

VILLAGE OF BRADLEY

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RESOLUTION NO. R-02-23-04

A RESOLUTION APPROVING A TERMS OF SERVICE AGREEMENT WITH BLACKHAWK NETWORK, INC TO PURCHASE \$693,000 IN GIFT CARDS TO BE DISTRUBUTED TO BRADLEY RESIDENTS

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ADOPTED BY THE  
BOARD OF TRUSTEES OF THE  
VILLAGE OF BRADLEY

THIS 27 DAY OF February, 2023

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Published in pamphlet form by the authority of the Board of Trustees of the Village of Bradley, Kankakee County, Illinois this 27 day of Feb, 2023

RESOLUTION NO. B-022304

A RESOLUTION APPROVING A TERMS OF SERVICE AGREEMENT WITH BLACKHAWK NETWORK, INC TO PURCHASE \$693,000 IN GIFT CARDS TO BE DISTRUBUTED TO BRADLEY RESIDENTS

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**WHEREAS**, the Corporate Authorities of the Village of Bradley, Kankakee County, Illinois, have the authority to adopt resolutions and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety, and welfare of its citizens; and

**WHEREAS**, pursuant to Section 2-3-8 of the Illinois Municipal Code (65 ILCS 5/2-3-8), the Corporate Authorities of the Village are authorized to enter into contracts that support and advance the legitimate public purposes of the Village; and

**WHEREAS**, the Corporate Authorities of the Village have determined that it is necessary, expedient, and in the best interests of the Village and its citizens to purchase gift cards to distribute to its residents in the amount not to exceed \$120.00 per household for the calendar year of 2022 or \$30.00 per full calendar quarter in which the head of household resides; and

**WHEREAS**, “Blackhawk Network, Inc” a Arizona corporation (collectively the “Company”), that is in the business of selling and managing gift card programs; and

**WHEREAS**, the Company has provided the Village with a written terms of service agreement, a copy of which is attached hereto as Exhibit A and fully incorporated herein, in which the Company offers to sell and manage the gift card program for total consideration of six hundred ninety eight thousand seven hundred seventy five and 00/100 dollars (\$698,775.00) (the “Proposal”) which calculates to 5,775 \$120 dollar gift cards plus \$1 per each card issued; and

**WHEREAS**, the Corporate Authorities of the Village have reviewed the Proposal and have determined that the terms, conditions, and provisions thereof are fair, reasonable, and acceptable to the Village; and

**WHEREAS**, the Corporate Authorities of the Village have determined that approving the Proposal in an amount not to exceed six hundred ninety-eight thousand seven hundred seventy five and 00/100 dollars (\$698,775.00) is in the best interests of the Village and its citizens.

**NOW THEREFORE, BE IT RESOLVED BY THE CORPORATE AUTHORITIES OF THE VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS, PURSUANT TO ITS STATUTORY AUTHORITY, AS FOLLOWS:**

**SECTION 1.** The Corporate Authorities hereby find that all of the recitals contained in the preamble to this Resolution are true, correct, and complete and are hereby incorporated by reference hereto and made a part hereof.

**SECTION 2.** The Corporate Authorities of the Village hereby find and declare that the terms, conditions, and provisions of the service agreement (Exhibit A) are fair, reasonable, and acceptable to the Village. Therefore, the Corporate Authorities of the Village hereby approve the Proposal in an amount not to exceed six hundred ninety-eight thousand seven hundred seventy-five and 00/100 dollars (\$698,775.00) and direct the Village Administrator to undertake any and all actions, including without limitation the execution and delivery of documents, necessary to engage the Company to complete the Project as set forth in the Proposal.

**SECTION 3.** In the event that any provision or provisions, portion or portions, or clause or clauses of this Resolution shall be declared to be invalid or unenforceable by a Court of competent jurisdiction, such adjudication shall in no way affect or impair the validity or enforceability of any of the remaining provisions, portions, or clauses of this Resolution that may be given effect without such invalid or unenforceable provision or provisions, portion or portions, or clause or clauses.

**SECTION 4.** All ordinances, resolutions, motions, or parts thereof, conflicting with any of the provisions of this Resolution, are hereby repealed to the extent of the conflict.

**SECTION 5.** The Village Clerk is hereby directed to publish this Resolution in pamphlet form.

**SECTION 6.** This Resolution shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

*[Intentionally Blank]*

PASSED by the Board of Trustees on a roll call vote on the 27 day of Feb, 2023.

**TRUSTEES:**

RYAN LEBRAN	Aye - <u>X</u>	Nay - <u>    </u>	Absent - <u>    </u>
BRIAN BILLINGSLEY	Aye - <u>X</u>	Nay - <u>    </u>	Absent - <u>    </u>
DARREN WESTPHAL	Aye - <u>    </u>	Nay - <u>    </u>	Absent - <u>X</u>
BRIAN TIERI	Aye - <u>X</u>	Nay - <u>    </u>	Absent - <u>    </u>
GRANT D. VANDENHOUT	Aye - <u>X</u>	Nay - <u>    </u>	Absent - <u>    </u>
GENE JORDAN	Aye - <u>X</u>	Nay - <u>    </u>	Absent - <u>    </u>

**VILLAGE PRESIDENT:**

MICHAEL WATSON      Aye -           Nay -           Absent -     

**TOTALS:**              Aye - 5      Nay - 0      Absent - 1

**ATTEST:**

Julie Tambling  
JULIE TAMBLING, VILLAGE CLERK

APPROVED this 27 day of February, 2023.

Michael Watson  
MICHAEL WATSON, VILLAGE PRESIDENT

**ATTEST:**

Julie Tambling  
JULIE TAMBLING, VILLAGE CLERK

STATE OF ILLINOIS        )  
                                  )        §§  
COUNTY OF KANKAKEE    )

I, Julie Tambling, Village Clerk of the Village of Bradley, County of Kankakee and State of Illinois, DO HEREBY CERTIFY that the attached is a true, perfect, and complete copy of Resolution number B022304, A RESOLUTION APPROVING A TERMS OF SERVICE AGREEMENT WITH BLACKHAWK NETWORK, INC TO PURCHASE \$693,000 IN GIFT CARDS TO BE DISTRUBUTED TO BRADLEY RESIDENTS which was adopted by the Village Corporate Authorities at a meeting held on the 27 day of Feb, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand in the Village of Bradley, County of Kankakee and State of Illinois, on this 27 day of Feb, 2023.

  
\_\_\_\_\_  
JULIE TAMBLING, VILLAGE CLERK

(SEAL)



# **Exhibit A**

## CARD ORDER AGREEMENT ("Agreement")

(Rev. March 29, 2017)

This Card Order Agreement, including the applicable attached schedule(s) (collectively the "Agreement") is entered into by and between Blackhawk Network, Inc., an Arizona corporation or Blackhawk Network (Canada) LTD, a corporation incorporated under the laws of the Province of Alberta, ("BH") and the organization on whose behalf the order for Cards is placed, or the product configuration accepted, and the Agreement accepted, either through electronic acceptance or written signature (hereinafter "Client"). BH and Client may be referred to herein individually as a "Party" and collectively as the "Parties." This Agreement incorporates the terms herein, the applicable product schedule(s) attached hereto, and the features and pricing described in the product configuration accepted by Client through BH's ordering portal.

1. **Definitions.** The following capitalized terms have the meanings set forth below:
  - a. "Affiliate" means, with respect to a Party, any person, firm, corporation, partnership, limited liability company, or other entity that now or in the future, directly controls, is controlled by or is under common control with a Party. For purposes of the foregoing, "control" shall mean, with respect to: (a) a corporation, the ownership directly of fifty percent (50%) or more of the voting power to elect directors thereof; and (b) any other entity, power to direct the management of such entity.
  - b. "Applicable Law" means local, state, provincial and federal laws including but not limited to, the Bank Secrecy Act, the USA PATRIOT Act, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and other relevant anti-money laundering laws, consumer promotion laws, consumer protection laws, the Internal Revenue Code, and rules and regulations promulgated by OFAC, and/or FINTRAC and the OSFI, applicable to a Party in light of that Party's role with respect to the Program, services and Cards.
  - c. "Authorized Partner" means a Client that has been separately approved by BH' compliance department to market and distribute Cards to a separate corporate entity.
  - d. "Card(s)" means the applicable prepaid card products, including, as applicable, Network-Branded Open Loop Prepaid Cards and Single Merchant Gift Cards (as those terms are defined in the applicable schedules), whether in plastic or other electronic or digital debit payment mechanisms, electronic promises, numbers, cards or other payment codes or devices to be used in connection with Client's Program.
  - e. "Claim" means an action, allegation, cause of action, cease and desist letter, charge, citation, claim, demand, directive, lawsuit or other litigation or proceeding, or notice.
  - f. "Client Content" means all data, graphics, (including, without limitation, logos and Client Marks), and other content provided to BH by Client for use in the Program.
  - g. "Damages" means any assessments, fines, bona fide settlements, costs, damages (including consequential, indirect, special, incidental or punitive damages), expenses (including without limitation reasonable attorneys' fees, expenses and costs), judgments, liabilities, losses, or penalties, incurred in connection with a Claim.
  - h. "FINTRAC" means the Financial Transactions and Reports Analysis Centre of Canada.
  - i. "Issuer" means the party or entity issuing the Card, whether directly or indirectly through a third party.
  - j. "Marks" means trademarks, service marks, trade names, copyrights and logos.



- k. "OFAC" means the Office of Foreign Asset Control.
- l. "OSFI" means the Office of the Superintendent of Financial Institutions.
- m. "Participant" means an individual participating in Client's Program and, as applicable, receiving a Card in connection with Client's Program.
- n. "Program" means a loyalty, award or promotional program sponsored by Client where individuals are awarded a Card and where no money or other thing of value is given by the individual in exchange for the Card or a bona fide corporate-funded expense management program.
- o. "Promotion" shall have the meaning found in Section 8 of this Agreement.
- p. "Term" means the effective period of this Agreement, as described in Section 10.a of this Agreement.

2. **Scope of Agreement.** All orders of Cards by Client are subject to acceptance by BH. If any term of this Agreement conflicts with terms and conditions specified by Client, THEN ACCEPTANCE OF CLIENT'S ORDER IS MADE ONLY UPON THE EXPRESS UNDERSTANDING AND CONDITION THAT THE TERMS AND CONDITIONS HEREIN SHALL GOVERN AND CONTROL THE AGREEMENT BETWEEN CLIENT AND BH, unless the Parties expressly agree otherwise, in a writing executed by authorized representatives of both Parties. The foregoing shall apply regardless of whether Client accepts this Agreement by a written acknowledgement, by implication or by acceptance of or payment for Cards ordered hereunder. BH's failure to object to provisions contained in any communication from Client shall not be deemed a waiver of or a modification to, any terms and conditions of this Agreement.

3. **Fees, Orders and Payment.**

- a. **Fees.** In consideration for the Cards and related services, Client shall pay the fees set forth in the product configuration accepted by Client through BH's online ordering portal. Card fees (with the exception of reloadable per-Card fees), Card funding and Card shipping and/or handling fees are due on a prepaid basis and are non-refundable and non-returnable unless otherwise agreed by the Parties. Upon submission of an order for Cards, such fees and funding shall be remitted by Client in accordance with BH's instructions. Preferred payment methods are ACH Debit, ACH Credit, wire transfer (\$5,000 USD/ \$7,500 CAD minimum), company check or drawdown account (cash is not accepted); additional payment terms may apply and shall be provided on the appropriate payment processing form by BH upon request. Orders for Cards will not be processed for fulfillment until BH has received good funds from Client.
- b. **Invoices.** BH shall submit to Client an invoice for any fees due under this Agreement (aside from fees or Card funding that are prepaid at the time of order) along with a description of the charge or work performed and such other information as may be appropriate for the particular charge. Invoices shall be due upon receipt and shall be paid in accordance with the invoice terms. Invoices to Client shall be sent to the address on file with BH.
- c. **Taxes.** Unless otherwise stated in this Agreement, the fees charged and all other amounts due to BH under this Agreement are net amounts, exclusive of all sales and other taxes, and Client, as applicable, shall be responsible for and shall pay directly, any and all such taxes that they are legally obligated to pay. Notwithstanding the foregoing, BH shall charge applicable Canadian tax on all fees. Applicable taxes shall be determined based on the province of ship to address for the Card(s), or the billing address for any additional services, as applicable.
- d. **Orders.** Client shall be responsible for designating individuals authorized to place orders and Client shall be liable for all orders placed on Client's behalf using the



required credentials for the applicable order method until such time as Client notifies BH in writing that any individual is no longer authorized to place orders on Client's behalf, and BH acknowledges such notification.

**4. Representations, Warranties and Covenants.**

- a. Both parties represent, warrant and covenant that their use and disclosure of personal information regarding Participants does and will continue to comply with all Applicable Law relating to the protection of such information. Consistent with the foregoing, Client represents and warrants that any such personal information which Client furnishes to BH is not the subject of any applicable "opt out" election by a Participant and that Client has obtained any necessary approvals or consents from Participants prior to sending or disclosing personally identifiable information of such Participants to BH. BH represents and warrants that it shall only share information provided hereunder with its vendors to the extent such disclosure is necessary to fulfill services or Cards and such vendor is under similar restrictive use terms. Client covenants that Client shall obtain any necessary approvals or consents from Participants prior to sending or disclosing personally identifiable information of such Participants to BH, and that Client shall be responsible for the maintenance and retention of records of such consent for the longer of (i) seven (7) years or (ii) five (5) years after the expiration of the Program.
- b. Each Party represents, warrants and covenants on their own behalf that they are and shall remain in compliance with Applicable Law throughout the Term of the Agreement and survival thereafter, as applicable. Further, Client represents and warrants that Client shall comply with all Applicable Law in connection with Client's Program, including but not limited to consumer protection, rebate, promotions, and sweepstakes. Client shall ensure that any sweepstakes are structured to comply with Applicable Law and do not constitute an illegal lottery.
- c. Both parties represent, warrant and covenant that their participation in the Program shall at all times conform to the highest standards of business ethics and practices, and at no time will they knowingly permit any act by their employees or representatives that will damage the name, reputation or goodwill of the other Party or its Affiliates.
- d. The Parties represent and warrant that they are authorized to enter into this Agreement and that this Agreement does not violate or breach any other agreement to which they may be a party.
- e. Client covenants that Client shall manage and implement the Program and determine which Participants are eligible to receive Cards and/or receive value on the Cards.

**5. Intellectual Property.**

- a. The Marks provided to Client for use in the Program are the property of BH and other parties. Client shall not use any such Marks without the written permission of BH or such third party that may own the Marks. Client hereby grants to BH a nonexclusive license to use, in accordance with Client guidelines and this Agreement, the Client Marks as required to fulfill BH's obligations under this Agreement. BH and Client agree that, except as stated herein, all right, title and interest in and to the Client Content shall belong solely to Client.
- b. Each Party warrants and represents, and is solely responsible for ensuring that its Marks and/or designs, pictures or other intellectual property which are provided for use in the Program (including collateral material) do not infringe or violate the intellectual property rights of any other party.
- c. Neither Party grants, or shall be deemed to grant to the other Party any right, title or interest in or to proprietary technology, methods and methodologies, software

code, documentation, tools, software and interfaces, trade secrets, works of authorship or other proprietary materials that are protected by intellectual property rights held by any Party or its licensors and used by the other Party in the operation and maintenance of the Program site (if applicable), or the BH website, including, without limitation, any and all intellectual property rights and other proprietary rights embodied therein or otherwise applicable thereto. The Parties have not granted any intellectual property ownership interest in such Parties' Marks or other intellectual property.

- d. Client shall not copy, reverse engineer, decompile or disassemble any online tool made available to Client, and Client shall limit use of such online tool(s) to the purposes described in this Agreement.
- e. Branding Compliance: Client shall adhere to BH's branding guidelines, and shall not distribute, either internally or to the public, any materials (including but not limited to advertisements, marketing materials, promotions, direct mail (including email), press releases, Internet notices or web pages, brochures and posters) that refer directly or indirectly to BH, any Card network, BH's merchant partners, the Card Issuer (including the Issuer of any Single Merchant Gift Card, if applicable), or any Marks of any of the foregoing, or the Cards without prior review and written approval from BH. BH's branding review is to ensure appropriate usage of Marks and should not be interpreted in any way as an approval of the elements of a Program, or that the Program complies with applicable law.
- f. Client shall, at all times, accurately describe the terms and conditions of the Card(s), as applicable, not strictly those for branding purposes, and Client shall be solely liable for all costs, expenses and outcomes of descriptions of the Card(s) other than as approved by BH as defined herein. Client shall not market, advertise or promote the availability of Cards or the Program(s) under which they are distributed in any way that (i) is misleading or potentially misleading, or (ii) fails to clearly identify Program eligibility criteria or material terms and conditions of the Cards. Client shall not promote or market any Card as a "gift," "cash," "cash back" or a similar cash equivalent.
- g. In addition to the indemnification provisions set forth herein, Client shall be fully liable for any cost associated with Client's breach of this section including, without limitation, revised or corrected materials, destruction costs, replacement Cards or other replacements or returns, customer service costs incurred by BH as a result, legal fees incurred by BH for enforcement, and other fees, fines or penalties incurred by BH as a result of such breach.

#### **6. Confidential Information.**

- a. As used here, "Confidential Information" means any information a reasonable person would determine to be sensitive, proprietary or confidential, and may include either Party's marketing philosophies and objectives, financial and pricing information, software or services documentation, client lists, Participant data, Card numbers, Card balances, Participant transactions, business processes, competitive advantages and disadvantages, and vendors. Such Confidential Information may be disclosed verbally and/or verbally identified as proprietary or confidential at the time of disclosure, and there may be a written record that such Confidential Information was disclosed and identified verbally as proprietary or confidential, but such identification and written record are not required. Such Confidential Information may be in written, graphic or electronic form when disclosed and the media that contains such Confidential Information may be clearly marked "confidential" or "proprietary", but is not required to be so marked. Notwithstanding the foregoing, Confidential Information shall not include information that is publicly known, already known by, or in the possession of the non-disclosing Party, or is

independently developed by the non-disclosing Party without use or reference to the other Party's Confidential Information, or is rightly obtained by the non-disclosing Party from a source other than the disclosing Party.

- b. Each Party agrees that during the Term and thereafter (i) it will use Confidential Information belonging to the other Party solely for purposes outlined in this Agreement, (ii) it will not disclose Confidential Information belonging to the other Party to any third party other than the receiving Party's employees, Affiliates, agents, permitted vendors, subcontractors and/or professional advisors on a need-to-know basis who are advised of the confidential nature of the Confidential Information and under similar confidentiality obligations, and (iii) each Party will treat the Confidential Information of the other Party with the same care that the receiving Party normally affords its own proprietary and confidential information. If any employee, Affiliate, agent, subcontractor or professional advisor of the receiving Party discloses or uses the Confidential Information in a manner not permitted under this Agreement, the Party disclosing the Confidential Information to such employee, Affiliate, agent, subcontractor or professional advisor will be liable for such unauthorized disclosure. If either Party is required by law to disclose Confidential Information, it may be disclosed only to the extent required by law.
  - c. In the event of actual or threatened breach of this Section 6, the non-breaching party will suffer irreparable harm with no adequate remedy at law and will be entitled to immediate injunctive relief and other equitable relief.
  - d. Upon request, each Party will promptly return to the disclosing Party any or all Confidential Information of the disclosing Party in its possession or under its control provided, however, that each Party may retain one copy of all such Confidential Information solely for its own internal records, such Confidential Information to remain subject to the restrictions contained in this Agreement.
7. **Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE PARTIES HERETO DO NOT MAKE ANY REPRESENTATION OR WARRANTY, AND HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, RELATING TO OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.
8. **Indemnification.**
- a. Client agrees to defend, indemnify and hold harmless BH, the Card Issuer, and their respective Affiliates, officers, directors, agents, and employees from and against any and all third party Claims and Damages arising out of or related to (i) Client's breach (or, as to defense obligations only, alleged breach) of this Agreement; (ii) Client's violation of any Applicable Law; (iii) Client's gross negligence, willful misconduct or fraudulent actions; and (iv) Client's infringement of the rights (including, without limitation, the intellectual property rights, proprietary rights, rights to privacy and rights to publicity) of any person or entity, including infringement by Client Content provided to BH of any such third-party rights.
  - b. For consumer promotion Programs of all types, including but not limited to sweepstakes, rebates, sales incentives and contests (the "Promotion") Client agrees to indemnify and hold harmless BH, the Card Issuer and their respective Affiliates, officers, directors, agents and employees from and against any Claims arising as a result of any breach or non-performance by Client of any service, disclosure, or obligations (regulatory or other) related to or arising from the

Promotion, except to the extent such Claims are due to the negligence or willful misconduct of such indemnified Party.

- c. BH agrees to defend, indemnify and hold harmless Client from and against any and all third party Claims and Damages arising out of or related to (i) BH's material breach (or, as to defense obligations only, alleged breach) of this Agreement; (ii) BH's violation of any Applicable Law; (iii) BH's gross negligence, willful misconduct or fraudulent actions; and (iii) a claim that any Card(s) or services as used by Client in accordance with the terms and conditions of this Agreement infringe any U.S. patent, trademark rights or copyright of any third party.
  - d. The Party seeking indemnification hereunder agrees to give the Party from whom indemnification is sought prompt notice of intention to make a claim for indemnification hereunder. The indemnifying Party shall have the opportunity to defend the underlying Claims by competent counsel of its own choosing. The indemnifying Party will, at its option, have sole control of the defense and all negotiations for the compromise or settlement of such Claim, and will pay any Damages in respect of such Claim and will reimburse the indemnified Party for its reasonable expenses incurred in cooperation with and providing assistance to the indemnifying Party; provided, however, that the indemnifying Party may not settle any such Claim without the indemnified Party's consent if the proposed settlement would be in the indemnified Party's name or impose pecuniary or other liability or an admission of fault or guilt on the indemnified Party or would require the indemnified Party to be bound by an injunction of any kind. Consent to settlement, where required, will not be unreasonably withheld. The indemnified Party may elect, at its own cost, to retain counsel for the proceedings as well. In any event, the indemnified Party shall cooperate in the defense of such Claim, suit or proceeding, including by providing witnesses and/or documents as reasonably requested by the indemnifying Party.
9. **Limitation of Liability.** THE FOLLOWING LIMITATIONS SHALL NOT APPLY TO ANY CLAIM THAT (A) IS SUBJECT TO INDEMNIFICATION UNDER SECTION 8, (B) ARISES OUT OF A BREACH OF CONFIDENTIALITY, OR (C) ARISES OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD: IN NO EVENT SHALL EITHER PARTY, OR ANY CARD ISSUER, OR THEIR AFFILIATES, BE LIABLE TO ANY PARTY TO THIS AGREEMENT, ANY CARD ISSUER, OR ANY OF THE AFFILIATES OF EITHER, WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM OR RELATING TO THIS AGREEMENT. FURTHER, THE CUMULATIVE LIABILITY OF BH FOR ANY CLAIMS, LIABILITIES, LOSSES, DAMAGES OR EXPENSES, DIRECT OR INDIRECT, ARISING OUT OF OR RELATED TO THIS AGREEMENT, SHALL NOT EXCEED THE AMOUNT OF NET FEES (NOT INCLUDING OTHER FUNDING AMOUNTS SUCH AS VALUE OF CARDS) PAID TO BH FOR THE PRECEDING TWELVE (12) MONTHS.

CLIENT ACKNOWLEDGES THAT BH HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE ON THE LIMITATIONS OF LIABILITY AND DAMAGES AND THE DISCLAIMERS OF WARRANTIES HEREIN AND THAT THEY FORM AN ESSENTIAL PART OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT SUCH LIMITATIONS AND DISCLAIMERS WILL SURVIVE AND APPLY IN ALL CIRCUMSTANCES.

**10. Term and Termination.**

- a. Upon acceptance and approval by Client of the product set-up and/or placement of an order by Client, Client agrees to comply with the terms and conditions set forth herein, which may be amended or supplemented by BH from time to time. Current

terms and conditions may be found at [www.hawkincentives.com/card-order-agreement](http://www.hawkincentives.com/card-order-agreement). This Agreement will be effective upon the earlier of the date of acceptance of Client's product configuration quote or placement of an order for Cards through BH's online ordering portal and will remain in force until the later of such time each party's obligations as defined herein are fulfilled for such order or the agreement is terminated or amended by the parties as provided herein.

- b. Any Party shall be entitled upon at least sixty (60) days prior written notice to the other party, to terminate this Agreement. Further, any Party shall have the right to terminate this Agreement effective immediately due to a material breach of this Agreement by another Party or the insolvency, bankruptcy filing or any action to wind-up the business activities of another Party. Further, the termination by an authorized regulatory body or applicable Card Issuer of any Cards, Programs, or the agreement between BH and Issuer, may effect a termination of this Agreement.
- c. In the event of termination of this Agreement, the parties shall cooperate with each other to effect an orderly conclusion of all business matters. In the event a Party elects to terminate the Agreement for any reason prior to the completion date of the Program, BH shall be entitled to receive all fees accrued hereunder and owing to BH up to and including the effective date of the termination. Subject to the provisions of this Agreement, for Cards issued in connection with this Agreement, Card life as well as Card balance remaining on the Card, shall be unaffected by the termination of this Agreement or the Card Program unless otherwise prohibited or restricted by the Issuer, network, or an authorized regulatory body.

**11. Additional Terms Applicable to Authorized Partners.** The following additional terms shall apply if Client is an Authorized Partner, as that term is defined in this Agreement.

- a. Client may only resell or redistribute Cards if it has been approved as an Authorized Partner.
- b. Authorized Partners shall comply with all requirements found in the following Partner Operations Manuals at <http://bhnpartnerships.com/wpdm-package/partner-operations-manual-u-s/> for products denominated in United States Dollars and <http://bhnpartnerships.com/wpdm-package/partner-operations-manual-canada/> for products denominated in Canadian Dollars, or any web address to which the aforementioned addresses redirect.
- c. Client shall enter into a written agreement with its business clients, which shall include provisions as specifically required herein and in the applicable Schedules under this Agreement, including the following:
  - i. Client shall require its business clients to make representations and warranties consistent with Section 4.a, Section 4.b, and Section 4.e of this Agreement.
  - ii. Client shall require its business clients to comply with the following sections of this Agreement related to intellectual property and branding compliance: 5.a; 5.b; 5.e; and 5.f.
- d. In addition to the indemnification provisions set forth in Section 8 of this Agreement, Client shall indemnify BH against any and all loss that BH may incur or be subjected to, including, without limitation, any loss resulting from any Claims brought by any entity including but not limited to governmental entities, as a result of or arising out of (i) Client's failure to conduct due diligence on its business client per Subsection (b) of this Section, (ii) any resale of the Cards by Client's business client(s), (iii) any resale of Cards to consumers by Client or Client's business client(s) and (iv) Client's failure to comply with the terms of the Partner Operations Manual, referenced above in Section 11.b.

12. **Referral.** Client allows BH to list Client as a current client. With Client's prior approval (verbal or written), Client further agrees to be used as a reference to current and future BH clients.
13. **Notices.** Any notice or other communication provided under this Agreement will be in writing and signed by the Party providing such notice and will be effective: a) when delivered personally to the other Party, b) five (5) days following deposit of such communication into the United States mail (certified mail, return receipt requested), or c) upon delivery by an overnight delivery service (with confirmation of delivery). Such notices shall be addressed as follows: To BH, Attention Legal Management, 1400 South Highway Drive, Fenton, MO 63099; phone for delivery services only 636-226-2000; with a copy to Blackhawk Network, Inc. - Legal Department, 5918 Stoneridge Mall Road, Pleasanton, CA 94588, Attn: General Counsel. To Client at the address on record with BH at the time such notice is sent.
14. **Business Communications.** Client consents to receiving electronic communications regarding BH products and services.
15. **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, successors and permitted assigns.
16. **Assignment.** Neither Party shall assign its rights, duties and obligations under this Agreement without prior written consent of the other Party, except that BH is permitted to assign to an Affiliate, or a purchaser of all or substantially all of BH's assets used in connection with performing this Agreement without prior notice or consent. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and to their respective successors and permitted assigns.
17. **Independent Contractor Relationship.** The Parties intend that an independent contractor relationship shall be created by this Agreement and that nothing contained herein shall be construed to create an employment or a franchise, partnership, agency or joint venture relationship between them and neither shall be entitled to or covered by the other's benefit plans. Client or Client's employees, agents and contractors have no right, power, or authority to create any obligation or contract, express or implied, or to make any representation on behalf of BH, or to hold Client or Client's employees, agents and contractors out to the public as having such right, power, or authority, or to make such representations except as may be expressly authorized in advance in writing by BH and then only to the extent of such authorization.
18. **Invalid/Unenforceable Provisions.** Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the enforceability of such remaining provisions.
19. **Force Majeure.** Neither party shall be liable for any delay or failure to perform due to any cause or condition beyond such Party's reasonable control whether foreseeable or not including, without limitation, acts of God, war, riot, fire, explosion, accident, acts of terrorism, seasonality, and unforecasted volume. Any orders of Cards so affected shall be suspended for the duration of the delay. Either Party may, by prior written notice, terminate an order for Cards if delivery is delayed more than ten business days due to causes covered by this Section.

20. **Waiver.** The failure by either Party to insist upon strict performance of any of the provisions contained in this Agreement, or to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy, and such failure shall not constitute a waiver of any other provisions of this Agreement or subsequent default by the other Party in the performance or compliance with any of the terms of this Agreement.
21. **Language.** The Parties have required that the terms and conditions and all documents relating thereto be drawn up in English. Les parties ont demandé que cette convention ainsi que tous les documents que s'y rattachent soient rédigés en anglais.
22. **Subcontractors.** For purposes of this Agreement, BH may fulfill its obligations under this Agreement through its authorized subcontractors.
23. **Governing Law; Arbitration.** Any claim, controversy, or dispute arising under or related to this Agreement shall be governed by and construed in accordance with the laws of the State of California, or U.S. Programs, or the Province of Ontario, for Canadian Programs, without giving effect to the conflict of law principles thereof. Any controversy or claim arising out of or in any way connected with this Agreement or the alleged breach thereof shall be resolved by one arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect in San Francisco, California and shall be held in the San Francisco Bay Area. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Costs of AAA will be shared equally by the Parties.
24. **Survival.** Any provision of this Agreement, which by its terms is to be performed after the termination or expiration of this Agreement shall remain in full force and effect.
25. **Entire Agreement.** This Agreement, including any schedules, exhibits and attachments hereto, and any written nondisclosure agreement previously executed by the set forth the entire agreement and understanding between the Parties as to the subject matter hereof and supersedes all prior discussions, agreements and understandings of any kind, and every nature between them. Any purchase order(s), vendor enrollment forms, or other similar documentation provided by Client and issued hereunder will be for informational purposes only and will not alter or override the terms of this Agreement.
26. **Headings.** The headings of this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation or construction of this Agreement.

## **SCHEDULE 1**

### **Network-Branded Open Loop Card Terms**

The following additional terms shall apply to Network-Branded Open Loop Cards supplied to Client by BH. Capitalized terms not otherwise defined in this schedule shall have the meaning ascribed to them in the Agreement. In the event that the terms of this Schedule conflict with the terms of the Agreement, the terms of this Schedule shall govern with respect to Network-Branded Open Loop Cards.



**1. Additional Defined Terms.**

- a. "Card(s)" means, for purposes of this Schedule, Network-Branded Open Loop Cards products, whether in plastic or other electronic or digital debit payment mechanisms, electronic promises, numbers, cards or other payment codes or devices to be used in connection with a Program.
- b. "Network Branded Open Loop Card(s)" means a Card bearing a network logo that can be used anywhere that accepts that network brand, subject to the filter selected by Client.
- c. "Material" means Card plastic, carrier, inserts, directories, and other supporting collateral.
- d. "Participant Agreement" means the agreement between the Issuer and a Participant governing the Participant's use of the Card.
- e. "Prohibited Countries" means countries for which shipment of Cards is prohibited (limited or fully sanctioned) or considered high risk based on any Financial Action Task Force (FATF), OFAC or OSFI sanctions, similar authority, or directed by the Card Issuer.
- f. "Third Parties" shall have the meaning found in Section 16 of this Schedule.

**2. Card Use.** Cards shall only be used in connection with loyalty, award or promotional business sponsored Programs, or corporate-funded expense management Programs, as applicable. Participants shall not be required to pay money or give any other thing of value in exchange for the Card, including a price increase to cover the cost of the Card. **IN NO EVENT MAY CARDS BE RESOLD OR OFFERED FOR SALE TO CONSUMERS.**

**3. Card Issuance and Servicing.**

- a. Cards will generally ship within three (3) to five (5) business days after receipt of good funds by BH. Shipping and handling fees may apply. In the event that any order or combination of orders, including the initial order, received by BH from Client in a single business day combines to exceed a total of 5,000 new Cards (3,000 in Canada), additional time may be required to complete production and shipment.
- b. For personalized Cards, Client shall provide only the first name and last name, the first initial and last name of a natural person, subject to the restrictions in this section. The text submitted for personalization shall be limited to the following: capital letters A-Z, space, period, comma, hyphen, forward slash, and apostrophe. If the first and last name combined exceeds 26 characters, the field will include the first initial and full last name (up to a total of 26 characters). If Client provides any text or symbols to BH other than the first initial or name and last name of the natural person Participant, (1) Client shall assume any and all costs and liabilities incurred as a result of such action, including but not limited to the cost to destroy and reissue Cards, and (2) the Card shall be treated as an anonymous card for customer service purposes. BH shall not be held responsible for any delay in funding or Card issuance as a result of such action.
- c. If Client sends text for use on the message line for Cards, the following requirements shall apply: (i) text shall be business appropriate, and (ii) text shall not exceed twenty-one (21) English alphabet characters or spaces in any of the following combinations: Capital letters A-Z, numerals 0-9, period, hyphen, forward slash or apostrophe. If Client attempts to transmit or provide any text or symbol to BH other than permitted above, such order may be delayed and Client shall assume any and all costs and liabilities incurred as a result of such action. BH shall not be held responsible for any delays in funding or card issuance or cancellation in shipping and/or fulfillment of Card orders as a result thereof.

- d. If Client sends text for use in any other data field not previously addressed herein, the text shall be business appropriate for such use and Client shall comply with the instructions provided by BH for transmission. Client shall be responsible for any delay in processing caused by transmission of data that does not meet such criteria for the data fields and BH shall not be held responsible for any delay in funding or Card issuance resulting from such action by Client.
- e. As applicable, the personalized Card demographic data must include Participant's home address regardless of the shipment method. Client shall transmit Participant home address and updates thereto as necessary to BH regardless of the shipment method specific to personalized Cards. Should addresses other than the Participant's home address be provided, Client accepts and acknowledges that the Card may be suspended and/or cancelled.
- f. A copy of the Participant Agreement shall accompany each Card. Terms governing use of the Card and the relationship between the Participant and the Issuer shall be included in the Participant Agreement. Any fees imposed on the Participant, such as Card replacement fees or currency conversion fees, shall be disclosed in the Participant Agreement.
- g. For standard Material (i.e., non-custom Material) whether or not co-branded, BH reserves the right to change the Material at BH discretion without notice. Any co-branding by Client shall not be changed by BH without Client's approval.
- h. BH shall provide 24/7 customer service regarding the Cards to the Participants via phone (toll free for calls placed within the United States) and website.
- i. Client shall manage and implement the Program and determine which Participants are eligible to receive Cards and receive value on the Cards. Client shall not request that Cards be provided to persons who have not reached the age of majority in their jurisdiction.
- j. BH reserves the right to deny participation or cancel any issued Card for any Participant or proposed Participant should the name of the Participant appear on OFAC, OFSI, and FINTRAC lists, or other local, state or federal lists of individuals being pursued by law enforcement agencies, or other such legal or risk related reasons as solely determined by BH.
- k. The Issuer may impose a limit on the total active balance any Participant may control. BH reserves the right to monitor such balances and may, but shall not be required to, block access to funds if the combined balance of all Cards controlled by a Cardholder exceeds the limit set by the Issuer.
- l. BH reserves the right to decline or refuse any order for Cards.

#### **4. Card Funds.**

- a. Unless the Card states, "Funds do not expire," dollar-based Cards must be used prior to the valid thru date on the Cards and are no longer redeemable after midnight (MST) the last day of the month that is embossed or printed on the Card face.
- b. For point-based Cards, reward earnings are represented as points. For point-based Cards, one point equals one U.S. Dollar of spending at those merchants authorized and able to accept the Card based on the filter selected by Client ("Participating Merchants"). You acknowledge that point-based Cards must be used prior to the valid thru date on the Cards and are no longer redeemable after midnight (MST) the last day of the month that is embossed or printed on the Card face.
- c. The Participant Agreement contains directions specific to any Card balance remaining after the valid thru date. Such limit is communicated to the Participant in the Participant Agreement, Card collateral, and various methods involving customer service including phone and web.

5. **Risk of Loss.**
  - a. **The full risk of loss for Cards passes to Client upon delivery to the address provided to BH, unless Client elects to designate its own carrier.** If Client elects to designate a carrier, the full risk of loss for such Cards passes to Client upon delivery to Client's designated carrier. Otherwise, the full risk of loss for such Cards passes to Client immediately upon delivery to the address provided to BH. For clarity, BH shall not reimburse Client or issue replacement Cards for any Card that is lost, stolen, misappropriated or that otherwise disappears once the risk of loss has passed to Client. This Section does not relieve BH of its obligations to the Participant under Section 7 including, but not limited to, providing replacement Cards.
  - b. Notwithstanding the foregoing, in the event that Client requests a change to BH's standard return address (so that any undeliverable Cards are returned to an address other than BH's standard return address), Client shall bear the full risk of loss including the cost of fraudulent or inappropriate Card use and of non-receipt of Cards by the intended Participant.
6. **Participant Fraud.** BH will not hold Client responsible for or seek to collect from Client any loss caused by or resulting from any Participant's fraud, misuse, or negative balance transactions involving the Cards except to the extent such loss was caused by Client's breach of a representation, warranty, or covenant of the Agreement or if Client (or Client's employees, agents or representatives) participated in, had or should have had knowledge of any deceptive, fraudulent or other illegal activity. Subject to applicable law, Client agrees to comply with all reasonable requests made by BH to investigate, prevent and recover sums due relating to any actual or suspected loss, fraud, or other improper use of any Card ordered by Client or on Client's behalf.
7. **Participant Lost and Stolen Cards.** For Cards lost or stolen after delivery and reported by the Participant before the valid thru date, BH shall replace one (1) Card at no charge, as well as replace onto the new Card, the balance on the Card at the time it is reported lost or stolen by the Participant, in accordance with the Participant Agreement. All subsequent lost and stolen Cards shall be replaced for a fee per Card charged to the Participant as disclosed in the Participant Agreement. BH shall not be responsible for replacement of value lost before the Card is reported as lost or stolen.
8. **Card Destruction/Error Correction.** Client may request cancellation of certain Cards to us and receive a credit for future purchases of Cards. The credit shall be equal to the face value of such eligible Cards less a per-Card destruction fee as indicated on the Certificate of Inventory Destruction Form (the "CID Process"), AND THE CREDIT MUST BE USED WITHIN 12 MONTHS FOR ANOTHER PURCHASE OF CARDS OR SHALL BE FORFEITED. **CID Process requests must meet all the following requirements: (i) such Cards were not previously distributed to Participants; (ii) Cards may not have any redemption or spend activity; and (iii) Card valid thru date is at least 20 days from the date the destruction request form is received by BH.** No refunds will be issued. For orders placed by you or on your behalf in error (other than errors made by us that are not consistent with your order), or that contain errors made by you, the foregoing requirements under items (i) through (iii) apply, the per-Card destruction fee shall also apply, along with any applicable Card fees for reorders. Card fees for the original order are not refundable. Conflicts between this Section and the Certificate of Inventory Destruction Form shall be governed by the Certificate of Inventory Destruction Form.
9. **Reloadable Cards.**

- a. Funding requests to be loaded on a new Card will generally be loaded within three to five (3-5) business days of receipt and clearance of funding. Upon receipt and clearance of funding to be loaded to each previously issued reloadable Card, BH will generally load such value onto the Cards within 48 hours. Reloadable Cards must be set up with the same valid thru date for all Program Cards regardless of the issue date of such Cards.
- b. BH shall contact Client prior to the Program end date to discuss renewal. Active Cards with a \$0.01 (or 1 point, as applicable) balance or higher at the time of Program renewal are eligible for transfer of the remaining Card balance onto a new Card at Client's discretion. Applicable Card renewal fees shall apply.
- c. Notwithstanding anything herein to the contrary and subject to the restrictions and limitations of this subsection, Client may submit files to reverse funding for reloadable Cards submitted in error (non-reloadable Cards are not eligible for reversal processing).
  - i. All Card funding amounts will be reviewed and all Cards with funds available for reversal will be processed.
  - ii. A reversal fee will be charged (and deducted from the aggregate reversal credit) in the amount of four dollars (\$4.00) per record in the reversal file. No refunds will be issued.
  - iii. Card fees for the original funding are not refundable.
  - iv. Within 10 calendar days of the original Card load, Client may submit a separate reversal file using the online order system IN THE SAME AMOUNT(S) LOADED IN ERROR.
  - v. After 10 calendar days of the original Card load, a completed Reversal Request Form is required; reversal terms apply. Reversal requests received the month of the valid thru date will not be honored. Conflicts between this Section and the Reversal Request Form shall be governed by the terms of the Reversal Request Form.
  - vi. Any discrepancies in funding, Participant disputes, etc. will be the responsibility of Client. BH is not responsible for any spend on Cards funded in error.
  - vii. BH shall respond to reversal requests promptly; however, BH does not guarantee reversal requests can be processed or that the reversal requests can be processed before redemption occurs.

**10. Custom Cards or Collateral.** In the event custom Material produced for Client's Program is not utilized (i.e., no Material ordered) for an eighteen (18) month period, BH may destroy any such Material. The determination of the destruction date of Material shall be based upon the last Card issued for the Program as solely determined by BH. Replacement Cards requested after destruction of Materials may be fulfilled with standard Card packets. Depending on the volume and type of custom inventory requested, Client may be required to complete and submit a Custom Inventory Request Form to BH prior to production or re-order of custom Materials. Conflicts between this Section and the Custom Inventory Request Form shall be governed by the terms of the Custom Inventory Request Form.

**11. Product Specific Terms:**

- a. Additional Terms Applicable for E-Mail Delivery of Virtual Codes:
  - i. Client shall not provide any e-mail address to BH for delivery of virtual codes by BH without obtaining the consent of the intended recipient of such e-mail, and Client shall not submit an e-mail address for any individual that has opted-out of receiving e-mails from Client. Client shall be responsible for complying with any Applicable Laws regarding sending of commercial e-

mails and, in requesting delivery of virtual codes via e-mail, shall be considered the sender of such e-mails.

- ii. Client shall retain records of any consents to receive electronic messages and shall provide such records upon request from BH.
  - iii. Client shall ensure that information submitted to BH for the content and delivery of any e-mails generated in connection with the delivery of virtual codes is accurate and not deceptive and complies with Applicable Law, and Client shall submit accurate contact information that a recipient can utilize to opt-out from receiving future e-mails from Client, in compliance with Applicable Law.
  - iv. In addition to the indemnification provisions under the Agreement, Client expressly agrees to indemnify BH for any Claims or Damages arising from Client's failure to comply with this Section 11.a.
- b. **Preferences® Card:** For orders of the Preferences Card, BH shall provide the following in support of the specific Program: a website with quarterly merchant updates, the initial merchant filter set up and quarterly merchant updates, custom Card carrier text, and merchant directory or listing.
- c. **Reward Collection Card:** For orders of the Reward Collection Card, the following terms and conditions apply:
- i. The party offering the online catalog rewards website may discontinue specific awards, in which event such party will substitute an equivalent award or ask Participant to make another selection. The catalog reward vendor may increase or decrease without notice the number of points required for specific awards.
  - ii. Redemption for awards will be subject to all terms and conditions set forth on the online catalog rewards website.
  - iii. Participants may redeem for rewards via the catalog reward vendor's toll-free Customer Service Center or the catalog rewards website.
  - iv. The item price includes estimated shipping and handling charges and estimated sales and use taxes which are listed separately on the site. Participants are responsible for paying these charges.
  - v. The catalog reward vendor may change elements or terms and conditions of any catalog offer, including, but not limited to, award offerings, at any time without notice. If an award offering is discontinued, reasonable efforts will be made to offer a substitute of equivalent quality. All award offerings are subject to availability. Catalog reward vendor may make model substitutions of equivalent value without advance notice when necessary. Award offers are void where prohibited by law. The catalog reward vendor makes every effort to ensure that information regarding products and services offered by participating award suppliers is accurate, but neither BH nor the catalog reward vendor shall be responsible for any errors or omissions in such information.

**12. Reloadable and/or Cash-Accessible Cards.** Client acknowledges that reloadable Cards and/or Cards useable at ATMs present a high level of risk of misuse and/or money laundering than other Cards. Client agrees to notify BH if Client suspects that the usage of such Cards may indicate illegal or improper activity of any kind. BH reserves the right to suspend or cancel any Cards, including but not limited to reloadable and/or Cards useable at ATMs, if it believes such Cards are being used for illegal or improper purposes.

**13. Additional Compliance Requirements.** Client agrees that, for Programs in which the Participants are Client's employees, and the employees are located in the state of Florida, that Cards issued in connection with such portion of the Program administered to such

Florida residents shall be valid for use for a period of not less than twelve (12) months subject to applicable law. For all Programs and Participants, Client shall determine whether the Cards provided to Participants implicate the Program's compliance with those provisions of the Internal Revenue Code governing exclusion of prizes and awards from the gross income of Participants. BH bears no responsibility or liability for any determination related to the Cards and treatment for tax purposes and makes no representation or warranty concerning any tax matters relating to the Program, including the eligibility of Participants for any exclusion. Client shall ensure that the Program qualifies as a loyalty, award or promotion, or expense management program.

14. **Card Network.** BH reserves the right to determine the appropriate network for all Cards or Programs in accordance with applicable law, and network and Issuer requirements.
15. **Shipping Restrictions.** Notwithstanding anything to the contrary herein, no Cards may be shipped to countries prohibited or sanctioned by the Office of Foreign Assets Control ("OFAC") or the Financial Action Task Force ("FATF") and/or as directed by the Card Issuer. Cards shipped internationally (except Canada) are subject to an additional surcharge per Card. Only personalized individual orders may be shipped internationally. International shipping addresses are limited to English alphabet only. U.S. and Canadian Universal Visa Prepaid Cards purchased in connection with a consumer promotion may not be shipped outside of their respective countries of origin.
16. **Third Parties.** Client shall disclose to BH any third party to be used for or involved in payment, fulfillment, shipment, or distribution of Cards (all such parties, the "Third Parties"). Further, upon any changes to the contact or identification information for the Third Parties, Client shall provide BH with such updated information fifteen (15) days in advance of such change.
17. **Representations, Warranties and Covenants.**
  - a. Client represents, warrants and covenants that the Card Program(s) requested by Client hereunder does not and shall not constitute payment of "commissions" e.g., the Card Program shall not provide a primary source (50% or more) of compensation to the Participant and is therefore not subject to regulation under Regulation E of the Electronic Funds Transfer Act and its Official Staff Commentary as issued August 24, 2006.
  - b. Client covenants that Client will not, directly or indirectly, send or instruct Cards to be sent outside the U.S., its territories, the District of Columbia, or Canada, unless the Program utilizes a product specifically authorized for international shipment. Client acknowledges that BH will not ship Cards to any address located in any Prohibited Countries. Cards may not be redeemed in Prohibited Countries regardless of whether the country was previously permitted for Card shipment or redemption. Client further warrants that Client will only provide BH with U.S. shipping addresses for Cards intended for use in the United States, and Canadian shipping addresses for Cards intended for use in Canada.
  - c. Client represents, warrants and covenants that Client will not order or request fulfillment of any Card that is not distributed to Participants pursuant to a bona fide, good faith awards, rewards, loyalty, incentive, rebate, or promotional Program in return for which no direct consideration is paid from such Participants or a corporate-funded expense management Program, as applicable.
  - d. Client covenants that, upon election of bulk shipment, Client will distribute the Participant Agreement, as provided by BH, to each Participant with each Card and that Client shall protect the Cards as a like amount of cash.

**18. Customer Identification and Recordkeeping.**

- a. Client must undergo customer identification pursuant 31 CFR 103.125 and/or the PC Act (also known as know-your-customer rules or "KYC"). KYC is performed by BH. Client shall provide BH the name, address, tax identification number and other information necessary for BH to reasonably verify Client's identity for performance of KYC, OFAC/OFSI screenings, and any other compliance activities, prior to, at the time of account set up, or upon request. Accounts shall not be available to place orders for Cards without the collection of and verification of the necessary Client identification data.
- b. BH may request, and Client shall provide, additional information regarding the purchaser of a Card under certain circumstances, such as, but not limited to, situations where a Card is issued in an amount in excess of \$10,000.00 and can be utilized at an automated teller machine (ATM).

**SCHEDULE 2**

**Single Merchant Gift Card Terms**

The following additional terms shall apply to the order of Single Merchant Gift Cards supplied to Client by BH. Capitalized terms not otherwise defined in this schedule shall have the meaning ascribed to them in the Agreement. In the event that the terms of this Schedule conflict with the terms of the Agreement, the terms of this Schedule shall govern with respect to Single Merchant Gift Cards.

**1. Additional Defined Terms.**

- a. "Card(s)" means, for purposes of this Schedule, Single Merchant Gift Cards products, whether in plastic or other electronic or digital debit payment mechanisms, electronic promises, numbers, cards or other payment codes or devices to be used in connection with a Program to be used in connection with a Program.
- b. "Incentive Sales" means any sale or distribution of the Single Merchant Gift Cards by BH to entities for use or further distribution by such entities in connection with incentive programs, including but not limited to, corporate incentive and awards programs, dealer/distributor incentive and loyalty programs, consumer promotion, loyalty, affinity and rebate programs, wellness programs, incentive marketing and charitable re-seller programs.
- c. "Single Merchant Gift Card(s)" means branded stored value or branded prepaid cards (including, without limitation, amusement, theme, sports and other admission tickets) or other electronic or digital debit payment mechanisms, electronic promises, numbers, cards, other payment codes or devices which, when activated, can be used to purchase services and merchandise from the Issuer.

- 2. Single Merchant Gift Card Use.** Single Merchant Gift Cards purchased by Client may only be used in connection with Incentive Sales.

**3. Orders and Fulfillment.**

- a. Order Fulfillment – Tangible Cards. After receipt of full payment, BH will process the order for fulfillment. Cards will be affixed to a carrier and shipped to the address(es) provided by Client via BH's standard carrier. Shipping and handling fees shall apply and shall be determined based on the shipment method (individual



or bulk shipment). Client is solely responsible for validating the accuracy of each order and order information (including without limitation, address and phone number). If Client designates their own carrier, Client shall provide BH with the shipping account number and other required information. Risk of loss for the tangible Cards shall pass from BH to Client upon the earlier of: (i) receipt by Client or Client's designated transportation carrier, or (ii) receipt by BH's designated transportation carrier.

- b. **Order Fulfilment - Electronic (Intangible) Cards.** After receipt of full payment, BH will distribute the electronic Gift Cards to the Gift Card recipients via e-mail. Purchaser is solely responsible for validating the accuracy of each order and order information (including without limitation, name and e-mail address). Risk of loss for the electronic Gift Cards shall pass from BH to Purchaser upon sending of the delivery e-mail by BH.
- c. **Inventory Limitations.** Order volume may be limited based on available inventory. In the event that demand exceeds available inventory, BH will advise Client and may modify expected shipment and delivery dates accordingly.
- d. **Prohibited Countries.** Client shall not, directly or indirectly, send or instruct Cards to be sent outside the U.S., its territories, the District of Columbia, or Canada, unless the Card ordered is specifically authorized for international shipment. Client acknowledges that BH will not ship Cards to any address which is located in a country that is prohibited (limited or fully sanctioned) or considered high risk based on any Financial Action Task Force, OFAC or OSFI sanctions, or directed by the Card Issuer ("Prohibited Countries").
- e. BH reserves the right to decline or refuse any order for Cards.

#### **4. Activation and Servicing.**

- a. **Activation.** Activation may occur via any of the following methods: (i) By individual recipient: individual recipients use a predetermined code (e.g., last 4 digits of phone number) to activate each Gift Card via IVR or online; (ii) By Client: Client activates each Gift Card via magstripe reader connected to BH and sends active Cards (s) (subject to availability) to recipient(s); or (iii) By BH: BH activates entire order prior to or after shipment to Client.
- b. **Customer Service.** BH shall only be responsible for customer service inquiries regarding orders and fulfilment thereof. Client understands and agrees that all other customer service inquiries shall be the responsibility of Client or the Card Issuer.

#### **5. Additional Terms Applicable for E-Mail Delivery of Electronic (Intangible) Cards.**

- a. Client shall not provide any e-mail address to BH for delivery of electronic (intangible) Cards by BH without obtaining the consent of the intended recipient of such e-mail, and Client shall not submit an e-mail address for any individual that has opted-out of receiving e-mails from Client. Client shall be responsible for complying with any Applicable Laws regarding sending of commercial e-mails and, in requesting delivery of electronic (intangible) Cards via e-mail, shall be considered the sender of such e-mails.
- b. Client shall retain records of any consents to receive electronic messages and shall provide such records upon request from BH.
- c. Client shall ensure that information submitted to BH for the content and delivery of any e-mails generated in connection with the delivery of electronic (intangible) Cards is accurate and not deceptive and complies with Applicable Law.
- d. In addition to the indemnification provisions under the Agreement, Client expressly agrees to indemnify BH for any Claims or Damages arising from Client's failure to

comply with this Section.

**6. Additional Compliance Requirements.**

- a. Each Party agrees to abide by all Applicable Laws pertaining to the Cards. For all Incentive Sales, Client shall determine whether the distribution of the Cards affects the Program's compliance with those provisions of the Internal Revenue Code governing exclusion of prizes and awards from the gross income of Participants. BH bears no responsibility or liability for any determination related to the Cards and treatment for tax purposes and makes no representation or warranty concerning any tax matters relating to the Program, including the eligibility of Participants for any exclusion. Client shall ensure that the Program qualifies as an Incentive Sale.