and (ii) electronic fund transfers; and (iii) confidential treatment of information. You will assist Member and Elavon in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. You will execute and deliver to Member and Elavon all documents they may from time to time reasonably deem necessary to verify your compliance with this provision.
- b) **MATCH™.** You acknowledge that Member and/or Elavon is required to report Merchant's business name and, if applicable, the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed by Visa pursuant to the requirements of the Payment Network Regulations. You specifically consent to the fulfillment of the obligations related to the listing by Elavon and Member, the listing itself and you waive and hold harmless Elavon and Member from all claims and liabilities you may have as a result of such reporting.
- c) **Security Program Compliance.** You must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard including the Cardholder Information Security Program (CISP) of Visa and the Site Data Protection Program (SDP) of MasterCard, as applicable, and any modifications to, or replacements of such programs that may occur from time to time. You also shall ensure that all third parties from whom you procure Value Added Services or third party POS Devices comply with the requirements of those programs. Upon request, Elavon will provide you with the respective website links to obtain the current requirements of the Visa and MasterCard programs. You are responsible for your own actions or inactions, those of your officers, directors, shareholders, employees and agents, including any third party vendors with whom you contract to perform services for you. You shall hold Elavon and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the program

requirements by any of the individuals or entities listed in the immediately preceding sentence. Should you participate in a program with any other Payment Network or Issuer, or accept a Payment Device of any other Payment Network that has a security program in place, you must comply therewith and ensure that your officers, directors, shareholders, employees, and agents, including any third party vendors from whom you procure Value Added Services or third party POS Devices also comply with the program requirements of such Payment Network.

- d) **Data Compromise.** You must notify us immediately (and if notice is given orally, it must be confirmed in writing within two (2) business days), if you know or suspect that Cardholder information has been accessed or used without authorization. You must take immediate steps to preserve all business records, logs and electronic evidence and contact local law enforcement authorities including the local FBI and U.S. Secret Service. You must work with us to rectify any issues that may result, including providing us with (and obtaining any waivers necessary for) all relevant information to verify your ability to prevent future data incidents in a manner consistent with this Agreement. Without waiving any of our rights and remedies, you are liable for all fraudulent transactions related to such data incident and all costs Elavon or Member incur as a result of such incident, including claims from third parties and all costs related to the notification of Cardholders and cancellation and re-issuance of Cards, forensic investigation, and PCI review for a report of compliance. You must provide to us, on request, audit reports of your computer systems or data incidents or allow us to perform such audits, at your expense. Audits must identify the cause of the data incident and confirm whether or not you were in compliance with the Payment Networks' PCI Data Security Standard at the time of the incident.

17) USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.

- a) **Use of Trademarks.** You will prominently display the promotional materials provided by Elavon in your place of business. Your use of Visa and MasterCard marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Your right to use all such marks will terminate upon termination of the Agreement. Your use of promotional materials, provided by Visa, MasterCard, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, or such other Payment Networks endorse any goods or services other than their own and you may not refer to Visa, MasterCard, or any other Payment Networks in stating eligibility for your products or services.
- b) **Confidentiality.**
- i) **Cardholder and Transaction Information.** You shall, at all times protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and Payment Network Regulations. You will not disclose Cardholder or Transaction information to any third party, except to an agent of yours assisting in completing a Transaction, or as required by Laws or the Payment Network Regulations. You must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent access by or disclosure to anyone other than your authorized personnel. You must maintain Cardholder and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that you no longer deem necessary or appropriate to maintain. Further, you must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2/CVC2 data after authorization for record keeping or additional authorization processing. In accordance with Section B(16)(d), Merchant shall immediately notify Elavon of any Cardholder or Transaction information compromise of which it becomes aware whether such compromise occurred at: (i) the Merchant; (ii) a third party from whom Merchant procures Value Added Services; (iii) Elavon or Member; or (iv) elsewhere.
- ii) **Bankruptcy.** In the event of failure or other suspension of your business operations, including bankruptcy or insolvency, you must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. You must:

- (1) Return this information to Elavon, or
- (2) Provide acceptable proof of destruction of this information to Elavon.
- iii) **Elavon or Member Confidential Information.** You shall at all times protect Elavon's and Member's Confidential Information. You will not disclose any of Elavon's or Member's Confidential Information to any third party except as required by Laws.
- c) **Passwords.** If you receive a password from Elavon to access any of Elavon's databases or services you will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Elavon's databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Elavon if you believe Elavon's databases or services or your information has been compromised by use of the password. If you receive passwords from a third party, you must protect such passwords in the manner required by such third party and hold Elavon and Member harmless from any losses, costs, or expenses that arise from your use or misuse of such third party passwords.
- d) **Proprietary Interest.** Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by Elavon. Nothing in the TOS shall be construed as granting Merchant any patent rights or patent license in any patent which Elavon may obtain in respect to Elavon'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 Elavon's services, equipment, or software.

18) MISCELLANEOUS PROVISIONS.

- a) **Entire Agreement.** The Agreement, Payment Network Regulations, and any amendment or supplement to either, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement. In the event of a conflict between the documents comprising the Agreement, the following order of priority will apply: (i) any Addendum; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Application; (v) the Merchant Operating Guide; and (vi) any other guides or manuals provided to Merchant from time to time.
- b) **Construction.** Any alteration or strikeover in the text of this preprinted TOS will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.
- c) **Assignability.** The Agreement may be assigned by Member or Elavon, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Elavon. If you, nevertheless, assign the Agreement without Elavon's consent, the Agreement will be binding on the assignee as well as you.
- d) **Notices.** Any written notice to the Merchant under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or with a nationally recognized overnight carrier, and addressed to the last address shown on the records of Elavon. Any written notice to Elavon, shall be sent by U.S. mail or a nationally recognized overnight carrier to: 7300 Chapman Highway, Knoxville, TN 37920, and shall be deemed received only upon actual receipt.
- e) **Bankruptcy.** You will immediately notify Elavon of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant. You will include Elavon 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 Elavon under applicable Payment Network Regulations or Laws. You acknowledge that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial

- accommodations to, or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.
- f) **Attorneys' Fees.** The non-prevailing party will be liable for and will reimburse the other parties for all attorneys' fees and other costs and expenses paid or incurred in the enforcement of this Agreement, or in collecting any amounts due or resulting from any breach of the Agreement.
 - g) **Customer Contact.** You authorize Member and Elavon to contact your customers or their Issuer if Member or Elavon determines that such contact is necessary to obtain information about any Transaction between you and a customer.
 - h) **Telephone Recording.** You authorize Elavon 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 Elavon's discretion.
 - i) **Information Sharing.** You understand and agree that Elavon may disclose any information gathered by Elavon to (i) Elavon's "affiliates" (i.e., companies related to us by common control or ownership) that offer financial products or services, including those identified in the Agreement and to Elavon's administrative or service units that perform such functions; (ii) to non-affiliated companies to assist Elavon 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).
 - j) **Communication with Merchant.** You agree that Elavon and Member may provide you with information about the Program including, without limitation, information about new products and/or services by telephone, electronic mail, and/or facsimile.
 - k) **Amendments.** Member and Elavon may propose amendments or additions to the Agreement. Member or Elavon will inform you of a proposed change in a periodic statement or other notice. You will be deemed to have agreed to the change if you continue to present Transactions to Member and Elavon after thirty (30) days following the issuance of the notice. Elavon is entitled to pass through to you any fee increases imposed upon Elavon by Visa, MasterCard, any other Payment Network, and any other third party including telecommunications vendors.
 - l) **Severability and Waiver.** If any provision of the Agreement is found to be illegal or otherwise unenforceable, the invalidity or unenforceability of that provision will not affect any of the remaining provisions and the Agreement will be construed as if the illegal or unenforceable provision is not contained in the Agreement. Neither the failure, the delay by Elavon or Member to exercise, nor the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by you must be signed by Elavon.
 - m) **Independent Contractors.** Elavon, Member, and you will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. This Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.
 - n) **Privacy Laws.** In addition to Section (B)(17)(b) above, Merchant must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information, using a standard of care at least equal to the standard required of Elavon to protect such information pursuant to applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act (HIPAA), the federal Gramm-Leach-Bliley Act or other applicable privacy laws. Further, a Merchant that is a "covered entity" or "business associate", as defined under HIPAA, must not use any product to store, transmit, or otherwise maintain "protected health information" as defined by HIPAA. Elavon is not a "business associate" as defined by HIPAA and it is not Elavon's practice to store or accept any information that would cause it to be a "business associate" under HIPAA.

- o) **Survival.** All or your obligations to Elavon and Member shall survive termination of the Agreement, including, without limitation, Sections (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(11), (B)(14), (B)(15)(d), (B)(16), (B)(17) and (B)(18)(f) of the TOS.
- p) **Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.

Section C – Acceptance of Visa and MasterCard

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

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



flat Convenience Fee and must combine all charges into one authorization and clearing Transaction.

- x. To the extent Merchant's state or other governing body has passed legislation that requires Convenience Fee assessment by government agencies as a component of card acceptance, such laws may conflict with the Payment Network Regulations. Merchant bears all responsibility for, and agrees to hold Elavon and Member harmless from, all liability associated therewith, including all fees, fines and penalties levied by the Payment Networks.
 - xi. Convenience Fees may be prohibited by Laws in some States. Merchant may not charge Convenience Fees where prohibited by Laws.
 - xii. In no event is a Convenience Fee to be referred to as a surcharge or advertised as an offset to processing fees.
 - xiii. If you have received approval from Visa to participate in the Tax Payment Pilot Program, then you may assess a variable service fee so long as: (i) only eligible tax payments are accepted (personal income, personal property, real property, unemployment, business income and sales and use taxes); (ii) Cardholders are notified of the fee and given the opportunity to opt-out of the Transaction; (iii) the variable fee must be processed as a separate Transaction and not combined with the tax payment; (iv) the variable fee may be assessed on all payment channels and the fee cannot be higher than any other card-based payment offered through the same channel; and (v) you submit appropriate reports of CISP compliance to Visa and receive Visa approval and certification annually.
- g) **Return Policy.** You must properly disclose to the Cardholder, at the time of the sales Transaction and in accordance with the Credit Card Rules, any limitation you have on accepting returned merchandise.
 - h) **No Claim Against Cardholder.** You will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Transaction unless Member or Elavon refuses to accept the Transaction Receipt or revokes its prior acceptance of the Transaction Receipt (after receipt of a Chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Transaction Receipt, and if you receive such payments, you will promptly remit them to Elavon.
 - i) **Disputes With Cardholders.** All disputes between you and any Cardholder relating to any Transaction will be settled between you and the Cardholder. Neither Elavon nor Member bears any responsibility for such Transactions or disputes, other than with respect to processing Chargebacks under the Credit Card Rules.

22) AUTHORIZATION.

- a) **Required on all Transactions.** You must obtain an Authorization Code before completing any sales Transaction. An Authorization Code verifies the Credit Card number is valid, the Credit Card has not been reported lost or stolen at the time of the sales Transaction, and confirms the amount of credit or funds requested for the sales Transaction is available. You will follow any instructions received during Authorization. Upon receipt of an Authorization Code, you may consummate only the sales Transaction authorized and must note the Authorization Code on the Transaction Receipt. In any case in which a sales Transaction is completed without imprinting the Credit Card, the Merchant, whether or not an Authorization Code is obtained, shall be deemed to warrant the true identity of the customer as the Cardholder. For all Card Not Present sales Transactions, you must obtain the Credit Card expiration date, Cardholder address and telephone number, and CVV2/CVC2 number and forward them as part of the Authorization.
- b) **Effect.** An Authorization Code does not: (i) guarantee the Merchant final payment for a sales Transaction; (ii) guarantee that the sales Transaction will not be disputed later by the Cardholder as any sales Transaction is subject to Chargeback; or (iii) protect you in the event of a Chargeback regarding unauthorized sales Transactions or disputes involving the quality of goods

or services. Authorization Codes will not waive any provision of the TOS or otherwise validate a fraudulent sales Transaction or a sales Transaction involving the use of an expired Credit Card.

- c) **Unreadable Magnetic Stripes.** For Card Present Transactions, if you authorize and present Transactions electronically and your terminal is unable to read the magnetic stripe on the Credit Card, you must obtain the following in addition to key-entering the Transaction into the POS Device for processing: (i) a physical imprint of the Credit Card using a manual imprinter and (ii) the Cardholder's signature on the imprinted Transaction Receipt.

23) PRESENTMENT OF TRANSACTION RECEIPTS.

a) Transaction Receipts.

i) **Card Present and Card Not Present Transactions (other than Electronic Commerce Transactions).** You will use a Transaction Receipt to document each Card Present and Card Not Present Transaction. Each such Transaction Receipt must include:

- (1) Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard).
- (2) Merchant name and location.
- (3) Location Code (i.e., merchant identification number issued by Elavon).
- (4) Transaction amount, including applicable taxes.
- (5) Transaction date.
- (6) Space for Cardholder signature for Card Present Transactions.
- (7) Indication of who shall receive each copy of the Transaction Receipt (e.g., Merchant Copy, Bank Copy, Cardholder Copy).
- (8) Authorization Code.
- (9) *Terms and conditions of the sale, if restricted.*

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

ii) **Electronic Commerce Transactions.** You will use a Transaction Receipt to document each Electronic Commerce Transaction. Each such Transaction Receipt must include:

- (1) Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard).
- (2) Merchant name.
- (3) Merchant online address.
- (4) Purchaser name.
- (5) Authorization Code.
- (6) Transaction amount.
- (7) Transaction date.
- (8) Customer service contact, including telephone number.
- (9) *Terms and conditions of the sale, if restricted.*

b) **Signatures.** In Card Present Transactions, Transaction Receipts must be signed by the Cardholder. The requirement for the Cardholder's signature on the Transaction Receipt will only be waived if the Credit Card Transaction is a valid Card Not Present Transaction which fully complies with the requirements set forth in the TOS.

c) **Reproduction of Information.** For Card Present Transactions, if the following information embossed on the Credit Card is not legibly imprinted on the Transaction Receipt, you will legibly reproduce on the Transaction Receipt the: (i) Cardholder's name; (ii) account number; (iii) expiration date; and (iv) Merchant's name and place of business. Additionally, for MasterCard Transactions, on the Transaction Receipt you will legibly reproduce the name of the bank that issued the Credit Card as it appears on the face of the Credit Card.

d) Truncation.

i) The Credit Card account number must be truncated on all Cardholder-activated Transaction Receipts. Truncated digits should be replaced with a fill character such as "x," "*", or "#," and not with blank spaces or numeric characters.

- ii) Effective July 1, 2003, all new POS Devices must suppress all but the last four digits of the Credit Card account number and the entire expiration date on the Cardholder's copy of the Transaction Receipt generated from electronic (including Cardholder-activated) POS Devices. Effective July 1, 2006, all existing POS Devices must comply with the rule set forth in this subsection.
 - iii) These truncation rules do not apply to Transactions in which the only way to record a Credit Card account number is in handwriting or by making an imprint or copy of the Credit Card.
 - e) **Delivery and Retention of Transaction Receipts.** For Card Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder at the time of the Transaction. For Card Not Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder promptly following completion of the Transaction in either electronic (e.g., e-mail or fax) or paper (e.g., handwritten or terminal-generated) format. You will retain the "Merchant Copy" of the Transaction Receipt or Credit Transaction Receipt for at least eighteen (18) months following the date of completion of the Credit Card Transaction (or such longer period as the Credit Card Rules or the Laws may require).
 - f) **Electronic Transmission.** If you utilize electronic Authorization and/or data capture services, you will enter the data related to Transactions into a POS Device and settle the Transactions and transmit the data to Elavon or its designated agent in the form specified by Elavon no later than the close of business on the date the Transactions are completed. If Member or Elavon requests a copy of a Transaction Receipt, Credit Transaction Receipt, or other Transaction evidence, you must provide it within the time frame specified in the request.
- 24) RETRIEVAL REQUESTS AND CHARGEBACKS; CREDITS; REPROCESSING; FRAUD; AND FACTORING.**
- a) **Retrieval Requests.** You must respond to a Retrieval Request with a legible copy of the Transaction Receipt within the time frame specified. If you fail to provide a legible copy of the Transaction Receipt, you will receive a Chargeback that cannot be cured.
 - b) **Chargebacks.** You are fully liable to Elavon and Member for all Transactions returned to Elavon or Member for whatever reason including, but not limited to, Chargebacks. You agree to accept for Chargeback and will be liable to Member and Elavon in the amount of any sale for which the Cardholder or Issuer disputes the validity of the sale for any reason. You will pay Elavon and Member on demand the value of all Chargebacks. You authorize Elavon and Member to offset from incoming Transactions and to debit the DDA and the Reserve Account for the amount of all Chargebacks. You will fully cooperate with Elavon and Member in complying with the Credit Card Rules regarding Chargebacks. The following is not to be considered a complete listing of the reasons for which you may incur a Chargeback. It is intended only to provide the most commonly encountered situations where a Chargeback may occur.
 - i) Failure to respond to a Retrieval Request or failure to provide a legible, complete, or proper copy of a Transaction Receipt in response to a Retrieval Request,
 - ii) Unauthorized use of a Credit Card as alleged by the Cardholder,
 - iii) Dispute by the Cardholder over the quality of goods or services,
 - iv) Failure by Merchant to provide goods or services,
 - v) The Transaction Receipt does not bear the Cardholder's signature,
 - vi) The Transaction Receipt represents a sales Transaction for which Authorization was initially declined and was subsequently obtained by means of multiple Authorization attempts or other means not permitted hereunder,
 - vii) The Transaction Receipt fails to comply with the terms and conditions of the Agreement or fails to comply with the Credit Card Rules,
 - viii) The sales Transaction was completed under circumstances constituting a breach of the Agreement.

- c) **Excessive Activity.** Your presentation to Elavon of Excessive Activity will be a breach of the Agreement and cause for termination of the Agreement as set forth in Section B(15)(b)(ii)(3). "Excessive Activity" means, during any monthly period, and for any one of Merchant's terminal identification numbers or merchant identification numbers, Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of your sales Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of sales Transactions. You authorize, upon the occurrence of Excessive Activity, Member and Elavon to take additional actions as either of them may deem necessary including, without limitation, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with the TOS.
- d) **Credits.**
- i) **Credit Transaction Receipt.** You will issue a Credit Transaction Receipt, instead of issuing cash or a check, as a refund for any previous sales Transaction. Member will debit the DDA for the total face amount of each Credit Transaction Receipt submitted to Elavon. You will not submit a Credit Transaction Receipt relating to any Transaction Receipt not originally submitted to Elavon, nor will you submit a Credit Transaction Receipt that exceeds the amount of the original Transaction Receipt. You will, within the time period specified by applicable Laws or the Credit Card Rules, whichever time period is shorter, provide Elavon with a Credit Transaction Receipt for every return of goods or forgiveness of debt for services that was the subject of a previous sales Transaction in accordance with the Credit Card Rules.
 - ii) **Revocation of Credit.** Member or Elavon may, in their sole discretion, refuse to accept any Credit Transaction Receipt for processing.
 - iii) **Reprocessing.** You will not resubmit or reprocess any Transaction that has been charged back.
- e) **Fraud and Factoring.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a transaction directly between you and a Cardholder or any Transaction you know or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of fraudulent Transactions will be referred to law enforcement officials. You will not deposit any Transaction Receipt representing the refinancing of an existing obligation of a Cardholder. You agree that Elavon may, within its sole discretion, suspend the disbursement of funds from Transaction Receipt for any reasonable period of time required to investigate suspicious or unusual deposit activity. Elavon and Member will have no liability for any losses you may attribute to any suspension of funds disbursement.
- 25) **OTHER TYPES OF TRANSACTIONS.**
- a) **Mail Order/Telephone Order (MO/TO).** You may not solicit or accept MO/TO sales Transactions unless you have disclosed such method of sale to Elavon previously in writing. If you complete a MO/TO sales Transaction without having disclosed such method of sale previously in writing, you will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules, and you may have to pay a surcharge on each such Transaction. You understand that Transactions processed via MO/TO are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to MO/TO sales Transactions. You may be required to use an address verification service ("AVS") on MO/TO sales Transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a fraudulent Transaction. You will obtain the expiration date of the Credit Card for a MO/TO sales Transaction and submit the expiration date when requesting Authorization of the sales Transaction. For MO/TO sales Transactions, you will type or print legibly on the signature line of the Transaction Receipt the following applicable words or letters: telephone order or "TO," or mail order or "MO," as appropriate. Elavon recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by Cardholder for MO/TO sales Transactions.

b) Recurring Transactions.

- i) **Requirements.** For recurring Transactions (e.g., payment of insurance premiums or subscriptions), you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring Transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) a notice from Elavon or Member that authority to accept recurring Transactions has been revoked; or (iii) a response that the Payment Device is not to be honored. You must provide a subsequent order form to the Cardholder when a Recurring Transaction is renewed by the Cardholder. Merchant is responsible for ensuring its compliance with Laws with respect to recurring Transactions.
 - ii) **Limitations on the Resubmission of Recurring Transactions.** In some limited instances, you may resubmit a preauthorized recurring Transaction up to four (4) times within sixteen (16) calendar days of the original Authorization request, provided that the decline response is one of the following: (i) authorization denied; (ii) insufficient funds; (iii) exceeds approval amount limit; or (iv) exceeds withdrawal frequency.
 - iii) **Recurring Transaction Receipts.** You must print legibly on the Transaction Receipt the words "Recurring Transaction." You must obtain the Cardholder's signature, including an electronic signature or other similar authentication that is effective under Laws, on the Transaction Receipt. For an Electronic Commerce Transaction, you must also include the frequency and duration of the Recurring Transaction, as agreed to by the Cardholder, on the Transaction Receipt.
 - iv) **Electronic Commerce Recurring Transactions.** In addition to the above, for an Electronic Commerce Transaction, you must also provide a simple and easily accessible online cancellation procedure that complies with Laws, if the Cardholder's request for goods or services was initially accepted online.
 - v) **Recurring Transactions With Varying Amounts.** For Recurring Transactions of varying amounts, all of the following apply: (i) the order form must allow the Cardholder to specify a minimum and maximum Transaction amount to be charged, unless the Cardholder will be notified of the amount and date of each charge, as specified in the remainder of this section; (ii) you must inform the Cardholder of their right to receive, at least ten (10) calendar days prior to each scheduled Transaction Date, written notification of the amount and date of the next charge; and (iii) the Cardholder may choose to receive the notification in any of the following ways: (a) for every charge; (b) when the Transaction amount does not fall within the range of amounts specified on the order form; or (c) when the Transaction amount will differ from the most recent charge by more than an agreed upon amount. Merchant is responsible for ensuring that all communications with, and disclosures to, Cardholders comply with Laws.
- c) **Multiple Transaction Receipts.** You will include a description and total amount of goods and services purchased in a single sales Transaction on a single Transaction Receipt unless: (i) partial payment is entered on the Transaction Receipt and the balance of the Transaction amount is paid in cash or by check at the time of the sales Transaction; or (ii) a Transaction Receipt represents an advance deposit in a sales Transaction completed in accordance with the Agreement and the Credit Card Rules.
- d) **Deposits.**
- i) **Prior Consent.** You will not accept for payment by Credit Card any amount representing a deposit or partial payment for goods or services to be delivered in the future unless you have disclosed such method of sale to Elavon previously in writing. If you accept a Credit Card for payment or partial payment of goods or services to be delivered in the future without having disclosed such method of sale to Elavon previously in writing, you will be in breach of the

Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules.

- ii) **Acceptance.** If you have disclosed such method of sale to Elavon previously in writing, then you will complete such sales Transactions in accordance with the Agreement, Laws, and Credit Card Rules. Merchant must execute one Transaction Receipt when processing the deposit Transaction and a second Transaction Receipt upon processing the balance of the Transaction. You will note the words "deposit" or "balance" on the applicable Transaction Receipt, as appropriate. You will not deposit the Transaction Receipt labeled "balance" until the goods have been delivered to Cardholder or until you have fully performed the services.
- e) **Future Delivery.** You will not present any Transaction Receipt or Credit Transaction Receipt to Member or Elavon for processing (whether by electronic means or otherwise) that relates to the sale of goods or services for future delivery unless you have disclosed such method of sale to Elavon previously in writing and you have been approved by Elavon to submit such Transactions. If you have disclosed such method of sale to Elavon previously in writing, you represent and warrant to Member and Elavon that you will not rely on any proceeds or credit resulting from such sales Transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Transaction Receipts or other Credit Transaction Receipts in connection with future delivery sales Transactions or until you have fully performed the services.
- f) **Electronic Commerce.**
 - i) **Electronic Commerce.** You may not solicit or accept Electronic Commerce sales Transactions unless you have disclosed such method of sale to Elavon previously in writing, and you may process such Transactions only if the Transactions have been encrypted by a third party vendor acceptable to Elavon and Member. If you submit Electronic Commerce sales Transactions without having disclosed such method of sale to Elavon previously in writing, you will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and the Payment Network Regulations. You understand that sales Transactions processed via the Internet are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to Electronic Commerce Transactions, whether or not: (i) such Transactions have been encrypted; and (ii) you have obtained Elavon's consent to engage in such Transactions. Encryption is not a guarantee of payment and does not waive any provision of the TOS or otherwise validate a fraudulent Transaction. Elavon recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by the Cardholder for all Electronic Commerce sales Transactions. All communication costs and compliance with Laws related to Electronic Commerce Transactions will be your responsibility. You understand that Elavon will not manage the telecommunications link for Electronic Commerce Transactions and that it is your responsibility to manage that link. Merchant authorizes Elavon and Member, at Merchant's costs and expense, to perform an annual audit and examination of Merchant's website and a due diligence review as required by the Payment Network Regulations for Electronic Commerce Merchants.
 - ii) **Requirements.** For goods to be shipped on Electronic Commerce sales Transactions, you may obtain authorization up to seven (7) days prior to the shipment date. You need not obtain a second authorization if the Transaction Receipt amount is within fifteen percent (15%) of the authorized amount, provided the additional amount represents shipping costs. Further, your Web site must contain all of the following information: (a) complete description of the goods or services offered; (b) returned merchandise and refund policy; (c) customer service contacts, including electronic mail address and/or telephone number; (d) complete address (street address, city, state, zip code, and country) of the permanent establishment of the business; (e) complete address of the permanent establishment of the business on either the

checkout screen (which displays the total purchase amount) or within the sequence of Web pages presented to the Cardholder during the checkout process; (f) Transaction currency (such as U.S. or Canadian dollars); (g) export or legal restrictions, if known; (h) delivery policy; (i) customer data privacy policy; and (j) your method of Transaction security. If you store Cardholder account numbers, expiration dates, or other personal Cardholder data in a database, you must follow the applicable Payment Network rules on securing such data. You may not retain or store CVV2/CVC2 data after authorization for record keeping or additional authorization processing.

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

Section D - Acceptance of American Express, Discover, Diners or JCB

- 27) ACCEPTANCE OF AMERICAN EXPRESS, DISCOVER, DINERS, AND/OR JCB CARDS. If Elavon provides authorization and/or data capture services to Merchant for American Express, Discover, Diners, and/or JCB Transactions, Merchant agrees to the following provisions, in addition to the Definitions in Section (A) and the General Provisions of Section (B) above.
28) ACCESS. Upon request and fulfillment of the following conditions, Elavon will provide access to authorization and/or data capture services for American Express, Discover, Diners, and/or JCB Transactions to Merchants who have been approved by American Express, Discover, Diners, or JCB and who have entered into a separate agreement with American Express, Discover, Diners, or JCB, respectively; provided, however that neither Elavon nor Member shall be responsible for funding such Transactions.
29) FORWARDED INFORMATION. Elavon will forward certain information pertaining to Merchant, including, but not limited to, contact information and DDA numbers, to one or more of such Card Associations, unless Elavon receives from Merchant written instructions to the contrary.

IN WITNESS WHEREOF, the parties hereto have executed this TOS.

MERCHANT

By: [Signature]
Name: JOYA C. De FOOL
Title: CITY TREASURER

ELAVON, INC

By: [Signature]
Name: Timothy Miller
Title: [Signature]
Date: 9/21/08 ("Effective Date")

WACHOVIA BANK, NATIONAL ASSOCIATION

By: [Signature]
Name: Casey J Bowles
Title: V.P.

Elavon

City of Los Angeles, CA FINAL Gov't TOS for Compensating Balances (Wachovia v 04.03.08)05.22.08

SCHEDULE A
SCHEDULE OF FEES

SCHEDULE B

AFFILIATED ENTITIES

This Schedule B to the Terms of Service is dated as of this 24 day of September, 2008.

Merchant only, Tax ID Number 95-600735

Merchant, Tax ID Number _____

And the following affiliates:

Name Tax ID Number

Name	Tax ID Number
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

MERCHANT

By: [Signature]
Name: Jo/A C. De Foor
Title: CITY TREASURER

ELAVON, INC.

By: [Signature]
Name: Timothy Milla
Title: [Signature]

WACHOVIA BANK, NATIONAL ASSOCIATION

By: [Signature]
Name: Carey J. Bowles
Title: V.P.

SCHEDULE A - SCHEDULE OF FEES

I. ASSUMPTIONS / MERCHANT PROFILE

Legal Entity Name	City of Los Angeles, CA
Business Segment	Services- Government
Category Description	Government Services-Not Elsewhere Clas
MCC	9399
Multiple MCCs?	Yes (Reference Additional List)
Locations	150
Initial Contract Term (yrs)	5
Date Fees Last Updated	July 15, 2008

	Annual Volume	Average Ticket	Annual Transactions
VISA	\$ 120,000,000	\$ 88.00	1,363,636
MasterCard	\$ 30,000,000	\$ 88.00	340,909
Discover	\$ 10,000,000	\$ 88.00	113,636
American Express	\$ -	\$ -	0
JCB & Diners	\$ -	\$ -	0
PIN-Debit	\$ 20,000,000	\$ 88.00	227,273
EBT	\$ -	\$ -	0
Other	\$ -	\$ -	0
Total	\$ 180,000,000	\$ 88.00	2,045,455

II. ACCOUNT IMPLEMENTATION & MAINTENANCE FEES

	Merchant Fee	Application	Comments
Account Set-Up & Implementation Fee	waived	Per Relationship	
Application Fee	\$ 30.00	Per MID	Future Add-Location
Rush Fee	\$ -		
Monthly Statement Fee	\$ 2.00	Per MID	
Supply Fee	pass-through		
Terminal reprogram Fee (per unit)	\$ 20		
Onsite Training	\$ -		
Research Fee	\$ 75.00	Per Hour	
Other Fee	\$ 10.00	Per Unit	Pin-Pad Encryption

III. CARD PROCESSING FEES

Pricing Type: Pass-Through

All Visa, MasterCard, Discover, debit network switch, authorization and interchange fees, *assessments and dues are passed to Merchant at cost. Service Transaction processing fees include:

	Auth Fee (\$)	Settle Fee (\$)	Settle Fee (%)
Visa	\$ -	\$ 0.0700	0.0700%
MasterCard	\$ -	\$ 0.0700	0.0700%
PIN-Debit	\$ 0.4000	\$ -	0.0000%

* Assessments Per Item - Based on current Association charges, an additional cost will be added to the settlement fee to pass-through dues incurred from Visa (\$0.0085), MasterCard (\$0.005), and Discover (\$0.0075) processing.

Billing Method: Gross

Interchange and assessment fees will be assessed on all Visa, MasterCard, and Discover settled volume.

IV. AUTHORIZATION FEES - Services

Visa	\$ -	
MasterCard	\$ -	
Discover	\$ 0.0700	
American Express	\$ 0.0700	
Diners	\$ 0.0700	
JCB	\$ 0.0700	
EBT	\$ -	
Elavon Dial-up Authorization	\$ 0.0100	0.0000%
Other Card Type	\$ -	0.0000%
Voice (VRU) Authorization	\$ 0.65	
Voice Authorization with Address Verification	\$ 0.90	
Operator-Assist Authorization	\$ 1.25	
Bank Referral Authorization	\$ 4.00	

V. OTHER TRANSACTION FEES & SERVICES

Batch Header Fee	\$ -
Returned Item Fee	\$ 25.00
AVS Fee	\$ -
ACH Fee	\$ -
ACH Returned Item Fee	\$ -
FedWire Settlement (per day, where available)	\$ -
Chargeback Fee (per occurrence)	\$ 10.00
Monthly Minimum (per location)	\$ 20.00
Monthly Minimum Start Date	As boarded
Other Fee	N/A
DCC (Dynamic Currency Conversion)	\$ -
Set-Up Fee	\$ -
Rebate %	0.75%

Available Equipment - Continued

Additional Equipment/Software - Available to the City

Equipment Type	PURCHASE Price/Unit	Monthly Fee	Application
viaWARP Standard	\$ 1,499.00	\$ 10.00	Per Unit
viaWARP Deluxe	\$ 2,499.00	\$ 10.00	Per Unit
VeriFone P900 Printer	\$ 299.00	\$ -	Per Unit
RDM6111f Check Imager	\$ 599.00	\$ -	Per Unit
Hypercom T4210	\$ 749.00	\$ -	Per Unit
Hypercom T4220IP	\$ 749.00	\$ -	Per Unit
RDM6014f Check Imager	\$ 599.00	\$ -	Per Unit
VeriFone Vx510LE	\$ 599.00	\$ -	Per Unit
VeriFone Vx570 Dial	\$ 699.00	\$ -	Per Unit
VeriFone Vx570IP	\$ 749.00	\$ -	Per Unit
VeriFone Vx610	\$ 1,099.00	\$ 19.00	Per Unit
RDM Synergy	\$ 799.00		Per Unit
Hypercom P1300 Pinpad	\$ 139.00		Per Unit

Notes: 1) Shipping and handling fees are included in the equipment price. 2) All newly purchased equipment from Servicer is warranted for one year from date of purchase. Servicer will replace defective equipment with like equipment free of charge. Merchant will pay a \$35/unit swap fee for the shipping and handling of the replacement equipment. After the first year, merchant will be quoted a new equipment cost based on market pricing. 3) Merchant owned equipment is not warranted by Servicer, but Merchant may purchase new equipment at market pricing from Servicer. 4) See additional pricing sheet as needed. 5) viaWarp and VirtualMerchant monthly fees are per-location. 6) VirtualMerchant is capped at \$1,999 for all locations implemented during initial implementation phase. Future locations are \$299

MERCHANT ACKNOWLEDGEMENT

Signature: Jaya C. DeFoor

Name: Jaya C. DeFoor

Title: CITY TREASURER

**PIN-Based, Debit Card Addendum
to the Terms of Service**

This PIN-Based, Debit Card Addendum to the Terms of Service is entered into as of the Effective Date by and among City of LA, CA ("Merchant"), Elavon, Inc. ("Servicer") and Member. Merchant, Servicer and Member may be referred to collectively herein as the "Parties."

WHEREAS, Merchant, Servicer and Member are parties to that certain Terms of Service ("TOS") dated September 24, 2008; and

WHEREAS, pursuant to the TOS, the terms and conditions for the acceptance of any additional Payment Devices shall be set forth in one or more addenda, which shall incorporate the TOS by reference; and

WHEREAS, Merchant has requested that Servicer and Member provide to Merchant PIN-based, Debit Card Transaction processing services;

WHEREAS, the Parties maintain that it is their interest to enter this Addendum regarding Merchant's utilization of those services.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual promises of the Parties hereinafter set forth, and intending to be legally bound hereby, the Parties hereto covenant and agree as follows:

Section A – Definitions

1) Additional Definitions.

- a. **Addendum:** This PIN-Based, Debit Card Addendum and all additions to, amendments, and modifications of, and all replacements to the Addendum, as applicable.
- b. **Debit Card:** Any PIN-based, Debit Card.
- c. **Effective Date:** The date set forth in the signature block herein.
- d. **EFT Networks:** (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE EFT Association, 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 Servicer and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
- e. **PED:** A Pin Entry Device that is used by the Cardholder to enter a PIN that identifies a Cardholder in an Authorization request originating at a terminal with electronic capability.
- f. **PIN:** A Personal Identification Number.
- g. **PIN Pad:** A secure device with an alphanumeric keyboard which conforms with the Debit Card Rules and the PCI Data Security Standard, and requirements established from time to time by Servicer, and through which a Cardholder may enter a PIN.
- h. **POS Device:** A terminal, software, or other point-of-sale device at a Merchant location that incorporates: (i) a Track 2 Magnetic Stripe Reader; (ii) communicates electronically, directly or indirectly, with the Servicer's Debit System; (iii) uses a receipt printer capable of providing a receipt conforming to the Debit Card Rules and Regulation E; (iv) uses a journal printer, journaling facility or terminal-generated receipt; (v) uses an encrypted alphanumeric PIN Pad; and (vi) uses a keyboard that can perform actions, functions and data entry. POS

Device also includes a Pin Entry Device (PED) that is used by the Cardholder to enter a PIN that identifies a Cardholder in an Authorization request originating at a terminal with electronic capability.

- i. **Servicer Debit System:** Servicer's electronic Debit Card Transaction processing system for provision of Debit Card authorization, data capture, and settlement services.
- 2) **Rules of Construction.** Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the TOS. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words "hereof," "herein," and "hereunder," and words of similar import when used in the TOS or this Addendum shall refer to the TOS or this Addendum as applicable and not to any particular provision of the TOS or Addendum. The word "day" shall mean "calendar day", unless specifically stated otherwise. This Addendum incorporates the TOS by reference as if it were fully set forth herein. In the event of a conflict between the terms of this Addendum and the TOS, the terms of this Addendum shall prevail.

Section B – Acceptance of PIN-Based, Debit Cards

- 3) **Debit Card Rules.** Merchant shall comply with and be bound by the Debit Card Rules, which are incorporated by this reference as if fully set forth herein.
- 4) **Debit Card Transaction Fees.** Fees for Debit Card Transactions are set forth in the Schedule A, Schedule of Fees attached hereto or on the Schedule A, Schedule of Fees attached to your TOS, including Authorization, Interchange and access fees, as defined by the EFT Networks.
- 5) **Display Of Debit Card Marks.** Unless otherwise informed by Servicer, Merchant shall prominently display the most current versions of the EFT Network's names, symbols, and/or service marks, as appropriate, at or near the POS Device and may display such marks on promotional materials to inform the public that such Debit Cards will be honored at Merchant's place(s) of business. Merchant's use of such marks must comply with the requirements of each mark's owner. Merchant's right to use or display such marks shall continue only long as the Agreement remains in effect and such right shall automatically terminate upon termination of the Agreement, and Merchant must remove the marks immediately upon termination.
- 6) **Use And Availability Of POS Devices And Pin Pads.**
 - a. A Cardholder's Debit Card information and PIN are confidential. The Merchant may not request or require a Cardholder to disclose his or her PIN at any point during a Transaction.
 - b. During the Transaction process, the Merchant must provide a reasonably secure area for Cardholders to enter their PIN into the PIN Pad.
 - c. Merchant shall cause a POS Device and PIN Pad to be readily available for the use of all Cardholders at all of Merchant's business locations where Debit Cards are accepted. Merchant shall take all reasonable steps to ensure that all POS Devices and PIN Pads operated at Merchant's business locations function with a minimum of error, in a reliable manner, and in accordance with the standards established from time to time by Servicer and the EFT Networks.
 - d. Merchant shall use a POS Device to initiate every Debit Card Transaction, and Merchant shall require that either the Cardholder or the Merchant insert and "swipe" the Debit Card through the POS Device to initiate every Debit Card Transaction, except as set forth herein. No Debit Card Transaction may be initiated unless the Debit Card is physically present.
 - e. Merchant shall require that each Debit Cardholder enter his or her PIN utilizing a PIN Pad at the POS Device when initiating a Debit Card Transaction. Merchant may not require a Debit Cardholder to sign a Transaction Receipt or other receipt, or require any other means of identification.
- 7) **No Minimum Or Maximum.** Merchant shall not establish minimum or maximum Debit Card Transaction amounts except to establish a maximum cash back dollar amount not to exceed \$200.00.
- 8) **Surcharges.** Merchant may not add any amount to the posted price of goods or services Merchant

offers as a condition of paying with a Debit Card unless permitted by all of the applicable Debit Card Rules.

- 9) **Pre-Authorization Requests.** Merchant may initiate pre-authorization requests pursuant to the following procedures:
- a. The Cardholder must enter the PIN on the PIN Pad.
 - b. The Debit Card must be inserted and "swiped" through the POS Device.
 - c. The pre-authorization request must be for a specific dollar amount. The subsequent purchase pre-authorized hereunder must be completed within two (2) hours after the original pre-authorization request.
 - d. Funds shall not be transferred with respect to a pre-authorization request.
 - e. In order to complete the subsequent purchase pre-authorization, Merchant shall transmit a completion message indicating the actual dollar amount of the Debit Card Transaction, and shall comply with all requirements of a purchase Debit Card Transaction, at that time, except that entry of a PIN and "swiping" of a Debit Card is not required to complete the subsequent purchase if these steps were properly taken in order to pre-authorize such purchase. Such subsequent purchase shall not be authorized or completed unless the actual dollar amount of the purchase is less than or equal to the amount specified in the pre-authorization request.
 - f. If Merchant initiates pre-authorization requests, it shall support the processing of partial pre-authorizations.
- 10) **Debit Card Transactions.**
- a. Merchant shall support the following Debit Card Transactions:
 - i. Purchases, and
 - ii. Merchandise credits.
 - b. Merchant may also support the following Debit Card Transactions if supported by the applicable EFT Network:
 - i. Purchase with cashback, and
 - ii. Balance inquiries.
 - c. **Prohibited Transactions.** Merchant shall initiate Transactions only for products or services approved by Servicer. In no event shall Merchant initiate, allow, or facilitate a gambling or gaming transaction, or fund a stored value account for such purposes.
- 11) **Transaction Receipt Requirements.** At the time of any Debit Card Transaction (other than a balance inquiry or pre-authorization request), Merchant shall make available to each Cardholder a Transaction Receipt that complies fully with all Laws and containing, at a minimum, the following information:
- a. Amount of the Debit Card Transaction;
 - b. Date and local time of the Debit Card Transaction;
 - c. Type of Transaction;
 - d. If during the Debit Card Transaction the Cardholder is prompted to select the type of account used, then the type of account accessed must be displayed on the Transaction Receipt;
 - e. Truncated Debit Card number (showing the final four (4) digits);
 - f. Merchant's name and location at which the Debit Card Transaction was initiated; and
 - g. Trace or retrieval reference number.
- 12) **Merchandise Returns.** Merchant may electronically perform a merchandise return (if permitted by the applicable EFT Network) for a Debit Card Transaction only at the same Merchant named on the Transaction Receipt where the original Debit Card Transaction was initiated. If permitted, a merchandise return requires the following procedures:
- a. The Cardholder must re-enter the PIN on the PIN Pad,
 - b. The Debit Card must be inserted and "swiped" through the POS Device, and
 - c. Merchant must transmit the reference number or authorization number and the exact dollar amount of the Debit Card Transaction to be returned.
- 13) **Balance Inquiries.** Merchant may accommodate balance inquiries if the applicable EFT Network and

the Issuer support the balance inquiry function, provided that the Merchant requires that the Cardholder enter their PIN on the PIN Pad and insert and "swipe" the Debit Card through the POS Device.

- 14) **Purchase With Cash Back.** Merchant may offer purchase with cash back Transactions pursuant to the following procedures:
 - a. For each purchase with cash back, Merchant shall transmit in its Transaction message the amount of cash given to the Cardholder (if permitted by Servicer's Debit System).
 - b. If a request for Authorization of a purchase with cash back is denied solely because the cash requested exceeds the Debit Card Issuer's limit on cash withdrawals, Merchant shall inform the Cardholder of the reason for the denial and that a new purchase Transaction in the amount of the purchase alone might be approved.
 - c. The amount of cash back may be limited by the EFT Networks or Issuer.
- 15) **Technical Problems.** Merchant shall ask a Cardholder to use an alternative means of payment if the Servicer Debit System, the POS Device, or the PIN Pad is inoperative, the electronic interface with any EFT Network is inoperative, or the magnetic stripe on a Debit Card is unreadable, and Merchant elects not to or is unable to store Debit Card Transactions.
- 16) **Adjustment.** A Debit Card Transaction may be adjusted if an error is discovered during Merchant's end-of-day balancing only by means of a written request from Merchant to Servicer. The request for adjustment must reference a settled Debit Card Transaction that is partially or completely erroneous or a denied pre-authorize Transaction for which the pre-authorization request was approved. An adjustment must be completed within forty-five (45) days after the date of the original Debit Card Transaction.
- 17) **Termination/Suspension.** When requested by any EFT Network in its sole discretion, Merchant will immediately take action to: (i) eliminate any fraudulent or improper Transactions; (ii) suspend the processing of Debit Card Transactions; or (iii) entirely discontinue acceptance of Debit Card Transactions.
- 18) **TOS.** Except as supplemented herein, the TOS remains unaltered and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the effective date below.

MERCHANT

By: Joya C. DeFoor
 Name: Joya C. DeFoor
 Title: CITY TREASURER

ELAVON, INC.

By: [Signature]
 Name: Timothy Miller
 Title: PRINT
 Effective Date: 9/22/12

MEMBER

By: [Signature]
 Name: Carey T Bowles
 Title: PRINT V.P.

Bill Payment Addendum to the Terms of Service

This Bill Payment Addendum to the Terms of Service is entered into as of the Effective Date by and among City of LA, CA, Elavon, Inc. and Member. Merchant, Elavon and Member may be referred to collectively herein as the "Parties."

WHEREAS, Merchant, Elavon and Member are parties to that certain Terms of Service ("TOS") dated September 24, 2008; and

WHEREAS, pursuant to the TOS, the terms and conditions for the acceptance of any additional Payment Devices shall be set forth in one or more addenda, which shall incorporate the TOS by reference; and

WHEREAS, Merchant has requested that Elavon and Member provide to Merchant Bill Payment Transaction processing services;

WHEREAS, the Parties maintain that it is their interest to enter this Addendum regarding Merchant's utilization of those services.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual promises of the Parties hereinafter set forth, and intending to be legally bound hereby, the Parties hereto covenant and agree as follows:

Section A – Definitions**1) Additional Definitions.**

- a. **Addendum:** This Bill Payment Addendum and all additions to, amendments, and modifications of, and all replacements to the Addendum, as applicable.
 - b. **Bill Payment.** PIN-less Debit Card payment Transactions resulting in funds transfer from Cardholders to Merchants in connection with payments for recurring services (excluding casual or occasional purchases) for which a corresponding invoice is periodically presented to the Cardholder by the Merchant, and which Transaction is initiated via a telephone (Voice Recognition Unit, Interactive Voice Recognition) or Internet device.
 - c. **Effective Date:** The date set forth in the signature block herein.
 - d. **EFT Networks:** (i) STAR Network Inc., NYCE, Accel, and Pulse; and (ii) any other organization or association that hereafter authorizes the Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
 - e. **Elavon Debit System:** Elavon's electronic Debit Card Transaction processing system for provision of Debit Card authorization, data capture, and settlement services.
 - f. **Internet Payment Screen.** The screen displayed to a Cardholder during an Internet Bill Payment Transaction payment process which allows the Cardholder to select the payment method and to confirm understanding and agreement with payment terms, shipping and return policy.
- 2) **Rules of Construction.** Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the TOS. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words "hereof," "herein," and "hereunder," and words of similar import when used in the TOS or this Addendum shall refer to the TOS or this Addendum as applicable and not to any particular provision of the TOS or

Addendum. The word "day" shall mean "calendar day", unless specifically stated otherwise. This Addendum incorporates the TOS by reference as if it were fully set forth herein. In the event of a conflict between the terms of this Addendum and the TOS, the terms of this Addendum shall prevail.

Section B – Acceptance of Bill Payment Debit Cards

- 3) **Debit Card Rules.** Merchant shall comply with and be bound by the Debit Card Rules, which are incorporated by this reference as if fully set forth herein.
- 4) **Bill Payment Transaction Fees.** Fees for Bill Payment Transactions are set forth in the attached Schedule A, Schedule of Fees.
- 5) **Display Of Debit Card Marks.** Unless otherwise informed by Elavon, Merchant shall prominently display the most current versions of the EFT Network's names, symbols, and/or service marks, as appropriate, on the Internet Payment Screen or utilize them in its telephone script messages, and may display such marks on promotional materials to inform the public that such Debit Cards will be honored at Merchant's place(s) of business. Merchant's use of such marks must comply with the requirements of each mark's owner. Merchant's right to use or display such marks shall continue only long as the Agreement remains in effect and such right shall automatically terminate upon termination of the Agreement.
- 6) **Authentication.** Prior to entering into a Bill Payment Transaction, Merchant must authenticate the Cardholder using information that is not commonly known, but is only known by the Cardholder and Merchant, such as the Cardholder's account number with Merchant or information present on the Cardholder's hard copy bill from Merchant. Merchant must submit its authentication procedures to Elavon for approval by the appropriate EFT Networks, and Merchant warrants that it will follow such authentication procedures for each Bill Payment Transaction. The use of an authentication procedure, or the approval of such procedure by an EFT Network, is not a guarantee of payment, and Merchant remains liable for any Chargebacks resulting from any Bill Payment Transactions.
- 7) **No Minimum Or Maximum.** Merchant shall not establish minimum or maximum Bill Payment Transaction amounts. Merchant must accept Bill Payment Transactions on terms no less favorable than the terms under which Merchant accepts other Payment Devices.
- 8) **Convenience Fees.** Merchant may not add any amount to the posted price of goods or services Merchant offers as a condition of paying with a Debit Card unless permitted by all of the applicable Debit Card Rules.
- 9) **Purchases Only.** Merchant shall support Bill Payment Transactions involving purchases only. Merchant may not initiate a Debit Card Transaction or a Credit Card Transaction for returns or refunds, and must utilize other payment avenues (such as cash, check, or invoice adjustment) to return funds to a Cardholder.
- 10) **Prohibited Transactions.** Merchant shall initiate Transactions only for services approved by Elavon. In no event shall Merchant initiate, allow, or facilitate a gambling or gaming transaction, or fund a stored value account for such purposes.
- 11) **Internet Transaction Receipt Requirements.** At the time of any Internet Bill Payment Transaction, Merchant shall make available to each Cardholder a Transaction Receipt (printable from a screen or via e-mail) that complies fully with all Laws and containing, at a minimum, the following information:
 - a. Amount of the Bill Payment Transaction, or if a convenience fee applies, the amount debited from the Cardholder's account (exclusive of the convenience fee, shipping, handling and other fees), and the amount debited from the Cardholder's account (inclusive of the fees);
 - b. Date and local time of the Bill Payment Transaction;

- c. Type of Transaction;
 - d. Type of account accessed;
 - e. Truncated Debit Card number (showing the final four (4) digits);
 - f. Trace or retrieval number;
 - g. Merchant name;
 - h. Merchant ID;
 - i. Merchant's web site home page URL;
 - j. Promised shipment time period (for Internet Transactions which involve shipment of goods);
 - k. Cardholder's name;
 - l. Authorization code;
 - m. Description of the bill payment;
 - n. Customer service contact; and
 - o. Fees imposed by the Merchant on the Cardholder, including shipping and handling fees, taxes, and convenience fees, as applicable.
- 12) **Additional Internet Requirements.**
- a. **Internet Payment Screen and Sales Policy.** Merchant must prominently display on the Internet Payment Screen the Merchant's name, telephone number, city and state. Merchant must also obtain explicit confirmation that the Cardholder understands and agrees that the funds will be immediately debited from their account upon approval of the Transaction, before submission of the Bill Payment Transaction. Merchant must display a clearly visible and conspicuous notice on the Internet Payment Screen of the imposition of any convenience fee or the payment of a rebate for a Bill Pay Transaction prior to submitting the payment request from the Cardholder. Such notice must include: (i) a heading of "Fee Notice" in at least 14-point type; (ii) text in at least 10-point type; and (iii) the amount of the convenience fee or rebate and the name of the party imposing the convenience fee or the Merchant that receives the convenience fee.
 - b. **Communication and Encryption.** Merchant must participate in an approved authentication program as designated by the EFT Networks. All authentication information must be encrypted upon entry into the Internet device and must never leave the Internet device in cleartext form. The Internet device used by Merchant must meet or exceed the minimum communication and encryption protocol set forth by the EFT Networks.
- 13) **Telephone Transaction Requirements.** At the time of a telephone Bill Payment Transaction, Merchant shall provide each Cardholder with Transaction information that complies fully with all Laws and containing, at a minimum, the following information:
- a. Approval or denial of the Bill Payment Transaction,
 - b. Amount of the Bill Payment Transaction, or if a convenience fee applies, the amount debited from the Cardholder's account (exclusive of the convenience fee, shipping, handling and other fees), and the amount debited from the Cardholder's account (inclusive of the fees);
 - c. Trace number;
 - d. Authorization code or confirmation number;
 - e. Customer service contact; and
 - f. Fees imposed by the Merchant on the Cardholder, including shipping and handling fees, taxes, and convenience fees, as applicable.
- 14) **Technical Problems.** Merchant shall ask a Cardholder to use an alternative means of payment if the Elavon Debit System or the electronic interface with any EFT Network is inoperative.

- 15) **Adjustment.** A Bill Payment Transaction may be adjusted if an error is discovered during Merchant's end-of-day balancing only by means of a written request from Merchant to Elavon. The request for adjustment must reference a settled Bill Payment Transaction that is partially or completely erroneous or a denied pre-authorize Transaction for which the pre-authorization request was approved. An adjustment must be completed within forty-five (45) days after the date of the original Bill Payment Transaction.
- 16) **Merchant Warranty.** In order to accept Bill Payment Transactions, Merchant warrants that it is: (i) a municipal, state or other public utility system operated for the manufacture, production, or sale of electricity, natural or artificial gas, water or waste collection; (ii) an insurance service provider that is licensed by a state to sell property, casualty, life and health insurance policies and that the Transaction involves the payment of premiums on such policies; (iii) a public or private provider of telecommunications services, including telephone, cellular, digital and cable services, which is licensed and governed by any federal, state or municipal authority; (iv) a public or private provider of cable or satellite media services, which is regulated by the Federal Communications Commission or any other federal, state or municipal authority, or (v) any other acceptable Merchant type, or covered under a pilot program approved by, the EFT Networks.
- 17) **Termination/Suspension of Bill Payment.** When requested by any EFT Network in its sole discretion, Merchant will immediately take action to: (i) eliminate any fraudulent or improper Transactions, (ii) suspend the processing of Bill Payment Transactions; or (iii) entirely discontinue acceptance of Bill Payment Transactions.
- 18) **Indemnification.** Merchant shall indemnify, defend and hold harmless Elavon and Member from and against all claims, losses, costs, damages, liabilities or expenses (including reasonable attorney's fees) that are suffered as a result of a Bill Payment Transaction.
- 19) Except as supplemented herein, the TOS remains unaltered and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum.

MERCHANT

By: Joya C. De Feor
 Name: JOYA C. DE FEOR
 Title: CITY TREASURER

PRINT

ELAVON, INC.

By: [Signature]
 Name: Timothy Miller
 Title: SVP
 Date: 9/21/08
 ("Effective Date")

PRINT

MEMBER

By: [Signature]
 Name: Cary J Bowles
 Title: V.P.

PRINT



SCHEDULE A
SCHEDULE OF FEES

Dynamic Currency Conversion Addendum to the Terms of Service

This Dynamic Currency Conversion Addendum to the Terms of Service is entered into as of the Effective Date by and among City of LA, CA, Elavon, Inc. and Member. Merchant, Elavon and Member may be referred to collectively herein as the "Parties".

WHEREAS, Merchant, Elavon and Member are parties to that certain Terms of Service ("TOS") dated September 24, 2008; and

WHEREAS, pursuant to the TOS, the terms and conditions for the acceptance of any additional Payment Device services shall be set forth in one or more addenda, which shall incorporate the TOS by reference; and

WHEREAS, Merchant has requested that Elavon and Member provide to Merchant Dynamic Currency Conversion ("DCC");

WHEREAS, the Parties maintain that it is their interest to enter this Addendum regarding Merchant's utilization of those services.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual promises of the Parties hereinafter set forth, and intending to be legally bound hereby, the Parties hereto covenant and agree as follows:

- 1) **Rules of Construction.** Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the TOS or the DCC MOG that is a part of this Addendum. 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, DCC MOG, or this Addendum shall refer to the TOS, DCC MOG, or this Addendum as applicable and not to any particular provision of the TOS, DCC MOG, or Addendum. The word "day" shall mean "calendar day", unless specifically stated otherwise. This Addendum incorporates the TOS and the DCC MOG by reference as if they were fully set forth herein. In the event of a conflict between the terms of this Addendum, the DCC MOG and the TOS, the terms of this Addendum shall prevail.
- 2) **Additional Definitions.**
 1. **Transaction Currency:** The international Cardholder's local currency in a DCC Transaction.
 2. **Express Service Transaction:** A unique Transaction agreement that is required for an eligible T&E Merchant in those limited situations where a Cardholder authorizes a hotel, lodging or car rental Transaction in advance and chooses to retain their express service options.
- 3) **DCC Included Under the Addendum.** Dynamic Currency Conversion is a service that allows a merchant to offer international Cardholders the option to pay in their local currency rather than U.S. Dollars at the point-of-sale.
- 4) **DCC Fees and Rebates.** The DCC Enrollment Fee is \$ Ø and the DCC Rebate is 0.75% of eligible Transactions.
- 5) **Merchant Responsibilities and Restrictions.**
 1. You have sole responsibility to comply with the Laws and Payment Network Regulations governing DCC Transactions including all of the following:
 - a.) You must inform the Cardholder that the DCC Transaction is optional and that the Cardholder does not need to do anything additional to have the transaction processed in their local currency. The Cardholder must expressly

agree to the DCC Transaction. You are prohibited from using any customer service procedure or contractual language that creates a DCC Transaction for the Cardholder by default.

- b.) You are prohibited from converting a DCC Transaction in U.S. currency into an amount in a Cardholder's local billing currency, after the transaction has been completed but not yet entered into Interchange.
- 2. Merchant may be terminated for failure to comply with this Addendum and the Agreement.
- 3. Except as supplemented herein, the TOS remains unaltered and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum.

MERCHANT

By: *Soya C. De Foor*
 Name: *Soya C. De Foor*
 Title: *CITY TREASURER*
PRINT

ELAVON, INC

By: *[Signature]*
 Name: *Timothy Miller*
 Title: *SUP*
PRINT
 Date: *9/22/08*
 ("Effective Date")

MEMBER

By: *Carey J Bowles*
 Name: *Carey J Bowles*
 Title: *V.P.*
PRINT

Merchant Application (Large Relationships)

USA

Date: (mm/dd/yyyy) 9/18/2008	Sales/CE Name: Jeremy Krahl	Phone Number: (865) 693-1231	Ext. 	Sales Rep Code: 19090	Sales Channel: Wachovia
Client Group: 19	Parent Entity: 40085	FI #:	Bank Number: 3851	Agent Number:	Lead Referral #: A011277

Merchant (as described in the Terms of Service): City of Los Angeles, CA	Primary Website: www.lacity.org
Contact: Crista Binder	Phone Number: (213) 978-1709 Ext.
Address: 200 North Spring Street Use a Physical Street Address - NO PO BOX	
Address2: 2nd Floor	Federal Tax ID: 95-6000735
City: Los Angeles	Incorporation Data: State CA Year 1781
State: CA Zip Code: 90012-	

When any affiliated entities will be covered by the attached Terms of Service, enter the entity name(s) and Federal Tax ID(s) on the attached Schedule B.

<input type="checkbox"/> Public Corporation	<input type="checkbox"/> Closely Held Corp	<input type="checkbox"/> Sub S Corp	<input type="checkbox"/> Sole Proprietor
<input type="checkbox"/> General Partnership	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Limited Liability Company	
<input checked="" type="checkbox"/> Government	<input type="checkbox"/> Transit Authority	<input type="checkbox"/> Utility	<input type="checkbox"/> Public/Private Consortium
<input type="checkbox"/> College/University	<input type="checkbox"/> Health Care	<input type="checkbox"/> Religious	<input type="checkbox"/> Non-Profit Charitable or Social
Mark all that apply <input type="checkbox"/> Other (Assn/Estate/Trust)			

Tax Exempt: NO YES (if YES, State Tax Exempt documentation will be required for each Entity and State where a location processes)

The financial statements provided by Merchant must be in the name of the entity identified above.
If the financial statements are in the name of another entity, then additional underwriting requirements will apply.

Financials: Publicly Traded (Symbol) Government/Institutional Organization (if online, provide website:)
 Private (3rd Party Audited required) Bank Provided

Please enter the Annual Volumes as a total of all locations and the Average Ticket as an average of all locations. Individual location volume data will be collected separately.

Annual Volume: \$150,000,000	Annual Volume: \$0	Annual Volume: \$20,000,000	Average Ticket: \$88
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Description of Product/Services - please be specific:
Various Government Services - Finance, Fire, Zoo, Convention Center, Taxes, Fees, Fines, Permits, Parks/Rec, Transportation, Public Works, Other.

Processing Services: Visa Discover Pin Debit Electronic Check Service Quick Pay Contactless
 MasterCard AMEX DCC Electronic Gift Card EBT Recurring/Installment

Processing Environments(s): Retail 30% Restaurant 0% Lodging 0% Pay at Pump 0%
 Mail Order 30% Telephone Order 20% Supermarket 0%
 Internet 20% Transactions accepted through a website requires that specific security/policy requirements be met in order to process.

Networks: Elavon Other: TSYS

Point of Sale Solution(s): Terminals - Various Elavon Software - VirtualMerchant VAR - Cybersource, Trust Commerce, Rita, others.
(mark all that apply) Elavon Certified: YES Cert Pending NO (List Other Network)

Registrations Required: Pin Less Debit Utility - VISA and MasterCard VISA Large Ticket VISA Tax Registration
(These are completed by individual location) NOTE - VISA registrations can take 45 days Fee is described on the attached Schedule A

(Checking Accounts only) Submission of bank documentation is required for all DDAs submitted, and we may confirm any data directly with the bank.

Primary Bank: (locations may be different) Wachovia	Primary Bank Contact Name: Corrie Bowman	Primary Bank Contact Phone: (213) 473-3046
Primary ABA/Routing # for ACH:	Primary DDA Account # for ACH: 2000044055763	DDA Documentation (one required): <input checked="" type="checkbox"/> Bank Letter // <input type="checkbox"/> Voided Check
		ACH Debit Blocking: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES

By signing below, the applicant merchant ("Merchant") and its authorized representative represent and warrant to Elavon, Inc. and Member that (i) all information provided in or with this merchant application ("Merchant Application") is true and complete and properly reflects the business and financial condition of Merchant, and (ii) the person signing this Merchant Application is duly authorized to bind Merchant to all provisions of the Agreement including the Terms of Service.

MERCHANT

By: Joya C. DeFoor Date: 9/24/2008
Name: Joya C. DeFoor Title: CITY TREASURER
PRINT PRINT

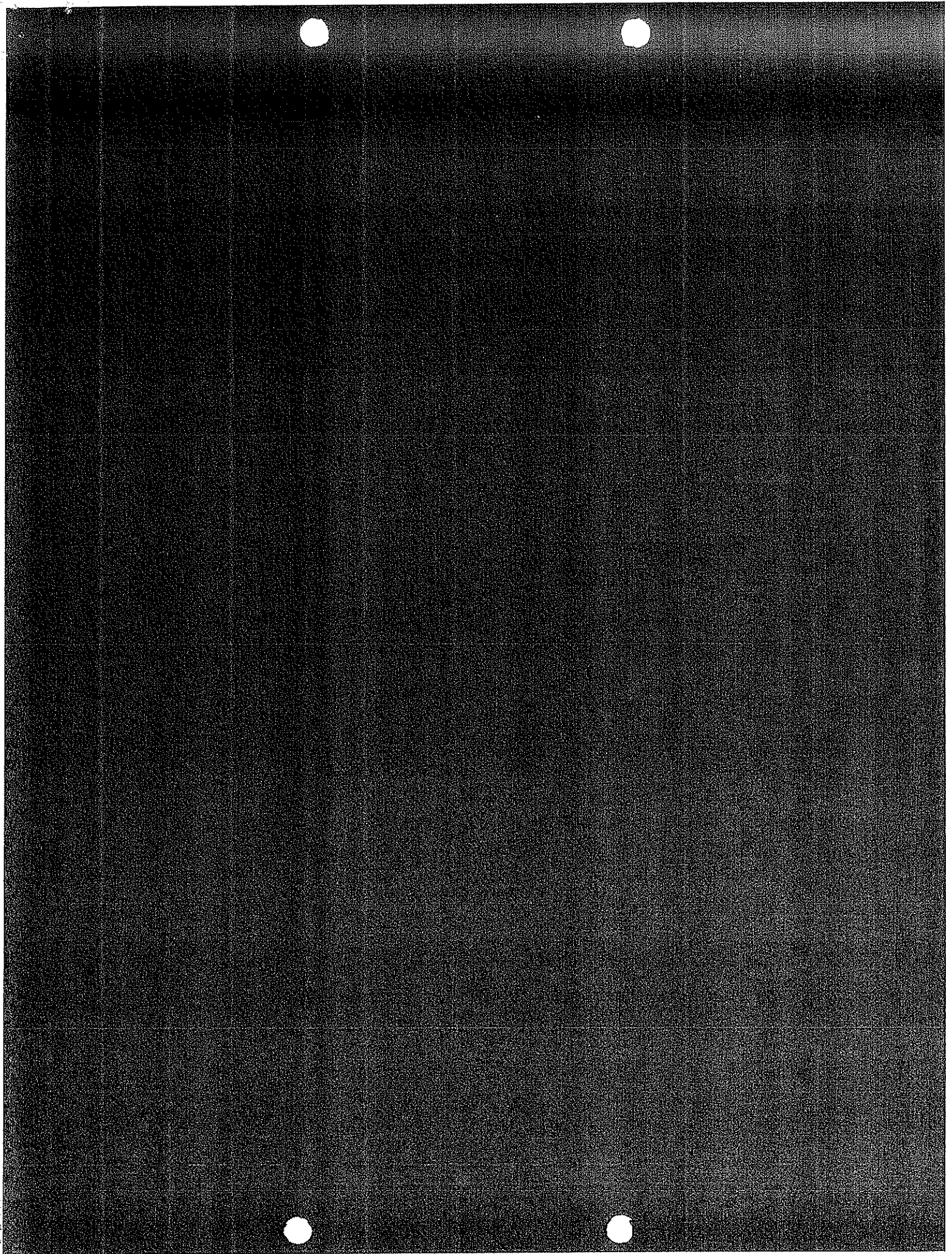
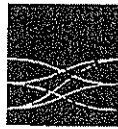


Exhibit E

**Deposit Agreement and Disclosures for Commercial
Accounts**

DEPOSIT AGREEMENT AND DISCLOSURES FOR COMMERCIAL ACCOUNTS

EFFECTIVE OCTOBER 12, 2007



WACHOVIA

No todos los documentos necesarios para abrir cuentas y darle mantenimiento a las mismas, están disponibles en Español. Para asistencia en Español, por favor llame al 800-326-8977.

INTRODUCTION

Welcome to Wachovia. Thank you for banking with us. This Deposit Account Agreement ("Agreement") contains the following important sections:

- I. DEPOSIT ACCOUNT AGREEMENT**
- II. SPECIAL TERMS AND CONDITIONS FOR WIRE TRANSFERS**
- III. SPECIAL TERMS AND CONDITIONS FOR AUTOMATED CLEARING HOUSE (ACH) TRANSACTIONS**

Please **READ** and **RETAIN** this Agreement so that you can refer to it whenever you have a question about your account. If you have any questions after reading this Agreement, we will be happy to answer them. You may obtain an additional copy at any Wachovia Financial Center or by calling 800-222-3862.

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I. DEPOSIT ACCOUNT AGREEMENT

1. LEGAL EFFECT OF AGREEMENT. This Agreement governs all commercial deposit accounts established with Wachovia Bank, National Association and supercedes any previous deposit agreement. The words "you," "your" and "yours" as used in this Agreement mean the person, partnership, corporation, association, limited liability company or other entity that maintains one or more deposit accounts with us including, but not limited to, all owners and signers on the account. The words "we," "us," "our," and "Bank" as used in this Agreement mean the Wachovia Bank in the state where we maintain your account. When you open, use and/or maintain an account with us, you are agreeing to the terms of this Agreement, including the fees and charges listed in the Schedule of Fees and Funds Availability for Commercial Accounts disclosure which is incorporated herein by reference. This Agreement, the Schedule of Fees and Funds Availability for Commercial Accounts and the Signature Card comprise our legally binding contract with you. For purposes of this Agreement, "Signature Card" refers to the Deposit Account Application or any other account opening documents that you completed when establishing your account. Our deposit relationship with you is that of debtor and creditor, and you agree that we are not in any way acting as a fiduciary for you or for your benefit. Depending on the context in which it is used, the term "item" means a check, draft or other written order or instruction for the payment of money or a point-of-sale authorization request, ATM withdrawal, ACH entry or other electronic transaction.

2. SCOPE OF AGREEMENT. This Agreement only applies to business accounts. Business accounts are those accounts established by a partnership, corporation, association, limited liability company or other entity operated on a for-profit basis; a corporation or an association operated on a not-for-profit basis; a governmental unit; and an individual who intends to use the account for carrying on a trade or business (hereinafter collectively referred to as "business"). The classification and form of ownership of a business account are as designated on the Signature Card for an account and we may rely on those designations for all purposes relating to such account.

The business and each person who signs the Signature Card, any resolution or any other separate written authorization concerning an account, represents to and agrees with us that, (a) the business has taken all actions necessary to open and maintain the account, (b) all resolutions or other authorizations given to us by or on behalf of the business are true, accurate and complete in all respects, (c) all assumed or fictitious names used by the business have been duly registered or filed with the applicable governmental authorities, and (d) each person whose name is written or printed on the Signature Card, any resolution or any other separate written authorization concerning the account has complete authority to bind the business in all transactions involving any account.

The business agrees to notify us promptly in writing of any change in its form of organization or ownership or in the authority of any person with respect to the account or any transactions relating to it. We also reserve the right to require a partnership, corporation or other legal entity to give separate written authorization telling us who is authorized to act on its behalf. We may conclusively rely upon written instructions from the secretary or assistant secretary (or equivalent officers) of the business. We are authorized to follow the directions of a person designated as having authority to act on the entity's behalf until we receive written notice that the authority has been terminated and have had a reasonable time to act upon that notice.

3. DEPOSITS. You may make deposits to your account in person at our financial centers, by mail or by any other method that we make available, such as at any Wachovia Automated Teller Machine (ATM) and at certain non-Wachovia ATMs. You are encouraged to use your personalized deposit slips in order to help us credit deposits to your account as soon as possible and to minimize errors. If you do not use your personalized deposit slips, you agree that we will not be liable to you for any errors resulting from your use of a counter deposit slip, whether completed by you or one of our employees. We are not responsible for deposits made by mail, night depository or other outside depository until we actually record the receipt of those deposits in our books and records. We have the right, but are not obligated, to endorse any items submitted for deposit to your account and to deposit them into your account and the right not to accept items that contain multiple, missing, or improper endorsements. We also have the right to limit, refuse, hold, or return any deposit. You agree that you shall not deposit, without our prior express written consent, unsigned demand drafts, any item in a check carrier, or any paper or electronic replacement for the original item, including without limitation substitute checks as defined by federal law that have not

been previously endorsed by a bank. You agree to be liable for and to reimburse us for any loss or expense or liability (including without limitation, attorneys' reasonable fees and costs of litigation) we may incur because you deposit any such items listed above, you fail to endorse an item exactly as drawn, you deposit an item with a missing endorsement, or resulting from or arising out of any return of or claim with respect to any deposited item for any reason whatsoever. You agree that we can automatically charge your deposit account for such losses and expenses without prior notice to you. If we receive an item on a weekend, holiday or after our "cut-off" hour on a business day, the item is deemed to have been received on our next business day. You agree that our count of the coins and currency in your deposit shall be conclusive as to the amount. We will make any necessary adjustments to your account for any discrepancies and notify you. Our business days and cut-off hours are posted at our financial centers and ATM cut-off hours are displayed on the ATM deposit screen and are subject to change from time to time at our discretion. We reserve the right to make adjustments to your account, in our sole discretion, for computation or other errors to your account.

4. COLLECTION OF ITEMS. In receiving items for deposit or collection, we act as your collection agent and assume no responsibility beyond the exercise of ordinary care. Special instructions for handling an item are effective only if made in writing and given to us along with the item in question. We will not be liable for default or negligence of our correspondent banks or for loss in transit, and each correspondent bank will only be liable for its own negligence.

You are responsible for reconstruction and proof of loss of any items, including checks and other negotiable instruments, included in deposits that are lost or stolen in transit before we have received and accepted the deposit. Further, you agree to fully cooperate and assist in the reconstruction of any items, including checks and other negotiable instruments, included in deposits that are lost or stolen in transit after we have received and accepted the deposit. Items and their proceeds may be handled in accordance with applicable Federal Reserve regulations and operating circulars, Clearing House Association or Funds Transfer System rules, and contractual arrangements with other financial institutions. All deposited items (including those drawn on another account at the Bank) are credited subject to final payment and our receipt of cash proceeds. If you deposit foreign currency or items that are denominated in a foreign currency into your account, the final credit to your account will be based on the exchange rate in effect at the time we receive final payment for that item in United States currency. Without prior notice to you, we may charge back any item at any time before final payment, whether returned or not, and we may also charge back any item drawn on us if the item cannot be honored against the drawer's account. We are authorized to pursue collection of previously dishonored items, and in so doing we may permit the payor bank to hold an item beyond the midnight deadline.

If any check or other item deposited in your account is returned to us by the bank on which it was drawn through the Federal Reserve, a clearing house or other normal check return channels, we may accept that return and charge the check or other item back against your account without regard to whether the bank on which the check was drawn returned the check before its midnight deadline.

At our discretion, you authorize us to convert any of your checks that are returned for uncollected or insufficient funds to an electronic transaction. Furthermore, if, after a check or other item deposited into your account is finally paid, it is returned to us by the bank on which it was drawn because someone has made a claim that the check or other item was altered, forged, unauthorized, or should not have been paid for some other reason, we may debit your account for the amount of the item. If you have insufficient funds in your account to cover a returned item, we may overdraw your account in accordance with this Agreement in an amount equal to such check or other item. You agree to reimburse us for any costs or expenses we incur in connection with any such claim (including, without limitation, attorneys' reasonable fees and court costs) and agree that we may impose service fees against your account for processing any such claim as reflected in our Schedule of Fees and Funds Availability for Commercial Accounts from time to time.

5. PAYMENT OF CHECKS AND OTHER WITHDRAWALS. Checks and other items are sometimes lost or truncated (i.e., converted into electronic images) during the collection process. Items that have been truncated may also be reconverted into substitute checks or other replacement documents. Under federal law, the Bank is required to accept substitute checks with warranties as the legal equivalent of the original and the Bank will pay and charge against your account such substitute checks. Moreover, you agree

that the Bank may at its discretion pay and cash against your account photocopies, image replacement documents, electronic checks or other paper or electronic replacements of the original item that do not constitute substitute checks, if they are legitimate replacements for properly drawn and authorized items. You agree to allow any imaged document or copy to serve as the original for all purposes, including charging your account or determining validity of signature, etc. We may refuse to pay or may impose a special fee for any check or other item drawn against your account or used to withdraw funds from your account if such item is not on a form we have approved. We also reserve the right to refuse to pay or impose a special fee for any check or other item drawn against your account or used to withdraw funds from your account if the transaction is made in a manner not specifically authorized for your account, if made more frequently or in a greater number than specifically permitted for your account, or if made in an amount less than the minimum withdrawal or transfer specifically permitted for your account. If you issue checks for payment with duplicate serial numbers, this will impair the bank's ability to protect your account; thus, you will have issued such checks at your own risk and we shall not be liable for such transactions. Withdrawals are generally made first from finally collected funds and, unless prohibited by law or by our Schedule of Fees and Funds Availability for Commercial Accounts policy, we have the right to refuse to pay any check or other item drawn against uncollected funds, impose a special fee for each such item, or both. We may pay checks or other items drawn upon your account (including those payable to us or on which we may be liable) in any order determined by us, even if (1) paying a particular check or item results in an insufficient balance in your account to pay one or more other checks or other items that otherwise could have been paid out of your account; or (2) using a particular order results in the payment of fewer checks or other items or the imposition of additional fees. Although we generally pay larger items first, we are not obligated to do so and, without prior notice to you, we may change the order in which we generally pay items.

From time to time, a person who is not our customer may attempt to cash a check that you have written on your account with us. Cashing an item for a non-customer exposes us to certain risks that are not present if the item is deposited at another financial institution and presented to us through the check collection system. As a result, you agree that we may charge a non-customer a fee to cash an item (including a payroll check) that is drawn on your account with us unless prohibited by applicable law. You also agree that we may impose various additional identification, security and other requirements on a non-customer seeking to cash an item at one of our financial centers. These requirements may include, without limitation, submitting one or more forms of identification, providing thumbprints or other identifiers, and using specified teller lines that may only be available at specially designated locations. You agree that we will not be liable for wrongful dishonor for refusing to cash the item if the payee refuses or fails to pay the fee or comply with such reasonable security measures.

We reserve the right to limit the amount of funds that may be withdrawn from your account in cash for various reasons including, without limitation, the amount of currency that is available at a particular financial center. This limitation is in addition to those set forth in other sections of this Agreement.

6. **AUTHORIZED SIGNATURES.** The authorized signatures for an account are those reflected on the Signature Card, or on any resolution or other separate written authorization relating to the account received by us. For the payment of funds and for other purposes relating to any account you have with us, we are authorized to recognize those signatures, but we will not be liable to you for refusing to honor a check or other signed instructions if we believe, in good faith, that the signature appearing on such checks or instructions is not genuine. If the Signature Card is not returned, you agree that we will not be liable to you for honoring checks or other signed instructions if we believe in good faith that the signature appearing on such checks or instructions is authorized. When an account is established, you may indicate your desire for more than one authorized signature on a check or other items drawn against the account by designating a specific number of desired signatures on the Signature Card, a resolution or in a separate written authorization that is received by us. However, we do not offer accounts that require two or more signatures. Any such designation is solely for your convenience and internal control purposes and is not binding on us. As a result, you agree that we may pay checks against your account without regard to the number of desired signatures. You may also give another person authority over your account by your conduct or failure to act.

7. **FACSIMILE SIGNATURES.** If you use a facsimile signature or endorsement, whether by machine, stamp or otherwise, that is not made by handwriting on any checks, drafts, notes, or other negotiable instruments with or without a designation of the party making such signature or endorsement, you agree that we may pay and charge your account for payments, checks, drafts, notes or other orders for payment bearing or purporting to bear the facsimile signature or endorsement of any person or persons required to sign, regardless of by whom or by what means the actual or purported facsimile signature or endorsement may have been affixed (whether or not authorized), and regardless of by whom or by what means the check, draft, note or other order for payment was created (whether or not authorized). We are not liable for any use of a facsimile signature or endorsement device. If you use a facsimile signature or endorsement, you bear the risk of any unauthorized use of your facsimile method or the use of fake facsimiles that may appear to be facsimiles.

8. **INSUFFICIENT FUNDS/OVERDRAFTS.** We may determine whether or not your account contains sufficient funds to pay a check or other item, authorize a point-of-sale transaction, or process any other electronic transaction at any time between the time we receive the check or other item, point-of-sale transaction authorization request, or other electronic transaction and our return deadline, and only one determination of the account balance is required. If our determination reveals insufficient available funds to pay the check or other item, authorize the point-of-sale transaction, or process the other electronic transaction you agree to pay us a service charge, and we are not required to honor the check or other item, authorize the point-of-sale transaction, or process the other electronic transaction and may return it, and/or decline it. Alternatively, we may honor the check or other item, authorize the point-of-sale transaction, or process the other electronic transaction and create an overdraft and impose a service charge for paying the overdraft. You agree to deposit sufficient funds to cover the overdraft and the related service charge upon notice of the overdraft and to reimburse us for any costs we incur in collecting the overdraft from you including, without limitation, attorneys' reasonable fees and the costs of litigation to the extent permitted by law. However, the honoring of one or more overdrafts does not obligate us to honor any future overdrafts, and you should not rely on us to honor an overdraft even if we have done so in the past. Moreover, we are not required to send you prior notice on checks returned for insufficient funds.

9. **OVERDRAFT CHECKING PROTECTION.** If overdraft checking protection is available and you elect that option, we will automatically transfer funds, sufficient to cover the amount of any overdraft and service charge to your primary checking account from any other eligible secondary deposit account (checking, savings or money market) or credit account (commercial credit card or line of credit) you selected. One transfer will be made at the end of the business day in which an overdraft(s) occurs, as follows:

A. Overdraft transfers made from a deposit account.

Funds will be transferred in the next largest full dollar amount. You agree to pay an overdraft protection service charge for each daily transfer, as provided in the our Schedule of Fees and Funds Availability for Commercial Accounts, and that charge will be deducted from your primary account. This is not an extension of credit and no transfer will be made if sufficient funds are not available in your secondary account to cover the overdraft. If your secondary account is a savings or money market account, transfers from such accounts are pre-authorized transfers and, under federal regulation, you are not permitted to make more than six (6) pre-authorized transfers (including telephone transfers) each statement period.

B. Overdraft transfers made from a credit account.

Funds will be transferred in amounts rounded up to the next one hundred dollar (\$100) increment, subject to your available credit limit. An overdraft transfer from a credit account is treated as a cash advance and is subject to the terms of the credit agreement, including any applicable transaction fee or other fees.

If there are not sufficient funds in your secondary deposit account to cover an overdraft in your primary checking account, no transfer will be made and you will be charged an insufficient funds fee in accordance with the Schedule of Fees and Funds Availability for Commercial Accounts. That fee will be deducted from your primary account.

10. **SERVICE FEES.** You agree to pay any service fees that apply to

your account or the services described in or incorporated into this Agreement. Service fees may include, but are not limited to, charges for check printing, check writing, stop payment orders, notices of post-dated items, cashier's checks, overdrafts, Automated Clearing House (ACH) entries, wire transfers, insufficient funds checks, other items, point-of-sale transaction authorization requests and other electronic transactions, and treasury services and other depository services. Any fees may be deducted from your account without prior notice to you. We will not be liable for dishonoring checks or other withdrawal orders because of insufficient funds resulting from proper deduction of fees. Our current Schedule of Fees and Funds Availability for Commercial Accounts will be given to you when you open an account and is available at any of our financial centers. Service fees are subject to change from time to time at our discretion. Notice of any changes will be sent to you at the address shown on our records, and a reasonable period of time will be given before any changes become effective. You further agree to reimburse us for any actual expenses we incur to execute, cancel or amend any wire transfer payment order or ACH entry, or perform any related act at your request.

- 11. AUTOMATED PROCESSING OF ITEMS.** Checks you write or deposit may be automatically processed and/or converted into electronic images (truncated) during the check collection and return process. If you elect to have your bank documents printed by a vendor that has not been approved by the Bank, or you use check stock or features (e.g., security features) that cause critical data on the check to disappear or be obscured upon truncation or you make your check out in such a way (e.g., using a lightly colored ink) that causes critical data to disappear upon truncation, you will be doing so at your own risk. We shall not be liable for processing errors or delays, losses or our failure to process any such item due to printing inaccuracies, faulty magnetic ink, encoding of critical data, or the failure of critical data printed or written on the item to survive truncation, or the use of check carriers. We have adopted automated collection and payment procedures so that we can process the greatest volume of items at the lowest possible cost to all customers. These automated procedures involve high-speed automated check processing machines that read information encoded onto each item in magnetic ink. In recognition of this fact, you agree that in paying or taking an item for collection, we may disregard all information on the item other than any information encoded onto the item in magnetic ink according to general banking standards, whether or not that information is consistent with other information on the item. For example, we may rely on the amount of a check as encoded in magnetic ink, even if that encoded amount is greater than the face amount of the check or exceeds the maximum amount for which the check is valid as stated in a legend on the check. You agree to reimburse us for any loss or expense (including without limitation, attorneys' reasonable fees and the cost of litigation) we incur because you issue or deposit an item (1) containing extra information such as, but not limited to, maximum amount limitations, date limitations, two signature requirements, etc.; (2) containing features or ink that cannot be properly imaged; or (3) placed in a check carrier. Furthermore, you agree that we have exercised ordinary care in paying an item even though our procedures do not provide for sight examination for alterations, verification of signatures or other aspects of items with a face amount below an amount we specify from time to time.

- 12. FRAUD DETECTION/DETERRENCE AND SAFEGUARDING YOUR ACCOUNT.** There are several precautions that you can and should take to decrease the risk of unauthorized transactions from your account(s). Such precautions include, but are not limited to:

- Safeguarding and not disclosing to third parties information about your account, such as your account number(s);
- Safeguarding materials and information which can be used to access your account, including but not limited to, your checkbook, blank or unused checks, electronic access devices including ATM cards, personal identification numbers, and any passwords or other access-related information, to prevent them from being misused by an unauthorized party;
- Calling us immediately at 800-WACHOVIA (922-4684) if you suspect any problem with your account or unauthorized activity, or your checkbook or unused checks are lost, stolen or misplaced;
- Reviewing carefully your checkbook and unused checks for unauthorized activity if you suspect that any of these items may have been stolen or tampered with, or if you are the victim of theft or your property is burglarized;
- Promptly and carefully reviewing your statement each month for

unauthorized activity, missing deposits;

- Closing your account immediately upon discovery of any known or suspected unauthorized activity. When you report missing, stolen, or unauthorized checks, we may recommend that any account(s) that has been compromised by unauthorized or fraudulent activity be closed. If you decline this recommendation and elect to leave your account open, we shall not be liable to you for subsequent losses on the account due to unauthorized activity and we may require you to indemnify us for any losses we incur as well;
- Limiting your telephone transactions with us to landline telephones. Cordless or cellular phone conversations can be intercepted without your knowledge or authorization;
- Maintaining close control over your facsimile signature devices to immediately detect any unauthorized use of those devices.
- Issuing any checks with care to avoid alterations or forgeries. Precautions include without limitation using a dark colored permanent ink to write out your checks, making sure the numeric and written amounts match and are readable, and making sure there are no blank or open spaces in the body of the instrument where words or figures are to be inserted.

In addition, from time to time we may make certain products and services that are designed to detect and/or deter check fraud available to you. While no product or service will be completely effective, we believe that the products and services we may offer will reduce the likelihood that certain types of fraudulent items will be paid against your account. You agree that if you fail to implement any of these products or services, or you fail to follow these and other precautions reasonable for your particular circumstances, you will be precluded from asserting any claims against us for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service, or precaution was designed to detect or deter, and we will not be required to re-credit your account or otherwise have any liability for paying such items.

- 13. STATEMENTS.** Your statement will be mailed monthly, quarterly or annually, depending on the types of accounts and services you have with us, and will include the interest rate and effective yield for the interest payment(s) included in that statement. We will mail your statements to the address we have for you in our records, unless we have agreed to provide statements electronically. If you elect to have statements mailed to a third party address, you are still responsible for careful and prompt examination of the statement and the timely reporting of any problems or unauthorized transactions as outlined below. You agree to notify us if you change your address. You also agree that if the U.S. Postal Service or one of its agents notifies us of a change in address for you, we may change your address based on information provided to us by the U.S. Postal Service. We will have no liability to you for changing your address based on such information, even if the information provided by the U.S. Postal Service is in error. If any statement is returned to us because of an incorrect address, we may stop sending statements to you, but for all purposes it shall still be considered as if we made your statement of account available to you as of the statement date that was or would have been printed on your statement, showing payment of items and the items paid or the information sufficient to allow you to reasonably identify the items paid.

Your statement will be deemed to have been received by you five (5) calendar days after its date. You are responsible for notifying us promptly if you do not receive your statement(s). If you do not receive canceled checks or copies of canceled checks that you have elected to receive with your statement or you receive copies or substitute checks with an illegible image, the canceled checks or legible copies will be provided to you within a reasonable time after your written request that sufficiently identifies the checks requested. You agree to pay the applicable service charge for retrieving and copying the requested checks.

- 14. REVIEW OF ACCOUNT STATEMENTS.** You are in the best position to discover a forged, unauthorized or missing signature or endorsement, a material alteration, a missing or diverted deposit, illegible image or any other error, or discrepancy relating to a check, deposit or other credit or debit entry to your account. Therefore, you agree to carefully and promptly examine your statements and canceled checks (if you have elected to receive them) when you, or a party designated by you, receive them. If you think that an unauthorized person has withdrawn funds from your account, that one or more deposits are not reflected on your statements, or that there is any other type of error or discrepancy in your statements,

you should notify us immediately. The statement shall be considered correct unless you notify us promptly after receipt of the statement, description of the canceled checks or the checks themselves, or after any error is discovered or reasonably could have been discovered, whichever occurs first.

If you do not discover and report a forged, unauthorized or missing signature, illegible image or an alteration promptly after we have sent or otherwise made your statements and/or canceled checks available to you, you agree not to assert against us (a) any forged, unauthorized or missing signature or alteration, if we suffered a loss because of your failure to discover and report the problem, and (b) any forged, unauthorized or missing signature or alteration by the same wrongdoer on items we paid after you have had a reasonable period of time (not to exceed 30 days) to examine the statement containing or reflecting the first forged, unauthorized or missing signature or alteration but before we received notice of the problem from you. If the previous sentence applies, but you are able to prove that we failed to exercise ordinary care in paying the item in question and that our failure substantially contributed to the loss, then the loss will be allocated between us based on the extent to which our respective failures to exercise ordinary care contributed to the loss. In that regard, and as disclosed elsewhere in this Agreement, we process checks and other items by automated means and do not visually examine or verify signatures on all checks or other items. You agree that we do not fail to exercise ordinary care because we use these automated procedures. You also agree that we do not fail to exercise ordinary care if the items were forged or altered so cleverly (as by unauthorized use of a facsimile machine, photocopy machine, computer equipment or otherwise) that a reasonable person would not detect the forgery or alteration.

If you have not discovered and reported a forged, unauthorized or missing signature or endorsement, a material alteration, a missing or diverted deposit, illegible image or any other error or discrepancy relating to a check, deposit or other credit or debit entry to your account within forty (40) days of the date on which the first statement containing or reflecting (or that should have contained or reflected) those items was mailed to you or otherwise made available to you, you agree not to assert that problem against us. This forty (40) day limitation takes priority over the provisions in the previous paragraph and applies regardless of whether or not you or we exercised ordinary care with respect to the item in question (or its payment), the examination of the statement on which it was reflected (or should have been reflected) or otherwise. **IF YOU FAIL TO DISCOVER AND REPORT THESE OR ANY OTHER ERRORS OR DISCREPANCIES WITHIN THE FORTY (40) DAY PERIOD, YOU LOSE ANY AND ALL RIGHTS YOU MAY HAVE TO ASSERT THE ERROR OR DISCREPANCY AGAINST US.**

15. **STOP PAYMENT.** You may ask us to stop payment on checks drawn on your account that we have not paid or certified. You must tell us the exact amount of the check, check number, date of check, payee and the full account number on which it is drawn for us to be able to enter a stop payment. If the information you give us is not correct or if you do not give us other reasonable information requested about the check, we will not be responsible if we are not able to affect the stop payment. We also cannot be responsible if we are not able to identify the proper check because you have issued more than one check with the same serial number. If you generate your checks by computer or in any other manner which does not produce a MICR-encoded check number on the check, we will be unable to guarantee that your stop payment will be honored. You therefore agree to hold us harmless should we be unable to honor a stop payment order which you have timely and correctly placed on your check with no MICR-encoded check number. We are entitled to a reasonable period of time within which to notify our employees after you give us a stop payment order. For purposes of this Agreement, a "reasonable time" means until the end of the business day following the day on which the stop payment order was placed. Moreover, we are not obligated to re-credit your account if we pay a check over a valid and timely stop order unless you are able to demonstrate that you would not have otherwise been obligated to pay the check. In that regard, you should be aware that a stop order does not relieve you of your obligation on a check that has been negotiated to a holder in due course. If we re-credit your account after paying a check over a valid and timely stop payment order, you agree to transfer to us all of your rights against the payee or other holder of the check, and to assist us in any legal action taken against that person later on. Any person who is authorized to draw checks against the account may give a release or cancellation of a stop payment order. Stop payment orders on official checks, cashier's checks, or money orders are not permitted. If an official check, cashier's check, or similar item has

been lost, stolen or destroyed, you may provide a declaration of loss and affidavit and request the check be re-issued. The Bank may require that you wait ninety (90) days (or provide a bond where permitted by law) before honoring your claim, and we will not be liable to you if such check is cashed prior to expiration of the ninety (90) days (or receipt of bond, if applicable). Stop payment orders (both oral and written) are valid for six (6) months unless you designate a longer period of time when placing the stop payment order. The fee for stopping payment is contained in the Schedule of Fees. You may extend a stop payment order by calling or writing us prior to the expiration of the existing stop payment order. An additional fee may apply for the extended period. If you place a stop payment order, you agree to pay our stop payment fee and to hold us harmless from costs and expenses incurred by us, including our attorneys' reasonable fees, in connection with our refusal to pay the stopped check. We will not be liable to you for any indirect or consequential damages.

16. **SETOFF AND SECURITY INTEREST.** Any pledge or assignment of CDs and other accounts for security purposes remains subject to our right of setoff and security interest. If you ever owe us money as a borrower, guarantor, judgment debtor or otherwise, including any obligation owed to a financial institution acquired by us, and it becomes due, we have the right under the law (called "setoff") and under this Agreement (by which you grant us a security interest in your certificates of deposit and other deposit accounts) to use the money from your account to pay the debt. We may use the money to pay the debt even if the withdrawal results in an interest penalty or the dishonor of checks. In the case of a partnership or joint account, each partner or joint owner agrees that we may use the money in their individual accounts to satisfy any one of their individual obligations. We may use the money if (a) you are a joint owner of the account and (b) you are not indebted to us and (c) the debt is owed to us by another joint owner. Similarly, each partner or joint owner agrees that we may use the money in their individual accounts to satisfy obligations in the joint account or partnership account. The security interest granted by this Agreement is consensual and is in addition to our right of setoff. To the extent any of the funds to be setoff are entitled to any exemption from execution, levy, attachment, garnishment, seizure or other legal or equitable process (including, without limitation, any Social Security, Supplemental Security Income, Veterans, or other federal or state benefits), then, to the maximum extent allowed by law, you hereby knowingly, affirmatively and unequivocally waive such exemption and co to our setoff against such funds as contemplated by this Agreement.

Regulatory authorities require banks to document their cash management arrangements with their customers. In such a cash management relationship, the customer and its related entities (e.g., subsidiaries and affiliates, including a parent company) that are also customers understand and agree that, for each such legal entity, payments made from any such customer's account will be honored by us so long as the aggregate total of such customer's and its related entities' accounts has a net credit balance.

17. **NOTICES.** Any notice we send you will be considered effective when it is deposited in the U.S. Mail to your most recent address reflected in our records. Notice from you will be considered effective when we receive it at our designated address.
18. **CLOSING YOUR ACCOUNT.** We reserve the right to close your account at any time without advance notice. The closing of your account (whether by you or by us) does not release you from any fees or other obligations incurred before closure, those you incur in the process of closing your account, or for your liability on outstanding items. In addition, you may lose the interest that has accumulated since the last time interest was added to your account. You will be subject to an early withdrawal penalty if you make withdrawals from or redeem a certificate of deposit or other time deposit early, as hereinafter explained.
19. **REPORTING INFORMATION.** We have the right to report information about your account to any credit reporting agency or to anyone to whom you give us as a reference. Wachovia shares customer transaction and experience information with affiliates within Wachovia Corporation (e.g., Wachovia Bank, National Association, Wachovia Securities, Inc., Wachovia Mortgage Corporation, etc.) through a central information system. Wachovia is permitted by the Fair Credit Reporting Act to share any other customer information among Wachovia affiliates. Wachovia will never share this "other information" with any non-affiliated third party for any reason other than those already stated in this Agreement.

Sharing of "other information" among Wachovia affiliates can be used to improve our services to you. However, you may opt out of such sharing with Wachovia affiliates. In order to do so send your name, address (as it appears on your account statement), social security number or tax ID, telephone number, and account type and number to:

Wachovia, P.O. Box 11726,
Roanoke, VA 24022-1726.

(Your request must be mailed in a separate envelope and should not be included in any other bank correspondence.) Please note that each customer has the right to direct Wachovia not to share information other than transaction or experience information about them with its affiliates. Each customer, including each joint owner, may separately choose to ask that his or her "other information" not be shared among Wachovia affiliates. Customers who request that "other information" not be shared may do so only for themselves, and may not do so for anyone else, including joint account owners. We will process any request received as quickly as possible. You authorize us to tell payees of items drawn against your account whether sufficient funds are then available.

20. **ABANDONED/DORMANT ACCOUNTS.** If you fail to notify us in writing of any change to your current mailing address or you fail to utilize your account, your account and deposits may be presumed dormant or even abandoned after a certain period of time. Dormant accounts may be subject to reasonable service charges (similar to those imposed on active accounts), and service charges may also be imposed on accounts presumed to be abandoned. Accounts that are presumed to be abandoned will be escheated to the state of your last known address in which your account is maintained in accordance with applicable law.
21. **PLACEMENT OF ENDORSEMENTS.** If you issue a check that contains a carbon band, printing, endorsements or other material on the back of the check outside of the area extending 1½ inches from the trailing edge of the check, that material could also interfere with endorsements by banks and cause delays in returning the check. Similarly, if you or a prior endorser shall have signed, stamped or affixed an endorsement to a check for deposit which endorsement is outside of the area extending 1½ inches from the trailing edge of a check, that material could also interfere with endorsements by banks and cause delays in returning the check. Therefore, (a) you agree we will not be liable to you because an item you deposit in your account is returned after the time set by applicable law if the delay in returning the item is caused by markings on the item in the space reserved for the depository bank's endorsement that were made by you or a prior endorser; and (b) you indemnify and hold us harmless from any and all claims, losses, costs and expenses (including, without limitation, attorneys' reasonable fees and the costs of litigation) that we may incur as a result of the late return of a check caused by a carbon band, printing, endorsements or other material on the back of any check drawn on or deposited to your account that extend outside the area extending 1½ inches from the trailing edge of the check. The trailing edge is the left side of the check when viewing it from the front.
22. **STALE, TIME-DATED AND POST-DATED ITEMS.** We maintain the option either to pay or to dishonor any stale check (i.e., a check that is more than six (6) months old) upon presentation to us. Our check processing equipment is unable to detect time-dated checks (i.e., checks stating that they are not valid after a certain date or beyond a certain period of time). As a result, you agree that we will not be liable to you for charging your account after the date or period stated on an otherwise properly payable time-dated check, and you further agree that we are not bound by any time limitation or restriction you may place on any item presented for payment against your account. If any item has not been paid within the time you want, you agree that your sole method to prevent payment is to place a stop payment order, as provided herein. Similarly, our check processing equipment cannot detect a post-dated check (i.e., a check bearing a date later than the actual calendar date). Therefore, it is not recommended that you issue post-dated checks as a means of withdrawal and you agree that we are not responsible for charging your account before the indicated date on a properly payable but post-dated check.
23. **NIGHT DEPOSITORY SERVICES.** If you wish to use our night depository services, the acceptance by us of an authorized night deposit bag and its contents, and your selection and use of such a bag, are subject to the following terms and conditions:
- A. You shall indicate by signing a Night Deposit Agreement that you will use hold bags and the Bank will not process the deposit(s) until one of your authorized agents has signed for the bag(s).

The bag(s) will be released to an authorized agent that has signed the Night Deposit Agreement.

- B. You may deliver and pick up the deposit bag by armored courier, or by courier designee, or by any other agent or employee. All such couriers or courier designees shall be deemed to be your agents.
- C. Each night deposit bag at time of delivery to us shall contain a deposit ticket accurately describing the cash, checks and/or other items contained in the bag and containing your name and the number of the account to which we are to make the deposit, and it shall be securely sealed. We reserve the right, in our sole discretion, to refuse to accept the bag or process any deposit if the bag appears torn or tampered with in any way. We will promptly give you notice of our refusal to process the bag. We shall not be deemed to have possession of the bag or any contents if we have refused to accept or process the bag pursuant to this paragraph, and we shall have no liability to you if we refuse to process the bag.
- D. You may deliver a night deposit bag into our night depository facility at any hour of the day or night, whether or not we are open for business. You will have received and acknowledged receipt of a key that opens such night depository facility, which key belongs to us and must be returned to us upon termination of your right to use the night depository facility or upon our demand. You may not permit any other person or entity to use any key entrusted to you or allow any other person or entity to make use of our night depository facility with any such key. We shall remove bags from the night depository facilities at least once a day on each day we are open for business. The Bank employee removing the bag or other Bank employee shall open the bag and process the contents in accordance with paragraph E. We may withdraw any night depository facility from use at any time without notice.
- E. You hereby direct us to open your night deposit bag and deposit the contents to your designated accounts with us. We shall process the contents of the bag in accordance with our normal processing procedures. We will notify you upon discovery of any discrepancy or missing documentation. Our count of the coins and currency contents of the bag shall be conclusive as to the amount it contains. We will conditionally credit all checks and other items contained in the bag as shown on the deposit ticket subject to later verification and final settlement. Notwithstanding the foregoing, we shall not be liable for opening or not opening the bag.
- F. You agree that nothing will be placed in a night deposit bag except money, checks and other like negotiable items ("Property"), and no Property will be placed in the chute to the night depository facility unless enclosed in a properly sealed or locked bag. The use of the night depository facility shall be at your sole risk. You agree that neither we nor any of our agents shall be responsible for any loss or damage incurred by you in the use of the night depository facility which results from a mechanical defect of the facility, from an act of God, from the inability of the user to properly operate the facility, or from acts of vandalism or malicious mischief unless such loss or damage is caused by our gross negligence or intentional misconduct.
- G. Prior to the receipt and acceptance of the contents of your night deposit bag by us as a deposit, the relationship between you and us as to all Property placed in the night depository facility shall be that of bailor and bailee of such Property, and we shall be liable to you not as an insurer of such Property, but only for that degree of care required of a gratuitous bailee having the custody of the property of others. No debtor/creditor relationship shall exist between you and us with respect to any cash, check or other items contained in the bag until we shall have received and accepted the contents of the bag as a deposit, credited the amount to your account and, in the case of noncash items, when we have finally collected the check or item. We shall not be liable for any act performed by us, nor any claims, expenses, damages or losses arising therefrom, if such act is performed by us pursuant to instructions, written or oral, which we reasonably and in good faith believe to be yours. In no event shall we be liable for indirect, consequential, exemplary or punitive damages, even if we have been advised of such possibility.

- H. The right to use a night deposit bag may be terminated by us on seventy-two (72) hours notice given orally to you or your agents, or by written notice mailed to your last address shown on our books. We reserve the right to assess a fee for the use of our night depository services. Such fee will be in keeping with Bank policy and disclosed on the Schedule of Fees and Funds Availability for Commercial Accounts available at any financial center and other applicable fee schedules.
24. **COURIER BAG RETRIEVAL AND DELIVERY.** If you elect to have any night deposit bag delivered or retrieved by a third party whom you have authorized to do so under the terms of this Agreement, we shall not be responsible for determining the authority of the person(s) or entity purporting to be your agent. Notwithstanding anything to the contrary contained in this Agreement or elsewhere, you hereby indemnify, defend, and hold harmless Bank and each of its affiliates, directors, officers, employees, attorneys, and agents (to the fullest extent permitted by law) from and against any and all claims, demands, lawsuits, costs, expenses, fees, fines, obligations, liabilities, losses, damages, recoveries, and deficiencies, including interest, penalties and attorneys' reasonable fees and costs, whether direct, indirect, consequential, incidental or at any time asserted that the Bank may incur or suffer or that may arise out of, result from or relate to your third party agent or any person or entity purporting to be your third party agent retrieving, delivering and/or taking custody of any night deposit bag.
25. **TREASURY SERVICES.** If you wish to utilize our treasury services, your selection and use of our treasury services are subject to the terms and conditions described below. The treasury services are more fully described in the Automated Clearing House Terms and Conditions and separate Service Description(s) provided by us, both initially and at any time hereafter. You agree that if any terms and conditions of the Service Description(s) conflict with the terms of this Agreement, the terms and conditions of the Service Description(s) shall govern. We may change our operational procedures without amending this Agreement, upon notice to you. We have the right to modify services, require minimum balances or security, or terminate services in our sole reasonable discretion in the event that you breach or fail to honor any provisions of this Agreement or there occurs a material change in your financial condition.
- A. **Documentation.** In our sole discretion, we shall determine the adequacy of the documents and instruments and we may delay the implementation of the treasury services you may prior to the receipt of adequate documents and instruments. You will promptly notify our Treasury Services Division in writing of any actual changes underlying or represented in the documentation, and will promptly execute and deliver new documentation as may be required by us. Until such new documentation is actually received by us and we have had a reasonable time to act thereon, we shall not be liable for any actions taken by us in reliance upon existing documentation and authorization. We reserve the right periodically to request, and you agree to provide upon our request, financial statements and other information we may feel are appropriate in consideration of various treasury or other depository services you ask us to provide or continue providing to you.
- B. **Subsidiaries.** If you are executing this Agreement on behalf of separate corporate or commercial entities or subsidiaries as well as on your own behalf, you hereby represent and warrant to us that you have received proper authorization or powers of attorney from each of such separate corporate entities or subsidiaries and that you have full power and authority to bind such entities to the terms of this Agreement.
- C. **Termination.** Either you or we may terminate the specified treasury services by giving the other party at least thirty (30) days prior written notice. However, we may terminate all specified treasury services immediately, and we shall be entitled to any remedy available to us at law or equity, if (1) you fail to make any payment to us under any obligation when due, or (2) you seek protection under any law for the protection of those unable to pay their debts or you commence any proceeding in bankruptcy or one shall be filed against you, or (3) any failure or default by you shall occur under any of your obligations to us, or (4) you conduct a transaction that is inappropriate, or violates the terms and usage of the Service Descriptions provided by us, or violates any law; or (5) we shall determine, at any time, in the exercise of our sole reasonable discretion that we are insecure with respect to your compliance with the provision of this Agreement or your financial condition. In the event of termination, for whatever reason, all sums and fees owed by you to us shall be immediately due and payable.
- D. **Indemnification; Limitation of Liability.** You indemnify and hold us, our officers, employees and agents, harmless from any and all losses or claims of any kind arising in connection with the treasury services provided under this Agreement, except losses, claims, and expenses (including attorneys' reasonable fees and costs) arising out of the gross negligence or willful misconduct of the Bank or its employees. You further agree to indemnify and hold us, our officers, employees and agents harmless from any and all losses or claims of any kind arising out of actions taken or omitted in good faith by us in reliance upon instructions from you. We shall not be responsible or liable for acts or omissions of any other entity (not under our direct control) including, without limitation, any Federal Reserve Bank or transmission or communication facility. **EVEN IF LIABILITY IS ESTABLISHED FOR ACTUAL DAMAGES, IN NO EVENT SHALL WE OR YOU BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE FURNISHING, PERFORMANCE OR USE OF THE TREASURY SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN IF WE OR YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** The limitations and exclusions in this paragraph shall apply to all claims of every kind, nature and description whether arising from breach of contract, breach of warranty, negligence or other tort, and shall survive the termination of this Agreement and any applicable Treasury Service Agreement.
- E. **Disbursement Fraud Detection Services.** You acknowledge that we have developed and made available to you treasury services designed to reduce the likelihood that a fraudulent, unauthorized or altered check or other item will be paid. You also acknowledge that failure to utilize those treasury services could substantially increase the likelihood that a fraudulent, unauthorized or altered check or other item may ultimately be paid out of your account. You agree that if you fail to implement any of these products or services, or you fail to follow these and other precautions reasonable for your particular circumstances, you will be precluded from asserting any claims against us for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service, or precaution was designed to detect or deter, that we will not be required to re-credit your account or otherwise have any liability for paying such items.
26. **TIME DEPOSITS.** At the Bank's option, time deposits may be issued in the form of a Certificate of Deposit (no longer issued), a passbook, or a time deposit for which no certificate is issued. On the initial or any subsequent maturity date, you may present your properly endorsed Certificate (for accounts where Certificates were issued), your passbook, or sign a receipt form (for accounts with no certificate issued) at any financial center and you will be paid the amount due. The certificate will serve as evidence of your account. If a time deposit certificate is lost or destroyed, we must be notified immediately in writing. Upon receipt of satisfactory indemnity and an affidavit to the effect that the certificate has been lost or destroyed and has not been pledged or assigned, we will close the account and reissue a Time Deposit Receipt. To the extent required to begin the running of the applicable statute of limitations, you will be deemed to have demanded payment of any time deposit that does not automatically renew for another term on the 31st day after its last maturity date.
- A. **Redemption.** We may redeem the Time Deposit on the initial or any subsequent maturity date, and we may accelerate maturity if you default in the payment of money owed to us, applying the redemption proceeds against such obligations.
- B. **Interest Calculation.** We use the daily balance method to calculate interest on your account. This method applies a daily periodic rate to the ledger balance in your account each day and to any interest you've earned that has not been credited to your account. The daily rate is 1/365 (or 1/366 in a leap year) of the interest rate. Interest is compounded at the frequency indicated on the Rate Disclosure provided from the opening date. Interest is paid from the date of deposit through the day prior to the maturity date, and begins to accrue on the business day you deposit non-cash items. The Annual Percentage Yield (APY) assumes that interest will remain on deposit for the term of the account. A withdrawal of interest will reduce earnings. Interest is credited in accordance with the terms of the Time

Deposit Receipt provided to the customer.

C. **Interest Rates.** The interest rate for your deposit is established based upon the amount of deposit, the type of product, and the term you select. Except for Step Rate CDs, the interest rate is fixed for the term of the account.

D. **Receiving Interest.** If you request at the time of purchase, earned interest may be withdrawn at intervals (specified by Wachovia) during the term of the Time Deposit without penalty. Methods of interest payments may be limited.

E. **Automatically Renewable Time Deposits.** If "Automatically Renewable" is indicated on your account opening documents, the following terms apply:

1. **Grace Period.** For time deposit accounts with a maturity of 7 through 31 days, you have one calendar day after the maturity date to withdraw funds without penalty. For all other time deposit accounts, you have 7 days after the maturity date to withdraw funds without penalty. This time period is known as a grace period.
2. **Automatic Renewal.** Unless your time deposit account is closed on the initial or any subsequent maturity date or within the grace period, the account will automatically be extended for a time period equal to the initial term beginning at the initial maturity date or at each subsequent maturity date. The interest rate for each renewal term will be the currently offered rate in effect on the maturity date for the term just ended.
3. **Withdrawal of Principal.** If any principal is withdrawn within the grace period and it is reinvested in any Wachovia account, interest will be paid through the grace period on the amount withdrawn at the interest rate in effect on the maturity date. However, interest will not be paid for the days in the grace period if any of the principal is withdrawn and not reinvested at Wachovia.

F. **Withdrawal of Interest.** As long as the principal is not reduced, interest earned during the initial or subsequent term may be withdrawn without penalty.

G. **Additional Deposits.** Additional deposits to your time deposit account are not permitted during the term of your account.

H. **Interest Added to Principal.** If the interest earned during the initial or subsequent term is not withdrawn or credited to another account on the maturity date or within the grace period after the term when earned, it will be added to and made part of the principal amount.

I. **Partial Withdrawals.** You are permitted to make partial withdrawals, \$500 minimum, during the initial or any subsequent renewal term of your account, as long as the minimum amount required to open a time deposit account of that type remains on deposit. The partial withdrawal will be subject to early withdrawal penalties.

J. **Early Withdrawal Penalties.** If you make any withdrawal from or close your time deposit account before the maturity date, you may be subject to an early withdrawal penalty as described below:

If any of the time deposit is withdrawn before the initial or any subsequent maturity date, an early withdrawal penalty as shown below will be imposed on the amount withdrawn:

Maturity Term Penalty	Early Withdrawal
7 days through 90 days	All interest that would have been earned in the maturity period.
91 days through 364 days	Amount equal to 90 days' simple interest.
365 days and greater	Amount equal to 180 days' simple interest.

K. **Convertible CDs Accounts.** Additional terms apply to Convertible CD accounts. A minimum of \$1,000 is required to open an account. Twelve (12) Month Convertible CD accounts may be

converted, after a (90) day waiting period, to a Wachovia CD account with a term of twelve (12) months or longer. Thirty-Six (36) Month Convertible CD accounts may be converted, after a one-year waiting period, to a Wachovia CD with a term of 36 months or longer. The interest rate and APY on the new CD, if converted, is the interest rate and APY in effect at that time for the selected product.

L. **Callable CD Accounts.** Additional terms apply to Callable CD Accounts. A minimum of \$10,000 is required to open the account. Callable CD Accounts pay a premium rate of interest in return for our right to "call" the CD account at any time after one year from the date of deposit. If the account is not called, the initial interest rate and APY apply for the initial term. If the account is called, you would choose from the following three options:

- Funds may be reinvested in any other Wachovia deposit account at the current interest rate and APY in effect at the time.
- Funds may remain in the CD for the remainder of the term and earn no less than the minimum interest rate and APY disclosed at account opening.
- Funds may be withdrawn without penalty.

If the CD is called, a notice indicating the call date would be mailed to you. You have ten (10) calendar days from the date to reinvest or withdraw the funds without penalty. If no action were taken, the funds remain in the account for the remainder of the term, earning interest at a rate that is no less than the minimum rate disclosed at the time the account was opened. At its maturity the Callable CD automatically renews as a standard CD with the same term.

M. **Step Rate CD Accounts.** The following additional terms apply to Step Rate CD accounts. A minimum deposit of \$1,000 is required to open the account. The interest rate in effect when the account is opened is increased at the following intervals: 183 days, 366 days and 548 days from the issue date as shown on your Rate Disclosure form. After the 548th day, the interest rate remains fixed until maturity. Step Rate CD accounts mature 24 months after account opening. At maturity, Step Rate CD accounts automatically renew as a standard, automatically renewing 24-month CD.

N. **Liquid CD Accounts.** The following additional terms apply to Liquid CD accounts. A minimum opening deposit of \$5,000 is required. These accounts also have a required minimum balance of \$5,000. The maximum account balance allowed is \$250,000. Funds can be deposited or withdrawn in amounts of \$500 or more as long as the balance remains above the required minimum. Deposits do not extend the term of the account. Automated Clearing House (ACH) deposits- for example, direct deposits-are not permitted. Withdrawals of funds within 7 calendar days of their deposit or within 7 calendar days of any prior withdrawal are subject to a penalty of 7 days' interest on the amount withdrawn. Also, when a withdrawal brings the account below the required minimum balance, the account will be closed and a penalty as described in Section J. above will apply on required minimum balance.

27. **INTEREST INFORMATION.** Interest will be compounded and credited as determined by the Bank. Please refer to the Schedule of Fees and Funds Availability for Commercial Accounts for details on interest compounding and payment methods. Interest rates for accounts vary from time to time. Your statement will also include the interest rate and the effective annual percentage yield earned for that statement period.

28. **COMMERCIAL MONEY MARKET ACCOUNTS.** You will earn our current applicable commercial money market account interest rate if you maintain a daily collected balance of the minimum amount. Please refer to your Schedule of Fees and Funds Availability for Commercial Accounts to confirm threshold balances for earning higher rates of interest.

29. INTERNAL MONEY MANAGEMENT ACCOUNTING. For regulatory and accounting purposes, your checking account will consist of two "sub-accounts" on our books: (1) either a non-interest-bearing (demand) account or an interest-bearing (NOW) sub-account, and (2) a money market sub-account. These sub-accounts are treated as a single account for statements and daily use of your account. Interest is not earned on either sub-account for non-interest-bearing checking accounts. On interest-bearing checking accounts, the same interest rate may be paid on both sub-accounts, and your periodic statement will reflect a single blended annual percentage yield (APY) earned.

Whenever your checking sub-account balance exceeds a threshold amount (which we may set and change at our discretion), we may transfer funds above that amount to the money market sub-account. As these funds are needed to pay items presented against your checking account, we will transfer funds from the money market sub-account to the checking sub-account, up to six (6) times per statement month. If a sixth transfer were needed, the entire balance in the money market sub-account would be transferred into the checking sub-account. This process may be repeated each statement month.

This internal accounting process has no effect on daily use of your account, on how checks are paid, or on how account activity appears on your account statement.

30. POLICY FOR PAYMENT OF INTEREST ON COLLECTED BALANCES.

Interest begins to accrue on interest bearing deposit accounts no later than the business day we receive credit for the deposit of noncash items deposited to your account. We receive credit for checks drawn on other financial institutions based on the availability schedule established by the applicable branch of the Federal Reserve Bank and other correspondent banks. The balance in interest bearing deposit accounts for which we have received credit is called the collected balance. Interest is paid on the net amount of the collected balance less applicable reserves.

31. BUSINESS SAVINGS ACCOUNTS. Your balance(s) will earn interest at our current Business Savings interest rate. Please refer to your Schedule of Fees and Funds Availability for Commercial Accounts to confirm tiers for earning higher rates of interest (may not be applicable in all states).

32. INTEREST-BEARING ACCOUNT LIMITATIONS. We are required under federal regulation to retain the right to ask for seven (7) days' written notice before you withdraw money from any interest-bearing accounts. Unless you receive different instructions from us, you can make withdrawals by writing a check on the applicable account, except on Business Savings accounts.

33. COMMERCIAL MONEY MARKET ACCOUNT TRANSACTION LIMITATIONS. You may make unlimited withdrawals in person from your Commercial Money Market Account. However, federal regulations limit third party transactions or pre-authorized transfers from your account (including overdraft transfers) or transfers made by personal computer (including online banking or bill payment services) or telephone (including facsimile or data transmission) to six per statement period, no more than three of which may be by check, draft, or debit card. If this limitation were exceeded on a regular basis, we would be required to convert your account to another account that permits unlimited check writing privileges. A fee will be imposed for items posted during a statement period in excess of this limit (see the Schedule of Fees for the amount of the fee). We will determine the number of third party checks for your statement period based on the posted date of the third party checks.

34. BUSINESS SAVINGS ACCOUNT TRANSACTION LIMITATIONS. You may make unlimited withdrawals in person from your Business Savings Account; however, under federal regulations you are not permitted to make more than six (6) pre-authorized transfers (including telephone transfers, automatic transfers, overdraft transfers, and transfers made by personal computer) and drafts. If this limitation were exceeded on a regular basis, we would be required to close your account and to open another account that permits unlimited check writing privileges. Withdrawals can only be made by those persons authorized by previously submitted resolutions.

35. CLIENT FUND MANAGER. Your master account is a non-interest bearing checking account established in your name to link it to related client accounts. We are not acting as escrow agent or in any other

fiduciary capacity with respect to your master account or client accounts. Each client account will be a separate interest bearing money market account, non-interest bearing checking account opened by you in the name of a party or parties to be designated by you at the time these accounts are opened. You are required to provide us with the name and taxpayer identification number of the party whose name the client account is being opened. A deposit ticket that indicates your client's name and account number must accompany each deposit. You authorize us to accept deposits for credit to client accounts as designated by you. Withdrawals from a client account can only be made by first transferring funds to the master account. Before you close your master account, you must transfer any balances remaining in your client accounts to the master account.

36. TRANSFER OF ACCOUNTS/ASSIGNMENT OF DEPOSITS. No accounts are transferable. Business Savings accounts and CDs are assignable only with our prior written consent. We may, in our sole and absolute discretion, withhold such consent. No assignment will become effective until we have documented it in our records.

37. LEGAL PROCESS AFFECTING ACCOUNTS. If legal action such as an attachment, garnishment, levy or other state or federal legal process ("legal process") is brought against your account, we may refuse to permit (or may limit) withdrawals or transfers from your account until the legal process is satisfied or dismissed. If we receive any document that purports to be legal process issued out of any court or governmental agency, you hereby authorize us to accept and comply with it, no matter how it was received by us. You hereby direct us that we not contest on your behalf any such legal process and may take action to comply with such process as we determine to be appropriate in the circumstances without liability to you, even if the legal process purports to affect the interest of only one owner of a joint account and even if any funds we may be required to pay out leaves insufficient funds to pay a check you have written. If we incur any expenses, including without limitation, attorneys' reasonable fees, in connection with any such document or legal process, you are liable to us in such amount and we may charge any expenses and fees to your account or any other account you may have with us without prior notice to you, or we may bill you directly for such expenses and fees. Any garnishment of other levy against your account is subject to our right of setoff and security interest. You agree that because we have financial centers or offices in numerous jurisdictions and states other than where your account was opened, if we are served with any process as referenced above in any jurisdiction or state, you hereby direct us to recognize and honor such service of process.

38. POWER OF ATTORNEY. You agree to authorize and direct us to receive, accept, pay and/or apply, without any duty of inquiry, without limit as to amount, and without regard to the application of the proceeds, any check, draft, or other instrument for the payment of money drawn by any of your agents or attorneys in fact on or payable from your accounts including, but not limited to, those endorsed to the order of such agent/attorney-in-fact or otherwise for the personal credit of such agent/attorney-in-fact.

39. OTHER ADVERSE CLAIMS. If we receive notice of an actual or potential adverse claim to your account or the funds in your account, we may at our discretion refuse to pay out any money from your account for a reasonable period of time after receipt of notice of the actual or potential claim. Although we reserve the right to refuse to pay out any money from your account if we have received notice of an actual or potential claim, we are not required to recognize any adverse claim unless (a) the claimant provides us with an acceptable bond indemnifying us against any and all liabilities, losses, damages, costs and expenses that we might incur in connection with payment of the adverse claim and any resulting dishonored checks or other items or (b) the claimant has obtained an order requiring us to recognize the adverse claim from a court of proper jurisdiction.

40. CONFLICTS/DISPUTES INVOLVING THE ACCOUNT. If we receive an actual or potential claim from a third party regarding your account, any deposit, transfer, credit or other transaction involving your Account, or conflicting instructions or claims from authorized signers, you hereby grant to us full discretion to freeze your Account and not honor any further transactions until the claim is resolved, or we may, at our discretion, choose not to pay out any money from your account until we receive consistent instructions from all parties or a court order, all without liability to you. We may also, without liability to you, close the account and issue a check made payable to you and each authorized signor or

you and each claimant, as we deem necessary, or we may interplead the funds into court. You agree to reimburse us for any loss, costs or expenses including, without limitation, attorneys' reasonable fees and the costs of litigation (to the extent permitted by law) that we incur as a result of any dispute involving your account, and you authorize us to deduct any such loss, costs, or expenses from your account without prior notice to you. This obligation includes any dispute between you and us involving the account and situations where we become involved in any dispute between you and an authorized signor, another joint owner, or a third party claiming an interest in the account. It also includes any situation where you, an authorized signor, another joint owner, or a third party takes action with respect to the account that causes us, in good faith, to seek the advice of counsel, whether or not we actually become involved in a dispute.

would provide a defense. A claim brought in a lawsuit in state or federal court will also apply with equal force and effect to any arbitration brought pursuant to this section.

To the extent permitted by law, if any dispute or claim results in a lawsuit, and neither you nor we have elected or requested arbitration, you and we knowingly and voluntarily agree that a judge, without a jury, will decide the case. The arbitration or trial will be brought individually and not as part of a class action. If it is brought as a class action, it must proceed on an individual (non-class, non-representative basis). YOU UNDERSTAND AND KNOWINGLY AND VOLUNTARILY AGREE THAT YOU AND WE ARE WAIVING THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE OR BE REPRESENTED IN ANY CLASS ACTION LAWSUIT.

41. **CHANGING THIS AGREEMENT.** We can change the rules for any of the accounts described in this Agreement at any time. We will notify you within a reasonable time before the change will take effect if the change is not in your favor.
42. **CUSTOMER'S WAIVER OF NOTICE.** By signing the Signature Card you waive any notice of nonpayment, dishonor or protest regarding any items credited to or charged against your deposit account. For example, if a check that you deposited were dishonored and returned to us, we are not required to notify you of the dishonor.
43. **WAIVER OF RIGHTS BY THE BANK.** We reserve the right to waive the enforcement of any of the terms of this Agreement with respect to any transaction or series of transactions. Any such waiver will not affect our right to enforce any of our rights with respect to other customers or to enforce any of our rights with respect to later transactions with you and is not sufficient to modify the terms and conditions of this Agreement.
44. **INVALIDITY OF CONTRACT PROVISIONS.** In the event any one or more of the provisions of this Agreement shall for any reason, including under any applicable statute or rule of law, be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.
45. **FORCE MAJEURE.** You agree we shall have no responsibility or liability to you or any third party for failure or delay in our performance under this Agreement or for any losses due to causes or conditions including, without limitation, delays and/or interruptions of business due to any act of God, natural disaster, fire, act of government authority, act of public enemy or war, riot, civil disturbance, insurrection, labor difficulty, power failure, telecommunications failure, severe adverse weather condition or other causes beyond our reasonable control. The time, if any, required for such performance under this Agreement shall be automatically extended during the period of such delay or interruption.
46. **APPLICABLE LAW.** Our deposit relationship with you is governed primarily by this Agreement. However, it is also governed by the laws of The United States of America; the rules and regulations of the Board of Governors of the Federal Reserve System and various Federal Reserve Banks; and the rules and regulations of other proper bank supervisory authorities and other governmental agencies. To the extent state law applies to our deposit relationship, the applicable law is the law of the state where your account was opened as contained in our records. If there is any conflict between this Agreement and applicable federal or state law, this Agreement will be considered changed to the extent necessary to comply with the law. If any provision in this Agreement is declared to be invalid, unenforceable or illegal, that part will not affect the validity of other provisions.
47. **ARBITRATION OF DISPUTES/WAIVER OF JURY TRIAL AND PARTICIPATION IN CLASS ACTIONS.** If either you or we request, any dispute or claim concerning your account or your relationship to us will be decided by binding arbitration under the expedited procedures of the Commercial Financial Disputes Arbitration Rules of the American Arbitration Association (AAA), and Title 9 of the US Code. Arbitration hearings will be held in the city where the dispute occurred or where mutually agreed. A single arbitrator will be appointed by the agreement of the parties, or, if the parties are unable to agree, by AAA and will be a retired judge or attorney with experience or knowledge in banking transactions. Each party will pay its own costs and attorney's fees. A court may enter a judgment on the award. Any statute of repose or limitations period which

48. **ACCURACY AND VERIFICATION. THIS PARAGRAPH APPLIES ONLY TO SOLE PROPRIETORSHIP ACCOUNTS.** You acknowledge and agree that any information you have supplied or will supply to us is and shall be complete and correct. You agree that we may request reports from credit bureaus and consumer reporting agencies to investigate or reinvestigate any information provided by you in connection with your application for any account. We may also verify your employment, salary, assets, debts, and references.
49. **INDEMNIFICATION OF BANK.** You hereby indemnify and hold us, our officers, employees and agents harmless from any and all losses, or claims of any kind arising in connection with the Services provided under this Agreement, except those losses, claims, and expenses (including attorney's reasonable fees and costs) arising out of the gross negligence or willful misconduct of the Bank or its employees. You further indemnify and hold us, our officers, employees and agents harmless from any and all losses or claims of any kind arising out of actions taken or omitted in good faith by us in reliance upon instructions from you. We shall not be responsible or liable for any other entity's (not under our direct control) acts or omissions including, without limitation, any Federal Reserve Bank or transmission or communication facility. **EVEN IF LIABILITY WERE ESTABLISHED FOR ACTUAL DAMAGES, IN NO EVENT SHALL WE OR YOU BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE FURNISHING, PERFORMANCE OR USE OF THE SERVICES PROVIDED UNDER THIS AGREEMENT, REGARDLESS OF WHETHER WE OR YOU MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES UNLESS REQUIRED BY APPLICABLE LAW.** The limitations and exclusions in this paragraph shall apply to all claims of every kind, nature and description whether arising from breach of contract, breach of warranty, gross negligence or other tort, and shall survive the termination of this Agreement and applicable Treasury Services agreements.
50. **YOUR REPRESENTATIONS, WARRANTIES AND COVENANTS.** You represent and warrant to the Bank that: (a) All information, including financial information, whenever provided by you to the Bank, shall be true, correct and complete. Information relating to your financial condition accurately reflects your financial condition as of the date(s) thereof; (b) You are not insolvent within the meaning of 11 U.S.C. Section 101 (32); (c) You are in compliance with all federal, state and local laws applicable to your properties, operations, business and finances; (d) You are duly organized and in good standing under the laws of the state of your organization, and you have all powers, licenses, authorizations and approvals to operate your business as now conducted; (e) You will promptly notify the Bank of the existence of any condition or event which may constitute a breach of or default under this Agreement; (f) You will promptly notify the Bank in writing of (i) any change in your financial condition or business; (ii) any change in your name, address or business structure, ownership, organization, or other information you provided to us to open the account (e.g., a change in your driver's license or other personal identification number); and (iii) any material litigation affecting you; (g) Upon the Bank's request therefor, you will promptly deliver to the Bank true and correct copies of your financial statements, reports, notices, and proxy statements sent to shareholders, and such other information regarding your operations, business affairs and operations including, but not limited to, income statements, balance sheets and statements of cash flows.
51. **SIGNATURES RECEIVED VIA FACSIMILE (FAX):** If you fax any document to us signed, you agree that it was your intention that: (i) your fax signature is an electronic signature under applicable federal and state law, (ii) the fax be an original document, (iii) you intend on conducting business with us by electronic records and electronic signatures, (iv) your consent under (iii) to be electronically given under applicable federal and state law.

52. **ENTIRE AGREEMENT.** This Agreement and the documents to which it refers constitute your and our entire agreement and understanding and supersede all prior agreements and understandings. This Agreement may not be changed orally. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

II. SPECIAL TERMS AND CONDITIONS FOR WIRE TRANSFERS

If you wish to use our wire transfer service, the following terms and conditions shall govern all transactions for our acceptance and processing of your payment orders, credits and related requests. If a discrepancy were determined to exist between these Terms and Conditions and other provisions of this Agreement, then these Terms and Conditions shall control but only to the extent necessary to address the discrepancy. Unless otherwise defined below, the terms used in this Section II of this Agreement shall have the same meaning as set forth in Article 4A of the Uniform Commercial Code of the state in which your account or relationship is maintained.

1. **AUTHORIZATION AND SECURITY PROCEDURE.** We have established operating rules and security procedures for you to initiate and receive funds transfers to or from your account(s), which rules and procedures include a requirement for you to sign a "Funds Transfer Schedule A - Authorization and Security Procedures," or such other document as we may require, the terms of which are incorporated by reference and made part of this Agreement. Such Funds Transfer and Authorization Schedule contains the rules and procedures ("Security Procedures") which you and we will use to process payment orders initiated by you. Additional call back procedures may be utilized by you as described in the Security Procedures. You agree that the Security Procedures are commercially reasonable in light of your circumstances and the type, value and frequency of the payment orders you will request. You also agree to keep the Security Procedures confidential and not to disclose the Security Procedures to anyone except the persons whom you have authorized to make transfer requests on your behalf ("Authorized Representatives"). If you or any of your Authorized Representatives have reason to believe that a Security Procedure may have been learned by an unauthorized person, you agree to notify us immediately at the telephone number indicated in the Authorization Schedule. If we receive a payment order (or related request) in accordance with your Security Procedure, it shall be conclusively deemed authentic and we shall be entitled to rely thereon. You are responsible for the accuracy of the initial communication of the payment order as well as the accuracy of any documentation or callback of the payment order made by us. You, for yourself and each of your Authorized Representatives, agree that we, in our sole discretion, may record any telephone conversation between you or any Authorized Representative and us.
2. **EXECUTION OF PAYMENT ORDERS.** If we receive a payment order that has been verified according to Security Procedures, you authorize and direct us to debit your account(s) as listed on the Authorization Schedule and transfer the funds. We are also authorized to implement any instructions, including amendments or cancellations of prior payment orders, upon verification of such instructions. We are authorized to rely on any payment order believed by us in good faith to have been given by an Authorized Representative. We may handle payment orders received from you and other customers in any order selected by us and, unless otherwise instructed by you, we may use any means, intermediaries or funds transfer systems which may have operating rules governing the execution of payment orders to effect the transfer as we, in our sole discretion, shall determine.
3. **CUT-OFF TIMES.** We must receive all payment orders before the cut-off time for funds transfers on a business day established by us from time to time. Any payment orders or related requests received after such deadlines, or on weekends, holidays for us or the bank or institution to receive the transfer, or the funds transfer system to be used, will be treated as received on our next funds transfer business day. We will make reasonable efforts to execute all payment orders received prior to the deadline.
4. **ADVICE OF FUNDS TRANSFERS.** Unless otherwise agreed in writing, we will not provide a next-day wire transfer summary statement or confirmation. Instead, we will notify you of a receipt or payment by wire transfer in any periodic statement provided to you.

You agree to examine each of your periodic statements promptly upon receipt and to notify us immediately of any discrepancies between the periodic statement and your records. We shall not be liable for interest compensation unless we are notified of the discrepancy within thirty (30) days after the date of your statement indicating the debit for the payment order in question. You agree that your right to assert a claim against us with respect to any transaction reasonably identified on a statement shall expire one (1) year after the date of the transaction which becomes the basis for such a claim.

5. **LIMITATION OF LIABILITY AND INDEMNIFICATION.** You expressly agree that we shall be liable to you only for our erroneous execution of a payment order. We shall not be liable for any errors the part of any third party including, without limitation, third parties used by us in executing a payment order or performing a related act and no such third party shall be deemed to be our agent. We shall not be liable for our refusal to honor any request if we, in good faith, are unable to determine to our satisfaction that such request is valid, based upon our adherence to the Security Procedures. **IN NO EVENT SHALL WE BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES EVEN IF WE SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.** Except as may be limited by applicable law, you agree to indemnify us and hold us harmless (including the payment of attorneys' reasonable fees) against all liability to third parties arising out of or in connection with the terms and conditions of this Agreement and the services provided hereunder or otherwise pursuant to your instructions.
6. **USE OF IDENTIFYING NUMBERS.** In the event a payment or payment order identifies a beneficiary, beneficiary's bank or intermediary bank inconsistently by name and an identifying number (such as an account number, S.W.I.F.T. address or universal identification number), payment may be made by the intermediary or beneficiary bank on the basis of the identifying number, even if the identifying number identifies a person or entity different from the named person or entity in your payment order and that your obligation to pay the payment order shall not be excused by your error. We will rely on the identifying number as proper identification of a beneficiary.
7. **INTEREST COMPENSATION.** In the event that we shall be liable to you for interest compensation under this Agreement or by applicable law, interest shall be calculated on the basis of the average Federal Funds rate for the period involved. You agree that we may, at our sole option, pay interest compensation as follows: (1) by lump sum payment of cash, or (2) by providing a credit to your account with us.
8. **INTERNATIONAL PAYMENTS.** Orders for the transfer of U.S. Dollars shall be paid in U.S. Dollars if transferred to a beneficiary located in the United States or its protectorates or territories. If transferred to a beneficiary located elsewhere, the beneficiary's bank may elect to pay the beneficiary in foreign currency at the bank's buying rate of exchange for wire transfers. It is your responsibility to advise the beneficiary of this possibility. We may send any message relative to this order in explicit language, code or cipher. Foreign currency transfer orders are final when made to us. However, pursuant to the request of the originator, and only if possible, we may cancel or amend any order before the transfer is effected. We shall incur no liability if we are unable, for any reason, to cancel or amend an order. Refunds of U.S. Dollar orders shall be in the U.S. Dollar amount. Refunds of foreign currency orders shall be in the amount of U.S. Dollars that can be bought for the foreign currency amount at our then current rate of exchange. The originator bears all risk of loss due to fluctuation in the rate of exchange. No transfer fee shall be refunded.

III. SPECIAL TERMS AND CONDITIONS FOR AUTOMATED CLEARING HOUSE (ACH) TRANSACTIONS

If you wish to use our ACH service, the following terms and conditions shall govern all transactions arising out of this service. If a discrepancy were determined to exist between these Terms and Conditions and this Agreement, then these Terms and Conditions shall control but only to the extent necessary to address the discrepancy.

1. **SERVICES.** The ACH services to be performed by us and in accordance with the rules of the National Automated Clearing House Association ("NACHA"), (hereinafter, the "Rules") as such Rules are amended from time to time include the transmission of

electronic credit and/or debit entries (hereinafter "Entries") initiated by you and processed through us from your demand depository account(s) with us (the "Accounts") to accounts maintained with us and at other banks and financial institutions by means of NACHA. In conjunction with the Federal Reserve Bank (the "Services"). With respect to such Entries, we will act as an Originating Depository Financial Institution and you will act as Originator, as defined in the Rules. As Originator, you agree to be bound by the Rules, as amended from time to time and you agree that you will handle all aspects relating to the processing of an Entry in a commercially reasonable manner. You acknowledge that Entries may not be initiated that violate the laws of the The United States of America. Capitalized terms in these Terms and Conditions, unless otherwise defined, will have the meaning given in the adoption of Article 4A of the Uniform Commercial Code in the state in which your account or relationship is maintained.

In accordance with the Rules and banking regulatory guidelines, companies using ACH services must be assigned exposure limits and meet minimum credit standards. These exposure limits represent the maximum ACH Dollar volume that can be originated and await final settlement over any three (3) banking days period. Specific exposure limits will be specific to a settlement deposit account. Efforts will be made to assign exposure limits that would be consistent with your historical ACH origination activity. We shall have the right to change or suspend these limits at any time in our sole reasonable discretion. Your failure to comply with such conditions and procedures can result in our requiring certain credit approvals in order to continue using our ACH services, or in our termination of your ACH services. Any such conditions and procedures we may establish shall be deemed to be provisions of this Agreement.

2. **SERVICES PERFORMED.** You will give us instructions detailing the Services to be performed with regard to the initiation, acceptance, rejection and transmission of Entries; transfer of funds; accounts to be utilized as Authorized Accounts; and the disposition of information regarding the Services performed. When accepted by us, your instructions are hereby incorporated by reference as though fully set forth herein. Such instructions may be changed from time to time by you upon notice to and acceptance by us without disturbing the validity of these Terms and Conditions.
3. **RULES AND VERIFICATION OF ENTRIES.** You agree we will transmit Entries by means of the ACH Operator in accordance with the Rules. You agree that we are not required to verify Entry information but, instead, may rely that the Information furnished by you is authentic, accurate and conforms to the Rules.
4. **OFFICE OF FOREIGN ASSETS CONTROL (OFAC).** The ACH system may not be used to process transactions in violation of OFAC sanctions. At a minimum, illicit transactions will be blocked or rejected and originators could face penalties.
5. **PRE-NOTIFICATION.** You agree to provide us with prescribed pre-notification information which we may require for all Entries that you intend to initiate, within the time limits prescribed by the Rules.
6. **CANCELLATION, AMENDMENT AND REJECTION OF ENTRIES.**
 - A. **Cancellation and Amendment.** You will have no right to amend, cancel or stop payment of an Entry after its receipt by us. However, we will use reasonable efforts to act on such a request by you prior to transmittal to the ACH to the extent provided in Article Seven of the Rules, or, in the case of an Entry for transmittal to an account maintained with us ("On-Us Entry"), prior to crediting or debiting the On-Us Entry account, but we will have no liability if any such amendment, cancellation or stop payment were not effected, notwithstanding timely receipt of the amendment, cancellation or stop payment request.
 - B. **Rejection by Bank.** We have the right to reject any Entry and may, at our option, reject an Entry that is in excess of the collected balance in the Authorized Account(s) or based on customer file limits. We will notify you by telephone or electronic transmission of such rejection no later than the business day such Entry would otherwise have been transmitted by us to the ACH. We will have no liability to you by reason of the rejection of any Entry or the fact that such notice shall not have been given at an earlier time than that provided for herein.
 - C. **Rejection by ACH.** We have the right to place a limit on aggregate transfers of funds out of any Authorized Account that might result in a negative collected balance in the account or an overdraft occurring in the account. In the event any Entry shall have been rejected by any component of the ACH system or network for any reason whatsoever, it will be your responsibility to remake such Entry; provided, however, that we can remake any Entry when such a rejection by the ACH was due to a discrepancy in the Entry by us and sufficient data shall have been available to us to permit a remake of such Entry.
 - D. **Unauthorized ACH Transactions.** If you receive an unauthorized transaction posted to your account, you shall have until 2:00 PM of the banking day after the item was posted to notify us to return the item as unauthorized. We will not be able to return the item after that time without the cooperation and agreement of the originating bank and the originating company. Any other action must be conducted between you and the originator of the transaction.
7. **RETENTION OF INFORMATION AND AUTHORIZATIONS.** You shall retain and provide to us, upon our request, all information necessary to remake any Entry for three (3) days after midnight of the Effective Date of an Entry. For the purposes of these Terms and Conditions, the "Effective Date" shall be the day on which the offsetting Entry shall have been posted to the Authorized Account(s), as stated in your Instructions. You will retain an original or copy of each authorization for six (6) years after the date of termination or revocation of such authorization.
8. **INCONSISTENCY OF NAME AND ACCOUNT NUMBER.** You acknowledge and agree that if an Entry were to describe the Beneficiary/Receiver of the Entry inconsistently by name and account number, payment of the Entry transmitted by us may be made on the basis of the account number even if the Identifying number identifies a person or entity different from the named Beneficiary/Receiver and that your obligation to us for the amount of the Entry shall not be excused in such circumstance by your error.
9. **SECURITY PROCEDURES.**
 - A. **Agreement to Security Procedures.** You and we acknowledge that, as part of your Instructions for the Services, you and we have agreed to certain security procedures (hereinafter "Security Procedures"), which you and we will use to verify that Entries are correct and valid or are those of the Company. You agree that such Security Procedures are and shall be Commercially Reasonable in light of your circumstances and the type, value and frequency of the Entries you will initiate.
 - B. **Security Procedures.** For Electronic Data Transmission of ACH Entry file(s) to us by you and for Electronic Data Transmission of ACH files to us from you when we are retrieving the file(s), you shall utilize security procedures provided by us, and you further agree that the security provided shall have been Commercially Reasonable data security. If our transmission software were to accept the file(s) or successfully retrieve the file(s) based on this security and the file(s) were in ACH system readable format, you agree that acceptance shall have occurred and we may process the file(s).
 - C. **Confidentiality of Security Procedures.** You agree to keep the Security Procedures confidential and not to disclose the Security Procedures to anyone except Authorized Representatives. If you or any of your Authorized Representatives have reason to believe that the Security Procedures may have been learned or are known by an unauthorized person, you agree to notify our Treasury Services Technical Services area immediately.
 - D. **Modification of Security Procedures.** All modifications and additions to the Security Procedures or list of Authorized Representatives must be in writing, except if you request us by oral instructions to delete a name of an Authorized Representative, in which event, you shall immediately send us written confirmation of such deletion.

- 10. RETURNED ENTRIES.** We will use reasonable efforts to notify you of receipt of a returned Entry. We will have no obligation to re-transmit a returned Entry, unless we have agreed otherwise in writing. We will credit the Account(s) for any amount received by us by reason of the return of any Entry transmitted by us for which we have previously received payment from you.
- 11. ON-US ENTRIES.** Except as provided in the Rules and these Terms and Conditions, in the case of an On-Us Entry received by us for transmittal, we will credit the Beneficiary/Receiver's account in the amount of such Entry on the Effective Date contained in such Entry provided the requirements of your Instructions and Security Procedures are met. If any such requirement were not met, we would use reasonable efforts to credit the Beneficiary/Receiver's account in the amount of such Entry on the next business day following such Effective Date.
- 12. PROVISIONAL PAYMENT.** Payment of an Entry by the Beneficiary/Receiver's bank to the Beneficiary/Receiver will be provisional until receipt by the Beneficiary/Receiver's bank of final settlement for such Entry. You specifically acknowledge that you have received notice of such settlement rule and the fact that, if any such settlement were not received, the Beneficiary/Receiver's bank would be entitled to a refund from the Receiver/Beneficiary or the amount credited, and you would not be deemed to have paid the Receiver/Beneficiary the amount of the Entry.
- 13. COLLECTED FUNDS.**
- A. Credit Entries.** When you initiate a credit Entry, you shall provide good collected funds in the Authorized Accounts to cover any credit Entry initiated by us no later than 2:00 PM on the applicable effective date. For the purposes of these Terms and Conditions, "good collected funds" shall mean funds subject to immediate withdrawal.
- B. Debit Entries.** When you initiate a debit Entry, you will receive immediately available funds in the Authorized Accounts for any debit Entry initiated by you on the applicable effective date or the next banking day after our receipt of the debit Entry information from you. You will promptly provide good collected funds into the affected Authorized Account to indemnify us if any debit Entry is rejected after we have permitted you to withdraw good collected funds in the amount thereof or if any adjustment memorandum that relates to any such Entry is received by us.
- 14. AUTHORIZATION WARRANTY.** With respect to each Entry submitted to us you represent and warrant to us that:
- A. Authorized.** The employee or other person or entity to whom such Entry pertains is an Authorized Representative and shall have authorized such Entry in writing prior to the submission thereof to us and such authorization shall have been effective at the time of delivery or transmittal of such Entry, and shall so remain until acceptance of the Entry by the Beneficiary/Receiver's bank;
- B. Evidence.** You will maintain written evidence of such authorizations in accordance with all applicable laws, rules and regulations and will furnish us with a copy if requested by us; and
- C. Accurate.** The Entry is accurate, in proper form, timely and conforms to all obligations owed by you to the applicable Receiver/Beneficiary.
- 15. TELEPHONE-INITIATED ENTRIES.** With respect to telephone-initiated Entries, you acknowledge and agree that you assume the following additional obligations and you further represent and warrant that:
- A. Information.** You shall have disclosed the information required by the Rules to the consumer during the telephone call.
- B. Confirmation.** You shall have tape recorded the telephone conversation authorizing the Entry or provided written confirmation of the consumer's authorization as required by the Rules.
- C. Verification.** You shall have verified the consumer's identity and routing number, as well as the Receiver's identity and routing number.
- Any liability for any failure on your part to comply with the Rules will be borne by you to the extent that your failure resulted in such liability.
- 16. INTERNET-INITIATED ENTRIES.** With respect to internet-initiated Entries ("WEB Entries"), you agree that you will maintain an annual security audit as required by the Rules. You understand that we are required by the Rules to set specific exposure limits and you agree to comply with such exposure limits.
- 17. YOUR LIABILITY.** You are and shall be responsible for any loss, costs incurred, and/or claims made against us for your failure to obtain the correct identity, proper authorization (by provision of prior notices, if applicable, to the Receiver, and other appropriate authorization and source documents, if applicable) and other information regardless of the reasonableness of any procedures employed by you, as well as any failure to provide timely copies or source documents when requested by us.
- 18. LIMITATION OF LIABILITY AND INDEMNIFICATION.** You expressly agree that we shall be liable to you only for our erroneous execution of a payment order. We shall not be liable for any errors or delay on the part of any third party including, without limitation, third parties used by us in executing a payment order or performing a related act due to any cause other than our own failure to exercise reasonable and ordinary care, and no such third party shall be deemed to be our agent. We shall not be liable for our refusal to honor any request if we, in good faith, are unable to determine to our satisfaction that such request is valid, based upon our adherence to the Security Procedures. **IN NO EVENT SHALL WE BE LIABLE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF WE SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.** Except as may be limited by applicable law, you agree to indemnify us and hold us harmless (including the payment of attorneys' reasonable fees, costs and expenses) against all liability to third parties arising out of or in connection with the terms and conditions of this Agreement or the services provided hereunder or otherwise pursuant to your instructions. This provision survives the termination of this Service and/or Agreement.

