

No. 23-12539

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

v.

FLEETCOR TECHNOLOGIES, INC.
and RONALD CLARKE
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Georgia
1:19-cv-5727-AT (Hon. Amy Totenberg)

BRIEF OF THE FEDERAL TRADE COMMISSION

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RULE 26.1 CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit R. 26.1-1, the Federal Trade Commission certifies that the Certificate of Interested Persons in Appellants' opening brief of November 15, 2023, is complete except as follows. The following attorneys may also have an interest in the outcome of this appeal.

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STATEMENT REGARDING ORAL ARGUMENT

The Federal Trade Commission respectfully requests oral argument. Given the number of arguments Appellants have raised in their brief, oral argument will likely be useful to focus the Court on the dispositive factual and legal issues and assist it in deciding this case.

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INTRODUCTION

Appellant FleetCor Technologies, Inc., markets and sells “fuel cards”—limited-purpose credit cards that can be used to purchase fuel. FleetCor’s customers are businesses that give the cards to their employees who are responsible for driving vehicles. The vast majority of FleetCor customers are small- and medium-sized companies, including many unsophisticated “mom-and-pop” operations.

For years, FleetCor preyed on these customers through deceptive advertising and unfair fee practices that the district court found were “pervasive and long-lasting” and “ingrained in the fabric of the company.” ECF 306 (hereinafter “Op.”) at 125, 129.¹ FleetCor’s ads made three types of deceptive claims. First, FleetCor promised that customers using certain cards would receive specific discounts on every gallon of fuel they purchased. In reality, those discounts were unavailable at many large retailers and could be reduced or eliminated for a variety of reasons—restrictions that were disclosed, if at all, only in virtually illegible fine-print disclaimers. Second, FleetCor claimed

¹ All record citations are to ECF page numbers. A parallel “Appx” cite is included for materials in Appellants’ appendix.

that certain MasterCard branded cards were limited to “fuel only” purchases—even though they could also be used inside service stations to buy items like beer, snacks, groceries, and gift cards. Finally, FleetCor claimed its cards had no transaction fees, but actually assessed several fees on a per-transaction basis.

FleetCor also bilked customers through two kinds of unfair fee practices. First, FleetCor charged fees without customer consent, including both transaction fees and fees for additional products that customers never signed up for. FleetCor affirmatively concealed these fees—for example, by deliberately leaving them off billing invoices and instructing service representatives not to mention the fees in calls with customers. Second, FleetCor regularly charged cardholders late fees for payments that were actually made on time. These practices caused hundreds of millions of dollars in consumer harm and continued through at least 2022.

In 2019, the FTC sued FleetCor and its CEO, Ronald Clarke, alleging that this conduct violated the FTC Act’s prohibition on unfair or deceptive acts or practices. *See* 15 U.S.C. § 45(a). The district court granted summary judgment for the FTC based on “a broad and detailed

array of hard, primary source evidence, including the advertisements at issue, FleetCor's internal marketing studies, and an outpouring of customer complaints regarding the company's false representations and unfair conduct." Op. 3. The court held Clarke personally liable based on his control of the company and "overwhelming evidence" that he knew of the violations. Op. 121. The court further found that FleetCor's illegal practices were ongoing and likely to continue. Given the seriousness of the conduct and the fact that it was "intentional," the court held that injunctive relief was "imperative to protect the public interest," and entered a permanent injunction to prevent similar violations going forward. Op. 125, 128.

FleetCor and Clarke now appeal, challenging both the grant of summary judgment and the portion of the injunction requiring them to obtain express informed consent from customers before charging fees. None of their arguments has any merit. The district court's summary decision is correct on the law and supported by overwhelming undisputed evidence, and the express informed consent provisions are reasonably related to FleetCor's unlawful conduct and well within the court's discretion. The judgment should be affirmed in its entirety.

JURISDICTIONAL STATEMENT

The FTC filed this action under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The district court had jurisdiction under 28 U.S.C. §§ 1331, 1337(a), and 1345. The district court entered judgment on June 8, 2023. Appellants timely appealed on August 3, 2023. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. Did the district court properly grant summary judgment against FleetCor?
2. Did the district court properly grant summary judgment against Clarke?
3. Are the injunction provisions relating to express informed consent within the scope of the district court's remedial authority?

STATEMENT OF THE CASE

A. FleetCor's Fuel Card Business

FleetCor sells three types of fuel cards: "Fuelman" cards, accepted by merchants in FleetCor's proprietary network; MasterCard-branded cards, accepted by merchants in the MasterCard network; and co-branded cards offered in partnership with major fuel merchants, which may operate on either network.

The vast majority of FleetCor’s customers—roughly 75%—are small businesses with 10 or fewer cards and credit limits of \$20,000 or less. ECF 161-10 at 34. FleetCor has described its typical customers as small business owners or managers who commonly “[w]ork[] in the field/drive[] vehicles,” “[d]o[n’t] think of them[selves] as having a ‘fleet,’” are “[n]ot always in front of a computer,” and are “short on time due to wearing multiple ‘hats.’” ECF 139-7 at 47. Another study describes “small fleet” customers as “fairly unsophisticated,” “not technically inclined,” and “business owners but not business people,” including some for whom “English was not their first language.” ECF 134-9 at 11. As a former employee put it, “FleetCor’s bread-and-butter customer is a mom-and-pop business where the wife handles the bills and is too busy to look things over carefully, so she just pays without questioning any of the charges.” ECF 124-20 at 6. FleetCor described these customers as “[f]ee resilient.” ECF 134-8 at 8.

B. FleetCor’s Deceptive Advertisements

FleetCor induced customers to sign up for fuel cards through a variety of deceptive advertisements touting the cards’ supposed benefits. Three kinds of claims are at issue here.

1. Deceptive Per-Gallon Discount Claims

FleetCor ads for certain Fuelman and Mastercard fuel cards promised that customers would get a specified discount on each gallon of fuel they purchased.² For example, an ad for the Fuelman Diesel Platinum Card stated in large bright green boldface type that customers would “**Save 10¢ per gallon on diesel fuel**” and that the savings were available “throughout the Fuelman Network.” ECF 122-13 at 2 (Add-1; Appx0190). And an ad for the Universal Premium FleetCard MasterCard promised in large type that customers would “**Save up to 6¢ per gallon** on fuel wherever MasterCard® is accepted.” ECF 122-16 at 2 (Add-2).

These promises were deceptive because the discounts were subject to significant restrictions that were disclosed, if at all, only in miniscule fine-print disclaimers at the bottom of the ads. The type was so small it could not easily be read without a magnifying glass, making the disclaimers virtually illegible. And even if an eagle-eyed customer could

² For convenience, copies of the ads and terms and conditions documents cited herein are reproduced in the Addendum to this brief. Citations to “Add” refer to pages of the Addendum.

read the disclaimers, many of the restrictions were written in vague language, using terms that were never defined or explained.

For example, here is the disclaimer that appeared in the Diesel Platinum Card ad, reproduced actual size:

*Earn a 10¢ per gallon volume discount on diesel purchases. Discount is not available on purchases at Loves, Chevron/Texaco, Arco, and Sinclair. Customer's price will never be below Fuelman's cost paid to merchant.

ECF 122-13 at 2 (Add-1; Appx0190). The first sentence states: “Discount is not available at Loves, Chevron/Texaco, Arco, and Sinclair.” *Id.* Thus, contrary to the representation in the main body of the ad that customers would save 10¢ per gallon “throughout the Fuelman Network,” the discounts were unavailable at several major retailers.

Similarly, here is the disclaimer that appeared in the Universal Premium MasterCard ad, again reproduced actual size:

*Earn up to 6¢ per gallon in rebates from a combination of 3¢ per gallon within the Fuelman Discount Network and up to 3¢ per gallon in volume rebates. Purchases must be made with the Universal Premium FuelCard MasterCard® and the account must be in good standing. Not valid on aviation, bulk fuel, propane or natural gas purchases. Volume rebates are based on the number of gallons purchased monthly and will be calculated on the gallons pumped at Level 3 sites. Unleaded and diesel grade fuels are included.
The Fuelman Discount Network is a selected group of fuel locations that allow cardholders additional savings. For a list of participating sites, visit www.fuelmandiscountnetwork.com

ECF 122-16 at 2 (Add-2). This fine print says that the promised 6¢ savings is a “combination of 3¢ per gallon within the Fuelman Discount Network and up to 3¢ per gallon in volume rebates,” which are “calculated on the gallons pumped at Level 3 sites.” *Id.* Thus again, discounts were available only at certain sites, contrary to the representation in the ad’s main body that customers would save money

“wherever MasterCard® is accepted.” *Id.* To make matters worse, this language is vague. It does not identify the retailers in the “Fuelman Discount Network”—instead, it directs customers to an external website, which FleetCor could modify at any time. Nor does it explain what a “Level 3 site” is or how many gallons needed to be purchased to obtain a discount. Furthermore, the disclaimer states that an account “must be in good standing” to qualify for the discount without explaining what that means. *Id.*

Numerous other ads followed the same pattern. Although the language of the disclaimers varied, they typically provided that discounts were not available at certain large retailers. In a particularly egregious example, the body of an online ad for the Fuelman Discount Advantage FleetCard touted that the card was “accepted across 6 major national brands, including Chevron, Texaco, Loves, Pilot, Sinclair and ARCO,” but the fine-print disclaimer said that the discount “does not apply to gallons pumped” at a “Convenience Network” consisting of those same six retailers, and that this network was “subject to change without notice.” ECF 122-11 at 3 (Add-3). Some of the disclaimers (but not others) added the vague “good standing” requirement. Some

disclaimers even contained language stating that “Fuelman reserves the right to change the rebate program at any time without prior notice.” *E.g.*, ECF 122-15 at 2 (Add-4).

The net result was that the actual per-gallon discounts customers received were substantially less than the advertised discount. The following table shows the difference:

Product	Advertised Discount	Actual Discount
Fuelman Diesel Platinum – 2016	10¢	6¢
Fuelman Diesel Platinum – 2017-2019	8¢	6¢
Fuelman Commercial Platinum	5¢	3¢
Fuelman Discount Advantage	5¢	0.1¢
Universal Premium MasterCard	6¢	1¢

ECF 132-7 at 15. FleetCor’s internal records and studies show that numerous customers complained not getting promised discounts. *See, e.g.*, ECF 134-12 at 2; 198-37 at 3; 198-41 at 2; 140-5 at 15, 17; 139-9 at 19; 198-5 at 4.

2. False “Fuel Only” Claims

FleetCor advertised that MasterCard fuel cards could be restricted to “fuel only” purchases. *See, e.g.*, ECF 122-22 at 16 (Add-5); 132-11 at 10 (Add-6). In fact, MasterCard only allows restrictions on where

purchases can be made—not on the type of products sold. A slide used in a presentation for new FleetCor hires makes this point clearly:

Cards can be set to “Fuel Only”

- Remember: MasterCard products can not limit by product type, so “Fuel Only” is a misnomer – it really means:
 - The cards will only be able to purchase at fuel sites
 - **The cards will be limited to one item per transaction (item can be fuel, snacks, beer, etc.)**

ECF 134-19 at 34 (Appx0592).

Many cardholders’ employees used “fuel only” cards for nonfuel purchases. One customer’s employee racked up \$208,688.05 in nonfuel purchases, including groceries and several Speedway gift cards, on a card that was plainly marked “FUEL ONLY.” ECF 134-20 at 3-4; 134-21 at 2. Another customer’s employee charged \$44,731.04 for nonfuel items. ECF 134-22 at 2; *see also* ECF 134-23 at 4 (customer disputing charge noting that “It is also very odd as the cards say FUEL ONLY so I wonder why it was even able to be used.”).

3. No Transaction Fee Claims.

FleetCor’s ads promised that fuel cards carried “no set-up, transaction or annual fees.” *E.g.*, ECF 123-1 at 2 (Add-7); 132-12 at 40 (Add-8). These claims were false because FleetCor charged at least three fees on a per-transaction or per-gallon basis: (1) a “Convenience

Network Surcharge” or “Special Network Pricing” fee at certain retail locations of up to 10¢ per gallon or \$2.50 (later increased to \$3.00) per transaction; (2) a “Minimum Program Administration Fee of up to 10¢ per gallon or \$2.00 per transaction when average gas prices dropped below \$3.25 per gallon; and (3) a “Level 2 Pricing” or “High Risk” fee of 20¢-30¢ per gallon for Fuelman cards or \$3.00-\$4.00 for MasterCard cards for certain customers. ECF 132-14 at 2, 5, 7 (Add-9, -12, -14; Appx0438, 0441, 0443); 141-9 at 6-9.

C. FleetCor’s Unfair Fee Practices

FleetCor engaged in two kinds of unfair fee practices.

1. Unauthorized Fees

FleetCor charged several fees that were not adequately disclosed and to which customers did not consent. These include the three transaction fees discussed above and four additional fees for add-on programs called “FleetDash,” “Clean Advantage,” “Accelerator Rewards,” and “Fraud Protector.” FleetCor automatically enrolled customers in these add-on programs and kept charging the fees unless a customer caught on and affirmatively opted out.

FleetCor took numerous steps to hide these fees from consumers both before and after customers signed up for cards. A FleetCor senior

sales executive candidly admitted that “customers are not informed during the sales process of potential fees that they will incur later,” and that it was “up to [customers] to read the [terms and conditions] to learn about potential fees that will hit them after the sales cycle ends.” ECF 135-6 at 2. But FleetCor actively sought to prevent customers from reading the terms and conditions: it did not make them available online, ECF 139-1 at 2, and refused to send them by email, ECF 135-12 at 3. Instead, FleetCor sent the terms and conditions by mail after customers had signed up.

Customers who managed to get hold of the terms and conditions would find them virtually impenetrable. They were contained on a multi-page document with four columns of miniscule type on each page. *See* ECF 132-14 at 2-15 (Add-9 to -22; Appx0438-51). Because the type was so tiny, FleetCor created a “read friendly” version in a larger font for its own employees to use. ECF 141-5. FleetCor executives were well aware that the terms and conditions were “fine print (which neither the rep or customer has ever read).” ECF 198-5 at 2; *see also* ECF 135-18 at 2 (“[I]t is unclear that customers really read all that fine print.”).

Furthermore, the terms and conditions used vague and confusing language that did not clearly indicate to customers what fees would apply to them and when. *E.g.*, ECF 132-14 at 7 (Add-14; Appx0443) (FleetCor “reserves the right” to charge fees for “use of select sites/merchants” the list of which was “available upon request” or to charge high-risk fees for a host of different factors). For add-on programs, FleetCor sent customers a mailer that purportedly described the program, and then unilaterally enrolled customers and began charging fees on a recurring basis without customer agreement. *E.g.*, ECF 136-20 at 6.³

Once customers were signed up, FleetCor continued its efforts to keep them in the dark about fees. Fees were not itemized on the invoices customers received. *See, e.g.*, ECF 132-2 at 102. Instead, they were listed at the very end of a separate “Fleet Management Report.”

³ FleetCor’s brief includes examples of boxes describing some fees (Br. 7, 13), but FleetCor did not add these boxes to the front of its terms and conditions until late 2019, just before this lawsuit was filed and only after the FTC raised concerns. ECF 163-5 at 5 (Appx1396); 311 at 11 (Appx1751). In 2018-19, terms and conditions documents had a much smaller box at the end where it could not easily be seen. ECF 132-14 at 12, 15 (Add-19, -22; Appx0448, 0451).

This was no accident—FleetCor deliberately chose to put the fee disclosures in a place where customers were less likely to see them. When a new fee was mistakenly placed on the invoice rather than the Fleet Management Report, an employee immediately noted that this was “not good” because it would “cause a lot of noise and our odds of keeping this fee will go down and our odds of losing customers will go up.” ECF 142-20 at 4. A high-ranking FleetCor executive responded: “Crap!” and the fee was quickly removed from the invoice. *Id.* FleetCor consciously chose not to tell customers when it started charging a new fee or raised the amount of an existing one. *See, e.g.*, ECF 136-3 at 2 (App0603); 136-6 at 2. And it instructed employees to withhold information about fees in calls with customers. *See, e.g.*, ECF 198-13 at 13; 198-14 at 2.

FleetCor further hid the existence of fees by not charging them for the first few months. As a former employee explained, this was because the company understood that “customers were more likely to pay close attention to their bills” during the first few months after signup, and that “after the first few months ... customers would be less likely to notice the fees.” ECF 124-20 at 6; *see also* ECF 133-7 at 14 (Appx0501)

(“Processes limiting the application of fees during the first ~60 days of an account transactions are critical to reducing attrition.”).

FleetCor’s internal files are replete with studies documenting customer complaints about being charged for fees they never agreed to. Op. 76-79 (summarizing studies). Additionally, the FTC’s expert, Dr. Jon Krosnick, surveyed more than 150 former current and former FleetCor customers, documenting numerous similar complaints and finding that that only 7% of customers were informed in advance about all the fees FleetCor charged them. ECF 124-1 at 9 (Appx0222), 74.

Using FleetCor’s transaction data, the FTC calculated that customers were charged some \$320 million in unauthorized fees between 2014 and 2019. ECF 132-7 at 20-21.

2. Improper Late Fees

FleetCor charged many customers late fees for payments that were actually made on time. Numerous internal studies show that FleetCor often failed to record mailed-in checks in its system for several days, delayed processing online payments up to 48 hours, and made bills due on weekends but did not process payments received after a Friday cutoff. *See* ECF 198-2 at 23; 140-16 at 20; 137-18 at 14-15

(Appx0618-19); 135-3 at 3; 198-50 at 8-10; 135-2 at 21-22. FleetCor's own expert, Dr. Schoar, sampled online payments from 2018 to 2020 and found that one third of payments marked "late" were actually paid on or before the due date. ECF 161-8 at 279-80 (Appx1190-91); *see also* ECF 124-1 at 5 (Appx0218) (Dr. Krosnick's study finding that 38% of customers surveyed had been charged a late fee for a timely payment).

FleetCor management was well aware of these issues. One senior executive called improper late fees a "massive problem," and wrote that she had "heard insinuations that we don't want to fix the issue because we want to capture the late fees that our payment problems generate." ECF 198-50 at 2. A former revenue analyst was told by management that "FleetCor did not want customers to start paying on time so that FleetCor could continue to generate late fee revenue." ECF 124-20 at 5-6. The directive to maximize late fees came from the top; in 2018, Clarke specifically directed staff to find "opportunities to get more late fee revenue." ECF 138-25 at 2 (Appx0654).

The FTC calculated that FleetCor improperly charged \$213 million in late fees from 2014 to 2019. ECF 132-7 at 26.

D. Clarke's Knowledge and Control

As CEO, Clarke had authority to put an end to FleetCor's unlawful practices. He was well aware of complaints about FleetCor's marketing and fee practices from multiple sources, including public news stories that he received, read, and discussed with staff. *E.g.*, ECF 138-15 at 2-3 (Appx0623-24); 139-6 at 2 (Appx0704). He received internal reports on the problems, *see* ECF 138-22 at 2-3, 21 (Appx0630-31, 0649), and heard complaints directly from FleetCor shareholders and business partners, *see* ECF 142-17 at 2 (Appx0707); 198-33 at 4-5. Rather than taking corrective action, he publicly dismissed reports of problems as "fake news." ECF 124-18 at 4.

E. Proceedings In This Case

In 2019, the FTC sued FleetCor and Clarke for violating Section 5 of the FTC Act, which prohibits "unfair or deceptive acts or practices." 15 U.S.C. § 45(a). Counts I to III of the complaint alleged that FleetCor engaged in deceptive advertising based on its false per-gallon discount, "fuel only," and "no transaction fee" claims. Count V alleged that FleetCor engaged in unfair practices with respect to both unauthorized

fees and improper late fees.⁴ The FTC sought a permanent injunction under Section 13(b) of the FTC Act, 15 U.S.C. 53(b).⁵

The district court granted summary judgment for the FTC in a thorough and detailed 130-page opinion. It held that all the challenged ads were deceptive. Specifically, the court “conclude[d] as a matter of law that the tiny, inscrutable print of the disclaimers does not cure the net impression of the representation in the ads ... that customers would be afforded certain per-gallon savings throughout the Fuelman Network or wherever Mastercard is accepted without condition or caveat.” Op. 31. The court held that MasterCard’s marketed as “fuel only” were not limited to fuel purchases and that FleetCor’s ads “had a tendency to deceive, and in fact did deceive.” Op. 49. And it held that fees charged per transaction or per gallon are “transaction fees,” notwithstanding FleetCor’s “semantic gymnastics” to the contrary. Op. 54.

⁴ Count IV alleged that billing customers for these unlawful fees was a deceptive practice, but since that claim rises or falls with Count V we do not discuss it separately.

⁵ The FTC abandoned a claim for monetary relief following *AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341 (2021).

The court also granted summary judgment on the unfair fee practice claim. It held that “FleetCor charged a slew of fees that: were never discoverable to customers, were obscured by undecipherable language, were hidden in tiny print in T&Cs that were not sent to customers or were made difficult to access, were added on without notice, or were charged in spite of promises by customer service reps (or ads) that such fees would not be charged.” Op. 102. And it found “overwhelming” undisputed evidence that “customers suffered substantial harm in being charged unfair late fees when they paid their bills on time or were blocked from paying bills by FleetCor’s Sisyphean payment system.” Op. 76.

The district court further found no material dispute that Clarke was personally liable for FleetCor’s violations based on his control of the company and substantial undisputed evidence that he had at least some knowledge of FleetCor’s unlawful practices. Op. 112-22.

Finally, the district court determined that injunctive relief was necessary. Op. 122-28. It cited the “mountain of evidence” presented by the FTC that FleetCor’s violations were “far-reaching,” that the deceptive ads were not isolated instances and “left customers

consistently feeling swindled and misled,” and that the unlawful fee practices were “even more pervasive.” Op. 124. It found a high degree of scienter, citing internal studies and emails from high-level employees showing that “FleetCor was well aware that customers were being hoodwinked.” Op. 125. “Unrefuted evidence” showed “that the conduct was intentional—and that it came straight from the top.” *Id.* The unlawful practices were “ingrained in the fabric of the company for years.” *Id.* Furthermore, FleetCor and Clarke continued to deny the wrongful nature of their conduct and were in a position to continue it. Although FleetCor argued that it had ceased its violations, the court was not persuaded; it pointed to “demonstrable record evidence” from as late as 2020 that “FleetCor’s unfair practices persist.” Op. 126. The court found a reasonable likelihood of further violations and concluded that a permanent injunction was “imperative to protect the public interest.” Op. 126, 128.

The district court held further proceedings to determine the scope of the injunction, including a two-day evidentiary hearing (ECF 329, 330) and submission of two rounds of proposed orders (ECF 309; 311;

339-2; 345-2). The court then entered a final injunction to prevent further violations. ECF 355 (Appx2062-83). This appeal followed.

F. Standard of Review

This Court reviews the district court's grant of summary judgment *de novo*. *E.g., McGriff v. City of Miami Beach*, 84 F.4th 1330, 1333 (11th Cir. 2023). The judgment should be affirmed if there is "no genuine dispute as to any material fact and the [FTC] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The injunction is reviewed for abuse of discretion. *FTC v. On Point Cap. Partners LLC*, 17 F. 4th 1066, 1077 (11th Cir. 2021). It must be affirmed unless the district court "commit[ted] a clear error of judgment, fail[ed] to follow the proper legal standard or process for making a determination, or relie[d] on clearly erroneous findings of fact." *FTC v. Nat'l Urological Grp.*, 80 F.4th 1236, 1241 (11th Cir. 2023). "[S]o long as [the district court's] decision does not amount to a clear error of judgment we will not reverse even if we would have gone the other way had the choice been ours to make." *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 733 (11th Cir. 2005).

SUMMARY OF ARGUMENT

FleetCor engaged in a pattern of serious misconduct for years: lying to its customers about card benefits and features, charging fees customers never agreed to and then concealing the fees, and charging late fees for timely payments. Although FleetCor now claims these problems are fixed, the record shows that unfair fee practices persisted past summary judgment through the evidentiary hearing in October 2022. The district court properly granted summary judgment based on a mountain of undisputed evidence, and the injunction's express informed consent provisions were well within the court's discretion.

Summary judgment was proper on all three deceptive advertising claims. Contrary to the claims made in the body of FleetCor's ads, discounts were not available on every gallon of fuel pumped wherever the cards were accepted. FleetCor's tiny fine-print disclaimers could not cure the false representations in the body of the ads because the disclaimers were virtually illegible and written in vague language. It is undisputed that "fuel only" MasterCards could be and were used for nonfuel purposes. And the fees FleetCor charged on a per-transaction or per-gallon basis are "transaction fees" in ordinary English usage.

Summary judgment on the unfair fee practice claims was proper based on the three-part unfairness test in Section 5(n) of the FTC Act, 15 U.S.C. § 45(n). With respect to unauthorized fees, FleetCor's argument that the court applied the wrong standard is forfeited because FleetCor expressly agreed in the district court that the three-part Section 5(n) test was proper. In any case, FleetCor's argument that a practice cannot be unfair unless it violates a "well-established policy" is wrong. Section 5(n) imposes no such requirement, but regardless, the district court's unfairness finding is fully consistent with basic principles of contract law, which FleetCor claims is the relevant yardstick. The essence of a contract is that the parties must consent to its terms. The district court properly held that the undisputed facts showed that FleetCor charged fees without consent, including transaction fees and fees for add-on programs customers never signed up for, then concealed these fees so customers would not catch on.

FleetCor does not dispute that it engaged in unfair practices by charging customers late fees for timely payments through 2018. FleetCor did not argue in the district court that these practices stopped before the FTC filed suit in 2019, and there is no evidence that they did;

in fact, a FleetCor executive testified that FleetCor was still charging late fees for some on-time payments as late as 2022. In any case, any supposed changes FleetCor made in 2018—after it knew it was under FTC investigation and likely to be sued—cannot absolve it of liability under Section 13(b) of the FTC Act.

FleetCor concedes that Clarke controlled the company, and the district court properly held based on undisputed evidence that Clarke had sufficient knowledge to subject him to liability. The knowledge requirement is not a high bar; a defendant need only have some knowledge of the unlawful practices—not necessarily every detail—and reckless indifference to the truth also suffices. The district court cited ample undisputed evidence that Clarke learned about the specific unfair and deceptive practices at issue here through multiple sources, including public news reports, follow-up communications with subordinates, and communications with investors and partners.

The district court did not abuse its discretion by requiring FleetCor to obtain express informed consent before charging customers any fees. The district court properly weighed the relevant factors identified by this Court and concluded that FleetCor's unfair practices

were likely to recur, and indeed, that they were still ongoing as of 2020. Evidence at the subsequent evidentiary hearing confirms that as of 2022, FleetCor was *still* hiding fees from its customers.

FleetCor's challenges to specific aspects of the injunction also fail. FleetCor's argument that the remedy violates Section 5(n) is waived and wrong; the district court's prohibition on hiding fee disclosures behind a hyperlink was reasonable in light of FleetCor's long history of misconduct and evidence that many customers do not click on a hyperlink; and it was likewise reasonable to require separate consent for each fee FleetCor charges.

ARGUMENT

I. THE DISTRICT COURT PROPERLY ENTERED SUMMARY JUDGMENT AGAINST FLEETCOR.

The FTC presented overwhelming undisputed evidence that FleetCor engaged in both deceptive advertising and unfair fee practices. The district court properly granted summary judgment on all counts.

A. The District Court Properly Granted Summary Judgment on the Deceptive Advertising Claims.

An advertisement is deceptive under Section 5 of the FTC Act if “(1) there was a representation; (2) the representation was likely to mislead customers acting reasonably under the circumstances, and

(3) the representation was material.” *On Point*, 17 F.4th at 1079. The defendant need not have intended to deceive customers. *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1368 (11th Cir. 1988). Nor does the FTC need to show customers were actually deceived, although “such proof is highly probative to show that a practice is likely to mislead consumers acting reasonably under the circumstances.” *FTC v. Cyberspace.com*, 453 F.3d 1196, 1201 (9th Cir. 2006); accord *FTC v. USA Fin., LLC*, 415 F. App’x 970, 973 (11th Cir. 2011).

Here, there is no dispute as to the contents of FleetCor’s advertisements or the representations contained therein. Nor does FleetCor argue that the representations were immaterial. Instead, FleetCor contends there are genuine issues of fact as to whether the ads were likely to mislead consumers. The district court properly rejected FleetCor’s arguments as to all three deceptiveness claims.

1. FleetCor’s Tiny Fine-Print Disclaimers Do Not Cure the Deceptive Representations in FleetCor’s Per-Gallon Discount Ads.

The plain text of multiple FleetCor advertisements promised that customers would receive specific discounts on each gallon of fuel pumped wherever the cards were accepted. *See, e.g.*, ECF 122-13 at 2

(Add-1; Appx0190); 122-16 at 2 (Add-2). FleetCor concedes that it did not actually give customers a discount on every gallon pumped, but argues the ads were not deceptive because the discount claims were sometimes followed by an asterisk supposedly alerting customers to a tiny fine-print disclaimer at the bottom of each ad. The district court properly held that as a matter of law these disclaimers were “inscrutable” and did not cure the misleading impression created in the main body of the ads.⁶ Op. 31.

A representation “may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.” *Cyberspace.com*, 453 F.3d at 1200. Accordingly, “[d]isclaimers or qualifications in any particular ad are not adequate to avoid liability unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate

⁶ FleetCor’s argument that its liability should be limited to the ads the district court specifically discussed is raised only in a footnote (Br. 44 n.9) and is thus waived. *LaCroix v. Town of Fort Myers Beach*, 38 F.4th 941, 947 n.1 (11th Cir. 2022). In any event, the FTC submitted “dozens of advertisements promising per-gallon savings” that varied from each other only “slightly.” Op. 23. FleetCor has not shown any material difference between the ads discussed by the court and those other ads.

impression. Anything less is only likely to cause confusion by creating contradictory double meanings.” *Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989).

Tiny fine-print disclaimers like FleetCor used here cannot cure deceptive claims in the body of the ads. Just recently, this Court held that small disclaimers in a pale-colored font on a defendant’s website were “either too small or too vague to dispel the misrepresentations otherwise created by the websites.” *On Point*, 17 F.4th at 1080. In *Cyberspace.com*, defendants mailed a solicitation that included a check with small print on the back stating that depositing the check would constitute agreement to pay a monthly fee for internet access. 453 F.3d at 1198. The court held that the disclaimer did not cure the overall deceptive impression that the check was a refund or a rebate and affirmed a grant of summary judgment. *Id.* at 1200. Likewise, in *FTC v. Brown & Williamson Tobacco Co.*, 778 F.2d 35 (D.C. Cir. 1985), a cigarette manufacturer misleadingly claimed that its product contained “1 mg. tar,” but qualified that claim in a “fine-print legend” that “often appears in virtually illegible form, placed in an inconspicuous corner of

[the] advertisements.” *Id.* at 43. The disclaimer did not eliminate the deceptive nature of the ad. *Id.*

The same principles apply here. The district court was entitled to rely on common sense and its own eyes to assess whether FleetCor’s ads were deceptive. It properly held that no reasonable factfinder could conclude that tiny and virtually illegible disclaimers buried at the bottom of the ads cured the deceptive impression created by the large and prominent type in the ads’ main body.

Furthermore, the district court properly held that even if an eagle-eyed consumer could read the disclaimers, that would not cure the ads’ overall deceptive impression because the disclaimers are full of vague and uncertain language. Op. 36. For example, several disclaimers state that discounts are unavailable unless the account is in “good standing,” but leave this term undefined. *See* ECF 122-16 at 2 (Add-2); 122-15 at 2 (Add-4). One disclaimer says that discounts are available for purchase within the “Fuelman Discount Network,” which is described in an external website that could change at any time, based in part on purchase at “Level 3 sites,” which is undefined. ECF 122-16 at 2 (Add-2). Another says discounts are not available at locations that are part of

a “Convenience Network” that is “subject to change without notice.” ECF 122-11 at 3 (Add-3). On top of all that, some disclaimers say that FleetCor “reserves the right to change the rebate program at any time without prior notice,” making the promised discounts entirely illusory and subject to revocation at FleetCor’s whim. ECF 122-15 at 2 (Add-4).⁷

FleetCor’s argument that the district court erred in resolving deceptiveness on summary judgment is wrong. Courts regularly assess the effectiveness of disclaimers on summary judgment simply by looking at the face of the ads. *See, e.g., FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 11-12 (1st Cir. 2010); *Cyberspace.com*, 453 F.3d at 1200-01. Courts are “well-equipped to discern express claims or clear and conspicuous implied claims from the face of the advertisement,” and contrary to FleetCor’s suggestion (Br. 47) consumer surveys are not needed to show deceptiveness. *FTC v. Nat’l Urological Gp.*, 645 F. Supp.2d 1167, 1189 n.12 (N.D. Ga. 2008), *aff’d* 356 F. App’x 358 (11th

⁷ Insofar as FleetCor purported to reserve such rights, ads that did not include this language were even more deceptive. *See Op.* 34-35. FleetCor produced no empirical evidence supporting its claim (Br. 49) that customers would have understood the promised discounts could be changed or eliminated at any time.

Cir. 2009). The unreported district court case FleetCor relies upon, *FTC v. DIRECTV, Inc.*, No. 15-cv-01129, 2018 WL 3911196 (N.D. Cal. Aug. 16, 2018), does not suggest summary judgment was improper here. As the district court correctly observed, the disclaimer there “was larger, legible, bolded, underlined, and in the center of the advertisement—a world away from the disclaimers at issue here.” Op. 30-31.

FleetCor did not present any evidence that creates a genuine factual dispute as to the deceptiveness of its ads. First, the fact that some of the ads contained a small asterisk supposedly alerting consumers to the disclaimer (Br. 44-45) does not change the ads’ overall misleading impression, given that the disclaimers directly contradict the claims in the main body of the ads, are so small as to be illegible, and are written in vague language that consumers could not reasonably be expected to understand.

FleetCor’s claim that its customers were “sophisticated” business entities (Br. 45-46) likewise does not raise a genuine issue of material fact. It is undisputed that the overwhelming majority of FleetCor’s fuel card customers are small businesses that are not particularly sophisticated. *See* discussion *supra* at 5. Furthermore, even if a

sophisticated customer might have read and understood the disclaimers, that does not mean they were not deceptive. The FTC Act protects “the public—that vast multitude, which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions.” *FTC v. Freecom Commc’ns, Inc.*, 401 F.3d 1192, 1202 n.5 (10th Cir. 2005) (citation omitted); *accord Gulf Oil Corp. v. FTC*, 150 F.2d 106, 109 (5th Cir. 1945).

Contrary to its claims (Br. 45), FleetCor did not present “empirical evidence” (*e.g.*, a consumer survey) that reasonable customers would have seen and understood the disclaimers. Instead, FleetCor argues that customers were not actually misled because “less than 2%” of customer service call records reviewed by its expert involved complaints about discounts and the district court cited “only” five such complaints.”⁸ But the district court was clear that these complaints are

⁸ The district court excluded most of the report of FleetCor’s expert, Dr. Wind, as unreliable. ECF 305 (Appx2062-83). FleetCor’s assertion that the district court disregarded the unexcluded portions of the report (Br. 45 n.10) is incorrect. The court stated that even considering the report “would not alter the calculus” because Dr. Wind did not “consider the actual advertisements at issue” or “speak to the operative question

merely examples consistent with other evidence, including FleetCor’s own internal studies documenting customer complaints about discounts. Op. 34, 39-40 (citing ECF 139-9 at 19; 140-5 at 15, 17). In any event, “proof of actual deception is unnecessary to establish a violation of Section 5.” *E.g., Cyberspace.com*, 453 F.3d at 1201 (cleaned up). The undisputed fact that many customers *did* complain about not getting promised discounts is simply icing on the cake—it is “highly probative” evidence reinforcing the conclusion that the claims were deceptive. *Id.*

Finally, FleetCor’s argument that summary judgment is appropriate only in the case of “scams” (Br. 47) finds no support in case law. In any event, FleetCor’s conduct here—unequivocally promising discounts on every gallon of fuel pumped but then denying customers those savings based on inscrutable and vague disclaimers—qualifies as a scam under any ordinary definition of the term.

of whether the particular per-gallon representations at issue had a tendency to deceive consumers.” Op. 42-43. It further noted that some of Dr. Wind’s data “actually supports the FTC’s position that customers were generally misinformed about per-gallon discounts.” Op. 43 n.16.

2. Undisputed Evidence Shows That “Fuel Only” Cards Could Be Used To Purchase Nonfuel Items.

FleetCor does not dispute that its ads promised MasterCard fuel cards could be limited to “fuel only” purchases. Nor does it dispute that “fuel only” MasterCards were used on multiple occasions to buy nonfuel items, including gift cards—a cash equivalent. *See, e.g.*, ECF 134-20 at 4; 134-21 at 2; 134-22 at 2; 134-23 at 4. FleetCor’s slides make clear that “Fuel Only” is a misnomer” because “MasterCard products can not limit by product type,” and that “fuel-only” cards could be used to purchase other items. ECF 134-19 at 34 (Appx0592). Nothing more is needed to sustain the district court’s grant of summary judgment as to the “fuel only” misrepresentation.

FleetCor’s attempt to conjure a dispute of material fact by pointing to the deposition of its corporate representative (Br. 50) fails for two reasons. First, the witness’s testimony does not undermine the undisputed fact that fuel-only cards *were* used for nonfuel purchases. Second, insofar as the witness claimed that “fuel only” cards were limited to “at-the-pump” purchases, ECF 162-13 at 4 (Appx1353), that testimony is “blatantly contradicted by the record” and therefore cannot create a genuine dispute of material fact. *Scott v. Harris*, 550 U.S. 372,

380 (2007). FleetCor’s slides make clear that the default setting for MasterCard fuel cards included *both* at-the-pump and inside-the-station transactions. ECF 134-19 at 19, 34 (Appx0577, 0592). FleetCor could “further limit the FUEL ONLY card to purchasing only at fuel islands ... for even more security,” but that required special coding. *Id.* at 34 (Appx0592). An email from FleetCor’s national accounts manager—discussing a customer whose employee racked up hundreds of thousands of dollars in nonfuel purchases using a card clearly marked “FUEL ONLY”—confirmed that the cards were not strictly limited to “pay-at-the-pump” transactions and explained why: “[I]n some of the rural areas where they travel that is not as feasible.” ECF 134-21 at 2.

FleetCor argues it could somehow have explained the slides away at trial (Br. 50), but it did not present any evidence in opposition to summary judgment showing that the slides were inaccurate or that they do not mean what they say. Furthermore, FleetCor’s own expert prepared a chart showing that “fuel only” cards could be used both at the pump and in stores and that 10% of in-store transactions were for nonfuel items. ECF 161-10 at 142-43. There is no genuine dispute that

“fuel only” MasterCard could be and often were used for nonfuel purchases.

3. FleetCor Charged Transaction Fees.

As the district court observed, FleetCor’s arguments that it did not charge transaction fees amount to “semantic gymnastics.” Op. 54.

FleetCor does not and cannot dispute that it assessed three different fees—the Convenience Network Surcharge, the Minimum Program Administration Fee, and the Level 2 Pricing/High Risk Fee—on a per-transaction basis or a per-gallon basis (which as the district court explained amounts to the same thing).⁹ FleetCor executive Yue Chen repeatedly described these fees as “transaction fees” in her deposition. ECF 145-1 at 132, 227, 232-33. FleetCor even instructed customer service representatives to call the high-risk fee a “transaction fee.” ECF 198-26 at 2 (“We want to avoid the words ‘High Risk.’ Instead use the term ‘Transaction Fee.’”)

FleetCor’s argument that “transaction fee” has some special meaning in the world of credit cards does not raise a genuine issue of

⁹ The district court correctly held that “a fee charged *per gallon* is by its nature a transaction fee” since it is “assessed in every fuel purchase transaction.” Op. 55.

material fact. FleetCor relies on a declaration from Ms. Chen (Br. 25) asserting that the fees she previously called transaction fees in her deposition were not actually “transaction fees.” ECF 161-17 at 6 (Appx1230). But “[w]hen a party has given clear answers to unambiguous questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony.” *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

Even if the declaration were not flatly contrary to Ms. Chen’s deposition testimony, it would not create a genuine dispute of fact. First of all, Ms. Chen’s personal definition, crafted for litigation, says nothing about how customers would have reasonably understood the term “transaction fee.” And even if some customers might read the term the way Ms. Chen does in her declaration, where a claim “conveys more than one meaning, only one of which is misleading, a seller is liable for the misleading interpretation even if nonmisleading interpretations are possible.” *Fanning v. FTC*, 821 F.3d 164, 171 (1st Cir. 2016); *see also Resort Car Rental Sys., Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975)

“Advertising capable of being interpreted in a misleading way should be construed against the advertiser.”).

Furthermore, even under Ms. Chen’s definition—“a fee charged by a company per every transaction (for the right to make the transaction)” (Br. 52)—the fees at are issue are plainly transaction fees. The Convenience Network fee is imposed on every out-of-network transaction. The Minimum Program Administration fee is charged on every transaction when prices fall below a benchmark amount. And the Level 2 Pricing/High Risk fees were assessed on every purchase for customers deemed high risk. These are transaction fees by any conceivable definition.

FleetCor improperly faults the FTC for not “conduct[ing] a study on how customers might understand the phrase ‘transaction fees.’” Br. 53. But “extrinsic evidence of consumer perceptions” is not required. *Fanning*, 821 F.3d at 170. The district court properly held that customers would understand the words “transaction fees” to have their ordinary English meaning. FleetCor presented no contrary evidence. There is no genuine dispute that fees charged on a per-transaction basis are “transaction fees.”

B. The District Court Properly Granted Summary Judgment on the Unfair Fee Practice Claims.

Section 5(n) of the FTC Act provides that an act or practice is “unfair” if it “[1] causes or is likely to cause substantial injury to consumers [2] which is not reasonably avoidable by consumers themselves and [3] not outweighed by countervailing benefits to consumers or to competition.” 15 U.S.C. § 45(n). “[E]stablished public policies” may be “considered with all other evidence,” but “may not serve as a primary basis for [an unfairness] determination.” *Id.*; *see also Orkin*, 849 F.2d at 1363-68 (affirming FTC determination of unfairness under this three-prong test).¹⁰ The district court properly applied the three-prong Section 5(n) test and correctly found no genuine dispute of fact that FleetCor’s fee practices were unfair.

1. The District Court Properly Held That FleetCor Engaged in Unfair Practices by Charging Fees Without Consent.

The district court carefully analyzed the evidence concerning FleetCor’s practices with respect to transaction and add-on fees and

¹⁰ Section 5(n), enacted in 1994, codified the unfairness standard set forth in a policy statement the FTC adopted in 1980. *See* FTC Policy Statement on Unfairness (Dec. 17, 1980), at <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>.

correctly found no genuine dispute that each of the three elements of the Section 5(n) unfairness test was satisfied. Op. 76-84, 90-111.

FleetCor now contends (Br. 37-38) that the district court applied the “wrong legal standard” because it did not also consider whether the unfairness claim was adequately grounded in contract law or other established legal principles, which FleetCor asserts is required by *LabMD, Inc. v. FTC*, 894 F.3d 1221 (11th Cir. 2018). This argument is forfeited because FleetCor did not raise it below. *See, e.g., Douglas Asphalt Co. v. QORE, Inc.*, 657 F.3d 1146, 1152 (11th Cir. 2011). Before the district court, FleetCor agreed that that unfairness turned solely on the three Section 5(n) factors. *See* ECF 161-1 at 34 (Appx0742). It did not cite *LabMD* or argue that an additional showing was necessary.

Furthermore, the language from *LabMD* that FleetCor now cites is nonbinding dictum that misconstrues Section 5(n). In *LabMD*, this Court vacated an FTC cease-and-desist order as insufficiently specific. *LabMD*, 894 F.3d at 1231, 1237. The Court did not reach the issue of whether the FTC properly found unfairness but nonetheless stated in passing that to be deemed unfair, a practice must violate a “well-established legal policy” in addition to the three-part Section 5(n) test.

Id. at 1229 & n.24. Because that statement was not necessary to the result, it is dictum and hence “not binding on anyone for any purpose.” *Kaye v. Blue Bell Creameries, Inc. (In re BFW Liquidation, LLC)*, 899 F.3d 1178, 1186 (11th Cir. 2018). Moreover, the Court’s passing statement was inconsistent with the plain text of Section 5(n). Although Congress provided that established public policies “*may*” be considered as part of the unfairness test, it did not *require* their consideration. 15 U.S.C. § 45(n). In fact, Congress specified that public policies “may not serve as a primary basis for [an unfairness] determination.” *Id.*¹¹

In any event, the district court’s unfairness determination is fully consistent with established legal principles. This Court has repeatedly emphasized that “[c]aveat emptor is not the law in this circuit.” *FTC v. IAB Mktg. Assocs. LP*, 746 F.3d 1228, 1233 (11th Cir. 2014); *accord FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003). FleetCor invokes contract law and the principle of “inquiry notice.” Yet with respect to

¹¹ Likewise, the Commission’s 1980 unfairness policy statement (*see* n.10, *supra*), which was cited in *LabMD*, does not state that unfairness requires violation of a well-established policy. It says that the Commission *may* consider public policy to support a finding of unfairness, but only if the policy is “clear and well-established.”

add-on programs, customers were charged for products they never signed up for. A key principle of contract law is that there must be “meeting of the minds” and “manifestation of mutual assent.” *Starke v. SquareTrade, Inc.*, 913 F.3d 279, 288 (2d Cir. 2019) (applying New York law). Even assuming that “inquiry notice” is an appropriate touchstone, whether a party may be bound by a contract term under that theory turns on “whether the term was obvious and whether it was called to the offeree’s attention,” *i.e.*, “presented to the offeree in a clear and conspicuous way.” *Id.* at 289. Furthermore, modern contract law recognizes that terms in a standard form contract may be procedurally unconscionable and unenforceable where important terms are hidden in a maze of fine print so that they cannot be reasonably understood. *See, e.g., Marquez v. Amazon.com*, 69 F.4th 1262, 1271-72 (11th Cir. 2023) (discussing Washington law); *see also 7 Corbin on Contracts* § 29.10 (online ed. 2023) (explaining how courts have moved away from “the traditional duty-to-read concept in adhesion or other standard form contracts”). Although the district court was not required to apply contract law principles (and FleetCor did not argue that it should), its unfairness determination fits comfortably within those principles.

The sole case FleetCor cites, *Larsen v. Citibank FSB*, 871 F.3d 1295 (11th Cir. 2017), is not to the contrary. *Larsen* held that an arbitration clause in a credit card agreement was not unconscionable where the clause was clearly listed in the table of contents, so that “even a cursory scan” would have put the average customer on notice of its existence, and the clause itself “appear[ed] on a single page, set off in a new paragraph that bears the title ‘Arbitration; Waiver of Jury Trial’ in bold-faced type.” *Id.* at 1311.

The facts here could not be more different. As the district court amply documented (*see* discussion *supra* at 11-15), FleetCor affirmatively chose not to disclose fees in the sales process and then made it difficult for customers to obtain a copy of the terms and conditions even when requested. The terms and conditions themselves were printed in dense minuscule type that was so difficult to read that FleetCor created a larger-print version for its own internal use. Add-on fees often were not mentioned at all in the terms and conditions, while the transaction fees were described only in vague and confusing language. On top of all that, FleetCor actively concealed fees from customers—for example, by not charging fees during the first few

months after signup so customers would be less likely to notice them, by not itemizing fees on the bill, and by directing employees not to discuss fees in phone calls with customers.

FleetCor's other arguments are equally flawed. First, although FleetCor now contends there are genuine issues of fact as to whether customers suffered or were likely to suffer "substantial injury" (Br. 38-39), it did not make that argument below, so the argument is forfeited. *See* Op. 83 ("FleetCor does not mention the substantial injury prong of the unfairness analysis."). Even on appeal, FleetCor does not dispute the FTC's estimate of \$320 million in consumer injury from 2014 to 2019. Op. 76; *see also* ECF 132-7 at 20. That is plainly substantial. *See Orkin*, 849 F.2d at 1365 (aggregate harm of \$7 million in improperly charged fees over four years was substantial injury).

Contrary to FleetCor's assertion (Br. 38), the district court did not rely on a mere "smattering" of evidence to support the conclusion that FleetCor failed to obtain consent. It cited *eight* internal FleetCor studies (Op. 76-79) providing "statistical and anecdotal evidence that significant portions of FleetCor's customer base were not aware of certain fees when they signed up for FleetCor fuel cards, were

frustrated with these ‘hidden fees,’ and cited these unexpected fees as the reason they stopped using FleetCor cards.” Op. 79. Additionally, the court cited a “plethora” of customer complaints that were documented in the survey conducted by the FTC’s expert, records of calls with customer service agents, and emails from high-level executives. Op. 80-82. The court noted that these materials were merely “exemplars” and that “there are many more in the record.” Op. 79.¹²

The “witness testimony and internal documents” FleetCor cites (Br. 39) do not raise a genuine issue of material fact. FleetCor argues this evidence shows that company policy was to disclose fees at the outset, but those conclusory assertions by high-level executives do not contradict the voluminous evidence cited by the district court showing that FleetCor’s fees were not disclosed in practice and that FleetCor affirmatively concealed them.

¹² FleetCor asserts in conclusory fashion that the customer complaints were “inadmissible hearsay.” As the district court noted (Op. 79 n.13), FleetCor did not raise a hearsay objection in its briefs, but anyway FleetCor’s surveys and other internal documents are not hearsay because they are party admissions, *see* Fed. R. Evid. 801(d)(2), and customer complaints fall within the hearsay exception for statements of the declarant’s existing state of mind. *See* Fed. R. Evid. 803(3); *Schering Corp, v. Pfizer, Inc.*, 189 F.3d 218, 227 (2d Cir. 1999).

FleetCor likewise fails to create a genuine issue of material fact through its gripe that the district court “improperly credited” the FTC’s survey expert, Dr. Krosnick, over FleetCor’s experts. Br. 39. The court did no such thing. It held that FleetCor’s “memory expert” “d[id] not challenge” Dr. Krosnick’s survey finding that only 7% of FleetCor customers were informed about fees in advance, “leaving those conclusions unrebutted.” Op. 104.¹³ Another FleetCor expert, Dr. Schoar, opined that customer behavior did not change after FleetCor made certain changes in its fee disclosures. ECF 161-8 at 106 (Appx1188). But this evidence does not rebut Dr. Krosnick’s survey findings, nor does it even demonstrate that customers were aware of the fees before or after the changes were made. The court properly held that it was immaterial. Op. 83-84 n.35. In any case, Dr. Krosnick’s findings were not essential to the district court’s conclusion. The court made clear that “even discounting Dr. Krosnick’s findings, other evidence,

¹³ FleetCor’s speculation that cross-examination of Dr. Krosnick at trial might have undermined his conclusions (Br. 38-39) likewise does not create a genuine issue of material fact. FleetCor had an opportunity to depose Dr. Krosnick during discovery and present any relevant testimony from that examination in opposition to summary judgment.

such as FleetCor’s own admissions, still demonstrate that many fees were not affirmatively disclosed by representatives at sign up or later in the process.” Op. 104; *see also* Op. 84 n.35.

Finally, FleetCor failed to argue before the district court that “record evidence” submitted during the summary judgment proceedings supposedly showed improvement of FleetCor’s informed consent procedures such that its deceptive conduct was “unlikely to recur.” Br. 40. The argument is thus forfeited. In any case, no such evidence appears in the summary judgment record. FleetCor now cites portions of Dr. Wind’s expert report, but Dr. Wind did not purport to have personal knowledge of FleetCor’s practices, and the portions FleetCor identifies relate to opinions that were excluded. *See* ECF 305 at 26-39 (Appx1590-1603) (excluding opinions about natural experiments and touchpoints). Furthermore, as shown below (at 61-63), evidence from the injunctive relief hearing shows that FleetCor was *still* hiding fees from its customers through 2022.

2. The District Court Properly Held That FleetCor Charged Late Fees for Timely Payments.

The district court properly applied the Section 5(n) unfairness test and found no genuine dispute that FleetCor engaged in an unfair

practice by charging and collecting late fees for payments that were made on time. Op. 67-76, 86-90, 109-111. Specifically, the court held that FleetCor systematically delayed payment posting, misled consumers about payment deadlines, and thwarted consumers attempting to pay on time by knowingly using defective payment systems. Op. at 86-90. Among other supporting evidence, the district court cited “[n]early a dozen” internal FleetCor surveys and an internal email admitting that wrongful late fees were a “massive problem.” Op. 67, 69; ECF 198-50 at 2.

FleetCor does not dispute that it engaged in unfair late fee practices in 2018 and earlier. Instead, FleetCor now asserts for the first time that it ceased these practices before the FTC sued in 2019 and that as a result the FTC was not authorized to seek injunctive relief for these violations. Br. 55-56. FleetCor relies on *FTC v. Shire ViroPharma, Inc.*, 917 F.3d 147 (3d Cir. 2019), which held that to plead a claim for injunctive relief based on “long-past conduct”, the FTC must allege that “the defendant ‘is’ committing or ‘is about to’ commit another violation.” *Id.* at 156 (quoting 15 U.S.C. § 53(b)).

FleetCor’s argument fails for multiple reasons. First, the argument is forfeited because FleetCor never claimed during the summary judgment proceedings that its unfair practices stopped on a particular date. Instead, FleetCor simply denied any late fee misconduct at all. Second, the argument fails on the facts because the evidence FleetCor cites (Br. 55) does not show that the unfair late fee practices stopped before 2019. The declaration of FleetCor executive Steven Pisciotta (ECF 161-20 (Appx1238-42)) says nothing about any overhaul of FleetCor’s payment system in 2018. FleetCor points to some slides discussing implementation of a new payment portal in 2018 (ECF 163-3 at 131-36 (Appx1386-91)), but the slides do not show that FleetCor stopped charging people late fees for timely online payments. And FleetCor’s own expert, Dr. Schoar, sampled online payments from 2018 to 2020 and found that *one third* of payments that FleetCor marked “late” were actually paid online on or before the due date. ECF 161-8 at 279–80 (Appx1190-91). Moreover, FleetCor’s late fee misconduct was not limited to payment system problems—it also encompassed issues with mailed checks and misleading consumers about payment deadlines.

Testimony from the evidentiary hearing was not part of the summary judgment record, but in any case, the evidence from that hearing does not show that FleetCor ceased its unlawful practices before 2019. To the contrary, a FleetCor executive testified that as of 2022, FleetCor *continued* to charge late fees for some payments received before the due date. ECF 329 at 220-22. For example, if a payment was due on a Sunday, any payment received after 4 pm the previous Friday would be deemed late. *Id.* at 221-22. FleetCor did not even begin work to stop setting customers’ payment due dates on weekends or other days on which FleetCor does not process payments until after it lost at summary judgment. *Id.* at 222.

Finally, even assuming *arguendo* (and contrary to fact) that FleetCor ceased its late-fee misconduct in 2018, the FTC still would be entitled to seek an injunction under Section 13(b). FleetCor’s reliance on *Shire* is misplaced because that case addresses “pleading requirement[s],” not the ultimate liability standard. *Shire*, 917 F.3d at 158.¹⁴ Additionally, this case does not involve the kind of “long-past

¹⁴ *Shire*’s conclusion that the “is” or “is about to” language in Section 13(b) is stricter than the likelihood-of-recurrence test, 917 F.3d at 158-

conduct” at issue in *Shire*, where the FTC’s lawsuit was brought five years after the unlawful conduct occurred and the defendant company had since divested the generic drug at issue. *Id.* at 149, 156; *see FTC v. Hoyal & Assocs.*, 859 F. App’x 117, 120 (9th Cir. 2021) (distinguishing *Shire* where defendants’ willingness to flout law over a decade showed likelihood of recurrence). Here, FleetCor claims (without support) that it ceased its unlawful practices in 2018, just a year before suit was filed, but well after FleetCor learned it was under investigation. *See* ECF 327 (noting that FleetCor received civil investigative demand in October 2017). This Court has recognized that “reform timed to anticipate or blunt the force of a lawsuit offers insufficient assurance that the practice sought to be enjoined will not be repeated.” *NAACP v. City of Evergreen*, 693 F.2d 1367, 1370 (11th Cir. 1982). FleetCor offers no argument as to why *Shire* should apply in these circumstances.

FleetCor likewise errs in arguing that the district court failed “to determine the *scope* of the violation.” Br. 57. The district court *did* determine the scope of the violation, finding “overwhelming evidence”

59, is at odds with other circuits’ holdings. *See FTC v. Evans Prod. Co.*, 775 F.2d 1084, 1087 (9th Cir. 1985); *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 99 (2d Cir. 1978).

that delays occurred “in posting *all types of payments*.” Op. 74. FleetCor did not argue that the conduct had stopped, and the evidence shows it did not. FleetCor has shown no basis for limiting the scope of its liability and has not challenged the portion of the injunction requiring proper crediting of payments; any such challenge is waived.

II. THE DISTRICT COURT PROPERLY ENTERED SUMMARY JUDGMENT AGAINST CLARKE.

The district court properly held Clarke personally liable for FleetCor’s violations. An individual is liable under the FTC Act for a corporation’s wrongdoing if the individual had “some knowledge of the practices” and either “participated directly in the practice or acts or had the authority to control them.” *On Point*, 17 F.4th at 1083. Clarke does not dispute that as CEO, he had the necessary control; instead, he contends he lacked sufficient knowledge of FleetCor’s violations because they were “well below his pay grade.” Br. 57-61. The extensive evidentiary record cited by the district court demonstrates otherwise.

The knowledge requirement is not a high bar. The FTC merely needs to show “some” knowledge of the illegal practices—not that the defendant was aware of every detail. For example, in *On Point*, where a company perpetrated a scam using deceptive websites, a defendant who

served as Chairman of the Board and as a consultant argued that he was “only involved in high-level decision making and had no knowledge of or control over the contents of [the] websites.” 17 F.4th at 1083. But the court found that a set of slides he prepared describing the company’s services and business model, combined with his general awareness of the company’s finances and operations, were enough to satisfy the “some knowledge” standard. *Id.* at 1083-84; *see also IAB*, 746 F.3d at 1228 (head of company had “some knowledge” where he received a report from chief compliance office that sales representatives had misrepresented company’s products).

Furthermore, the FTC need not show that the defendant had actual knowledge of the unlawful practices: evidence of “reckless indifference to the truth” or “awareness of a high probability of [unlawfulness] combined with intentionally avoiding the truth” also suffices. *FTC v. Ross*, 743 F.3d 886, 892 (4th Cir. 2014); *accord FTC v. Primary Gp., Inc.*, 713 F. App’x 805, 807 (11th Cir. 2017).

The district court found there was “overwhelming evidence,” and thus no genuine dispute, that “Clarke had actual knowledge of FleetCor’s unlawful practices, or, *at the very least*, that he was

recklessly indifferent.” Op. 121, 122. The court based this conclusion on a detailed analysis of evidence that included (1) e-mail communications between Clarke and his subordinates; (2) warnings from shareholders and partners; (3) customer complaints to FleetCor and the Better Business Bureau; (4) public reports; (5) internal studies; and (6) Clarke’s general involvement in discussions about the practices at issue. Op. 121. Thus FleetCor’s assertion that the district court relied only on a “smattering of emails” (Br. 59) is incorrect.

Furthermore, the emails FleetCor dismisses are part of a chain of communications that clearly show Clarke’s knowledge of the specific practices at issue in this case. In March and April of 2017, an investigative news organization, the Capital Forum, published several articles describing these practices. The articles specifically discussed FleetCor’s misrepresentations regarding fees and discounts, its practice of automatically enrolling customers in add-on programs and concealing the fees, and its practice of assessing late fees even when customers paid on time. *See* ECF 138-14 at 2-6. Clarke admitted that he read these reports. ECF 124-4 at 4, 5, 7.

Emails show that following these reports, Clarke received information from subordinates confirming the substance of the reporting. For example, Clarke was told that FleetCor's terms and conditions were not available online and that if those were given to investment analysts "the biggest risk would be they pick up on [Minimum Program Fee] & high risk fees." ECF 139-1 at 2. Clarke asked about the reported forfeiture of customer rebates and was told that "[f]undamentally we have had minimal/no [small and medium business] rebates since beginning of 2015." ECF 139-6 at 2 (Appx0704). He asked what notifications customers received when they were charged a particular fee for the first time, and he was told "none. Other than T&C change." ECF 136-3 at 2 (Appx0603). He also received a report confirming that small- and medium-sized business were spending more, not less, than customers paying cash or using non-FleetCor cards. ECF 139-3 (Appx0669-77). Additionally, Clarke requested and received copies of terms and conditions documents, invoices, and Fuel Management Reports, so he could see their deficiencies for himself. ECF 139-2; 139-4 (Appx0678-0702).

In May 2017, Clarke held a call with investors. He noted “the various questions that we’ve been getting regarding customer fees, billing practices, and our customer service,” and specifically mentioned complaints regarding discounts and fees, including the High Risk fee, Minimum Program Administration fee, and late fees. ECF 124-18 at 4-5. Rather than promising to investigate and address these issues, Clarke dismissed them as “fake news and exaggerations.” *Id.* at 4.

Additional evidence cited by the district court further shows Clarke’s knowledge of the specific practices at issue in this case. For example, he received a report showing that FleetCor was losing customers because of fees that were “too high, unexpected, [or] incorrect” and a “lack of discounts.” ECF 138-22 at 2-3, 21 (Appx0630-31, 0649). FleetCor shareholders and business partners complained directly to Clarke about concerns regarding FleetCor’s practices. ECF 142-17 at 2 (Appx0707); 198-33 at 4-5. And Clarke specifically instructed staff to find “opportunities to get more late fee revenue in 2018,” showing that he was personally focused on this issue, and it was not below his pay grade at all. ECF 138-25 at 2 (Appx0654).

As the district court held (Op. 121), Clarke’s testimony that he directed FleetCor’s general counsel to investigate the practices described in the Capitol Forum reports does not create a genuine dispute of fact as to Clarke’s knowledge. In fact, this testimony confirms that Clarke had at least “some knowledge” of the unlawful practices taking place on his watch. And tellingly, Clarke did not testify that he took or directed any action to halt FleetCor’s violations or followed up to see whether changes were made.

III. THE INJUNCTION’S EXPRESS INFORMED CONSENT PROVISIONS ARE WELL WITHIN THE SCOPE OF THE DISTRICT COURT’S REMEDIAL AUTHORITY.

The only parts of the district court’s injunction that FleetCor challenges are provisions addressing FleetCor’s unfair practices with respect to unauthorized fees. The injunction bars FleetCor from billing customers for any charge without “Express Informed Consent,” which is defined as “an affirmative act communicating unambiguous assent to be charged, made after Clear and Conspicuous disclosure of ... (a) the product, service, fee, or interest associated with the charge, (b) the specific amount of the charge, (c) whether the charge is recurring and the frequency of recurrence; and (d) under what circumstances the

charge will be incurred.” ECF 355 at 4, 9 (Appx2065, 2070). “Clear and Conspicuous” means the disclosure must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and where it is made by an interactive electronic medium such as the internet, “the disclosure must be unavoidable.” *Id.* at 3 (Appx2064). The order also provides that “[m]aterial terms may not be disclosed behind a hyperlink or tooltip.” *Id.* at 5 (Appx2066). Additionally, FleetCor may not obtain “assent to more than one charge through a single expression of assent.” *Id.* The district court did not abuse its discretion by subjecting FleetCor to these requirements.

A. The District Court Properly Found That FleetCor’s Unfair Practices Were Ongoing and Likely To Continue.

FleetCor is wrong on the law and the facts in arguing that injunctive relief was improper because FleetCor has supposedly stopped its unfair practices. The Supreme Court has squarely held that “the court’s power to grant injunctive relief survives discontinuance of the illegal conduct,” so long as “there exists some cognizable danger of recurrent violation.” *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953); see also *Pensacola Motor Sales v. E. Shore Toyota, LLC*, 684

F.3d 1211, 1220 (11th Cir. 2012) (“[A] court has equitable discretion about whether to issue an injunction after the conduct has ceased.”). Permanent injunctive relief is thus appropriate when “the defendant’s past conduct indicates that there is a reasonable likelihood of further violations in the future.” *CFTC v. S. Tr. Metals, Inc.*, 894 F.3d 1313, 1328 (11th Cir. 2018).¹⁵

This Court has identified six factors that courts should weigh in considering whether a defendant’s violations are likely to recur: (1) the egregiousness of the defendant’s actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, (4) the sincerity of the defendant’s assurances against future violations, (5) the defendant’s recognition of the wrongful nature of his conduct, and the (6) the likelihood that the defendant’s occupation will present opportunities for future violations. *S. Tr. Metals*, 894 F.3d at 1328. The court need not make findings as to every factor. *Id.* The district court

¹⁵ FleetCor misplaces its reliance (Br. 25) on *Reich v. OSHRC*, 102 F.3d 1200 (11th Cir. 1997), which recognizes that an injunction may address “ongoing or future violations,” *id.* at 1202 (emphasis added).

properly applied this test and concluded that FleetCor’s unlawful practices were likely to recur. Op. 123-28.

The district court first noted that FleetCor’s violations were “far-reaching,” “pervasive,” and “ingrained in the fabric of the company for years.” Op. 124-25. This plainly demonstrates egregiousness. The court also found that the violations were “recurrent.” Op. 124. The degree of scienter was “plain,” based on “[n]early a dozen internally commissioned studies and surveys, plus dozens of emails of high-level employees,” as well as “unrefuted evidence that the conduct was intentional—and that it came straight from the top.” Op. 125. Finally, the court found that FleetCor has “in no way recognized the wrongful nature of [its] conduct” and that “as the business is still fully operational, the ‘occupation’ surely presents opportunities for future violations.” *Id.*

These findings amply demonstrate likelihood of recurrence. But “beyond these sprawling prior violations,” the district court also cited “demonstrable record evidence ... that FleetCor’s unfair practices persist,” pointing to an internal study from 2020 finding that large numbers of customers “were charged fees they were not made aware of

at time of sale, or opted into and charged for unwanted services.” Op. 126 (citing ECF 140-5 at 16, 26).

Contrary to FleetCor’s assertions, the evidence presented at the two-day hearing on injunctive relief confirms that FleetCor has not changed its ways and is *still* hiding add-on fees from its customers. FleetCor’s “overhaul” of its consent system consisted of asking customers who had previously been auto-enrolled in add-on programs without their knowledge to consent to a new set of terms and conditions either in an email or a popup box that would automatically appear when they logged in. *See* ECF 334-16 (Appx2003) (pop-up box); 334-17 (Appx2007) (email). Neither the email nor the popup informed customers that they had been auto-enrolled in add-on programs or gave them a chance to opt out of those programs. Instead, the popup stated that FleetCor was updating its terms and conditions “to provide more personalized information and to enhance the format.” ECF 334-16 (Appx2003). Both the email and the popup included a hyperlink to the terms and conditions, but customers were not required to click on that link; they were simply asked to click on a box stating that they had read the terms and conditions. ECF 329 at 113-14 (Appx1911-12); 330 at 28.

FleetCor's data shows that the overwhelming majority of its customers did not click on such links. ECF 317-18 at 7 (Appx1856).

A customer who did click on the link would be taken to a set of terms and conditions generated specifically for that customer, which listed the add-on fees in the programs in which the customer had been auto-enrolled. ECF 334-21. Customers were not told that these programs were optional or given a chance to cancel. Instead, the terms and conditions described the add-ons as "a program feature," suggesting that they were mandatory. *Id.* at 2. The emails and popups allowed the user to click on an "I AGREE" button, but there was no button for registering disagreement. ECF 334-16 (Appx2003). In any case, FleetCor continued to charge add-on fees for customers who did not click "I AGREE." ECF 329 at 103-04 (Appx 1901-02); 330 at 49-50.

On their face, these practices do not amount to a meaningful effort to obtain informed consent from consumers. Indeed, the court received evidence that customers subjected to Appellants' "overhaul" later discovered that they had been billed for thousands in charges for add-on programs that they knew nothing about. ECF 319-1; 330 at 137-138, 205-209. The court also received evidence that FleetCor is still

mentioning fees in lengthy T&Cs using vague language, burying payment cutoff times, and not disclosing fees after they are charged, among other continuing misconduct. ECF 317 at 13, 16-17 (Appx 1829, 1832-33); 329 at 223.

FleetCor's argument that the district court never specifically found its current practices unlawful (Br. 26) ignores the fact that the court had *already* determined on summary judgment that FleetCor engaged in unfair fee practices and that this conduct was likely to recur. The purpose of the hearing was to determine "the appropriate scope of injunctive relief" (Op. 129), not to assess the legality of FleetCor's current practices. Nonetheless, the court heard extensive evidence that FleetCor's misconduct continues. Nothing presented at the hearing remotely suggests that the district court abused its discretion in finding that FleetCor's fee practice were ongoing and likely to continue.

B. The Express Informed Consent Provisions Are Properly Tailored To Prevent Further Violations.

There is no merit to FleetCor's arguments that the Express Informed Consent provisions of the injunction are overbroad or unlawful. A remedy is within the court's discretion if it has some "reasonable relation to the unlawful practices found to exist." *FTC v.*

Colgate-Palmolive Co., 380 U.S. 374, 394-95 (1965). The court is not limited to prohibiting the illegal practice in the precise form that was previously shown because those who are “caught violating the [FTC] Act ... must expect some fencing in.” *Id.* at 395. Moreover, as the cases that FleetCor cites make clear, “a court of equity is free to proscribe activities that, standing alone, would have been unassailable.” *Cumulus Media, Inc. v. Clear Channel Commc’ns, Inc.*, 304 F.3d 1167, 1179 (11th Cir. 2002) (citation omitted); *see also Planetary Motion v. Techsplosion, Inc.*, 261 F.3d 1188, 1204 (11th Cir. 2001) (quoting same language).

Applying these principles, the Express Informed Consent provisions are well within the scope of the district court’s discretion. FleetCor does not argue that it is impossible or impracticable to comply with these provisions, and FleetCor’s specific challenges lack merit.

1. FleetCor forfeited its objection to the word “unavoidable” in the definition of “Clear and Conspicuous” by failing to raise the objection before the district court. FleetCor did not propose striking this language or suggest any alternative in either of its markups of the FTC’s proposed orders. ECF 311-1 at 9 (Appx1779); 345-2 at 11. In any event, the “unavoidable” language is not inconsistent with § 5(n), as

FleetCor claims. Section 5(n) says that a practice is not unfair unless it causes or is likely to cause *injury* that is not “reasonably avoidable”—not that a *disclosure requirement* intended to prevent injury may be reasonably avoidable. 15 U.S.C. § 45(n). The district court properly determined that to ensure consumers know about the fees and have a chance to opt out, FleetCor’s disclosure of the fees should be unavoidable—*i.e.*, something customers will actually see. If a disclosure is avoidable, it does not provide meaningful notice.

2. The ban on the use of hyperlinks to disclose material terms concerning fees is also reasonably related to the unlawful practices documented by the district court. FleetCor’s main argument (Br. 44) is that it is a common practice to provide via hyperlink a “terms and conditions” document describing the relationship between a service provider and user, and that in some cases, courts have held that such disclosures provide sufficient notice to bind consumers to contract provisions. *But see Starke*, 913 F.3d at 294-97 (2d Cir. 2019) (email containing hyperlink to “terms and conditions” did not give customer reasonable notice of arbitration provision). This argument misses the mark because the injunction in this case does not prohibit FleetCor

from providing such a “terms and conditions” document via a hyperlink. It requires FleetCor to provide a “Clear and Conspicuous” disclosure of basic information concerning each fee being charged and bars *that* disclosure from being hidden behind a hyperlink, whether or not FleetCor also provides a “terms and conditions” document. Regardless of whether hyperlinks are appropriate in *some* contexts, the district court did not abuse its discretion by prohibiting FleetCor from hiding *fee disclosures* behind hyperlinks, given the company’s long history of affirmatively concealing fees and the evidence that many customers never even click on hyperlinks.

3. The provision requiring separate assent to each charge is reasonably related to FleetCor’s practice of hiding fees in dense, inscrutable “terms and conditions” documents, both before and after summary judgment. Although FleetCor objects to the provision, it does not actually make any argument as to why that requirement amounts to an abuse of discretion. It plainly does not. It is reasonable to require individual consent to each fee FleetCor charges.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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January 29, 2024

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 12,977 words, excluding the parts of the exempted by Fed. R. App. P. 32(f), and that it complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (a)(6) because it was prepared using Microsoft Word for Microsoft 365 MSO in 14 point Century Schoolbook type.

January 29, 2024

/s/ Matthew M. Hoffman

Matthew M. Hoffman

ADDENDUM

Advertisements and Terms and Conditions Documents

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- Customize card limits by gallon amount, fuel type, time or day of week
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***To qualify for the \$100 statement credit, the account must purchase at least 5,000 gallons of fuel within the first 90 days from account-setup date. Unleaded and diesel fuel gallons are included. Promotional statement credit is credited to the account in full during the following billing cycle. Account must be setup by July 3, 2016 to be eligible for the promotional statement credit offer.

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Add-1

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1-800-FUELMAN (1-800-383-5626) or www.fuelman.com

UPC-0312

* Earn up to 6¢ per gallon in rebates from a combination of 3¢ per gallon within the Fuelman Discount Network and up to 3¢ per gallon in volume rebates. Purchases must be made with the Universal Premium FleetCard MasterCard® and the account must be in good standing. Not valid on aviation, bulk fuel, propane or natural gas purchases. Volume rebates are based on the number of gallons purchased monthly and will be calculated on the gallons pumped at Level 3 sites. Unleaded and diesel grade fuels are included.

The Fuelman Discount Network is a selected group of fuel locations that allow cardholders additional savings. For a list of participating sites, visit www.fuelmandiscountnetwork.com

** Terms and conditions apply.

Universal Premium FleetCard MasterCard is issued by Regions Bank, pursuant to a license by MasterCard International Incorporated. MasterCard and the MasterCard Brand Mark are registered trademarks of MasterCard International Incorporated.

Add-2

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http://www.fleetcardsusa.com/apply1/Fuelman_Discount_Advantage_Fleet_Card.aspx

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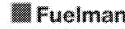
Find the Right Card Apply for a Card Fleet Facts Merchant Locator Customer Testimonials

Apply for a Card



Fuelman Discount Advantage Fleet Card

Savings and convenience



Earn 5¢ Cash Back with the Discount Advantage FleetCard!

With the Discount Advantage FleetCard, you earn 5¢ cash back on fuel from the very first gallon you pump. No waiting for volume discounts to kick in. Plus, the savings is not an introductory offer.

Cash Back Bonus!

- Savings start with your first gallon - no volume requirements!
- Save on up to 8,000 gallons* per year.
- No set-up, transaction, or annual fees.

Easy to Use: Easy to Save

- Conveniently accepted at 40,000 fuel sites in the Fuelman Network:
 - Earn cash back at 25,000 locations close by and Nationwide.
 - Also accepted across 6 major national brands, including Chevron, Texaco, Loves, Pilot, Sinclair and ARCO.
- Can be used for payment at the pump or in the store.
- Easily find locations on Fuelman.com.
(Coming Soon: the Fuelman Mobile Site Locator® application for iPhone and Android.)

Better for Business: Helps Control Spending

- Unlike credit cards, restrict purchases to fuel only and allows for customized spending limits.
- Eliminates administration of expenses for drivers and owners.
- Improve expense tracking with detailed transaction reporting and MPG calculations.

*Rebates credited to account statement quarterly, and limited to 2,000 gallons per quarter. Rebates are subject to forfeiture for inactivity or late payment behavior during the quarter. Discount does not apply to gallons pumped at the Convenience Network of Chevron, Texaco, Loves, Pilot, Sinclair and ARCO. Convenience Network is subject to change without notice.

Product FAQs

[Are there any usage fees?](#)

[Why is it better to use the Fuelman Advantage card vs. cash or house accounts?](#)

[Can I save money with this fleet card and are there any discounts?](#)

Find an Answer

Fuelman [COMMERCIAL PLATINUM FLEETCARD]

SAVE AN
ADDITIONAL

3¢

per gallon for the
first 3 months.**

Apply Today!

Invest more in your business with everyday savings on both unleaded and diesel.

Fuel your business with everyday savings. Throughout the Fuelman Network, the Fuelman Commercial Platinum FleetCard offers a **5¢ per gallon** discount on both unleaded and diesel fuel.*



With Fuelman Commercial Platinum, savings at the pump are just the beginning. In addition, our purchase controls and detailed reporting can save your business in overall fuel management costs.

Here's how the Fuelman Commercial Platinum FleetCard helps your business:

CONTROLS



Be everywhere your drivers are at once.

Monitor transactions and manage your account in real-time with iFleet online account management.

Customize card limits by gallon amount, fuel type, time or day of week.

SAVINGS



Pay less in the Fuelman Network

Save **5¢ per gallon** on unleaded and diesel fuel everyday, from gallon one, with no caps on total savings!*

Save with customized purchase limits that prevent purchases outside of the parameters you select.

CONVENIENCE



One-stop shopping for your fleet's needs.

Fuel up at **50,000 commercial fueling locations** nationwide.

Make maintenance purchases at **20,000 locations**.

Conveniently find locations along your route via www.fuelman.com.

Speak with your sales representative to choose the **right fuel management program** for your business!

*Earn a 5¢ per gallon volume discount on unleaded and diesel purchases. Discount is not available on purchases at Loves, Chevron/Texaco, Arco, and Sinclair. Customer's price will never be below Fuelman's cost paid to merchant.

** Earn a 3¢ per gallon promotional rebate for the first three months from account setup date. Promotional rebate applies to first 3,000 monthly, 1,384 bi-weekly, or 692 weekly gallons, depending on billing term. Account must be setup by June 25, 2017 to be eligible for the promotional offer. Purchases must be made with the Fuelman Commercial Platinum FleetCard and the account must be in good standing.

Fuelman reserves the right to change the rebate program at any time without prior notice.

Fuelman® is a registered trademark of FLEETCOR Technologies Operating Company, LLC.

http://www.fuelman.com/fuelman-advantage-mastercard-details.aspx JUN JUL AUG
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 2016 2017 2018

Fuelman Site Locator | Need a Site | Account Login | Merchant Login | FAQs | Contact Us
Customer Service:
 1-800-877-0800
Sales: 1-800-FUELMAN (383-5626)

Fuelman

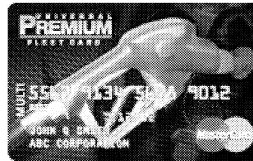
The Fuelmanagement Solution

[Account Login](#) | [Fuelman Fuel Program](#) | [Fuelman Merchant Program](#) | [The Toolbox Blog](#)

[About Fuelman](#) | [Your Fleet Needs](#) | [Program Details](#) | [Find Your Program](#) | [Apply Now](#)

Save up to 6¢ per gallon wherever MasterCard is accepted

The Universal Premium FleetCard MasterCard offers you both convenience and control. Your drivers get a card that allows them to fuel up anywhere MasterCard is accepted, so they don't have to spend time searching for a specific gas station. And you receive a complete fuel management solution that saves you up to 15% † mitigates unauthorized purchases, simplifies administrative tasks, and earns rebates.



APPLY NOW >

Here's how the Universal Premium FleetCard MasterCard will help your business:

Convenience

- Fuel at over 160,000 stations anywhere MasterCard is accepted
- Visit any of 400,000 locations for maintenance purchases—but only with your permission
- Receive emergency help 24/7 with Master RoadAssist® roadside service
- Receive detailed reporting that can be downloaded in Microsoft® Excel®

Savings

- Save up to 3¢ per gallon with volume rebates*
- Save up to an additional 3¢ per gallon on gallons purchased within the Retail Savings network**
- Protect against unauthorized employee charges with MasterCoverage® Liability Protection

Controls

- Restrict card purchasing to fuel or fuel and maintenance only
- Control what, where, and when drivers can purchase
- Customize purchase limits by type of fuel, time, date and/or gallons
- Monitor transactions and manage your accounts online in real-time

APPLY NOW >

* Earn up to 3 cents per gallon in volume rebates. Purchases must be made with the Universal Premium FleetCard MasterCard and the account must be in good standing. Not valid on aviation, bulk fuel, propane or natural gas purchases. Volume rebates are based on the number of gallons purchased monthly and will be calculated on the gallons pumped at Level 3 sites. Unleaded and diesel grade fuels are included.

** Earn an average of 2-3 cents within the Retail Savings Network. Purchases must be made with the Universal Premium FleetCard MasterCard and the account must be in good standing. The Retail Savings Network is a selected group of fuel locations that allow cardholders additional savings. Rebates are subject to forfeiture for inactivity or if account is not in good standing. Program pricing re-evaluated annually and subject to change.

† A Fleet Financials survey shows that, on average, fleets that change from no fuel management program to a managed fuel program realize savings of up to 15% on their overall fuel management costs.

Program Terms and Conditions apply. Visit www.universalpremiumcard.com/terms for details. Fees may apply in some cases, such as for optional services, late payments and/or credit risk.

Universal Premium FleetCard MasterCard is issued by Regions Bank, pursuant to a license by MasterCard International Incorporated. MasterCard and the MasterCard Brand Mark are registered trademarks of MasterCard International Incorporated.

QUESTIONS?

First Name	Last Name
Company Name	Number of Vehicles
Phone Number	Zip Code

Email Address

Contact Me:
 9am - 12pm EST weekdays
 weekends

Best Way to Contact Me:
 Phone Privacy Statement >

CONTACT ME >

Hear what customers are saying:

"Fuelman has given us the ability to keep a closer tab on our employees. In return this has limited the incidents of employees stealing gas by working as a deterrent."

-General Contractor, with 17 vehicles, Missouri

READ MORE >

→ BuilderPro MasterCard®

By COMDATA®

A payment and expense management solution designed exclusively for contractors.

APPLY TODAY

Earn an additional

1%

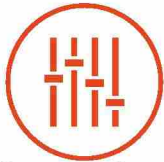
Bonus Cash Back

On All Purchases, Excluding Fuel⁵



Power Up with the Newest Tool for Saving Pros Money ↘

As a busy contractor, you should never be forced to choose between purchase control and convenience when it comes to buying materials for your business. The **BuilderPro Card** is a complete purchasing solution that enables your employees to buy only the things they need to get the job done, with none of the unwanted extras. Earn a **5% cash rebate²** on all qualifying building material purchases each month, all while earning **valuable fuel rebates³**. Use it for everyday material and maintenance purchases nationwide and conveniently fuel up anywhere MasterCard is accepted.



Controls:

24/7 Expense Management.

- **Save money** and gain peace of mind. BuilderPro enables you to **customize purchasing functionality** by each individual card and employee:

PURCHASE LEVELS

1. Materials, fuel, & maintenance
2. Fuel & maintenance only
3. Fuel only

- **Online Account Management:** Monitor employee transactions in real-time and manage your account online.

- **FleetAdvance:** our mobile application helps you and your employees find the cheapest fuel sites in your area.⁴



Savings:

Straight to your business.

MATERIALS - 5% cash back

- Get **5% cash back** on purchases at Home Depot, Lowe's, Menards, and HD Supply².

MAINTENANCE - 5% cash back

- Get **5% cash back** on purchases at Firestone and Tires Plus retail locations³.

FUEL - up to 3¢ per gallon every day

- Save **2-3¢ per gallon** on average at over 21,000 fuel sites nationwide through our exclusive Retail Savings Network¹:



Fuelman and Comdata have teamed up to deliver exclusive savings at many of the leading regional and national brands where you shop everyday, including Wilco-Hess, TA, Stripes, and Sheetz.



Convenience:

One card. Maximum Utility.

- Save time with a single solution that's accepted for all of your **material, fuel, and maintenance** purchasing needs.
- Receive a **single invoice** that delivers a streamlined view of expenses by employee.
- **Eliminate administrative burden** so you can focus on what matters most- growing your business.



¹ Earn an average discount of 2-3¢ per gallon based on specific locations within the Retail Savings Network. Purchases must be made with the BuilderPro Comdata Universal FleetCard MasterCard® and the account must be in good standing. Not valid on aviation, bulk fuel, propane or natural gas purchases. The Retail Savings Network is a selected group of fuel locations that allow cardholders additional savings. Program pricing re-evaluated annually and subject to change.

² Earn 5% rebate each month on all eligible purchases made at select large big box home improvement retailers, including Home Depot, Lowe's, Menards, and HD Supply. Cardholders can earn up to \$1,200 cash back annually, capped at \$100 per month. Rebate credited to account statement monthly in arrears. Rebates are subject to forfeiture for inactivity or if account is not in good standing. Qualifying purchases do not include purchases or reloading of pre-paid cards, or purchases of other cash equivalents. Purchases made at warehouse clubs, supercenters or department stores are not permitted. Program pricing re-evaluated annually and subject to change.

³ 5% rebate on purchases at Firestone and Tires Plus Retail Locations is available through the MasterCard Easy Savings Network. Discount will be applied after the time of transaction. The Easy Savings Network is a MasterCard-funded program that is subject to change without prior notice.

⁴ The FleetAdvance mobile application and usage come free with your program enrollment. The FleetAdvance web application is free for the first 60 days. After 60 days, a monthly service charge will be billed to your account. To unsubscribe, call your Customer Support number.

⁵ Earn a bonus 1% cash back promotional rebate for the first three months from account setup date. Promotional rebate applies to all non-fuel purchases based on product code information supplied by merchant. Account must be setup by March 31, 2018 to be eligible for the promotional offer. Purchases must be made with the BuilderPro Comdata Universal FleetCard MasterCard® and the account must be in good standing.

Program Terms and Conditions apply. Visit www.builderprocard.com/terms for details. Fees may apply in some cases, such as for optional services, late payments and/or credit risk.

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Add-6



APPLY TODAY!
Click here to leave us a message.

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Live Chat by LivePerson
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What is a Fleet Card? Find the Right Card Apply for a Card Station Locator GPS Fleet Vehicle Tracking

Apply for a Card

Print Email



Fuelman Commercial Advantage Fleet Card



Apply Now >

Find an Answer

SEARCH

Save up to 8¢ per gallon with wholesale-based fuel pricing.*

The Fuelman Commercial Advantage FleetCard offers fleets savings with wholesale-based pricing on both unleaded and diesel fuel. In addition, our purchase controls and detailed reporting can save your business up to 15% in overall fuel management costs through fuel spend monitoring and the prevention of driver theft and fraud.†

Here's how the Fuelman Commercial Advantage FleetCard helps your business:

Savings:

- Save up to 8¢ per gallon on unleaded and diesel fuel*
- Save up to 30% on maintenance at selected merchants
- Pay no set-up, transaction or annual fees

Controls

- Ensure drivers can only make business purchases by restricting cards to fuel or fuel and maintenance only
- Monitor transactions and manage your account online in real-time
- Customize card limits by gallon amount, fuel type, time or day of week
- Receive real-time email or text alerts on unusual transactions

Convenience

- Fuel up at 40,000 commercial fueling locations nationwide
- Use the card for maintenance purchases at 25,000 locations
- Free companion smartphone app that allows you to find stations easily, enjoy food and drink deals, manage your account, communicate with your team and even manage jobs from your smartphone.

How you save with wholesale-based pricing.

Your fuel price = wholesale cost of fuel + small margin
(to cover freight and processing expenses)

- You pay just a small mark-up over wholesale prices.
- Your pricing is not affected by fluctuating retail margins.
- The higher the variance between retail and wholesale prices, the more you save vs. retail... up to 8¢ per gallon on both diesel and unleaded.*
- Flexible billing terms are available to suit your needs—monthly, bi-weekly, and weekly billing.

* Wholesale cost calculated as cost of fuel plus a small margin to cover freight and transaction fees. Actual savings vary based on the market and the retail price of fuel in the market.

† A Fleet Financials survey shows that, on average, fleets that change from no fuel management program to a managed fuel program realize savings of up to 15% on their overall fuel management costs. Fuelman® is a registered trademark of FLEETCOR Technologies Operating Company, LLC.



FUELMAN COMMERCIAL ADVANTAGE FLEETCARD

Save up to 8¢ per gallon with wholesale-based fuel pricing.*

The Fuelman Commercial Advantage FleetCard offers fleets savings with wholesale-based pricing on both unleaded and diesel fuel. In addition, our purchase controls and detailed reporting can save your business up to 15% in overall fuel management costs through fuel spend monitoring and the prevention of driver theft and fraud.†

Here's how the Fuelman Commercial Advantage FleetCard helps your business:



Savings

- Save up to 8¢ per gallon on unleaded and diesel fuel*
- Plus: Save up to an extra \$250 for the first 3 months*
- Pay no set-up, transaction or annual fees



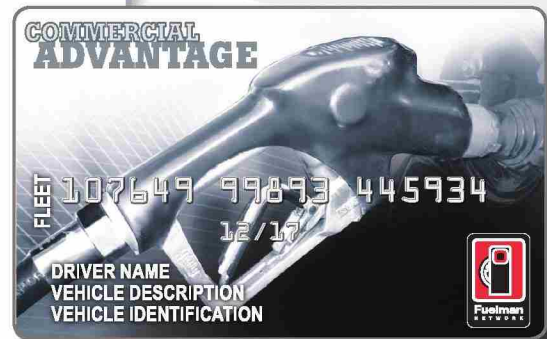
Controls

- Ensure drivers can only make business purchases by restricting cards to fuel or fuel and maintenance only
- Monitor transactions and manage your account online in real-time
- Customize card limits by gallon amount, fuel type, time or day of week
- Receive real-time email or text alerts on unusual transactions



Convenience

- Fuel up at 50,000 commercial fueling locations nationwide
- Use the card for maintenance purchases at 20,000 locations
- Find convenient locations via www.fuelman.com or the Fuelman Mobile Site Locator
- Manage your fleet on the go with the free Fuelman Mobile application. Download today in the iTunes or Google Play stores by searching "Fuelman InTouch"



Take advantage of better fuel management.

For more information or to apply today:

1-800-FUELMAN (1-800-383-5626) or www.fuelman.com

FCAC-0312

*Wholesale cost calculated as cost of fuel plus a small margin to cover freight and transaction fees. Actual savings vary based on the market and the retail price of fuel in the market.

*Promotional offer is calculated as a 4¢ per gallon rebate on the first 480 gallons per week for 13 weeks from account set-up date. Accounts must be set-up by March 27, 2015 to be eligible for the promotional offer. Rebate is credited to the account statement in the following billing cycle. The account must be in good standing and rebates are subject to forfeiture for inactivity.

† A Fleet Financials survey shows that, on average, fleets that change from no fuel management program to a managed fuel program realize savings of up to 15% on their overall fuel management costs.

Fuelman® is a registered trademark of FLEETCOR Technologies Operating Company, LLC.

Add-8



FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC

FUELMAN FLEET CARD CLIENT AGREEMENT

TERMS AND CONDITIONS

1 Definitions.

1.1 **Account.** "Account" shall mean the internal Fuelman account established for Client.

1.2 **Agreement.** "Agreement" shall mean this agreement comprised of the Application (if any), the Approval Letter (if any) and this document containing the Terms and Conditions.

1.3 **Agreement Date.** "Agreement Date" shall mean the date on which Fuelman accepts the Client's Application and issues one or more Cards for Client's Account.

1.4 **Application.** "Application" shall mean the application completed by Client in applying for the Account through Fuelman.

1.5 **Approval Letter.** "Approval Letter" shall mean the letter, if any, sent by Fuelman to Client that approves the Application and establishes the Account under these Terms and Conditions.

1.6 **Bank Account.** "Bank Account" shall mean any bank account that Client has designated on the Application or by written notice to Fuelman for electronic funds transfer, automated clearinghouse or other electronic transfer of money to pay amounts due for Client's Account.

1.7 **Billing Cycle.** "Billing Cycle" shall mean the period of time set forth in the Approval Letter or any subsequent notification for which Transactions will be accepted and a Statement for the Account will be provided.

1.8 **Card or Cards.** "Card" or "Cards" shall mean the Fuelman fleet card or cards issued to Client.

1.9 **Cardholder.** "Cardholder" shall mean the person presenting the Card to the Merchant to be used to purchase Fuel and/or Maintenance.

1.10 **Client.** "Client" shall mean the business entity identified in the Application.

1.11 **Client's Representative.** "Client's Representative" shall mean the person(s) identified as Client's representative on the Application.

1.12 **Driver ID.** "Driver ID" shall mean the personal identification number issued to the Client by Fuelman for use with a Card to authorize a particular Transaction.

1.13 **Due Date.** "Due Date" shall mean the date upon which payment from Client is due to Fuelman as stated on Fuelman's Statement to Client.

1.14 **FleetCor.** "FleetCor" shall mean FleetCor Technologies Operating Company, LLC, the company which owns the Accounts and in whose favor all Obligations, as defined in Section 10.3, of Client under this Agreement flow.

1.15 **Fuelman.** "Fuelman" shall mean Fuelman, the division of FleetCor administering the Card(s) and Account.

1.16 **Fuel.** "Fuel" shall mean any combustible material dispensed by volume that is purchased with a Card.

1.17 **Guaranteed Obligations.** "Guaranteed Obligations" shall have the meaning set forth in Section 10.4.

1.18 **Guarantor(s).** "Guarantor" shall mean the person(s) identified on the Application or a separate guaranty document, if any, that guarantees Client will comply with this Agreement and pay all amounts owed to Fuelman.

1.19 **Maintenance.** "Maintenance" shall mean any non-Fuel product or service for the vehicle that is purchased with a Card (e.g., oil, wiper blades, fluids, towing, roadside assistance, parts, supplies, tires, oil changes, brakes, glass, exhaust systems, transmissions, and repair services).

1.20 **Merchant.** "Merchant" shall mean a third party that operates retail locations providing Fuel and/or Maintenance in the Fuelman network.

1.21 **Merchant Location.** "Merchant Location" shall mean a Merchant's Fuel and/or Maintenance site that is participating in the Fuelman network, such that a Card may be used to purchase Fuel and/or Maintenance at such site.

1.22 **Miscellaneous.** "Miscellaneous" shall mean any non-vehicle related product or service that is purchased with a Card (e.g., food, drink, magazines, cigarettes, lottery tickets).

1.23 **Principal.** "Principal" shall mean the person identified on the Application, if any, who applies for the Account as a co-maker with the Client.

1.24 **Reporting.** "Reporting" shall mean related products or services that are purchased to manage the vehicle fleet (e.g., paper report delivery, fax report delivery).

1.25 **Statement.** "Statement" shall mean the billing statement provided at the end of each Billing Cycle.

1.26 **Terms and Conditions.** "Terms and Conditions" shall mean the terms and conditions contained in the Agreement and any other electronic or paper document presented to the Client by or on behalf of Fuelman in connection with this Agreement (e.g. the physical card, driver instructions, site guides, reports, billing/statement inserts, Application, and web site). In the event of a conflict between any such other document and this Agreement, this Agreement will control unless specifically provided otherwise in the other document.

1.27 **Transaction.** "Transaction" shall mean any individual purchase with a Card.

2 General.

2.1 **Agreement for Account and Services.** Client and, if applicable, Principal or Guarantor, shall submit an Application to signify Client's application for an Account with Fuelman. If Fuelman accepts such Application, Fuelman shall send an Approval Letter and these Terms and Conditions to Client's Representative along with Cards and Driver IDs issued for the Account. Upon Client's first use of a Card, Client will be deemed to have accepted the Approval Letter and these Terms and Conditions and Client and Fuelman shall be deemed to have entered into this Agreement. If a Guarantor also submits the Application or a separate guaranty then Client and Guarantor shall both be responsible for all payments owed to Client hereunder and for compliance by Client with these Terms and Conditions. If a Principal jointly submits the Application with Client, then Client and Principal are jointly and severally responsible for all payments owed by Client hereunder and for compliance with these Terms and Conditions.

2.2 **Entire Agreement.** These Terms and Conditions, together with the Application (if any) and the Approval Letter (if any), are the exclusive statement of the terms and conditions with respect to their subject matter as of the Agreement Date and supersede all prior agreements, negotiations, representations and proposals, whether written or oral. Deviations from the Agreement are not valid unless confirmed in writing by an authorized representative of Fuelman.

3 Account Administration and Card Issuance.

3.1 **Establishment of Client Account.** Upon issuance of the Cards, Fuelman will establish an Account for Client that will be used to pay for Fuel, Maintenance and Miscellaneous items purchased through the use of the Cards at Merchant Locations. For purpose of determining Client's domicile, Client acknowledges and agrees that its domicile shall be the state reflected in the Client's mailing address as reflected on the Client's Statement.

3.2 **Government Regulation.** Neither Client nor any Guarantor of the Account shall (a) be or become at any time, and are not currently, subject to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Fuelman from making any advance or extension of credit to Client or any Guarantor of the Account or from otherwise conducting business with Client or any Guarantor of the Account, or (b) fail to provide documentary and other evidence of Client's identity or the identity of any Guarantor of the Account or person to whom Client gives a Card, as may be requested by Fuelman at any time to enable Fuelman to comply with any applicable law or regulation, including, without limitation, Section 526 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

3.3 **Credit Limit.** Upon Fuelman's approval of the Client's Application, Fuelman will establish an aggregate spending limit for all the Cards issued to Client under the Account (the "Credit Limit") based on Fuelman's evaluation of the Client's creditworthiness. Fuelman reserves the right to increase or decrease this Credit Limit at any time with or without providing notice to Client. Fuelman may, at its own discretion, to decline or approve any transactions made after the Client exceeds the Account Credit Limit, or to lock the Account until the balance due is paid in full. Fuelman reserves the right to charge an Over Limit Fee of up to fifty dollars (\$50.00) per Over Limit transaction authorized.

3.4 **Initial Cards.** Upon Fuelman's approval of Client's Application, Fuelman will issue one or more Cards and Driver ID numbers to Client. Client shall be responsible for distributing the Cards and Driver IDs to its employees or agents.

3.5 **Additional Cards.** If, at some time after the initial issuance of Cards to Client, Client desires one or more additional Cards, Client must notify Fuelman via the online application or in writing or by calling Fuelman Customer Service. Fuelman reserves the right to charge a fee of up to five dollars (\$5.00) for creating and delivering each additional Card.

3.6 **Replacement Cards.** If Client desires one or more replacement Cards, including, but not limited to replacing lost or damaged Cards, Client must notify Fuelman via the online application or in writing or by calling Fuelman Customer Service. Fuelman reserves the right to charge a fee of up to five dollars (\$5.00) for creating and delivering each replacement Card.

3.7 **Administration of Cards.** Client shall be solely responsible for the use, maintenance, administration, and security of the Cards and Driver IDs within Client's business, including, but not limited to, distributing Cards to, and collecting Cards from, its employees and agents. Notwithstanding any other provision in this Agreement, Client is responsible for any loss or misuse of Cards by its employees and agents. See Section 16 for more information regarding Client responsibilities.

3.8 **Administration of Account.** Fuelman shall be responsible for collecting and reporting all Transactions by date, vehicle, Merchant Location, and driver based upon data received by Fuelman. In addition, Fuelman shall be responsible for maintaining the database for the Client with all Card numbers, vehicle data, driver data, and purchase control data. Fuelman reserves the right to charge a fee of up to fifty dollars (\$50.00) a month or a minimum of fifteen dollars (\$15.00) per Billing Cycle for account administration.

3.9 **Card Fees.** Fuelman reserves the right to charge a service fee of up to ten dollars (\$10.00) per Card per month to support the use of the Card.

3.10 **Property.** All Cards remain the property of Fuelman and shall be surrendered immediately by Client to Fuelman upon Fuelman's request or if Client or Fuelman cancels the Card or Account as permitted herein.

3.11 **Inactive Cards.** Fuelman reserves the right to charge a fee of up to three dollars and fifty cents (\$3.50) per Billing Cycle for Cards that are inactive for seventy-five (75) or more days.

3.12 **Cancellation of Cards.** If, at any time, for any reason, Client decides to cancel any particular Card, but not the Account, Client's Representative must notify Fuelman via the online application or in writing of such cancellation. Client's liability for purchases made using the canceled Card shall end at midnight of the day that Fuelman receives notice of such Card cancellation.

3.13 **Suspension of Cards.** Fuelman, at its sole discretion, may suspend or terminate the use of any Card at any time, for any reason, including, but not limited to, inactivity, unusual activity, or suspected loss, theft, fraud, or in compliance with the USA Patriot Act. However, nothing in this Agreement shall obligate Fuelman to monitor the use of any Card, and, as described in this Agreement, Client is solely responsible for the use of any outstanding Cards.

3.14 **Suspension of Account.** Fuelman, at its sole discretion, may suspend or terminate the use of an Account at any time for any reason, including, but not limited to, inactivity, unusual activity, charge in creditworthiness, late payment (excessive days beyond terms), aggregate outstanding balance owed on the Account (outstanding Account balance and unbilled Transactions) over the Credit Limit or in compliance with the USA Patriot Act. Fuelman reserves the right to charge up to a fifty dollar (\$50.00) fee for Account reinstatement each time a previously suspended Account is reinstated.

3.15 **Non-Transferability, Reversibility.** All Cards and any and all rights and privileges to which its holder is entitled are not transferable and may be revoked for any reason, including but not limited to, a breach of any of the Terms and Conditions of this Agreement, without prior notice at any time and with no liability to Fuelman, at which time any credit extended hereunder shall be revoked and all sums owed by Client to Fuelman pursuant hereto shall become immediately due and payable.

4 Services Provided.

4.1 **General Services.** Fuelman shall provide the following services to Client under this Agreement:

4.1.1 Issue to Client the Cards upon Fuelman's approval of the Application.

4.1.2 Maintain a network of Merchant Locations for Fuel and Maintenance where Client may make purchases with Cards pursuant to this Agreement.

4.1.3 Provide an online directory to identify accepting Merchant Locations.

4.1.4 Maintain an authorization control system to verify that a Card being presented for payment is valid/active and that the Driver ID being used is valid/active for that particular Card. In addition, individual Card-level spending limits can be established by the Client for each product category (e.g., Fuel, Maintenance supplies, Maintenance services, Miscellaneous).

4.1.5 Issue management reports and billing Statements to Client showing details of all posted Card Transactions (as detailed in Section 11.2) during the Billing Cycle.

4.2 **Referrals.** Fuelman reserves the right to deliver informational material in reference to ancillary fleet management related products and services provided by other providers to the Client. In no case is Fuelman making any representation about the quality or value of any particular product or service.

4.3 **Ancillary Products and Services.** Fuelman reserves the right to make certain ancillary fleet management related products and services (e.g., emergency roadside assistance) that are delivered by other vendors/companies available to the Client for purchase on Cards. For the purpose of reporting the Transactions, these ancillary products and services are considered Maintenance. The act of requesting the ancillary product or service with a valid Card and Driver ID, establishes approval for Fuelman to charge and collect the corresponding balance incurred by these ancillary products and services.

4.3.1 **Roadside Assistance for Unattended Vehicles.** Through an association with a third party, Fuelman may offer roadside assistance for vehicles, including towing services. The services may not be available for unattended vehicles. The personnel of any such third party provider are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by such third party, or for any other liability or damage which arises from the action or negligence of the personnel of the third party, its agents or its employees.

4.3.2 **Additional Services.** Client may be eligible for additional services from time to time. If Client is eligible for an additional service, Fuelman may enroll Account in the service. The terms and fees applicable to such service will be disclosed prior to enrollment. Client will have the opportunity to opt-out of enrollment in such service.

4.4 **Inability to Operate.** Fuelman shall have no responsibility for any person(s) or machine(s) rejection or refusal to honor a Card. Client agrees there shall be no liability to Fuelman or any other company or entity, if for any reason any Merchant or Merchant Location should fail to allow the purchase of Fuel or Maintenance, fail to authorize Transaction(s) or fail to operate in any other manner, even though a Card is valid.

4.5 **WARRANTY DISCLAIMER.** FUELMAN DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ALL FUELMAN ACCOUNTS, PRODUCTS, AND SERVICES ARE PROVIDED ON AN "AS-IS" BASIS.

5 Purchases.

5.1 **Use of Cards.** Client may use the Cards at any participating Merchant Location for the purchase of Fuel, Maintenance, or Miscellaneous items. To use a Card the Client should follow the directions for purchase established at the particular Merchant Location.

5.2 **Title.** As between Client and Fuelman, title to Fuel purchased with the Card passes from Fuelman to Client when the Cardholder dispenses Fuel (or when Fuel leaves the fuel dispensing nozzle), except as otherwise provided by applicable law. Title to any non-Fuel product or service purchased with the Card passes directly from the Merchant to Client when the Cardholder receives such non-Fuel product and/or service. Fuelman takes no title to Maintenance or Miscellaneous items.

5.3 **Verification of Merchant Locations.** Client acknowledges that not all retail locations selling Fuel and Maintenance accept Fuelman's Cards. If Client is uncertain as to whether a location is able to accept the Cards, Client should visit the online site locator at www.fuelman.com or contact Fuelman's 24x365 Authorization Center at 800-877-9013.

6 Safety.

6.1 **Safe Fueling Operation.** Client shall instruct all persons to whom Client provides a Card for purchasing Fuel in safe and proper fueling procedures. Client will ensure that everyone using a Card issued in the name of Client is instructed in applicable safety measures.

6.2 **Safety Laws and Notices.** Client shall comply, and Client shall cause its employees and agents to comply, with all applicable local, state, and federal laws and regulations pertaining to the dispensing and use of Fuel at Merchant Locations as well as all safety notices posted by Merchants.

7 Representations and Warranties. Client represents and warrants to Fuelman as of the date of the Application and on the date of each extension of credit under this Agreement that:

7.1.1 Client is duly organized, validly existing and in good standing under the laws of the state of its formation. Client has the power and authority to own its properties and to carry on its business as presently conducted and to execute and deliver, and enter and perform its obligations under this Agreement.

7.1.2 The execution, delivery and performance of this Agreement have been duly authorized by all necessary organizational action. This Agreement has been duly executed and delivered by Client and constitutes the legal, valid and binding obligations of each such party, enforceable against such parties in accordance with this Agreement, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

7.1.3 The execution, delivery and performance of this Agreement by Client and Guarantor will not violate any applicable law, rule or regulation or the charter, by-laws or other organizational documents of such parties or any judgment, order or ruling of any governmental authority.

7.1.4 The financial and other information furnished by Client and Guarantor to Fuelman in the Application, or otherwise, is true, correct and complete in all material respects.

7.1.5 Cards issued to Client will be used only by Client's employees and agents and will not be distributed or resold to other companies without the express written consent of Fuelman.

7.1.6 CLIENT WILL USE THE CARDS SOLELY FOR COMMERCIAL PURPOSES AND SHALL STRICTLY PROHIBIT ANY PERSONAL USE BY THE USERS OF ITS CARDS.

8 Conditions To Extension Of Credit. Any extension of credit under this Agreement shall be subject to, and conditioned upon, satisfaction of the following requirements:

8.1.1 Fuelman's receipt of a duly executed counterpart of the Application by Client and, if requested, the Guarantor, in form and substance acceptable to Fuelman in its sole discretion;

8.1.2 All representations and warranties set forth in this Agreement are true and correct;

8.1.3 No event shall have occurred and be continuing, or would result from the extension of credit hereunder, that constitutes or would constitute (with notice or the lapse of time or both) an Event of Default (defined below);

8.1.4 Outstanding amounts due, including any applicable fees as described in this Agreement, are paid by Due Date. Any amount not paid by the Due Date is subject to Late Fees (Section 10.7) and Finance Charges (Section 10.9).

8.1.5 After giving effect to any requested extension of credit, the aggregate outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) shall not exceed Client's Credit Limit, as determined by Fuelman from time to time in its sole discretion; and,

8.1.6 Receipt of any required Reserve Amount (as defined below) necessary to open the Client's Account.

9 Pricing.

9.1 **Methodology.** Fuelman establishes competitive local market Fuel and Maintenance Transaction prices for the

Fuelman Fleet Card program depending on a variety of factors (e.g., product costs, purchase volume, market conditions). Transaction pricing can be Merchant Retail-Based, Merchant National Account-Based, Fuelman Cost-Based or a combination thereof. The pricing methodology can vary by product type and is disclosed to Client in the Application, Approval Letter, and/or subsequent written notification. Additional charges/fees and/or discounts may apply based on the Client's agreed-upon program.

9.2 **Merchant Retail-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to the prevailing Merchant Location's retail price plus or minus a fixed adjustment factor but never below Fuelman's cost. In the event there is no established retail price (e.g., unattended fueling sites, mobile refueling), the retail price will be established by Fuelman.

9.3 **Merchant National Account-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to the Merchant's prevailing national account price.

9.4 **Fuelman Cost-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to Fuelman's delivered cost plus a mark-up. Fuelman's cost is dependent on a variety of factors and can include any or all of the following components: wholesale cost; merchant freight; dealer adjustment; network operation costs, merchant commission; and applicable taxes. Under no circumstance will Client's price be below Fuelman's cost.

9.5 **Special Network Pricing.** Fuelman reserves the right to charge for the use of select sites/merchants. The added charge to use these sites will not exceed the greater of ten cents (\$0.10) per gallon or two dollars fifty cents (\$2.50) per transaction. The list of select sites/merchants is available upon request by calling Fuelman Customer Service.

9.6 **Level 2 Pricing.** Fuelman reserves the right to invoke Level 2 Pricing in several scenarios. Level 2 Pricing may be invoked when Amount Due, including fees and charges are not paid by the Due Date; Client's Credit Score, as reported by a credit reporting agency utilized by Fuelman in its discretion, drops by fifty-one (51) points or more in a 3 month period; and/or Client's Credit Score is below a certain risk threshold. This risk threshold is four hundred seventy-six (476) for commercial credit scores and six hundred and sixty (660) for individual credit scores. Level 2 Pricing may also be applied to certain industries based upon the risk factors of said industry, which pricing shall be reflected in Client's Statement. The Level 2 Pricing is an incremental charge above Client's current pricing. The maximum increase is ten cents (\$0.10) per gallon purchased. Level 2 Pricing remains in effect until the next Billing Cycle following when all amounts owed on the Account are paid in full and/or Client's Credit Score is higher than the risk threshold for a 3 month period. This decision is made solely by FleetCor based on information provided by the credit reporting agency along with the Account's payment history. The credit reporting agency does not participate in the decision. Client questions concerning their commercial and/or consumer credit scores should be directed to the applicable reporting agencies directly. D&B may be contacted at 800-234-2467 or by mail to Dun and Bradstreet Corporation, 103 JFK Parkway, Short Hills, NJ 07078. Equifax may be contacted at 800-727-8928 or at sbfc@equifax.com. Experian may be contacted at 888-397-3742 or online at www.experian.com/reportaccess.

10 Billing & Payments.

10.1 **Billing.** Billing frequency is agreed upon with the Client during the Application and Account setup process. Client shall be responsible for all credit extended on the Account. This is not a revolving credit account. The total amount shown on each Account Statement is due and payable in full by the Due Date shown on the Statement. Unless otherwise agreed upon, the standard Due Date is ten (10) days after the date the Account Statement is created, regardless of the delivery method selected. It shall be the obligation of the Client to notify Fuelman within five (5) business days of the end of each Billing Cycle if Client does not receive a Statement. If the Client does not receive a Statement and thus payment is not completed by the Due Date, Client is responsible for any Late Fees or Finance Charges.

10.2 **Extended Terms Programs.** Upon Client's request and subject to Fuelman approval, terms can be extended at an additional charge.

10.3 **Payment.** Client hereby unconditionally promises to pay Fuelman, in lawful money of the United States of America and in accordance with this Agreement, all outstanding Obligations (as defined below) which may, from time to time, be owing to Fuelman by Client. As used herein, "Obligations" shall mean all outstanding sums owing to Fuelman by Client, including, without limitation, reimbursement for petroleum products obtained through Fuelman, payments for any products or services obtained using the Card(s), and interest, penalties, fees, report delivery, reporting, account charges, service charges, costs and expenses (including attorneys' fees) and all other obligations under this Agreement or otherwise. Client must pay all outstanding Obligations on the statement by the Due Date to avoid Late Fees and Finance Charges. Failure by Client to pay all amounts by the Due Date shall be a breach of the Terms and Conditions of this Agreement. Conforming payments received by 7:00 a.m. Eastern Time on a business day (Monday through Friday of each week, excluding banking holidays) will be credited to your Account as of the date received. Otherwise, payments will be credited to your Account as of the next business day. In the event your billing statement reflects a Due Date which falls on a day which is not a business day, your payment must be received by 7:00 a.m. Eastern Time on the preceding business day. If we do not receive your payment for the Amount Due by the Due Date, you may not be able to make any further purchases until such time that you pay the entire outstanding balance on the Account. We may change our billing and debiting cycle at any time by reflecting the change on your billing statement.

10.4 **Guaranty.** Guarantor hereby unconditionally and irrevocably guarantees to Fuelman and its successors, endorses, transfers and assigns, the present payment when due (whether at stated maturity, by acceleration or otherwise) and performance of the Obligations, now or hereafter owing, whether for principal, interest, premiums, fees, expenses or otherwise (collectively, the "Guaranteed Obligations"). Any and all payments by the Guarantor hereunder shall be made free and clear of and without deduction for any set-off, counterclaim, or withholding. Guarantor acknowledges and agrees that this is a guaranty of payment when due, and not of collection, and Guarantor agrees that his obligations under this Agreement shall not be discharged until the payment and performance, in full, of the Guaranteed Obligations. Guarantor shall not be relieved of its obligations, as Client with respect to the Guaranteed Obligations. Guarantor expressly waives all rights he may now or in the future have under any statute, or at common law, or at law or in equity, or otherwise, to compel Fuelman to proceed in respect of the Guaranteed Obligations against Client or any other party before proceeding against, or as a condition to proceeding against, Guarantor. Guarantor acknowledges and agrees that any delay or failure by Fuelman to take any action regarding the Guaranteed Obligations does not limit or prohibit Fuelman from enforcing its rights under this Agreement and further that Guarantor's liability under this Agreement shall not be limited or reduced by any delay on the part of Fuelman. Guarantor further expressly waives and agrees not to assert or take advantage of any defense based upon the failure of Fuelman in respect of the Guaranteed Obligations against Client or any other party for the payment and Guaranteed Obligations. Guarantor agrees that any notice or directive given at any time by any person to Fuelman which is inconsistent with the waivers in the preceding two sentences shall be null and void and may be ignored by Fuelman. Guarantor further hereby waives diligence, presentment and demand (whether for non-payment or protest) or notice of acceptance, maturity, extension of time, change in nature or form of the Guaranteed Obligations (including, without limitation, composition, the assignment of, or the terms of, the Guaranteed Obligations) or notice of material adverse change in Client's financial condition or any other fact which might materially increase the risk to Guarantor with respect to any of the Guaranteed Obligations or all other demands whatsoever and waives the benefit of all

provisions of law which are or might be in conflict with the terms of this Agreement. Guarantor represents, warrants and agrees that Guarantor's obligations under this Agreement are not and shall not be subject to any contractual defenses or defenses of any kind against Fuelman or Client now existing or which may arise in the future. Guarantor further agrees that the Guaranteed Obligations may be amended, modified, increased, extended or renewed, in whole or in part, without notice to or further assent from Guarantor, and that Guarantor will remain bound upon its guaranty notwithstanding any amendment, modification, increase, extension or renewal of any guaranteed Obligation. The foregoing waivers are of the essence of the transaction contemplated by this Agreement and, but for the guaranty contained herein and such waivers, Fuelman would decline to make the financial accommodations to Client under this Agreement. Each Guarantor is liable on a joint and several basis with Client and each other Guarantor.

10.4.1 **Account Principal Responsibility.** Each Principal for this Account, if any, as shown on the Application, is personally and unconditionally, jointly and severally liable with Client, as principal and not as surety or guarantor, for the payment and performance when due of all obligations owed on the Account, regardless of who made purchases using the Cards, and the Principal agrees to pay such amounts according to the terms of this Agreement. Principal is responsible under this Agreement for all use of all of the Cards issued on the Account to the fullest extent permitted by law.

10.5 **Payment Methods.** The following terms shall apply to each of following payment methods.

10.5.1 **Client Check.** Prior to the Due Date specified on Fuelman's Statement to Client, Client will submit payment by valid check equal to the accumulated balance of the Account for the previous Billing Cycle. The client is required to note the Account number or Statement (BO) number on the check. If the matching Statement Remit To coupon is not included with payment, Fuelman reserves the right to charge an Exception Handling Fee of ten dollars (\$10.00) for processing the payment. Fuelman reserves the right to charge a Check Processing Fee of fifteen dollars (\$15.00) per check payment. If insufficient funds are available in the Account to pay the Account balance at the time a debit is initiated, at Fuelman's option, Client will not be able to make any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account.

10.5.2 **Client Initiated Online Payment.** Prior to the Due Date specified on Fuelman's Statement to Client, Client will submit payment by online method equal to the accumulated balance of the account for the previous Billing Cycle. If insufficient funds are available on the Account balance at the time a debit is initiated, at Fuelman's option, Client will not be able to make any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account.

10.5.3 **Pay by Phone.** By the Due Date, Fuelman will initiate, at Client's request, payment by phone either through Customer Service Representative or Interactive Voice Response (IVR) system. Fuelman reserves the right to charge a fee up to thirty dollars (\$30.00) for processing each Pay by Phone payment using either methods.

10.5.4 **Fuelman Initiated Credit Card Charge.** Prior to the Due Date specified on Fuelman's Statement to Client, Fuelman will initiate a charge to the Client's credit card on file to pay the accumulated balance of the Account from the previous Billing Cycle. Fuelman may also charge the credit card to pay the amount charged to the Account any time the balance of the Account reaches the Credit Limit. The exact time that the credit card will be charged for the amount due on the Account may vary, depending on the processing cycle. If insufficient funds are available on the credit card to pay the Account balance at the time a debit is initiated, at Fuelman's option, Client will be prevented from making any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account. Fuelman may change its billing and charge cycle at any time by providing written notice to Client. Fuelman reserves the right to charge a credit card convenience fee up to three percent (3%) of the payment amount.

10.5.5 **Fuelman Initiated Electronic Funds Transfer / Automated Clearinghouse (EFT/ACH) Payment.**

10.5.5.1 **Debits to Bank Account.** On the Due Date identified on the Client's Statement, Fuelman will initiate a debit to the Bank Account to pay the accumulated balance of the Account from the previous Billing Cycle. For daily billed Client, Fuelman will initiate a debit to the Bank Account to pay the accumulated balance of the Account from the previous business day. Fuelman may also debit the Bank Account to pay the amount charged to the Account any time the balance of the Account reaches the Credit Limit. The exact time that the Bank Account will be debited for the amount charged to the Account may vary, depending on the processing capabilities of the bank at which the Bank Account exists. If insufficient funds are available in the Bank Account to pay the Account balance at the time a debit is initiated, Fuelman may prevent the Client from making any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account. Fuelman may change its billing and charge cycle at any time by providing written notice to Client. Fuelman reserves the right to charge an administration fee of up to twenty five dollars (\$25.00) per debit of the Client's Bank Account.

10.5.5.2 **Change in Bank Account.** To change the Bank Account, Client's Representative must provide a written request of such change to Fuelman. The request should include the following information for the new account: bank name (the bank must be a member of the National Automated Clearinghouse Association (NACHA); branch address; branch number; bank routing number; and account number. The request should also contain a voided check from the new account. It will take approximately ten or more days for Fuelman to change the account. During this time, Client agrees to cooperate with Fuelman to provide additional information necessary to make the change and to execute a test of the change.

10.5.6 **Client Initiated Electronic Funds Transfer / Automated Clearinghouse (EFT/ACH) Payment.** Prior to the Due Date, Client will initiate a credit to Fuelman's bank account to pay the accumulated balance of the Client Account from the previous Billing Cycle after notifying and obtaining approval from a Fuelman Customer Service representative to do so. Fuelman reserves the right to charge a fee of up to fifty dollars (\$50.00) for processing each Client initiated EFT/ACH.

10.5.7 **On Account.** Fuelman may offer Client the ability to pay in advance for its Fuel purchases. The Account will be debited for each purchase. The Account will be replenished by EFT with the amount equal to the prior week's Statement amount. Fuelman may charge a fee up to twenty-five dollars (\$25.00) for the Client's replenishing of the Account. A Dormancy Fee of thirty dollars (\$30.00) per Billing Cycle may be charged after one hundred eighty days (180) days of inactivity, where allowed by applicable law. Residual Account credit balances will be returned upon written request. Eschewment laws, where applicable, will be followed.

10.6 **Applying Payments.** Fuelman uses a "balance-forward" based accounting system. Therefore, all payments made by Client to Fuelman will be applied accordingly against the outstanding amount due at the time payment is received. Subject to applicable law, we will apply and allocate payments and credits among balances owed by Client (whether for purchases, fees, interest, or otherwise) in any order and manner determined by Fuelman in its sole discretion. Client agrees that Fuelman has the unconditional right to exercise this discretion in a way that is most favorable or convenient to Fuelman.

10.7 **Late Payments.** All payments made by Client to Fuelman that are not received by the Due Date are considered late. Fuelman reserves the right to charge up to 8.99% of the New Balance (defined below) with a minimum of seventy five dollars (\$75.00) and a maximum of one thousand dollars (\$1000.00) for each late payment, not to exceed the maximum rate allowable by applicable law. To determine the New Balance for the purposes of late fees, Fuelman starts with the Amount Due on the invoice for which the payment is late. Any purchases and other debits posted to the Account through the end date of the current (next succeeding) billing statement may be added to this. Appropriate finance charges or interest charges and fees are added and other applicable adjustments made.

10.8 **Annual Percentage Rate.** The Annual Percentage Rate for purchases is thirty two percent (32%), which corresponds to the daily periodic rate of 0.0877%, or the maximum amount allowed by applicable law, whichever is less. The daily periodic rate is the annual percentage rate divided by three hundred sixty-five (365).

10.9 **Finance Charges.** If Client's Statement is paid in full every Billing Cycle by the applicable Due Date, the Account will not incur Finance Charges. Finance Charges begin to accrue for each purchase as of the date the purchase is added to the Account. If payment in full of the Amount Due shown on the Statement for a Billing Cycle is credited to Client's Account by the Due Date shown on that respective Statement, then Finance Charges will not accrue for purchases from the date on which payment in full of that Amount Due is credited to Client's Account, provided the Amount Due of the next Statement attributable to such purchases is paid by the Due Date reflected in such next Statement (interest due because Client does not pay in full the Amount Due of the next Statement will be reflected in the following Statement). In addition, Finance Charges will not accrue for purchases during a Billing Cycle if the Amount Due shown on the Statement for the prior Billing Cycle is zero (0) or a credit balance, provided the Amount Due of the next Statement attributable to such purchases is paid by the Due Date reflected in such next Statement (interest due because Client does not pay in full the Amount Due of the next Statement will be reflected in the following Statement).

10.9.1 Periodic Finance Charges are calculated in two steps as follows: First, for each day of the Billing Cycle, Fuelman multiplies the daily balance by the applicable daily periodic rate.

10.9.2 Second, for each day of the prior Billing Cycle, Fuelman multiplies the daily balance for purchases made in that Billing Cycle by the same daily periodic rate. However, Fuelman does not do this second step if it received payment in full of the Amount Due on Client's previous billing Statement by the date the payment was due or if a periodic finance charge was already billed on that balance.

10.9.3 For finance charge calculation purposes, the Billing Cycle begins on the day after the Closing Date of the Statement and includes the following Closing Date. The number of days in the Billing Cycle may vary.

10.9.4 The daily balance is calculated by taking the beginning balance every day (which may include unpaid Finance Charges from previous Billing Cycles), adding any new transaction and any new fees, subtracting any credits or payments posted as of that day, and any other adjustments. Daily Periodic Finance Charges will be rounded to the nearest cent. Unless Fuelman elects to use a later date, a new Transaction is added to the balance as of the Transaction date shown on Client's billing report. A credit balance is treated as a balance of zero.

10.10 **Returned Payment.** If a check, credit card charge, or EFT/ACH is returned or denied, Fuelman reserves the right to charge the lesser of fifty dollars (\$50.00) Returned Payment Fee or the maximum amount allowable by applicable law for each occurrence. At our option, we will assess this fee the first time your check or payment is not honored even if it is honored upon resubmission. Fuelman may also charge the applicable Late Fees and Finance Charges incurred if balance is not received by Due Date due to returned payment.

10.11 **Reserve Amount.** Fuelman will notify Client of any reserve amount (the "Reserve Amount") necessary to open the Client's Account. The Reserve Amount will be paid to Fuelman by Client prior to using the Cards. Client shall continue paying Fuelman any amounts on any periodic Fuelman Statement by the Due Date. This Reserve Amount will be held by Fuelman and may be returned to Client only after Client has satisfied all Obligations of the Account, the Card(s) have been returned to Fuelman and the Account has been closed. In the Event of Default (defined below), the Reserve Amount will be applied to the Account as a payment on the Account. Any interest earned on the reserve balance in the Account will accrue to Fuelman.

As part of our credit reviews, Client may be required to provide a Reserve Amount to Fuelman to secure the full and faithful performance of all of Client's obligations. If required, Client understands that the credit line will be equal to an amount that is up to 80% of the Reserve Amount. Client understands that the credit line will not be activated for use until Fuelman has received confirmation from its bank that the security deposit funds are available for use. In the event Client defaults or otherwise fails to perform any obligation owed to Fuelman, Client authorizes Fuelman to use, without notice or demand, the Reserve Amount to satisfy any such default or obligation. Client represents that the Reserve Amount is made in the ordinary course of Client's business, and that the Reserve Amount is not a transfer made on account of any antecedent debt. No trust relationship is created between Fuelman and Client as a result of the Client's payment and Fuelman's acceptance of the security deposit. Client authorizes Fuelman to commingle the Reserve Amount with other Fuelman funds. After receiving a written request from Client, Fuelman may, but is not obligated to, reevaluate the necessity and the amount of the Reserve Amount. Client will provide Fuelman financial information requested to conduct its evaluation. Upon evidence of satisfactory improvement in Client's financial condition, Fuelman may determine, in its sole discretion, to return the Reserve Amount. Fuelman may also require an increase in the Reserve Amount at any time from time to time in order to continue the credit relationship between the parties. Fuelman will return the Reserve Amount to Client upon termination of the Account only after Client has satisfied all Obligations of the Account, the Card(s) have been returned to Fuelman and full performance by Client its obligations to Fuelman.

11 **Reporting.**

11.1 **Statements.** Fuelman shall furnish Client with a Statement at the end of each Billing Cycle.

11.1.1 **Information.** The Statement will include the following information:

11.1.1.1 The Account number and other relevant billing information.

11.1.1.2 The previous unpaid charges.

11.1.1.3 The previous statement balance.

11.1.1.4 Any payments posted to the Account.

11.1.1.5 New charges and adjustments.

11.1.1.6 Amount Due.

11.2 **Standard Fleet Management Report.** Fuelman shall produce a standard fleet management report at the end of each Billing Cycle.

11.2.1 **Information.** The standard fleet management report will include the following information:

11.2.1.1 **The applicable fleet customer number.** A single Client's Account can have multiple fleets (customer numbers) within it.

11.2.1.2 Any rebates, discounts, report delivery, reporting, account charges, Finance Charges, interest, fees, and other charges posted to the Account.

11.2.1.3 Detail on each Transaction posted to the Client's Account during the Billing Cycle, including date, Merchant Location, vehicle based on the Card used, employee/driver based on the Driver ID used, product description based on the product type, quantity purchased, total purchase amount, and total applicable taxes.

11.3 **Delivery Methods.** Fuelman offers several different methods for delivering Statements and the standard fleet management report:

11.3.1 Via US Mail. Fuelman reserves the right to charge up to ten dollars (\$10.00) for each mail delivery of each report. Client with failed fax and email deliveries will be charged the mail delivery rate for any resubmission of the reports via mail performed at Fuelman's discretion.

11.3.2 Via Facsimile. Fuelman reserves the right to charge up to five dollars (\$5.00) for each fax delivery of each report. Mailed resubmissions will be charged at the mail delivery rate described in Section 11.3.1.

11.3.3 Via eMail. Mailed resubmissions will be charged at the mail delivery rate described in Section 11.3.1.

11.4 **Optional Fleet Management Reports.** Fuelman provides a variety of optional fleet management reports, including YTD summaries, Maintenance-specific reports, driver-specific reports, and tax reports. Fuelman reserves the right to charge Client a fee of up to fifteen dollars (\$15.00) for delivering each of these optional reports or up to one hundred dollars (\$100.00) per quarter.

11.5 **Tax Exempt Processing & Reporting.** Qualified tax exempt Clients may be eligible to purchase Fuel from Fuelman tax-free at the point-of-sale. Fuelman reserves the right to charge a processing fee of up to one percent (1%) of the total purchases for this service except where prohibited by applicable law.

11.6 **Multiple Report Copies.** Fuelman will provide multiple copies of mailed reports upon request. Fuelman may charge up to five dollars (\$5.00) per report copy.

12 **Change in Terms And Conditions.** Fuelman may change the Terms and Conditions of this Agreement at any time by giving Client written notice of such amendment. Guarantor agrees to be bound by any such changes. If written notice is given to Client. Such changes will go into effect as outlined in the change notice. If permitted by applicable law, such changes will apply to existing balances as well as future purchases and balances. Any modification of or amendment to this Agreement will be delivered to Client through U.S. mail at the address Client provided to and periodically provides updates to Fuelman. All initial amendment notifications will be sent to Client in advance of the effective date thereof or earlier as required by law. Client shall be deemed to have accepted such amendments by continued use, after the effective date of the amendment, of any of the Card(s) issued to Client. Notwithstanding any of the foregoing provisions of this Section, Fuelman retains the right to change credit limits for the Account or to suspend, cancel, or terminate the Account or any Card without prior written notice and Client and Guarantor acknowledge and agree that Fuelman may take such actions without notice.

13 **Events Of Default.** The occurrence of any of the following shall constitute an "Event of Default" hereunder:

13.1.1 Client shall fail to pay any principal, interest, or other amount payable in respect of any Obligation when due;

13.1.2 Client shall fail to observe or perform any other covenant contained in this Agreement;

13.1.3 Any representation or warranty made by Client or Guarantor herein or in the Application proves untrue in any material respect as of the date of the making or furnishing thereof;

13.1.4 Either Client or Guarantor shall (i) make an assignment for the benefit of its creditors; (ii) admit in writing its inability to pay its debts as they become due; (iii) file a petition under any applicable insolvency, debtor relief or reorganization statute, including without limitation, the United States Bankruptcy Code; (iv) be subject to an involuntary petition under any applicable insolvency, debtor relief, or reorganization statute; (v) appoint or consent to the appointment of any receiver, conservator, liquidating agent, or committee in any insolvency, readjustment of debts, marshaling of assets or liabilities, or similar proceedings of, or relating to Client or Guarantor, or any substantial portion of their assets; or (vi) take any corporate action for the purpose of effecting any of the foregoing; or

13.1.5 Guarantor shall terminate or contest the validity or enforceability of Guarantor's guaranty hereunder or Guarantor's guaranty hereunder shall be determined to be invalid or unenforceable for any reason.

14 **Remedies Upon Event Of Default.** Without limiting any other rights or remedies of Fuelman provided for elsewhere in this Agreement, or by applicable law, or in equity, or otherwise, upon or at any time after the occurrence of any Event of Default, Fuelman shall have and may exercise, at its election, from time to time, any and all rights and remedies available at law, in equity, or otherwise, including, without limitation, (i) declaring the entire unpaid balance of the Obligations hereunder or any part thereof immediately due and payable, whereupon it shall be due and payable; and (ii) demanding payment from the Guarantor.

15 **Dispute Resolution.**

15.1 **Disputed Transactions.** To dispute any Transaction on Client's Statement, Client must notify Fuelman in writing as set forth below within fifteen (15) days of the date of Client's Statement. Fuelman will promptly investigate the matter and respond to Client within sixty (60) days after receiving written notice. Notice should be sent to: FUELMAN, P. O. Box 924138, Norcross, GA 30010, Attention: Customer Service. Fuelman shall not be responsible for and Client shall waive any discrepancies or disputes that Client does not report to Fuelman in writing within fifteen (15) days after the date of Client's Statement.

15.2 **Disputed Transaction Notices.** Client may report any dispute to Fuelman by telephone. However, telephone notice will not preserve Client's right or otherwise serve as effective notice under this Agreement. Client must put in writing any dispute regarding a Transaction on Client's Statement. Client's letter must include the following information: name; Account number; date of the Statement; dollar amount and identification of the Transaction(s) in question; and any possible explanation of the error.

15.3 **Dispute Resolution.** The parties agree that they will work in good faith to resolve any disputes arising under this Agreement. If the dispute cannot be resolved by the parties, then at Fuelman's sole discretion, the dispute will be resolved by binding arbitration in Atlanta, Georgia in compliance with the American Arbitration Association's commercial arbitration rules or by litigation in accordance with Section 25.1. The foregoing does not prohibit either party from seeking injunctive relief without first complying with this Section. Client will reimburse Fuelman for all of its costs and expenses (including collections and attorney's fees and costs) incurred in connection with enforcing any of Fuelman's rights under this Agreement. To accommodate the right to arbitrate, Client agrees that Client will neither assert, nor participate in, a class action or other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Client's relationship with Fuelman.

16 **Security, Loss, Theft Or Unauthorized Use Of Card.**

16.1 **General Security.** Each Card can be programmed to only allow Fuel or both Fuel & Maintenance services such as oil changes, vehicle washes, etc. Typically each Transaction is authorized with the Card number, product code, quantity and driver's Driver ID across the proprietary Fuelman network to ensure that the purchase is authorized and limited to the product and quantity (e.g. gallons of Fuel or dollars of Maintenance) that have been pre-approved. This system also helps prevent unauthorized Driver IDs and stolen Cards from being used to make purchases. The product and quantity controls are subject to each Merchant Location's POS Authorization Limitations described in Section 16.9.

16.2 **Fuelman's Liability.** In the event an unauthorized Transaction occurs, subject to the limitations and client responsibilities explained in this Section 16, and in the event that the Account has been issued fewer than ten (10) Cards, Fuelman will assume full responsibility for those purchases. If the Account has been issued ten (10) or more Cards, Client assumes all liability and responsibility for unauthorized Transactions or Account activity.

16.3 **Client's Responsibility.** It is the responsibility of Client to ensure proper security controls are kept in place to protect the Cards and Driver IDs and that only authorized employees or agents of Client use them to make purchases. It is also the Client's responsibility to lock any inactive, misplaced, or stolen Cards and Driver IDs immediately. Fuelman is not responsible for fraudulent Transactions made on unlocked Cards with valid Driver IDs. Client should use the online account application to lock Cards and Driver IDs instantly. Alternatively, the Client can contact Fuelman Customer Service during regular business hours via phone call with the requested change, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. All Transactions in which a valid/unlocked Card number was used in conjunction with a valid/active Driver ID will be considered to be authorized Transactions in which Client is fully responsible for payment. It is also the Client's responsibility to review the standard fleet management reports and optional eMail exception alerts to identify potential purchasing discrepancies. Client should instruct its Cardholders to keep any record of their Driver ID separate from the vehicle's Card.

16.4 **Lost or Stolen Cards.** Client shall report all lost or stolen Cards to Fuelman immediately via phone call to Fuelman Customer Service identifying the Card number and such other details concerning the loss, or theft of the Cards as are known to Client, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. Client shall be liable for all Transactions made by lost or stolen Cards until 24 hours after the time Fuelman receives Client's notice of such loss or stolen Cards. Client and Guarantor(s) agree to and acknowledge full liability for any losses resulting from any failure to report the loss or theft of Card(s) in accordance with the terms hereof.

16.5 **Terminated Drivers.** It is the Client's responsibility to lock a terminated driver's Driver ID as explained in Section 16.3.

16.6 **Miscellaneous Product Purchase Limitations.** In addition to the vehicle-related product categories (Fuel, Maintenance supplies, and Maintenance services) a Card can be allowed to purchase non-vehicle related items under the Miscellaneous product category. If a Client does not want to allow non-vehicle related purchases, Client should set each Card's Miscellaneous product category spending limit to zero dollars (\$0). Fuelman assumes no responsibility for any unauthorized Miscellaneous purchases.

16.7 **Tax Reporting Limitations.** Fuelman calculates applicable taxes for Fuel. Applicable taxes for Maintenance and other non-Fuel purchases are dependent on the information provided to Fuelman by the applicable Merchant Location.

16.8 **Merchant Limitations.** The personnel (if any) at a Merchant Location are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by any of the Merchants or any other liability or damage which arises from the action or negligence of the personnel of any of the Merchants, their agents or their employees.

16.9 **POS Authorization Limitations.** Authorization controls are provided as a convenience to the Client and are not guaranteed to prevent unauthorized purchases. Specifically, depending on the particular point-of-sale (POS) equipment and Fuel dispenser controls being used by a particular Merchant Location, the product type and spending limit may not be enforceable prior to completing the Transaction. In these situations the Transaction will still be considered to be authorized, but will be identified as an exception on the Client's standard fleet management report and reported via email if desired by Client.

16.10 **Claims.** All claims for defective Fuel or Maintenance must be made to the Merchant operating the Merchant Location where such Fuel or Maintenance was purchased. Any claim for defective Fuel or Maintenance is waived by Client unless made in writing to Merchant, with a copy to Fuelman, within fifteen (15) days from the date of the purchase of the alleged defective Fuel or Maintenance giving rise to the claim. Fuelman will not accept any claims for defective Miscellaneous.

17 **Term and Termination.**

17.1 **Term.** The term of the Account shall be one (1) year from the date the Cards are issued to Client unless either party terminates the Account as provided in this Agreement. Thereafter, Fuelman will automatically renew Client's Account for additional one (1) year periods unless either Fuelman or Client gives the other party notice of intent not to renew at least thirty (30) days before its scheduled expiration date. At the outset of any such one year renewal period, Fuelman, at its discretion, may issue replacement Cards to Client.

17.2 **Termination by Client.** Client may terminate Client's Account and its use of the Cards for any reason by providing written notice of such termination to Fuelman. Client remains obligated to pay for any and all transactions, balances, fees, and other amounts incurred up until midnight of the day Fuelman receives notice of such termination.

17.3 **Termination by Fuelman.** Fuelman may terminate Client's Account and its use of the Cards for any reason, including but not limited to, inactivity, failure to promptly pay any amounts due Fuelman, failure to use the Cards exclusively for business purposes, or Fuelman's decision to terminate the Fuelman Program. Fuelman will notify Client's Representative at the time of termination that the Client's Account or Card(s) will be terminated along with the reason(s) for such termination.

18 **Change In Ownership.** Client must notify Fuelman immediately in the event of any sale of a majority ownership of its equity, any sale of a majority of its assets, any merger, reorganization or other transaction which results in a change of ownership of Client. Fuelman may terminate the Account in its sole discretion upon any change of ownership.

19 **Contacts And Notices.**

19.1 **Fleet Contact:** The "Fleet Contact" listed on the Application is authorized to provide Fuelman with the information necessary to establish Client's Account records and Cards, including, but not limited to vehicle, driver and card user related information. Fuelman is authorized to send all Account information and Client's Cards to the Fleet Contact's attention.

19.2 **Accounts Payable Contact.** The "Accounts Payable Contact" listed on the Application is authorized to provide Fuelman with payment information about payments on the Account. This contact may be the same person as the Fleet Contact and will be Fuelman's primary contact in the event that the Account becomes delinquent or exceeds the assigned Credit Limit.

19.3 **Notices.** Except as specified otherwise in this Agreement, all notices, requests, demand, or other communications required to be made pursuant to this Agreement shall be in writing and shall be given by mail by first class, certified or registered mail, postage prepaid, or by the sending by facsimile (with confirmation by mail to be provided by the party giving notice) or by reputable overnight delivery service (such as FEDEX or UPS) or by personal delivery to the recipient party, to the address indicated below for Fuelman and in the Application for Client. Fuelman may provide any such notice to Client by including the notice in the Statement provided to Client. A notice will be deemed received on the actual date of receipt. Fuelman's address for notices is: FUELMAN, P. O. Box 924138, Norcross, GA 30010, Attention: Customer Service.

20 **Maximum Lawful Rate.** In no event shall any Finance Charges or other rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court competent jurisdiction shall, in a final determination, deem to be applicable. Client and Fuelman, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment

- stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *pro tanto*, as of the date of this Agreement, Client is and shall be liable only for the payment of such maximum amount as allowed by law, and payment received from Client in excess of such legal maximum amount, wheresoever received, shall be applied to reduce the principal balance of the Obligations hereunder to the extent of such excess.
- 21 **Credit Reporting Agencies.** Client and Guarantor(s) authorize Fuelman to report to any commercial credit reporting agency, Client's or Guarantor's performance under this Agreement, including but not limited to Dunn & Bradstreet, Experian Business or Equifax Credit Information Services. If the Account is personally guaranteed, Fuelman reserves the right to report Account information to consumer credit reporting agencies, including but not limited to Equifax Credit Information Services, Experian and TransUnion. Client and Guarantor have the right to notify the consumer reporting agencies not to use its respective credit report in connection with a credit transaction it did not initiate. To do so, contact Equifax Credit Information Services, P.O. Box 740123, Atlanta, GA 30374-0123; Experian, P.O. Box 919 Allen, TX 75013; and TransUnion, P.O. Box 97328, Jackson, MS 39288-7328; or Client and Guarantor may notify all three agencies by calling 1-888-567-8648.
- 22 **Limitation of Liability.** FUELMAN WILL HAVE NO LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING CLAIMS FOR LOSS OF PROFITS, WHETHER RESULTING DIRECTLY OR INDIRECTLY TO CLIENT, GUARANTOR, OR THIRD PARTIES, AND WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR RESULT FROM A BREACH OF THIS AGREEMENT. IN THE EVENT A COURT IN A FINAL, NON-APPEALABLE AWARD FINES FUELMAN LIABLE FOR ANY DIRECT DAMAGES, FUELMAN'S LIABILITY IN THE AGGREGATE FOR SUCH DIRECT DAMAGES WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CLIENT TO FUELMAN FOR THE MONTH PRECEDING THE DATE ON WHICH THE CLAIM AROSE.
- 23 **Indemnification.** To the maximum extent allowed by law, Client (the "Indemnitor") will indemnify and hold harmless Fuelman and its affiliates, directors, officers, employees, and agents (the "Indemnitees") from and against any and all third party claims, losses, damages, suits, fees, judgments, costs, and expenses (collectively referred to as "Claims"), including attorneys' fees incurred in responding to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with (a) the Indemnitor's (or its employees' or agents') negligence, willful misconduct, or breach of any representation, warranty or other obligation under this Agreement; or (b) any personal injury (including death), damage to property, or environmental clean-up and related costs, resulting from the Indemnitor's or its employees' or agents' acts or omissions. The Indemnitees will give prompt notice of any Claim to the Indemnitor, who will defend the Indemnitees at the Indemnitees' request.
- 24 **Nondisclosure.** Fuelman may provide to Client access to confidential and proprietary information regarding Fuelman's business, business plans, pricing and reimbursement policies, and other issues ("Confidential Information"). Client will keep all Confidential Information in strict confidence and not disclose or use the Confidential Information during the term of this Agreement and for five (5) years thereafter, provided that for any Confidential Information deemed to be a "trade secret," Client shall protect and not disclose or use such Confidential Information for so long as such Confidential Information is will not disclose its terms except as permitted by Fuelman. Client will inform its employees and agents as to the confidential and proprietary nature of the Confidential Information to which they may be exposed and take all necessary actions to ensure that such employees and agents keep such information strictly confidential. Client will return any Confidential Information upon request from Fuelman. Client agrees that any disclosure of Confidential Information would cause irreparable harm for which monetary damages may not be a sufficient remedy, so Fuelman will be entitled to seek all remedies and damages available at law and in equity, including but not limited to injunctive relief, without the posting of a bond.
- 25 **Miscellaneous Provisions.**
- 25.1 **Governing Law; Waiver of Jury Trial; Binding Arbitration.** This Agreement will be governed by Louisiana law, without regard to its conflicts of laws principles. Many Account maintenance, treasury and accounting functions are performed by Fuelman in Louisiana, where it has a substantial presence. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. A party may, without the other's consent, elect MANDATORY, BINDING ARBITRATION for any claim, dispute, or controversy between or among such parties relating to an Account, a Card, a prior Account, or the relationship of such parties, including without limitation claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision, and no matter what legal theory such claims are based on or what remedy (damages, or injunctive or declaratory relief) such claims seek. To accommodate the right to arbitrate, Client agrees that it will neither assert, nor participate in, a class action or other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Client's relationship with Fuelman. The party filing for arbitration must choose one of the following two arbitration firms and follow its rules and procedures for initiating (including paying the filing fee) and pursuing arbitration before a single neutral arbitrator: American Arbitration Association, or JAMS. All other fees will be allocated as provided by the rules of the arbitration firm and applicable law. Claims must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis. Any arbitration hearing that Client attends will be held at a place chosen by the arbitration firm: in the same city as the U.S. District Court closest to Client's mailing address as reflected on the Client's Statement, or at some other place to which the parties agree in writing.
- 25.2 **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman's rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.
- 25.3 **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.
- 25.4 **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.
- 25.5 **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of such right. A waiver by any party of any breach or obligation will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party hereto shall be binding upon the party making such waiver in the event of a subsequent default.
- 25.6 **Severability.** If any provision of this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of

this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.

- 25.7 **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The captions and headings included in this Agreement have been inserted for convenience only and may not be used in connection with the interpretation of this Agreement. Each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties to this Agreement.

Fuelman

FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC FUELMAN FLEET CARD CLIENT AGREEMENT TERMS AND CONDITIONS

1. **Definitions.**

1.1 **Account.** "Account" shall mean the internal Fuelman account established for Client.

1.2 **Agreement.** "Agreement" shall mean this agreement comprised of the Application (if any), the Approval Letter (if any) and this document containing the Terms and Conditions.

1.3 **Agreement Date.** "Agreement Date" shall mean the date on which Fuelman accepts the Client's Application and issues one or more Cards for Client's Account.

1.4 **Application.** "Application" shall mean the application completed by Client in applying for the Account through Fuelman.

1.5 **Approval Letter.** "Approval Letter" shall mean the letter, if any, sent by Fuelman to Client that approves the Application and establishes the Account under these Terms and Conditions.

1.6 **Bank Account.** "Bank Account" shall mean any bank account that Client has designated or the Application or by written notice to Fuelman for electronic funds transfer, automated clearinghouse or other electronic transfer of money to pay amounts for Client's Account.

1.7 **Billing Cycle.** "Billing Cycle" shall mean the period of time set forth in the Approval Letter or any subsequent notification for which Transactions will be accepted and a Statement for the Account will be provided.

1.8 **Card or Cards.** "Card" or "Cards" shall mean the Fuelman fleet card or cards issued to Client.

1.9 **Cardholder.** "Cardholder" shall mean the person presenting the Card to the Merchant to be used to purchase Fuel and/or Maintenance.

1.10 **Client.** "Client" shall mean the business entity identified in the Application.

1.11 **Client Representative.** "Client Representative" shall mean the person(s) identified as Client's representative on the Application.

1.12 **Driver ID.** "Driver ID" shall mean the personal identification number issued to the Client by Fuelman for use with a Card to authorize a particular Transaction.

1.13 **Due Date.** "Due Date" shall mean the date upon which payment from Client is due to Fuelman as stated on Fuelman's Statement to Client.

1.14 **FleetCor.** "FleetCor" shall mean FleetCor Technologies Operating Company, LLC, the company which owns the Accounts and in whose favor all Obligations, as defined in Section 10.3, of Client under this Agreement flow.

1.15 **Fuelman.** "Fuelman" shall mean Fuelman, the division of FleetCor administering the Card(s) and Account.

1.16 **Fuel.** "Fuel" shall mean any combustible material dispensed by volume that is purchased with a Card.

1.17 **Guaranteed Obligations.** "Guaranteed Obligations" shall have the meaning set forth in Section 10.4.

1.18 **Guarantor(s).** "Guarantor" shall mean the person(s) identified on the Application or a separate guaranty document, if any, that guarantees Client will comply with this Agreement and pay all amounts owed to Fuelman.

1.19 **Maintenance.** "Maintenance" shall mean any non-Fuel product or service for a vehicle that is purchased with a Card (e.g., oil, wiper blades, fluids, towing, roadside assistance, parts, supplies, tires, oil changes, brakes, glass, exhaust systems, transmissions, and repair services).

1.20 **Merchant.** "Merchant" shall mean a third party that operates retail locations providing Fuel and/or Maintenance in the Fuelman network.

1.21 **Merchant Location.** "Merchant Location" shall mean a Merchant's Fuel and/or Maintenance site that is participating in the Fuelman network, such that a Card may be used to purchase Fuel and/or Maintenance at such site.

1.22 **Miscellaneous.** "Miscellaneous" shall mean any non-vehicle related product or service that is purchased with a Card (e.g., food, drink, magazines, cigarettes, lottery tickets).

1.23 **Principal.** "Principal" shall mean the person identified on the Application, if any, who applies for the Account as a co-maker with the Client.

1.24 **Reporting.** "Reporting" shall mean related products or services that are purchased to manage the vehicle fleet (e.g., paper report delivery, fleet report delivery).

1.25 **Statement.** "Statement" shall mean the billing statement provided at the end of each Billing Cycle.

1.26 **Terms and Conditions.** "Terms and Conditions" shall mean the terms and conditions contained in the Agreement and any other electronic or paper document presented to the Client by or on behalf of Fuelman in connection with this Agreement (e.g. the physical card, driver instructions, site guides, reports, billing/statement inserts, Application, and web site). In the event of a conflict between any such other document and this Agreement, this Agreement will control unless specifically provided otherwise in the other document.

1.27 **Transaction.** "Transaction" shall mean any individual purchase with a Card.

2. **General.**

2.1 **Agreement for Account and Services.** Client and, if applicable, Principal or Guarantor, shall submit an Application to signify Client's application for an Account with Fuelman. If Fuelman accepts such Application, Fuelman shall send an Approval Letter and these Terms and Conditions to Client's Representative along with Cards and Driver IDs issued for the Account. Upon Client's first use of a Card, Client will be deemed to have accepted the Approval Letter and these Terms and Conditions and Client and Fuelman shall be deemed to have entered into this Agreement. Client shall not be deemed to have accepted the Application or the Account until Client and Guarantor shall both be responsible for all payments owed by Client hereunder and for compliance by Client with these Terms and Conditions. If a Principal jointly submits the Application with Client, then Client and Principal are jointly and severally responsible for all payments owed by Client hereunder and for compliance with these Terms and Conditions.

2.2 **Entire Agreement.** These Terms and Conditions, together with the Application (if any) and the Approval Letter (if any), are the exclusive statement of the terms and conditions with respect to their subject matter as of the Agreement Date and supersede all prior agreements, negotiations, representations and proposals, whether written or oral. Deviations from the Agreement are not valid unless confirmed in writing by an authorized representative of Fuelman.

3. **Account Administration and Card Issuance.**

3.1 **Establishment of Client Account.** Upon issuance of the Cards, Fuelman will establish an Account for Client that will be used to pay for Fuel, Maintenance and Miscellaneous items purchased through the use of the Cards at Merchant Locations. For purpose of determining Client's domicile, Client acknowledges and agrees that its domicile shall be the address of its mailing address as reflected on the Client's Statement.

3.2 **Government Regulation.** Neither Client nor any Guarantor of the Account shall (a) be become at any time, and are not currently, subject to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Fuelman from making any advance or extension of credit to Client or any Guarantor of the Account or from otherwise conducting business with Client or any Guarantor of the Account, or (b) fail to provide documentary and other evidence of Client's identity or the identity of any Guarantor of the Account or person to whom Client gives a Card, as may be requested by Fuelman, at any time, to enable Fuelman to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

3.3 **Spend Limit.** Upon Fuelman's approval of the Client's Application, Fuelman will establish an aggregate spending limit for all the Cards issued to Client under the Account (the "Spend Limit") based on Fuelman's evaluation of the Client's creditworthiness. Fuelman reserves the right to increase or decrease this Spend Limit at any time with or without providing notice to Client. Fuelman may decide, at its own discretion, to decline or approve any transactions made after the Client exceeds the Account Spend Limit, or to lock the Account until the balance due is paid in full. Fuelman reserves the right to charge an Over Limit Fee of up to fifty dollars (\$50.00) per Over Limit transaction authorized.

3.4 **Initial Cards.** Upon Fuelman's approval of Client's Application, Fuelman will issue one or more Cards and Driver ID numbers to Client. Client shall be responsible for distributing the Cards and Driver IDs to its employees or agents.

3.5 **Additional Cards.** If, at some time after the initial issuance of Cards to Client, Client desires one or more additional Cards, Client must notify Fuelman via the online application or in writing or by calling Fuelman Customer Service. Fuelman reserves the right to charge a fee of up to five dollars (\$5.00) for creating and delivering each additional Card.

3.6 **Replacement Cards.** If Client desires one or more replacement Cards, including, but not limited to replacing lost or damaged Cards, Client must notify Fuelman via the online application or in writing or by calling Fuelman Customer Service. Fuelman reserves the right to charge a fee of up to five dollars (\$5.00) for creating

and delivering each replacement Card. Client shall be solely responsible for the use, maintenance, administration, and security of the Cards and Driver IDs within Client's business, including, but not limited to, distributing Cards to, and collecting Cards from, its employees and agents. Notwithstanding any other provision in this Agreement, Client is responsible for any loss or misuse of Cards by its employees and agents. See Section 16 for more information regarding Client responsibilities.

3.7 **Administration of Account.** Fuelman shall be responsible for collecting and reporting all Transactions by data, vehicle, Merchant Location, and driver based upon data received by Fuelman. In addition, Fuelman shall be responsible for maintaining the database for the Client with all Card numbers, vehicle data, driver data, and purchase control data. Fuelman reserves the right to charge a fee of up to fifty dollars (\$50.00) a month or a minimum of fifteen dollars (\$15.00) per Billing Cycle for account administration.

3.8 **Card Fees.** Fuelman reserves the right to charge a service fee of up to ten dollars (\$10.00) per Card per month to support the use of the Cards. Client shall be responsible for the cost of the Cards.

3.9 **Procedural.** All Cards remain the property of Fuelman and shall be surrendered immediately by Client to Fuelman upon Fuelman's request or if Client or Fuelman cancels the Card or Account as permitted hereunder.

3.10 **Inactive Cards.** Fuelman reserves the right to charge a fee of up to three dollars and fifty cents (\$3.50) per Billing Cycle for Cards that are inactive for seventy-five (75) or more days.

3.11 **Cancellation of Cards.** If, at any time, for any reason, Client desires to cancel any particular Card, but not the Account, Client's Representative must notify Fuelman via the online application or in writing of such cancellation. Client's liability for purchases made using the canceled Card shall end at midnight of the day that Fuelman receives notice of such Card cancellation.

3.12 **Suspension of Cards.** Fuelman, at its sole discretion, may suspend or terminate the use of any Card at any time for any reason, including, but not limited to, inactivity, unusual activity, or suspected loss, theft, fraud, or in compliance with the USA Patriot Act. However, nothing in this Agreement shall obligate Fuelman to monitor the use of any Card, and, as described in this Agreement, Client is solely responsible for the use of any Card.

3.13 **Outstanding Cards.** Fuelman, at its sole discretion, may suspend or terminate the use of an Account at any time for any reason, including, but not limited to, inactivity, unusual activity, change in creditworthiness, late payment (excessive days beyond terms), aggregate outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) over the Spend Limit or in compliance with the USA Patriot Act. Fuelman reserves the right to charge up to a fifty dollar (\$50.00) fee for Account reinstatement each time a previously suspended Account is reinstated.

3.14 **Non-Transferability, Revocability.** All Cards and any and all rights and privileges to which its holders are entitled are not transferable and may be revoked for any reason, including but not limited to, a breach of any of the terms of this Agreement. Fuelman shall provide prior notice at any time and with no liability to Fuelman, at which time any credit extended hereunder shall be revoked and all sums owed by Client to Fuelman pursuant hereto shall become immediately due and payable.

4. **Services Provided.**

4.1 **General Services.** Fuelman shall provide the following services to Client under this Agreement:

4.1.1 Issue to Client the Cards upon Fuelman's approval of the Application.

4.1.2 Maintain a network of Merchant Locations for Fuel and Maintenance where Client may make purchases with Cards pursuant to this Agreement.

4.1.3 Provide an online directory to identify accepting Merchant Locations.

4.1.4 Maintain an authorization control system to verify that a Card being presented for payment is valid/active and that the Driver ID being used is valid/active for that particular Card. In addition, individual Card-Level spending limits can be established by the Client for each product category (e.g., Fuel, Maintenance supplies, Maintenance services, Miscellaneous).

4.1.5 Issue management reports and billing Statements to Client showing details of all posted Card Transactions (as detailed in Section 11.2) during the Billing Cycle.

4.1.6 Referrals. Fuelman reserves the right to deliver informational material in reference to ancillary fleet management related products and services provided by other vendors to the Client. In no case is Fuelman making any representation about the quality or value of any particular product or service.

4.1.7 Ancillary Products and Services. Fuelman reserves the right to make certain ancillary fleet management related products and services (e.g., emergency roadside assistance) that are delivered by other vendors/companies available to the Client for purchase on Cards. For the purpose of reporting the Transactions, these ancillary products and services are considered Maintenance. The act of requesting the ancillary product or service with a valid Card and Driver ID, establishes approval for Fuelman to charge and collect the corresponding balance incurred by these ancillary products and services.

4.1.8 Roadside Assistance for Unattended Vehicles. Through an association with a third party, Fuelman may offer roadside assistance for vehicles, including towing services. The services may not be available for unattended vehicles. The personnel of any such third party provider are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by such third party, or for any other damage or change which arises from the action or negligence of the personnel of the third party, its agents or its employees.

4.1.9 Additional Services. Client may be eligible for additional services from time to time. If Client is eligible for an additional service, Fuelman may enroll Client in the service. The terms and fees applicable to such service will be disclosed prior to enrollment. Client will have the opportunity to opt-out of enrollment in such service.

4.1.10 Inability to Operate. Fuelman shall have no responsibility for any person(s) or machine(s) rejection or refusal to honor a Card. Client agrees there shall be no liability to Fuelman or any other company or entity, if any, for any credit or other financial action taken by Client or Fuelman to allow the purchase of Fuel or Maintenance, fail to authorize Transactions) or to fail to operate in any other manner, even though a Card is valid.

4.1.11 WARRANTY DISCLAIMER. FUELMAN DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ALL FUELMAN ACCOUNTS, PRODUCTS, AND SERVICES ARE PROVIDED ON AN AS-IS BASIS.

5. **Purchases.**

5.1 **Use of Cards.** Client may use the Cards at any participating Merchant Location for the purchase of Fuel, Maintenance, or Miscellaneous items. To use a Card the Client should follow the directions for purchase established at the particular Merchant Location.

5.2 **Title.** As between Client and Fuelman, title to Fuel purchased with the Card passes from Fuelman to Client when the Cardholder dispenses Fuel (when fuel leaves the fuel dispensing nozzle), except as otherwise provided by applicable law. Title to any non-Fuel product or service purchased with the Card passes directly from the Merchant to Client when the Cardholder receives such non-Fuel product and/or service. Fuelman takes no title to Maintenance or Billing Cycle.

5.3 **Verification of Merchant Locations.** Client acknowledges that not all retail locations selling Fuel and Maintenance accept Fuelman's Cards. If Client is uncertain as to whether a location is able to accept the Cards, Client should visit the online site locator at www.fuelman.com or contact Fuelman's 24x365 Authorization Center at 800-877-9013.

6. **Security.**

6.1 **Safe Fueling Operation.** Client shall instruct all persons to whom Client provides a Card for purchasing Fuel in the event of an emergency fueling procedure that Client will ensure that everyone using a Card issued in the name of Client is instructed in applicable safety measures.

6.2 **Safety Laws and Notices.** Client shall comply, and Client shall cause its employees and agents to comply, with all applicable local, state, and federal laws and regulations pertaining to the dispensing and use of Fuel at Merchant Locations as well as all safety notices posted by Merchants.

7. **Representations and Warranties.** Client represents and warrants to Fuelman as of the date of the Application and on the date of each extension of credit under this Agreement that:

7.1.1 Client is duly organized, validly existing and in good standing under the laws of the state of its formation. Client has the power and authority to own its properties and to carry on its business as presently conducted and to execute and deliver, and enter and perform its obligations under this Agreement.

7.1.2 The execution, delivery and performance of this Agreement have been duly authorized by all necessary organizational action. This Agreement has been duly executed and delivered by Client and Guarantor, and constitutes the legal, valid and binding obligations of each such party, enforceable against such parties in accordance with this Agreement, except as may be limited by applicable bankruptcy, insolvency, reorganization, liquidation, or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

7.1.3 The execution, delivery and performance of this Agreement by Client and Guarantor will not violate any applicable law, rule or regulation or the charter, by-laws or other organizational documents of such parties or

any law, rule or regulation of any state or federal authority. The financial and other information furnished by Client and Guarantor to Fuelman in the Application, or otherwise, is true, correct and complete in all material respects.

7.1.5 Cards issued to Client will be used only by Client's employees and agents and will not be distributed or resold to other companies without the express written consent of Fuelman.

7.1.6 CLIENT WILL USE THE CARDS SOLELY FOR COMMERCIAL PURPOSES AND SHALL STRICTLY PROHIBIT ANY PERSONAL USE BY THE USERS OF ITS CARDS.

8. **Conditions To Extension Of Credit.** Any extension of credit under this Agreement shall be subject to, and conditioned upon, satisfaction of the following requirements:

8.1.1 Fuelman's receipt of a duly executed counterpart of the Application by Client and, if requested, the Guarantor, in form and substance acceptable to Fuelman in its sole discretion;

8.1.2 All representations and warranties set forth in this Agreement are true and correct;

8.1.3 No event shall have occurred that, in the continuing exercise of its discretion, Client has a reasonable basis to believe constitutes or would constitute (with notice or the lapse of time or both) an Event of Default (defined below);

8.1.4 Outstanding amounts due, including any applicable fees as described in this Agreement, are paid by Due Date. Any amount not paid by the Due Date is subject to Late Fees (Section 10.7) and Finance Charges (Section 10.9).

8.1.5 After giving effect to any requested extension of credit, the aggregate outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) shall not exceed Client's Spend Limit, as determined by Fuelman from time to time in its sole discretion; and,

8.1.6 Receipt of any required Reserve Amount (as defined below) necessary to open the Client's Account.

9. **Pricing.**

9.1 **Methodology.** Fuelman establishes competitive local market Fuel and Maintenance Transaction prices for the Fuelman Fleet Card program depending on a variety of factors (e.g., product costs, purchase volume, market conditions). Transaction pricing can be Merchant Retail-Based, Merchant National Account-Based, Fuelman Cost-Based or a combination thereof. The pricing methodology can vary by product type and is disclosed to Client in the Application, Approval Letter and/or subsequent written notification. Additional charges/fees and/or discounts may apply to the Client's respective program.

9.2 **Merchant Retail-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to the prevailing Merchant Location's retail price plus or minus a fixed adjustment factor but never below Fuelman cost. In the event there is no established retail price (e.g., unattended fueling sites, mobile refueling), the retail price will be established by Fuelman.

9.3 **Merchant National Account-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to the Merchant's prevailing national account price.

9.4 **Fuelman Cost-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to Fuelman's delivered cost plus a mark-up. Fuelman's cost is dependent on a variety of factors and can include any or all of the following components: wholesale cost; merchant freight, dealer adjustment; network operation costs, merchant commission; and applicable taxes. Under no circumstance will Client's price be below Fuelman's cost.

9.5 **Special Network Pricing.** Fuelman reserves the right to charge for the use of select sites/merchants. The added charge to use these sites will not exceed the greater of ten cents (\$0.10) per gallon or two dollars fifty cents (\$2.50) per transaction. The list of selected sites/merchants is available upon request by calling Fuelman Customer Service.

9.6 **Universal Pricing.** Client price for each Fuel or Maintenance Transaction is equal to an index price established by surveying a subset of transactions in the fueling area. This index can vary from posted retail price and may include a mark-up, but will never be below Fuelman cost. The markup and index calculation basis may vary by region and can change at any time.

9.7 **Level 2 Pricing.** Fuelman reserves the right to invoke Level 2 Pricing in several scenarios. Level 2 Pricing may be invoked when the Amount Due for a Card is not paid by the Due Date, Client's Credit Score, as reported by a credit reporting agency utilized by Fuelman in its discretion, drops by fifty-one (51) points or more in a rolling 3 month period; and/or Client's Credit Score is below a certain risk threshold. This risk threshold is five hundred and twenty (520) for commercial credit scores and six hundred and sixty (660) for individual credit scores. Level 2 Pricing may also be applied to Clients who operate in the trucking or transportation industries, which pricing shall be reflected in Client's Statement. The Level 2 Pricing is an incremental charge above Client's current pricing. The minimum increase is ten cents (\$0.10) per gallon purchased. Level 2 Pricing reserves the right to affect until the next Billing Cycle following when all amounts owed on the Account are paid in full and/or Client's Credit Score is higher than the risk threshold for a rolling 3 month period. This decision is made solely by FleetCor based on information provided by the credit reporting agency along with the Account's payment history. The credit reporting agency does not participate in the decision. Client questions concerning their commercial and/or consumer credit scores should be directed to the applicable reporting agencies directly. D&B may be contacted at 800-234-3867 or by mail to Dun and Bradstreet Corporation, 105 JFK Parkway, Short Hills, NJ 07078. Equifax may be contacted at 800-727-8495 or at info@equifax.com. TransUnion may be contacted at 888-909-8886 or info@transunion.com. Minimum Program Administration Fee. Under circumstances where the previous month's average fuel price (defined as the U.S. Regular Gasoline Price by the U.S. Energy Information Administration) is below \$3.25 per gallon per gallon, we may charge a Minimum Program Administration Fee of up to 10 cents per gallon or \$2 per transaction to cover ongoing program operation costs.

9.8 **Rebate/Volume Discount.** Fuelman may provide rebate or volume discount off retail price for fuel and nonfuel purchases under certain customer pricing. Such rebate or volume discount could be at transaction level or as separate credit. The rebate or volume discount is only available if the Account is open, in good standing, and is not in default of the payment terms provided within these card client agreement terms and conditions. Please refer to the account pricing documentation for specifics regarding the rebate program detail. Aviation purchases, bulk fuel purchases, international fuel purchases, transactions at non-qualifying gasoline merchants, and any account in default of the payment terms provided within these card client agreement terms and conditions are excluded from the rebate program. Fuelman reserves the right to change a Rebate Program Fee of up to ten dollars (\$10) per card per Billing cycle. Fuelman also reserve the right to charge or terminate the rebate program at any time and in any manner with prior notice. Changes may include, among other things, changing the benefits, imposing additional restrictions, or terminating the program. In addition, reserve the right to remove any amount from the rebate program in the event of any fraud or abuse. Participation in the rebate program will be suspended if the account is suspended. Under circumstances where the previous month's average fuel price (defined as the U.S. Regular Gasoline Price by the U.S. Energy Information Administration) is below \$3.25 per gallon per gallon, we may change, suspend, or terminate this rebate program without notice.

10. **Billing & Payments.**

10.1 **Change in Billing Cycle.** Client may agree upon with the Client during the Application and Account setup process. Client shall be responsible for all credit extended on the Account. This is not a revolving credit account. The total amount shown on each Account Statement is due and payable in full by the Due Date shown on the Statement. Unless otherwise agreed upon, the standard Due Date is ten (10) days after the date the Account Statement is created, regardless of the delivery method. Regardless of the delivery method selected, it shall be the obligation of the Client to notify Fuelman within five (5) business days of the end of each Billing Cycle if Client does not receive a Statement. If the Client does not receive a Statement and thus payment is not completed by the Due Date, Client is responsible for any Late Fees or Finance Charges.

10.2 **Extended Terms Programs.** Upon Client's request and subject to Fuelman approval, terms can be extended at an additional charge.

10.3 **Payment.** Client hereby unconditionally promises to pay Fuelman, in lawful money of the United States of America and in accordance with this Agreement, all outstanding Obligations (as defined below) which may, from time to time, be owing to Fuelman by Client. As used herein, "Obligations" shall mean all outstanding sums owing to Fuelman by Client, including, without limitation, reimbursement for petroleum products obtained through Fuelman, payments for any products or services obtained using the Card(s), and late interest, penalties, fees, report delivery, reporting, account charges, service charges, costs and expenses (including attorneys' fees) and all other obligations under this Agreement or otherwise. Client must pay all outstanding Obligations on the statement by the Due Date to avoid Late Fees and Finance Charges. Failure by Client to pay all amounts by the Due Date shall be a breach of the Terms and Conditions of this Agreement. Conforming payments received by 7:00 a.m. Eastern Time on a business day (Monday through Friday of each week, excluding banking holidays) will be credited to your Account as of the date received. Otherwise, payments will be credited to your Account as of the next business day. In the event your billing statement shows a Due Date which falls on a day which is not a business day, your payment must be received by 7:00 a.m. Eastern Time on the preceding business day. If we do not receive your payment for the Amount Due by the Due Date, you may not be able to make any further purchases until such time that you pay the entire outstanding balance on the

Account. We may change our billing and debiting cycle at any time by reflecting the change on your billing statement.

10.4 **Guaranty.** Guarantor hereby unconditionally and irrevocably guarantees to Fuelman and its successors, endorses, transfers and assigns, the punctual payment when due (whether at stated maturity, by acceleration or otherwise) and performance of the Obligations, now or hereafter owing, whether for principal, late interest, penalties, fees, expenses or otherwise (collectively, the "Guaranteed Obligations"). Any and all payments by the Guarantor hereunder shall be made free and clear of all warrants, Guarantor for any self-off, counterclaim, or withholding. Guarantor acknowledges and agrees that this is a guaranty of payment when due, and not of collection, and Guarantor agrees that his obligations under this Agreement shall not be discharged until the payment and performance, in full, of the Guaranteed Obligations. Guarantor shall be regarded, and shall be in the same position, as Client with respect to the Guaranteed Obligations. Guarantor expressly waives all rights (he may now or in the future have under any statute, or at common law, or at law or in any other, or otherwise, to charge or attach to proceed to enforce) of the Guaranteed Obligations against Client or any other party before proceeding against or as a condition to the enforcement of the Guaranteed Obligations. Guarantor acknowledges and agrees that any delay or failure by Fuelman to take any action regarding the Guaranteed Obligations does not limit or prohibit Fuelman from enforcing its rights under this Agreement and further that Guarantor's liability under this Agreement shall not be eliminated or reduced by any such failure or delay on the part of Fuelman. Guarantor further expressly waives and agrees not to assert or take advantage of any defense based upon the failure of Fuelman in respect of the Guaranteed Obligations against Client or any other party for the payment and performance of the Guaranteed Obligations. Guarantor agrees that any notice or disclaimer given at any time by any person to Guarantor which is inconsistent with the waivers in the preceding two sentences shall be null and void and may be ignored by Fuelman. Guarantor further hereby waives diligence, presentment and demand (whether for non-payment or protest) or notice of acceptance, maturity, extension of time, change in nature or form of the Guaranteed Obligations (including, without limitation, composition, the amount of, or the terms of, the Guaranteed Obligations), notice of material adverse change in Client's financial condition or any other fact which might materially increase the risk to Guarantor with respect to any of the Guaranteed Obligations or all other demands whatsoever and waives the benefit of all provisions of law which are or might be in conflict with the terms of this Agreement. Guarantor further waives and agrees that Guarantor's obligations under this Agreement are not and shall not be subject to any counterclaims, offsets or defenses of any kind against Fuelman or Client now existing or which may arise in the future. The Guarantor further agrees that the Guaranteed Obligations may be amended, modified, increased, extended or renewed, in whole or in part, without notice to or further assent from Guarantor, and that Guarantor will remain bound upon its guaranty notwithstanding any amendment, modification, increase, extension or renewal of any guaranteed obligation. The foregoing waivers are of the essence of the transaction contemplated by this Agreement and, but for the guaranty contained herein, would be null and void. Fuelman, its successors and assigns, shall be deemed to be Client under this Agreement. Each Guarantor is liable on a joint and several basis with Client and each other Guarantor.

10.4.1 **Account Principal Responsibility.** Each Principal for this Account, if any, as shown on the Application, is personally and unconditionally, jointly and severally liable with Client, as principal and not as surety or guarantor, for the payment and performance when due of all obligations owed on the Account, regardless of who made purchases using the Cards, and the Principal agrees to pay such amounts according to the terms of this Agreement. Principal shall be deemed to have accepted this Agreement for all use of all of the Cards issued on the Account to the fullest extent permitted by law.

10.5 **Payment Methods.** The following terms shall apply to each of following payment methods.

10.5.1 **Client Check.** Prior to the Due Date specified on Fuelman's Statement to Client, Client will submit payment by valid check equal to the accumulated balance of the Account for the previous Billing Cycle. The Client is required to note the Account number or Statement (BG) number on the check. If the matching Statement Remit To coupon is not included with payment, Fuelman reserves the right to charge an Exception Handling Fee of ten dollars (\$10) per transaction. Fuelman reserves the right to require Client to make the amount due of fifteen dollars (\$15.00) per check payment. If insufficient funds are available in the Account to pay the Account balance at the time a debit is initiated, at Fuelman's option, Client will not be able to make any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account.

10.5.2 **Client Initiated Online Payment.** Prior to the Due Date specified on Fuelman's Statement to Client, Client will submit payment by online method equal to the accumulated balance of the Account for the previous Billing Cycle. If insufficient funds are available on the Account balance at the time a debit is initiated, at Fuelman's option, Client will not be able to make any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account.

10.5.3 **Pay by Phone.** By the Due Date, Fuelman will initiate, at Client's request, payment by phone either through Customer Service Representative or Interactive Voice Response (IVR) system. Fuelman reserves the right to charge a fee up to thirty dollars (\$30.00) for processing each Pay by Phone payment using either methods.

10.5.4 **Fuelman Initiated Credit Card Charge.** Prior to the Due Date specified on Fuelman's Statement to Client, Fuelman will initiate a charge to the Client's credit card on file to pay the accumulated balance of the Account from the previous Billing Cycle. Fuelman reserves the right to require Client to make the amount due of fifteen dollars (\$15.00) per transaction. If insufficient funds are available in the Account any time the balance of the Account reaches the Spend Limit. The exact time that the credit card will be charged for the amount due on the Account may vary, depending on the processing cycle. If insufficient funds are available on the credit card to pay the Account balance at the time a debit is initiated, at Fuelman's option, Client will be prevented from making any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account. Fuelman may change its billing and charge cycle at any time by providing written notice to Client. Fuelman reserves the right to charge a credit card convenience fee of up to three percent per transaction.

10.5.5 **Fuelman Initiated Electronic Funds Transfer / Automated Clearinghouse (EFT/ACH) Payment.**

10.5.5.1 **Debits to Bank Account.** On the Due Date identified on the Client's Statement, Fuelman will initiate a debit to the Bank Account to pay the accumulated balance of the Account from the previous Billing Cycle. For daily billed Client, Fuelman will initiate a debit to the Bank Account to pay the accumulated balance of the Account from the previous business day. Fuelman may also debit the Bank Account to pay the amount charged to the Account any time the balance of the Account reaches the Spend Limit. The exact time that the Bank Account will be debited for the amount charged to the Account may vary, depending on the processing capabilities of the bank at which the Bank Account exists. If insufficient funds are available in the Bank Account to pay the Account balance at the time a debit is initiated, Fuelman may prevent the Client from making any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account. Fuelman may change its billing and debiting cycle at any time by providing written notice to Client. Fuelman reserves the right to charge a bank handling fee of up to twenty five dollars (\$25.00) per debit of the Client's Bank Account.

10.5.5.2 **Change in Bank Account.** To change the Bank Account, Client's Representative must provide a written request of such change to Fuelman. The request should include the following information for the new account; bank name (the bank must be a member of the National Automated Clearinghouse Association (NACHA)); branch address; branch number; bank routing number; and account number. The request should also contain a voided check from the new account. It will take approximately ten or more days for Fuelman to change the account. During this time, Client agrees to cooperate with Fuelman to provide additional information necessary to make the change and to execute a test of the change.

10.5.6 **Client Initiated Electronic Funds Transfer / Automated Clearinghouse (EFT/ACH) Payment.** Prior to the Due Date, Client will initiate a credit to Fuelman's bank account to pay the accumulated balance of the Client Account from the previous Billing Cycle after notifying and obtaining approval from a Fuelman Customer Service representative to do so. Fuelman reserves the right to charge a fee of up to fifty dollars (\$50.00) for processing each Client initiated EFT/ACH.

10.5.7 **On Account.** Fuelman may offer Client the ability to pay in advance for its Fuel purchases. The Account will be debited for each purchase. The Account will be replenished by EFT with the amount equal to the prior week's Statement amount. Fuelman may charge a fee up to twenty-five dollars (\$25.00) for the Client's replenishing of the Account. A Dormancy Fee of thirty dollars (\$30.00) per Billing Cycle may be charged after one hundred eighty days (180) days of inactivity, where allowed by applicable law. Residual Account credit balances will be returned upon written request. Eschatement laws, where applicable, will be followed.

10.6 **Applying Payments.** Fuelman uses a "balance-forward" based accounting system. Therefore, all payments made by Client to Fuelman will be applied accordingly against the outstanding amount due on the balance payment is received. Subject to applicable law, we will apply and allocate payments and credits among bills owed by Client (whether for purchases, fees, late interest or otherwise) in any order and manner determined by Fuelman in its sole discretion. Client agrees that Fuelman has the unconditional right to exercise this discretion in a way that is most favorable or convenient to Fuelman.

10.7 **Late Payments.** All payments made by Client to Fuelman that are not received by the Due Date are considered

1.0. Fuelman reserves the right to charge 9.999% of the New Balance (defined below) with a minimum of seven five dollars (\$75.00) for each late payment, not to exceed the maximum rate allowable by applicable law. To determine the New Balance for the purposes of late fees, Fuelman starts with the Amount Due on the statement for which the payment is late. Any purchases and other debits posted to the Account through the end date of the current (next succeeding) billing statement may be added to this. Appropriate finance charges or late interest charges and fees are added and divided by applicable adjustments made.

10.8. **Annual Percentage Rate.** The Annual Percentage Rate for purchases is 3.99% per finance charge, which corresponds to the daily periodic rate of 0.0877%, or the maximum amount allowed by applicable law, whichever is less. The daily periodic rate is the annual percentage rate divided by three hundred sixty-five (365).

10.9. **Finance Charges.** If Client's Statement is paid in full every Billing Cycle by the applicable Due Date, the Account will not incur Finance Charges. Finance Charges begin to accrue for each purchase as of the date the purchase is added to the Account. The Amount Due shown on the Statement for a Billing Cycle for a Billing Cycle is credited to Client's Account by the Due Date shown on that respective Statement, then Finance Charges will not accrue for purchases from the date on which payment in full of that Amount Due is credited to Client's Account, provided the Amount Due of the next Statement attributable to such purchases is paid by the Due Date reflected in such next Statement. Late interest due because Client does not pay in full the Amount Due of the next Statement will be reflected in the following Statement. In addition, Finance Charges will not accrue for purchases during a Billing Cycle if the Amount Due shown on the Statement for the prior Billing Cycle is zero (\$0) or a credit balance, and the Amount Due of the next Statement attributable to such purchases is paid by the Due Date reflected in such next Statement. Late interest due because Client does not pay in full the Amount Due of the next Statement will be reflected in the following Statement.

10.9.1. Periodic Finance Charges are calculated in two steps as follows: First, for each day of the Billing Cycle, Fuelman multiplies the daily balance by the applicable daily periodic rate.

10.9.2. Second, for each day of the prior Billing Cycle, Fuelman multiplies the daily balance for purchases made in that Billing Cycle by the same daily periodic rate. However, Fuelman does not do this second step if it received payment in full of the Amount Due on Client's previous billing Statement by the date the payment was due or if Client's Statement is billed on a credit balance.

10.9.3. For finance charge calculation purposes, the Billing Cycle begins on the day after the Closing Date of the Statement and includes the following Closing Date. The number of days in the Billing Cycle may vary. The daily balance is calculated by taking the beginning balance every day (which may include unpaid Finance Charges from previous Billing Cycles), adding any new transactions and any new fees, subtracting any credits or payments posted as of that day, and any other adjustments. Daily Periodic Finance Charges will be rounded to the nearest cent. Unless Fuelman elects to use a later date, a new Transaction is added to the balance as of the date the Transaction is billed on the statement.

10.10. **Returned Payment.** If a check, credit card charge, or EFT/ACH is returned or denied, Fuelman reserves the right to charge the lesser of fifty dollars (\$50.00) Returned Payment Fee or the maximum amount allowable by applicable law for each occurrence. At our option, we will assess this fee the first time your check or payment is not honored even if it honored upon resubmission. Fuelman may also charge the applicable Late Fees and Finance Charges incurred if payment is not received by Due Date due to returned payment.

10.11. **Reserve Amount.** Fuelman will notify Client of any reserve amount (the "Reserve Amount") necessary to open Client's Account. The Reserve Amount will be paid to Fuelman by Client prior to using the Cards. Client shall continue paying Fuelman any amounts on any periodic Fuelman Statement by the Due Date. This Reserve Amount will be held by Fuelman and may be returned to Client only after Client has satisfied all Obligations of the Account, the Card(s) have been returned to Fuelman and the Account has been closed. In the Event of Default (defined below), the Reserve Amount will be applied to the Account as a payment on the Account. Any interest earned on the reserve balance in the Account will accrue to Fuelman.

11. **Reporting.** Fuelman shall furnish Client with a Statement at the end of each Billing Cycle.

11.1. **Information.** The Statement will include the following information:
11.1.1. The account number and other relevant billing information.
11.1.2. The previous unpaid charges.
11.1.3. The previous statement balance.
11.1.4. Any payments posted to the Account.
11.1.5. New charges and adjustments.
11.1.6. Amount Due.

11.2. **Standard Fleet Management Report.** Fuelman shall produce a standard fleet management report at the end of each Billing Cycle.
11.2.1. **Information.** The standard fleet management report will include the following information: The applicable fleet customer number. A single Client's Account can have multiple fleets (customer numbers) within it.
11.2.2. Any rebates, discounts, report delivery, reporting, account charges, Finance Charges, late interest, fees, and other charges posted to the Account.

11.2.3. Detail on each Transaction posted to the Client's Account during the Billing Cycle, including date, Merchant Location, vehicle based on the Card used, employee/driver based on the Driver ID used, product description and amount, and the applicable and total applicable taxes.
11.3. **Delivery Methods.** Fuelman offers several different methods for delivering Statements and the standard fleet management report:
11.3.1. Via US Mail. Fuelman reserves the right to charge up to ten dollars (\$10.00) for each mail delivery of each report. Client with failed fax and email deliveries will be charged the mail delivery rate for any resubmission of the reports via mail, performed at Fuelman's discretion.
11.3.2. Via Facsimile. Fuelman reserves the right to charge up to five dollars (\$5.00) for each fax delivery of each report. Client with failed fax transmissions has the right to charge a processing fee of \$5.10.
11.3.3. Via eMail. Mailed resubmissions will be charged at the mail delivery rate described in Section 11.3.1.
11.4. **Optional Fleet Management Reports.** Fuelman produces a variety of optional fleet management reports, including YTD summaries, Maintenance-specific reports, driver-specific reports, and tax reports. Fuelman reserves the right to charge Client a fee of up to fifteen dollars (\$15.00) for delivering each of these optional reports or up to one hundred dollars (\$100.00) per quarter.

11.5. **Tax Exempt Processing & Reporting.** Qualified tax exempt Clients may be eligible to purchase Fuel from Fuelman tax-free at the point-of-sale. Fuelman reserves the right to charge a processing fee of up to one percent (1%) of the total purchases for this service except where prohibited by applicable law.
11.6. **Multiple Report Copies.** Fuelman will provide multiple copies of mailed reports upon request. Fuelman may charge up to five dollars (\$5.00) per report copy.
12. **Change In Terms And Conditions.** Fuelman may change the Terms and Conditions of this Agreement at any time by giving Client written notice of such amendment. Guarantor agrees to be bound by any such changes, if written notice is given to Client. Such changes will go into effect as outlined in the change notice. If permitted by applicable law, such changes will apply to existing balances, as well as future purchases and balances. Any modification of or amendment to this Agreement will be delivered to Client through U.S. mail at the address Client provided to and periodically provides updates to Fuelman. All initial amendment notifications will be sent to Client in advance of the effective date thereof or earlier as required by law. Client shall be deemed to

have accepted any amendment to the Terms and Conditions of the Account by the date of the Client's Card(s) last use. Notwithstanding to the extent of any inconsistent provisions of this Section, Client hereby agrees to the right to change Spend Limits for the Account or to suspend, cancel, or terminate the Account or any Card without prior written notice and Client and Guarantor acknowledge and agree that Fuelman may take such actions without notice.

13. **Events Of Default.** The occurrence of any of the following shall constitute an "Event of Default" hereunder:
13.1.1. Client shall fail to pay any principal, late interest, or other amount payable in respect of any Obligation when due;
13.1.2. Client shall fail to observe or perform any other covenant contained in this Agreement;
13.1.3. Any representation or warranty made by Client or Guarantor herein or in the Application proves untrue in any material respect as of the date of the making or furnishing thereof;

13.1.4. Either Client or Guarantor shall (i) make an assignment for the benefit of its creditors; (ii) admit in writing its inability to pay its debts as they become due within the period under any applicable insolvency, debtor relief or reorganization statute, including without limitation, the United States Bankruptcy Code; (iv) be subject to an involuntary petition under any applicable insolvency, debtor relief, or reorganization statute; (v) appoint or consent to the appointment of any receiver, conservator, liquidating agent, or committee in any insolvency, reorganization, or other proceeding; (vi) be subject to any order of a court of competent jurisdiction, or relating to Client or Guarantor, or any substantial portion of their assets; or (vii) take any corporate action for the purpose of effecting any of the foregoing or

13.1.5. Guarantor shall terminate or contest the validity or enforceability of Guarantor's guaranty hereunder or Guarantor's guaranty hereunder shall be determined to be invalid or unenforceable for any reason.
14. **Remedies Upon Event Of Default.** Without limiting any other rights or remedies of Fuelman provided for elsewhere in this Agreement, or by applicable law, or in equity, or otherwise, upon or at any time after the occurrence of any Event of Default, Fuelman shall have and may exercise, at its election, from time to time, any and all rights and remedies available at law, in equity, or otherwise, including, without limitation, (i) declaring the entire unpaid balance of the Obligations hereunder or any part thereof immediately due and payable, whereupon it shall be due and payable; and (ii) demanding payment from the Guarantor.

15. **Dispute Resolution.** Client and Guarantor may report any dispute to Fuelman by telephone. However, telephone notice will not preserve Client's rights or otherwise serve as effective notice under this Agreement. Client must put in writing any dispute regarding a Transaction on Client's Statement. Client's letter must include the following information: name; Account number; date of the Statement; dollar amount and identification of the Transaction(s) in question; and any possible explanation of the error.
15.1. **Dispute Transactions.** To dispute any Transaction on Client's Statement, Client must notify Fuelman in writing as set forth below within fifteen (15) days of the date of Client's Statement. Fuelman will promptly investigate the matter and respond to Client within sixty (60) days after receiving written notice. Notice should be sent to: FUELMAN, P. O. Box 924138, Norcross, GA 30010, Attention: Customer Service. Fuelman shall not be responsible for and Client shall waive any discrepancies or disputes that Client does not report to Fuelman in writing within fifteen (15) days after the date of Client's Statement.

15.2. **Dispute Resolution Notice.** Client and Guarantor may report any dispute to Fuelman by telephone. However, telephone notice will not preserve Client's rights or otherwise serve as effective notice under this Agreement. Client must put in writing any dispute regarding a Transaction on Client's Statement. Client's letter must include the following information: name; Account number; date of the Statement; dollar amount and identification of the Transaction(s) in question; and any possible explanation of the error.
15.3. **Dispute Resolution.** The parties agree that they will work in good faith to resolve any disputes arising under this Agreement. The parties agree that the resolution of any disputes, then, at Fuelman's sole discretion, the dispute may be resolved by binding arbitration at Atlanta, Georgia, in compliance with the American Arbitration Association's commercial arbitration rules or by litigation in accordance with Section 25.1. The foregoing does not prohibit either party from seeking injunctive relief without first complying with this Section. Client will reimburse Fuelman for all of its costs and expenses (including collections and attorney's fees and costs) incurred in connection with enforcing any of Fuelman's rights under this Agreement. To accommodate the right to arbitrate, Client agrees that Client will neither assert, nor participate in, a class action or any other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Client's relationship with Fuelman.

16. **Security, Loss, Theft Or Unauthorized Use Of Card.**
16.1. **General Security.** Each Card can be programmed to only allow Fuel or both Fuel & Maintenance services such as oil changes, vehicle washes, etc. Typically each Transaction is authorized with the Card number, product code, quantity and driver's Driver ID across the proprietary Fuelman network to ensure that the purchase is authorized and limited to the product and quantity (e.g. gallons of Fuel or dollars of Maintenance) that have been pre-approved. This system also helps prevent unauthorized Driver IDs and stolen Cards from being used to make purchases. The product and quantity controls are subject to each Merchant Location's POS Authorization Limitations described in Section 16.9.

16.2. **Fuelman's Liability.** In the event an unauthorized Transaction occurs, subject to the limitations and client responsibilities explained in this Section 16, and in the event that the Account has been issued fewer than ten (10) Cards, Fuelman will assume full responsibility for those purchases. If the Account has been issued ten (10) or more Cards, Client assumes all liability and responsibility for unauthorized Transactions or Account activity.
16.3. **Client's Responsibility.** It is the responsibility of Client to ensure proper security controls are kept in place to protect the Account. Fuelman will not be responsible for any unauthorized Transactions or Account activity resulting from purchases. It is also the Client's responsibility to lock any inactive, misplaced, or stolen Cards and Driver IDs immediately. Fuelman is not responsible for fraudulent Transactions made on unlocked Cards with valid Driver IDs. Client should use the online account application to report Cards and Driver IDs instantly. Alternatively, the Client can contact Fuelman Customer Service during regular business hours via phone call with the requested change, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. All Transactions in which a valid/unlocked Card number was used in connection with a purchase will be authorized by Fuelman. Fuelman will not be responsible for any unauthorized purchases. Client should set each Card's Miscellaneous product category spending limit to zero dollars (\$0.00). Fuelman assumes no responsibility for any unauthorized Miscellaneous purchases.

16.4. **Lost or Stolen Cards.** Client shall report all lost or stolen Cards to Fuelman immediately via phone call to Fuelman Customer Service identifying the Card number and such other details concerning the loss or theft of the Cards as are known by Client, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. Client shall be liable for all Transactions made by lost or stolen Cards until 24 hours after the time Fuelman receives Client's notice of such loss or stolen Cards. Client and Guarantor(s) agree to acknowledge full liability for any losses resulting from any failure to report the loss or theft of Card(s) in accordance with the terms hereof.
16.5. **Terminated Drivers.** It is the Client's responsibility to lock a terminated driver's Driver ID as explained in Section 16.3.

16.6. **Miscellaneous Product Purchase Limitations.** In addition to the vehicle-related product categories (Fuel, Agreements, and Maintenance), Client may purchase other products and services that are not included in the Miscellaneous product category. If a Client does not want to allow non-vehicle related purchases, Client should set each Card's Miscellaneous product category spending limit to zero dollars (\$0.00). Fuelman assumes no responsibility for any unauthorized Miscellaneous purchases.
16.7. **Tax Reporting Limitations.** Fuelman calculates applicable taxes for Fuel. Applicable taxes for Maintenance and other non-Fuel purchases are dependent on the information provided to Fuelman by the applicable Merchant Location.

16.8. **Personnel (If Any) at a Merchant Location** are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by any of the Merchants or any other liability or damage which arises from the action or negligence of the personnel of any of the Merchants, their agents or their employees.
16.9. **POS Authorization Limitations.** Authorization controls are provided as a convenience to the Client and are not guaranteed to prevent unauthorized purchases. Specifically, depending on the particular point-of-sale (POS) equipment and Fuel dispenser controls being used by a particular Merchant Location, the product type and spending limit may not be enforceable prior to completing the Transaction. In these situations, the Transaction will still be considered to be authorized, but will be identified as an exception on the Client's standard fleet management report and reported via email if desired by Client.

16.10. **Claims.** All claims for defective Fuel or Maintenance must be made to the Merchant operating the Merchant Location where such Fuel or Maintenance was purchased. Any claim for defective Fuel or Maintenance is waived by Client unless made in writing to Merchant, with a copy to Fuelman, within fifteen (15) days from the date of the purchase of the alleged defective Fuel or Maintenance giving rise to the claim. Fuelman will not accept any claims for defective Miscellaneous.
17. **Term and Termination.**
17.1. **Term.** The term of the Account shall be one (1) year from the date the Cards are issued to Client unless either party terminates the Account as provided in this Agreement. Thereafter, Fuelman will automatically renew

Client's Account for the same term. Fuelman reserves the right to terminate or suspend a Client's Account at any other party notice of Client's failure to observe any terms hereof (30 days) before its successful expiration. At the end of any such one year renewal period, Fuelman, at its discretion, may issue replacement Cards to Client.

17.2. **Termination by Client.** Client may terminate Client's Account and its use of the Cards for any reason by providing written notice of such termination to Fuelman. Client remains obligated to pay for any and all transactions, balances, fees, and other amounts incurred up until midnight of the day Fuelman receives notice of such termination.
17.3. **Termination by Fuelman.** Fuelman may terminate Client's Account and its use of the Cards for any reason, including but not limited to, inactivity, failure to promptly pay any amounts due Fuelman, failure to use the Cards exclusively for business purposes, or Fuelman's decision to terminate the Fuelman Program. Fuelman will notify Client's Representative at the time of termination that the Client's Account or Card(s) will be terminated along with the reason(s) for such termination.

18. **Change In Ownership.** Client must notify Fuelman immediately in the event of any sale of a majority ownership of its equity, any sale of a majority of its assets, any merger, reorganization or other transaction which results in a change of ownership of Client. Fuelman may terminate the Account in its sole discretion upon any change of ownership.
19. **Contacts And Notices.**
19.1. **Fleet Contact.** The "Fleet Contact" listed on the Application is authorized to provide Fuelman with the information necessary to establish Client's Account records and Cards, including, but not limited to vehicle, driver and card use related information. Fuelman is authorized to send all Account information and Client's Cards to the Fleet Contact's attention.
19.2. **Accounts Payable Contact.** The "Accounts Payable Contact" listed on the Application is authorized to provide Fuelman with payment information about payments on the Account. This contact may be the same person as the Fleet Contact and will be Fuelman's primary contact in the event that the Account becomes delinquent or exceeds the assigned Spend Limit.

19.3. **Notices.** Except as specified otherwise in this Agreement, all notices, requests, demand, or other communications required to be made pursuant to this Agreement shall be in writing and shall be given by mail by first class, certified or registered mail, postage prepaid, or by the sender's facsimile with confirmation by mail to be provided by the party giving notice) or by reputable overnight delivery service (such as FEDEX or UPS) or by personal delivery to the recipient party, to the address indicated below for Fuelman and in the Application for Client. Fuelman may provide any such notice to Client by including the notice in the Statement provided to Client. A notice will be deemed received on the actual date of receipt. Fuelman's address for notices is: FUELMAN, P. O. Box 924138, Norcross, GA 30010, Attention: Customer Service.
19.4. **Maximum Lawful Rate.** No event shall any Finance Charges or other rates payable under this Agreement, however accrued, be applied to reduce the principal balance of the Obligations hereunder to the extent of such excess.

21. **Credit Reporting Agencies.** Client and Guarantor(s) authorize Fuelman to report to any commercial credit reporting agency, Client's or Guarantor's performance under this Agreement, including but not limited to Dunn & Bradstreet, Experian Business or Equifax Credit Information Services. If the Account is personally guaranteed, Fuelman reserves the right to report Account information to consumer credit reporting agencies, including but not limited to Equifax Credit Information Services, Experian and TransUnion. Client and Guarantor have authorized Fuelman to report any credit reporting agencies not on the resolution of any other dispute in connection with a credit transaction it did not initiate. To do so, contact Equifax Credit Information Services, P.O. Box 740123, Atlanta, GA 30374-0123; Experian, P.O. Box 919 Allen, TX 75013; and TransUnion, P.O. Box 97328, Jackson, MS 39288-7328; or Client and Guarantor may notify all three agencies by calling 1-888-667-8688.

22. **Limitation of Liability.** FUELMAN WILL HAVE NO LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING CLAIMS FOR LOSS OF PROFITS, WHETHER RESULTING DIRECTLY OR INDIRECTLY TO CLIENT, GUARANTOR, OR THIRD PARTIES, AND WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR RESULT FROM A BREACH OF THIS AGREEMENT. IN THE EVENT A COURT IN A FINAL, NON-APPEALABLE AWARD FINDS FUELMAN LIABLE FOR ANY DIRECT DAMAGES, FUELMAN'S LIABILITY IN THE AGGREGATE FOR SUCH DIRECT DAMAGES WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CLIENT TO FUELMAN FOR THE MONTH PRECEDING THE DATE ON WHICH THE CLAIM AROSE.
23. **Indemnification.** Client and Guarantor(s) shall indemnify, defend, hold harmless and hold harmless Fuelman and its affiliates, directors, officers, employees, and agents (the "Indemnitees") from and against any and all third party claims, losses, damages, suits, fees, judgments, costs, and expenses (collectively referred to as "Claims"), including attorneys' fees incurred in responding to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with (a) the Indemnitee's (or its employees' or agents') negligence, willful misconduct, or breach of any representation, warranty or other obligation under this Agreement; or (b) any personal injury (including death), damage to property, or environmental clean-up and abatement, and made decisions based on the vote of the majority. Costs will be allocated in the same way they are allocated for arbitration before a single arbitrator. An award by a panel is final and binding on the parties after fifteen days has passed. A final and binding award is subject to judicial review and enforcement as provided by the FAA or other applicable law. However, we will advance or reimburse your fees if the arbitration firm or arbitrator determines there is good reason for requiring us to do so, or if you ask us and we determine there is good reason for doing so. Each party will bear the expense of that party's attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines.

24. **Non-disclosure.** Fuelman may provide to Client access to confidential and proprietary information regarding Fuelman's business, business plans, pricing and reimbursement policies, and other issues ("Confidential Information."). Client will keep all Confidential Information in strict confidence and not disclose or use such Confidential Information during the term of this Agreement and for five (5) years thereafter, provided that for any Confidential Information deemed to be a "trade secret," Client shall protect and not disclose or use such Confidential Information for so long as such Confidential Information is not to disclose its terms except as permitted by Fuelman. Client will inform its employees and agents as to the confidential and proprietary nature of the Confidential Information to which they may be exposed and take all necessary actions to ensure that such employees and agents keep such information strictly confidential. Client will return any Confidential Information upon request from Fuelman. Client agrees that any disclosure of Confidential Information would cause irreparable harm for which monetary damages may not be a sufficient remedy, so Fuelman will be entitled to seek an injunction to prevent disclosure of Confidential Information, and will be entitled to injunctive relief, without the posting of a bond.
25. **Miscellaneous Provisions.**
25.1. **Governing Law; Waiver of Jury Trial; Binding Arbitration.** This Agreement will be governed by Louisiana law, without regard to its conflicts of laws principles. Many Account maintenance, treasury and accounting functions are performed by Fuelman in Louisiana, where it has a substantial presence.

25.2. **Arbitration.** Client or FleetCor may, without the other's consent, elect mandatory, binding arbitration for any claims, disputes or controversies between the parties relating to the Cards or Account, a prior Card or account, or the relationship of such parties, including without limitation claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision, and no matter what legal theory such claims are based on or what remedy (damages, or injunctive or declaratory relief) such claims seek (a "Claim"). To accommodate the right to arbitrate, Client agrees that it will neither assert, nor participate in, a class action or any other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Client's relationship with FleetCor. The party filing for arbitration must choose one of the following arbitration firms and follow its rules and procedures for initiating (including paying the filing fee) and pursuing arbitration before a single neutral arbitrator: American Arbitration Association, National Arbitration Forum or JAMS. All other fees will be allocated as provided by the rules of the arbitration firm and applicable law. Claims must be brought in the name of a individual person or entity and must proceed on an individual (non-class, non-representative) basis.
25.3. **Claims Covered.** What Claims are subject to arbitration? All Claims relating to your Cards or Account, a prior related account, or our relationship are subject to arbitration, including Claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision. All Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence,

25.4. **Survival and Severability of Terms.** This arbitration provision shall survive: (i) termination or changes in the Agreement, and the account; or the relationship between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing.
25.5. **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman's rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.
25.6. **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.
25.7. **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.
25.8. **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of that right. A waiver by any party of any one or more obligations will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party hereto shall be binding upon the party making such waiver in the event of a subsequent default.
25.9. **Severability.** If any provision of this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.
25.10. **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The captions and headings included in this Agreement have been inserted for convenience only and may not be used in connection with the interpretation of this Agreement. Each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties to this Agreement.

25.11. **Survival and Severability of Terms.** This arbitration provision shall survive: (i) termination or changes in the Agreement, and the account; or the relationship between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing.
25.12. **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman's rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.
25.13. **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.
25.14. **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.
25.15. **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of that right. A waiver by any party of any one or more obligations will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party hereto shall be binding upon the party making such waiver in the event of a subsequent default.
25.16. **Severability.** If any provision of this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.
25.17. **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The captions and headings included in this Agreement have been inserted for convenience only and may not be used in connection with the interpretation of this Agreement. Each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties to this Agreement.

25.18. **Survival and Severability of Terms.** This arbitration provision shall survive: (i) termination or changes in the Agreement, and the account; or the relationship between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing.
25.19. **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman's rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.
25.20. **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.
25.21. **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.
25.22. **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of that right. A waiver by any party of any one or more obligations will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party hereto shall be binding upon the party making such waiver in the event of a subsequent default.
25.23. **Severability.** If any provision of this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.
25.24. **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The captions and headings included in this Agreement have been inserted for convenience only and may not be used in connection with the interpretation of this Agreement. Each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties to this Agreement.

25.25. **Survival and Severability of Terms.** This arbitration provision shall survive: (i) termination or changes in the Agreement, and the account; or the relationship between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing.
25.26. **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman's rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.
25.27. **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.
25.28. **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.
25.29. **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of that right. A waiver by any party of any one or more obligations will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party hereto shall be binding upon the party making such waiver in the event of a subsequent default.
25.30. **Severability.** If any provision of this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.
25.31. **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The captions and headings included in this Agreement have been inserted for convenience only and may not be used in connection with the interpretation of this Agreement. Each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties to this Agreement.

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25.33. **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman's rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.
25.34. **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.
25.35. **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.
25.36. **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of that right. A waiver by any party of any one or more obligations will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party hereto shall be binding upon the party making such waiver in the event of a subsequent default.
25.37. **Severability.** If any provision of this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.
25.38. **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The captions and headings included in this Agreement have been inserted for convenience only and may not be used in connection with the interpretation of this Agreement. Each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties to this Agreement.

25.39. **Survival and Severability of Terms.** This arbitration provision shall survive: (i) termination or changes in the Agreement, and the account; or the relationship between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing.
25.40. **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman's rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.
25.41. **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.
25.42. **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.
25.43. **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of that right. A waiver by any party of any one or more obligations will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party hereto shall be binding upon the party making such waiver in the event of a subsequent default.
25.44. **Severability.** If any provision of this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.
25.45. **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The captions and headings included in this Agreement have been inserted for convenience only and may not be used in connection with the interpretation of this Agreement. Each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties to this Agreement.

25.46. **Survival and Severability of Terms.** This arbitration provision shall survive: (i) termination or changes in the Agreement, and the account; or the relationship between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing.
25.47. **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman's rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.
25.48. **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.
25.49. **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.
25.50. **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of that right. A waiver by any party of any one or more obligations will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party hereto shall be binding upon the party making such waiver in the event of a subsequent default.
25.51. **Severability.** If any provision of this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.
25.52. **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted



**FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC
FUELMAN FLEET CARD CLIENT AGREEMENT
TERMS AND CONDITIONS**

1 Definitions.

1.1 **Account.** "Account" shall mean the internal Fuelman account established for Client.

1.2 **Agreement.** "Agreement" shall mean this agreement comprised of the Application (if any), the Approval Letter (if any) and this document containing the Terms and Conditions.

1.3 **Agreement Date.** "Agreement Date" shall mean the date on which Fuelman accepts the Client's Application and issues one or more Cards for Client's Account.

1.4 **Application.** "Application" shall mean the application completed by Client in applying for the Account through Fuelman.

1.5 **Approval Letter.** "Approval Letter" shall mean the letter, if any, sent by Fuelman to Client that approves the Application and establishes the Account under these Terms and Conditions.

1.6 **Bank Account.** "Bank Account" shall mean any bank account that Client has designated on the Application or by written notice to Fuelman for electronic funds transfer, automated clearinghouse or other electronic transfer of money to pay amounts for Client's Account.

1.7 **Billing Cycle.** "Billing Cycle" shall mean the period of time set forth in the Approval Letter and any subsequent notification for which Transactions will be accepted and a Statement for the Account will be provided.

1.8 **Card or Cards.** "Card" or "Cards" shall mean the Fuelman fleet card or cards issued to Client.

1.9 **Cardholder.** "Cardholder" shall mean the person presenting the Card to the Merchant to be used to purchase Fuel and/or Maintenance.

1.10 **Client.** "Client" shall mean the business entity identified in the Application.

1.11 **Client's Representative.** "Client's Representative" shall mean the person(s) identified as Client's representative on the Application.

1.12 **Driver ID.** "Driver ID" shall mean the personal identification number issued to the Client by Fuelman for use with a Card to authorize a particular Transaction.

1.13 **Due Date.** "Due Date" shall mean the date upon which payment from Client is due to Fuelman as stated on Fuelman's Statement to Client.

1.14 **FleetCor.** "FleetCor" shall mean FleetCor Technologies Operating Company, LLC, the company which owns the Accounts and in whose favor all Obligations, as defined in Section 10.3, of Client under this Agreement flow.

1.15 **Fuelman.** "Fuelman" shall mean Fuelman, the division of FleetCor administering the Card(s) and Account.

1.16 **Fuel.** "Fuel" shall mean any combustible material dispensed by volume that is purchased with a Card.

1.17 **Guaranteed Obligations.** "Guaranteed Obligations" shall have the meaning set forth in Section 10.4.

1.18 **Guarantor(s).** "Guarantor" shall mean the person(s) identified on the Application or a separate guaranty document, if any, that guarantees Client will comply with this Agreement and pay all amounts owed to Fuelman.

1.19 **Maintenance.** "Maintenance" shall mean any non-Fuel product or service for a vehicle that is purchased with a Card (e.g., oil, wiper blades, fluids, towing, roadside assistance, parts, supplies, tires, oil changes, brakes, glass, exhaust systems, transmissions, and repair services).

1.20 **Merchant.** "Merchant" shall mean a third party that operates retail locations providing Fuel and/or Maintenance in the Fuelman network.

1.21 **Merchant Location.** "Merchant Location" shall mean a Merchant's Fuel and/or Maintenance site that is participating in the Fuelman network, such that a Card may be used to purchase Fuel and/or Maintenance at such site.

1.22 **Miscellaneous.** "Miscellaneous" shall mean any non-vehicle related product or service that is purchased with a Card (e.g., food, drink, magazines, cigarettes, lottery tickets).

1.23 **Principal.** "Principal" shall mean the person identified on the Application, if any, who applies for the Account as a co-maker with the Client.

1.24 **Reporting.** "Reporting" shall mean related products or services that are purchased to manage the vehicle fleet (e.g., paper reports, delivery, fleet report delivery).

1.25 **Statement.** "Statement" shall mean the billing statement provided at the end of each Billing Cycle.

1.26 **Terms and Conditions.** "Terms and Conditions" shall mean the terms and conditions contained in the Agreement and any other electronic or paper document presented to the Client by or on behalf of Fuelman in connection with this Agreement (e.g. the physical card, driver instructions, site guides, reports, billing/statement inserts, Application, and web site). In the event of a conflict between any such other document and this Agreement, this Agreement will control unless specifically provided otherwise in the other document.

1.27 **Transaction.** "Transaction" shall mean any individual purchase with a Card.

2 General.

2.1 **Agreement for Account and Services.** Client and, if applicable, Principal or Guarantor, shall submit an Application to signify Client's application for an Account with Fuelman. If Fuelman accepts such Application, Fuelman shall send an Approval Letter and these Terms and Conditions to Client's Representative along with Cards and Driver IDs issued for the Account. Upon Client's first use of a Card, Client will be deemed to have accepted the Approval Letter and these Terms and Conditions and Client and Fuelman shall be deemed to have entered into this Agreement. If Client does not accept the Application or a separate guaranty then Client and Guarantor shall both be responsible for all payments owed by Client hereunder and for compliance by Client with these Terms and Conditions. If a Principal jointly submits the Application with Client, then Client and Principal are jointly and severally responsible for all payments owed by Client hereunder and for compliance with these Terms and Conditions.

2.2 **Entire Agreement.** These Terms and Conditions, together with the Application (if any) and the Approval Letter (if any), are the exclusive statement of the terms and conditions with respect to their subject matter as of the Agreement Date and supersede all prior agreements, negotiations, representations and proposals, whether written or oral. Deviations from the Agreement are not valid unless confirmed in writing by an authorized representative of Fuelman.

3 Account Administration and Card Issuance.

3.1 **Establishment of Client Account.** Upon issuance of the Cards, Fuelman will establish an Account for Client that will be used to pay for Fuel, Maintenance and Miscellaneous items purchased through the use of the Cards at Merchant Locations. For purpose of determining Client's domicile, Client acknowledges and agrees that Client's domicile shall be the address in which Client's mailing address as reflected on the Client's Statement.

3.2 **Government Regulations.** Neither Client nor any Guarantor of the Account shall (a) be or become at any time, and are not currently, subject to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Fuelman from making any advance or extension of credit to Client or any Guarantor of the Account or from otherwise conducting business with Client or any Guarantor of the Account, or (b) fail to provide documentary and other evidence of Client's identity or the identity of any Guarantor of the Account or person to whom Client gives a Card, as may be requested by Fuelman in full compliance with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

3.3 **Spending Limit.** Upon Fuelman's approval of the Client's Application, Fuelman will establish an aggregate spending limit for all the Cards issued to Client under the Account (the "Spending Limit") based on Fuelman's evaluation of the Client's creditworthiness. Fuelman reserves the right to increase or decrease this Spending Limit at any time with or without providing notice to Client. Fuelman may decide, at its own discretion, to decline or approve any transactions made after the Client exceeds the Account Spending Limit, or to look the Account until the balance due is paid in full. Fuelman reserves the right to charge an Over Limit Fee of up to fifty dollars (\$50.00) per Over Limit transaction authorized.

3.4 **Initial Cards.** Upon Fuelman's approval of Client's Application, Fuelman will issue one or more Cards and Driver ID numbers to Client. Client shall be responsible for distributing the Cards and Driver IDs to its employees or agents.

3.5 **Additional Cards.** If, at some time after the initial issuance of Cards to Client, Client desires one or more additional Cards, Client must notify Fuelman via the online application or in writing or by calling Fuelman Customer Service. Fuelman reserves the right to charge a fee of up to five dollars (\$5.00) for creating and delivering each additional Card.

3.6 **Replacement Cards.** If Client desires one or more replacement Cards, including, but not limited to replacing lost or damaged Cards, Client must notify Fuelman via the online application or in writing or by calling Fuelman Customer Service. Fuelman reserves the right to charge a fee of up to five dollars (\$5.00) for creating and

3.7 **delivery of each replacement Card.**

4 Administration and Client Obligations. Client shall be solely responsible for the use, maintenance, administration, and security of the Cards and Driver IDs within Client's business, including, but not limited to, distributing Cards to, and collecting Cards from, its employees and agents. Notwithstanding any other provision in this Agreement, Client is responsible for any loss or misuse of Cards by its employees and agents. See Section 16 for more information regarding Client's responsibilities.

3.8 **Administration of Account.** Fuelman shall be responsible for collecting and reporting all Transactions by date, vehicle, Merchant Location, and driver based upon data received by Fuelman. In addition, Fuelman shall be responsible for maintaining the database for the Client with all Card numbers, vehicle data, driver data, and purchase control data. Fuelman reserves the right to charge a fee of up to fifty dollars (\$50.00) a month or a minimum of fifteen dollars (\$15.00) per Billing Cycle for account administration.

3.9 **Card Fees.** Fuelman reserves the right to charge a service fee of up to ten dollars (\$10.00) per Card per month to support the Client's Card(s) and Account.

3.10 **Property.** All Cards remain the property of Fuelman and shall be surrendered immediately by Client to Fuelman upon Fuelman's request or if Client or Fuelman cancels the Card or Account as permitted herein.

3.11 **Inactive Cards.** Fuelman reserves the right to charge a fee of up to three dollars and fifty cents (\$3.50) per Billing Cycle for Cards that are inactive for seventy-five (75) or more days.

3.12 **Cancellation of Cards.** If, at any time, for any reason, Client desires to cancel any particular Card, but not the Account, Client's Representative must notify Fuelman via the online application or in writing of such cancellation. Client's liability for purchases made using the canceled Card shall end at midnight of the day that Fuelman receives notice of such Card cancellation.

3.13 **Suspension of Cards.** Fuelman, at its sole discretion, may suspend or terminate the use of any Card at any time for any reason, including, but not limited to, inactivity, unusual activity, or suspected loss, theft, fraud, or in compliance with the USA Patriot Act. However, nothing in this Agreement shall obligate Fuelman to monitor the use of any Card, and, as described in this Agreement, Client is solely responsible for the use of any outstanding Cards.

3.14 **Suspension of Account.** Fuelman, at its sole discretion, may suspend or terminate the use of an Account at any time for any reason, including, but not limited to, inactivity, unusual activity, change in creditworthiness, late payment (excessive days beyond terms), aggregate outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) over the Spend Limit or in compliance with the USA Patriot Act. Fuelman reserves the right to charge up to a fifty dollar (\$50.00) fee for Account reinstatement each time a previously suspended Account is reinstated.

3.15 **Non-Transferability, Revocability.** All Cards and any and all rights and privileges to which its holders are entitled are not transferable and may be revoked for any reason, including but not limited to, a breach of any of the Terms and Conditions of this Agreement, without prior notice to any time and with no liability to Fuelman, at which time any credit extended hereunder shall be revoked and all sums owed by Client to Fuelman pursuant hereto shall become immediately due and payable.

5 Services Provided.

4.1 **General Services.** Fuelman shall provide the following services to Client under this Agreement:

4.1.1 Issue to Client the Cards upon Fuelman's approval of the Application.

4.1.2 Maintain a network of Merchant Locations for Fuel and Maintenance where Client may make purchases with Cards pursuant to this Agreement.

4.1.3 Provide an online directory to identify accepting Merchant Locations.

4.1.4 Maintain an authorization control system to verify that a Card being presented for payment is valid/active and that the Driver ID being used is valid/active for that particular Card. In addition, individual Card-Level spending limits can be established by the Client for each product category (e.g., Fuel, Maintenance supplies, Maintenance services, Miscellaneous).

4.1.5 Issue management reports and billing Statements to Client showing details of all posted Card Transactions (as defined in Section 11.2) during the Billing Cycle.

4.1.6 Referals. Fuelman reserves the right to deliver informational material in reference to ancillary fleet management related products and services provided by other vendors to the Client. In no case is Fuelman making any representation about the quality or value of any particular product or service.

4.2 **Ancillary Products and Services.** Fuelman reserves the right to make certain ancillary fleet management related products and services (e.g., emergency roadside assistance) that are delivered by other vendors/companies available to the Client for purchase on Cards. For the purpose of reporting the Transactions, these ancillary products and services are considered Maintenance. The act of requesting the ancillary product or service with a valid Card and Driver ID, establishes approval for Fuelman to charge and collect the corresponding balance incurred by these ancillary products and services.

4.3.1 **Roadside Assistance for Unattended Vehicles.** Through an association with a third party, Fuelman may offer roadside assistance for vehicles, including towing services. The services may not be available for unattended vehicles. The personnel of any such third party provider are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by such third party, or for any other injury or damage which arises from the action or negligence of the personnel of the third party, its agents or its employees.

4.3.2 **Additional Services.** Client may be eligible for additional services from time to time. If Client is eligible for an additional service, Fuelman may enroll Client in the service. The terms and fees applicable to such service will be disclosed prior to enrollment. Client will have the opportunity to opt-out of enrollment in such service.

4.3.3 **Inability to Operate.** Fuelman shall have no responsibility for any person(s) or machine(s) rejection of or refusal to honor a Card. Client agrees there shall be no liability to Fuelman or any other company or entity, if for any reason Client is unable to operate the Card, or if Client is unable to use the Card for Fuel and/or Maintenance, fail to authorize Transaction(s) or fail to operate in any other manner, even though a Card is valid.

4.5 **WARRANTY DISCLAIMER. FUELMAN DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ALL FUELMAN ACCOUNTS, PRODUCTS, AND SERVICES ARE PROVIDED ON AN AS-IS BASIS.**

6 Purchases.

5.1 **Use of Cards.** Client may use the Cards at any participating Merchant Location for the purchase of Fuel, Maintenance, or Miscellaneous items. To use a Card the Client should follow the directions for purchase established at the particular Merchant Location.

5.2 **Title.** As between Client and Fuelman, title to Fuel purchased with the Card passes from Fuelman to Client when the Cardholder dispenses Fuel (when fuel leaves the fuel dispensing nozzle), except as otherwise provided by applicable law. Title to any non-Fuel product or service purchased with the Card passes directly from the Merchant to Client when the Cardholder receives such non-Fuel product and/or service. Fuelman takes no title to Fuel, Fueling, or Miscellaneous items.

5.3 **Verification of Merchant Locations.** Client acknowledges that not all retail locations selling Fuel and Maintenance accept Fuelman's Cards. If Client is uncertain as to whether a location is able to accept the Cards, Client should visit the online site locator at www.fuelman.com or contact Fuelman's 24x365 Authorization Center at 800-877-9013.

6 Safety.

6.1 **Safe Fueling Operation.** Client shall instruct all persons to whom Client provides a Card for purchasing Fuel in the Cardholder's presence. Client will ensure that everyone using a Card issued in the name of Client is instructed in applicable safety measures.

6.2 **Safety Laws and Notices.** Client shall comply, and Client shall cause its employees and agents to comply, with all applicable local, state, and federal laws and regulations pertaining to the dispensing and use of Fuel at Merchant Locations as well as all safety notices posted by Merchants.

7 Representations and Warranties. Client represents and warrants to Fuelman as of the date of the Application and on the date of each extension of credit under this Agreement that:

7.1.1 Client is duly organized, validly existing and in good standing under the laws of the state of its formation. Client has the power and authority to own its properties and to carry on its business as presently conducted and to execute and deliver, and enter and perform its obligations under this Agreement.

7.1.2 The execution, delivery and performance of this Agreement have been duly authorized by all necessary organizational action. This Agreement has been duly executed and delivered by Client and Guarantor, and constitutes the legal, valid and binding obligations of each such party, enforceable against such parties in accordance with this Agreement, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

7.1.3 The execution, delivery and performance of this Agreement by Client and Guarantor will not violate any applicable law, rule or regulation or the charter, by-laws or other organizational documents of such parties or

any other applicable law or governmental authority.

7.1.4 The financial and client information requested by Client in the Application, or otherwise, is true, correct and complete in all material respects.

7.1.5 Cards issued to Client will be used only by Client's employees and agents and will not be distributed or resold to other companies without the express written consent of Fuelman.

7.1.6 **CLIENT WILL USE THE CARDS SOLELY FOR COMMERCIAL PURPOSES AND SHALL STRICTLY PROHIBIT ANY PERSONAL USE BY THE USERS OF ITS CARDS.**

8 Conditions To Extension Of Credit. Any extension of credit under this Agreement shall be subject to, and conditioned upon, satisfaction of the following requirements:

8.1.1 Fuelman's receipt of a duly executed counterpart of the Application by Client and, if requested, the Guarantor, in form and substance acceptable to Fuelman at its sole discretion;

8.1.2 All representations and warranties set forth in this Agreement are true and correct;

8.1.3 No event shall have occurred and no condition shall exist that would result in an extension of credit hereunder, that constitutes or would constitute (with notice or the lapse of time or both) an Event of Default (defined below). Outstanding amounts due, including any applicable fees as described in this Agreement, are paid by Due Date. Any amount not paid by the Due Date is subject to Late Fees (Section 10.7) and Finance Charges (Section 10.9). After giving effect to any requested extension of credit, the aggregate outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) shall not exceed Client's Spend Limit, as determined by Fuelman from time to time in its sole discretion; and,

8.1.6 **Recap of any required Reserve Amount.** (as defined below) necessary to open the Client's Account.

9 Pricing.

9.1 **Methodology.** Fuelman establishes competitive local market Fuel and Maintenance Transaction prices for the Fuelman Fleet Card program depending on a variety of factors (e.g., product costs, purchase volume, market conditions). Transaction pricing can be Merchant Retail-Based, Merchant National Account-Based, Fuelman Cost-Based or a combination thereof. The pricing methodology can vary by product type and is disclosed to Client in the Application, Approval Letter, and/or subsequent written notification. Additional charges/fees and/or discounts may apply based on the Client's agreed-upon program.

9.2 **Merchant Retail-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to the prevailing Merchant Location's retail price plus or minus a fixed adjustment factor but never below Fuelman cost. In the event there is no established retail price (e.g., unattended fueling sites, mobile refueling), the retail price will be established by Fuelman.

9.3 **Merchant National Account-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to the Merchant's prevailing national account price.

9.4 **Fuelman Cost-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to Fuelman's delivered cost plus a mark-up. Client's cost is dependent on a variety of factors and can include any or all of the following components: wholesale cost; merchant freight; dealer adjustment; network operation costs; merchant commission; and applicable taxes. Under no circumstance will Client's price be below Fuelman's cost.

9.5 **Special Network Pricing.** Fuelman reserves the right to charge for the use of select sites/merchants. The added charge to use these sites will not exceed the greater of ten cents (\$0.10) per gallon or two dollars fifty cents (\$2.50) per transaction. The list of select sites/merchants is available upon request by calling Fuelman Customer Service.

9.6 **Universal Pricing.** Client price for each Fuel or Maintenance Transaction is equal to an index price established by surveying a subset of transactions in the fueling area. This index can vary from posted retail price and may include a mark-up, but will never be below Fuelman cost. The markup and index calculation basis may vary by region and can change at any time.

9.7 **Level 2 Pricing.** Fuelman may deem the Client to be High Credit Risk Account and reserves the right to invoke Level 2 Pricing in the event that the Client's Commercial and/or Consumer Credit Score as reported by a credit reporting agency is below Fuelman's credit threshold. Fuelman's credit threshold for creditworthiness (this threshold is five hundred and twenty (\$20) for commercial credit scores and six hundred and sixty (660) for individual credit scores), or the score drops by fifty-one (51) points or more in any 3 month rolling period, or the Client incurs more than one late fee in any 12-month rolling period, or is 30 days or more delinquent in any 12-month rolling period, or makes a payment that is not honored by Customer's bank, or the Client operates in the trucking or transportation industry. Level 2 Pricing is an incremental charge above Client's current pricing and the maximum increase is twenty cents (\$0.20) per gallon purchased. Level 2 Pricing remains in effect until such time that Client is no longer a High Credit Risk Account. Fuelman will review each High Credit Risk Account at least once every three months for changes in creditworthiness. This decision is made solely by Fuelman based on information provided by the credit reporting agency along with the Account's payment history. The credit reporting agency does not participate in the decision. Client questions concerning their commercial and/or consumer credit scores should be directed to the applicable reporting agencies directly. D&B may be contacted at 800-234-8867 or by mail to Dun and Bradstreet Corporation, 103 JFK Parkway, Short Hills, NJ 07078. Equifax may be contacted at 800-727-8495 or at sb6@equifax.com. Experian may be contacted at 888-234-7474.

9.8 **Minimum Program Administration Fee.** Under circumstances where the previous month's average fuel price (defined as the U.S. Regular Gasoline Price by the U.S. Energy Information Administration) is below \$3.25 dollar per gallon, we may charge a Minimum Program Administration Fee of up to 10 cents per gallon or \$2 per transaction to cover ongoing program operation costs.

9.9 **Rebate/Volume Discount.** Fuelman may provide rebate or volume discount off retail price for fuel and nonfuel purchases under certain customer pricing. Such rebate or volume discount could be at transaction level and as separate credit to Client's account. The rebate or volume discount is only available if the Account is open, in good standing, and is not in default of the payment terms provided within these card client agreement terms and conditions. Please refer to the account pricing documentation for specifics regarding the rebate program detail. Aviation purchases, bulk fuel purchases, international fuel purchases, transactions at non-qualifying gasoline merchants, and any account in default of the payment terms provided within these card client agreement terms and conditions are excluded from the rebate program. Fuelman reserves the right to charge a Rebate Program Fee of up to ten dollars (\$10) per card per billing cycle. Fuelman also reserve the right to charge or terminate the rebate program at any time and in any manner with prior notice. Changes may include, among other things, changing the benefits, imposing additional restrictions, or terminating the program. In addition, reserve the right to remove any account from the rebate program in the event of any fraud or abuse. Participation in the rebate program will be suspended if the account is suspended. Under circumstances where the previous month's average fuel price (defined as the U.S. Regular Gasoline Price by the U.S. Energy Information Administration) is below \$3.25 dollar per gallon, we may charge, suspend, or terminate this rebate program without notice.

10 Billing & Payments.

10.1 **Billing Cycle.** Client is agreed upon with the Client during the Application and Account setup process. Client shall be responsible for all credit extended on the Account. This is not a revolving credit account. The total amount shown on each Account Statement is due and payable in full by the Due Date shown on the Statement. Unless otherwise agreed upon, the standard Due Date is ten (10) days after the date the Account Statement is created, regardless of the delivery method. Regardless of the delivery method selected, it shall be the obligation of the Client to notify Fuelman within five (5) business days of the end of each Billing Cycle if Client does not receive a Statement. If the Client does not receive a Statement and this payment is not completed by the Due Date, Client is responsible for the Late Fees and Finance Charges.

10.2 **Extended Terms Program.** Upon Client's request and subject to Fuelman approval, terms can be extended at an additional charge.

10.3 **Payment.** Client hereby unconditionally promises to pay Fuelman, in lawful money of the United States of America and in accordance with this Agreement, all outstanding Obligations (as defined below) which may, from time to time, be owing to Fuelman by Client. As used herein, "Obligations" shall mean all outstanding sums owing to Fuelman by Client, including, without limitation, reimbursement for petroleum products obtained through Fuelman, payments for any products or services obtained using the Card(s), and late interest, penalties, fees, report delivery, reporting, account charges, service charges, costs and expenses (including attorneys' fees) and all other obligations under this Agreement or otherwise. Client must pay all outstanding Obligations on the statement by the Due Date to avoid Late Fees and Finance Charges. Failure by Client to pay all amounts by the Due Date shall be a breach of the Terms and Conditions of this Agreement. Confirming payments received by 7:00 a.m. Eastern Time on a business day (Monday through Friday of each week, excluding banking holidays) will be credited to your Account as of the date received. Otherwise, payments will be credited to your Account as of the next business day. In the event your billing statement reflects a Due Date which falls on a day which is not a business day, your payment must be received by 7:00 a.m. Eastern Time on the preceding business day. If we do not receive your payment for the Amount Due by the Due Date, you may not be able to make any further purchases until such time that you pay the entire outstanding balance on the Account. We may charge our

10.4 billing and debiting cycle at any time by reflecting the change on your billing statement.

Guaranty. Guarantor hereby unconditionally and irrevocably guarantees to Fuelman and its successors, endorsees, transferees and assigns, the punctual payment when due (whether at stated maturity, by acceleration or otherwise) and performance of the Obligations, now or hereafter owing, whether for principal, late interest, penalties, fees, expenses or otherwise (collectively, the "Guaranteed Obligations"). Any and all payments by the Guarantor hereunder shall be made in full, without deduction for any set-off, counterclaim, or withholding. Guarantor acknowledges and agrees that this is a guaranty of payment when due, not of collection, and Guarantor agrees that his obligations under this Agreement shall not be discharged until the payment and performance, in full, of the Guaranteed Obligations. Guarantor shall be regarded, and shall be in the same position, as Client with respect to the Guaranteed Obligations. Guarantor expressly waives all rights he may now or in the future have under any statute, or a common law, or a law or in equity, or otherwise, to compel Fuelman to proceed in respect to the Guaranteed Obligations against Client or any other party before proceeding against, and in relation to proceeding against, Guarantor. Guarantor acknowledges and agrees that any delay or failure by Fuelman to take any action regarding the Guaranteed Obligations does not and shall not prohibit Fuelman from enforcing its rights under this Agreement and further that Guarantor's liability under this Agreement shall not be eliminated or reduced by any such failure or delay on the part of Fuelman. Guarantor further expressly waives and agrees not to assert or take advantage of any defense based upon the failure of Fuelman in respect of the Guaranteed Obligations against Client or any other party for the payment and Guaranteed Obligations. Guarantor agrees that any notice or directive given at any time by any person to Fuelman which is inconsistent with the waivers in the preceding two sentences shall be void and shall not be ignored by Fuelman. Guarantor further hereby waives diligence, presentment and demand (whether for non-payment or protest) or notice of acceptance, maturity, extension of time, change in nature or form of the Guaranteed Obligations (including, without limitation, composition, the amount of, or the terms of the Guaranteed Obligations), notice of material adverse change in Client's financial condition or any other fact which might materially increase the risk to Guarantor with respect to any of the Guaranteed Obligations or all other demands whatsoever and waives the benefit of all provisions of law which are or might be in conflict with the terms of this Agreement. Guarantor represents, warrants and agrees that Guarantor's obligations under this Agreement are not and shall not be subject to any conditions, offsets, or defenses of any kind against Fuelman or Client now existing or which may arise in the future. The Guarantor further agrees that the Guaranteed Obligations may be amended, modified, increased, extended or renewed, in whole or in part, without notice to or further assent from Guarantor, and that Guarantor will remain bound upon its guaranty notwithstanding any amendment, modification, increase, extension or renewal of any guaranteed Obligation. The foregoing waivers are of the essence of the transaction contemplated by this Agreement and, but for the guaranty contained herein and such waivers, Fuelman would decline to make the financial accommodations to Client and/or this Agreement. Each Guarantor is liable on a joint and several basis with Client and each other Guarantor.

10.4.1 **Account Principal Responsibility.** Each Principal for this Account, if any, as shown on the Application, is personally and unconditionally, jointly and severally liable with Client, as principal and not as surety or guarantor, for the payment and performance when due of all obligations owed on the Account, regardless of what purchases using the Cards, and the Principal agrees to pay such amounts according to the terms of this Agreement. Principal is responsible under this Agreement for all use of all of the Cards issued on the Account to the fullest extent of the law.

10.5 **Payment Methods.** The following terms shall apply to each of following payment methods.

10.5.1 **Client Check.** Prior to the Due Date specified on Fuelman's Statement to Client, Client will submit payment by valid check equal to the accumulated balance of the Account for the previous Billing Cycle. The client is required to note the Account number or Statement (BG) number on the check. If the matching Statement Remit to Copion is not included with payment, Fuelman reserves the right to charge an Exception Handling Fee of ten dollars (\$10.00) for processing the payment. Fuelman reserves the right to charge a Check Processing Fee of ten dollars (\$10.00) for processing the payment. If insufficient funds are available on the check, the account balance at the time a debit is initiated, at Fuelman's option, Client will not be able to make any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account.

10.5.2 **Client Initiated Online Payment.** Prior to the Due Date specified on Fuelman's Statement to Client, Client will submit payment by online method equal to the accumulated balance of the Account for the previous Billing Cycle. If insufficient funds are available on the Account balance at the time a debit is initiated, at Fuelman's option, Client will not be able to make any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account.

10.5.3 **Client Initiated Online Payment.** Prior to the Due Date specified on Fuelman's Statement to Client, Client will submit payment by phone either through Customer Service Representative or Interactive Voice Response (IVR) system. Fuelman reserves the right to charge a fee up to thirty dollars (\$30.00) for processing each Pay by Phone payment using either methods.

10.5.4 **Fuelman Initiated Credit Card Charge.** Prior to the Due Date specified on Fuelman's Statement to Client, Fuelman will initiate a charge to the Client's credit card on file to pay the accumulated balance of the Account from the previous Billing Cycle. Fuelman may also charge the credit card to pay the amount charged to the Account any time the Client has a balance on the Account. The Client's credit card may be used to pay the amount charged for the amount due on the Account may vary, depending on the processing cycle. If insufficient funds are available on the credit card to pay the Account balance at the time a debit is initiated, at Fuelman's option, Client will be prevented from making any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account. Fuelman may change its billing and charge cycle at any time by providing written notice to Client. Fuelman reserves the right to charge a credit card convenience fee up to three percent (3%) of the payment amount.

10.5.5 **Client Initiated Electronic Funds Transfer / Automated Clearinghouse (EFT/ACH) Payment.**

10.5.5.1 **Debits to Bank Account.** Prior to the Due Date identified on the Client's Statement, Fuelman will initiate a debit to the Bank Account to pay the accumulated balance of the Account from the previous Billing Cycle. For daily billed Client, Fuelman will initiate a debit to the Bank Account to pay the accumulated balance of the Account from the previous business day. Fuelman may also debit the Bank Account to pay the amount charged to the Account any time the balance of the Account reaches the Spend Limit. The exact time that the Bank Account will be debited for the amount charged to the Account may vary, depending on the processing capabilities of the bank at which the Bank Account exists. If insufficient funds are available in the Bank Account to pay the Account balance at the time a debit is initiated, Fuelman may prevent the Client from making any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account. Fuelman may change its billing and debiting cycle at any time by providing written notice to Client. Fuelman reserves the right to charge a bank handling fee of up to twenty five dollars (\$25.00) per debit of the Client's Bank Account.

10.5.5.2 **Change in Bank Account.** To change the Bank Account, Client's Representative must provide a written request of such change to Fuelman. The request should include the following information for the new account: bank name (the bank's identification number (BANK ID), Automated Clearinghouse (EFT/ACH) Payment address; branch number; bank routing number; and account number. The request should also contain a voided check from the new account. It will take approximately ten or more days for Fuelman to change the account. During this time, Client agrees to cooperate with Fuelman to provide additional information necessary to make the change and to execute a test of the change.

10.5.6 **Client Initiated Electronic Funds Transfer / Automated Clearinghouse (EFT/ACH) Payment.** Prior to the Due Date, Client will initiate a credit to Fuelman's bank account to pay the accumulated balance of the Client Account from the previous Billing Cycle. Fuelman reserves the right to charge a fee up to fifty dollars (\$50.00) for processing each Client initiated EFT/ACH.

10.5.7 **On Account.** Fuelman may offer Client the ability to pay in advance for its Fuel purchases. The Account will be debited for each purchase. The Account will be replenished by EFT with the amount equal to the prior week's Statement amount. Fuelman may charge a fee up to twenty-five dollars (\$25.00) for the Client's replenishing of the Account. A Dormancy Fee of thirty dollars (\$30.00) per Billing Cycle may be charged after one hundred eighty days (180 days) of inactivity, which may be waived by applicable law. Residual Account credit balances will be returned upon written request. Eschatement laws, where applicable, will be followed.

10.6 **Applying Payments.** Fuelman uses a "balance-forward" based accounting system. Therefore, all payments made by Client to Fuelman will be applied accordingly against the outstanding amount due at the time the payment is received. Subject to applicable law, we will apply and allocate payments and credits among balances owed by Client (whether for purchases, fees, late interest, or otherwise) in any order and manner determined by Fuelman in its sole discretion. Client agrees that Fuelman has the unconditional right to exercise this discretion in a way that is most favorable to or convenient for Fuelman.

10.7 **Late Payments.** All payments made by Client to Fuelman that are not received by the Due Date are considered late. Fuelman reserves the right to charge 9.99% of the New Balance (defined below) with a minimum of seventy five dollars (\$75.00) for each late payment, not to exceed the maximum rate allowable by applicable

law. To determine the New Balance for the purposes of late fees, Fuelman starts with the Amount Due on the statement for which the payment is late. Any purchases and other debts posted to the Account through the end date of the current (not succeeding) billing statement may be added to this. Appropriate finance charges or late interest charges and fees are added and other applicable adjustments made.

10.8 **Annual Percentage Rate.** The Annual Percentage Rate for purchases is thirty two percent (32%), which corresponds to the daily periodic rate of 0.087%, or the maximum amount allowed by applicable law, whichever is less. The daily periodic rate is the annual percentage rate divided by three hundred sixty-five (365).

10.9 **Finance Charges.** If Client's Statement is paid in full every Billing Cycle by the applicable Due Date, the Account will not incur Finance Charges. Finance Charges begin to accrue for each purchase as of the date the purchase is added to the Account. If payment in full of the Amount Due shown on the Statement for a Billing Cycle is credited to Client's Account by the Due Date shown on that respective Statement, then Finance Charges will not accrue for that Billing Cycle on which payment in full of the Amount Due is credited to Client's Account, provided the Amount Due of the next Statement attributable to such purchases is paid by the Due Date reflected in such next Statement (late interest due because Client does not pay in full the Amount Due of the next Statement will be reflected in the following Statement). In addition, Finance Charges will not accrue for purchases during a Billing Cycle if the Amount Due shown on the Statement for the prior Billing Cycle is zero (\$0) or a credit balance, provided the Amount Due of the next Statement attributable to such purchases is paid by the Due Date reflected in such next Statement (date interest due because Client does not pay in full the Amount Due of the next Statement will be reflected in the following Statement).

10.9.1 **Periodic Finance Charges** are calculated in two steps as follows: First, for each day of the Billing Cycle, Fuelman multiplies the daily balance by the applicable daily periodic rate.

10.9.2 Second, for each day of the prior Billing Cycle, Fuelman multiplies the daily balance for purchases made in that Billing Cycle by the same daily periodic rate. However, Fuelman does not do this second step if it received payment in full of the Amount Due on Client's previous billing statement by the date the payment was due or if a periodic finance charge was already billed on that balance.

10.9.3 For finance charge calculation purposes, the Billing Cycle begins on the day after the Closing Date of the Statement and includes the following number of days: The number of days in the Billing Cycle may vary. The daily balance is calculated by taking the beginning balance every day (which may include unpaid Finance Charges from previous Billing Cycles), adding any new transactions and any new fees, subtracting any credits or payments posted as of that day, and any other adjustments. Daily Periodic Finance Charges will be rounded to the nearest cent. Unless Fuelman elects to use a later date, a new Transaction is added to the balance as of the Transaction date shown on Client's billing report. A credit balance is treated as a balance of zero.

10.10 **Returned Payment.** If a check, credit card charge, or AFT/ACH is returned or denied, Fuelman reserves the right to assess the issues of late fees, dollars (\$50.00) Returned Payment Fee at the maximum amount allowable by applicable law for each occurrence. At our option, we will assess this fee the first time your check or payment is not honored even if it honored upon restitution. Fuelman may also charge the applicable Late Fees and Finance Charges incurred if balance is not received by Due Date due to returned payment.

10.11 **Reserve Amount.** Fuelman will notify Client of any reserve amount (the "Reserve Amount") necessary to open the Client's Account. The Reserve Amount will be paid to Fuelman by Client prior to using the Cards. Client shall continue paying any amounts on any payments on the Reserve Amount by the Due Date. This Reserve Amount will be used by Fuelman and may be returned to Client only after Client has satisfied all Obligations of the Account, the Card(s) have been returned to Fuelman and the Account has been closed. In the Event of Default (defined below), the Reserve Amount will be applied to the Account as a payment on the Account. Any interest earned on the reserve balance in the Account will accrue to Fuelman.

As part of our credit reviews, Client may be required to provide a Reserve Amount to Fuelman to secure the full and faithful performance of all of Client's obligations. If required, Client understands that the credit line will be equal to an amount that is up to 40% of the Reserve Amount. Client understands that the credit line will not be active for the full amount of the Reserve Amount until such time as the credit review is complete and funds are available for use. In the event Client defaults or otherwise fails to perform any obligation owed to Fuelman, Client authorizes Fuelman to use, without notice or demand, the Reserve Amount to satisfy any such default or obligation. Client represents that the Reserve Amount is made in the ordinary course of Client's business, and that the Reserve Amount is not a transfer made on account of any antecedent debt. No trust relationship is created between Fuelman and Client as a result of the Client's payment and Fuelman's acceptance of the security deposit. Client authorizes Fuelman to commingle the Reserve Amount with other Fuelman funds. After receiving a request from Client, Fuelman may, but is not obligated to, reevaluate the deposit funds and the amount of the Reserve Amount. Client will provide Fuelman financial information requested to conduct its evaluation. Upon evidence of satisfactory improvement in Client's financial condition, Fuelman may determine, in its sole discretion, to return the Reserve Amount. Fuelman may also require an increase in the Reserve Amount at any time from time to time in order to continue the credit relationship between the parties. Fuelman will return the Reserve Amount to Client upon termination of the Account only after Client has satisfied all Obligations of the Account, the Card(s) have been returned to Fuelman and full performance by Client is complete to Fuelman.

11. Reporting.

11.1 **Statements.** Fuelman shall furnish Client with a Statement at the end of each Billing Cycle.

11.1.1 **Information.** The Statement will include the following information:

11.1.1.1 The Account number and other relevant billing information.

11.1.1.2 The previous unpaid charges.

11.1.1.3 The previous statement balance.

11.1.1.4 Any maintenance-specific reports, driver-specific reports, and tax reports.

11.1.1.5 New charges and adjustments.

11.1.1.6 Amount Due.

11.2 **Standard Fleet Management Report.** Fuelman shall produce a standard fleet management report at the end of each Billing Cycle.

11.2.1 **Information.** The standard fleet management report will include the following information: The applicable fleet customer number. A single Client's Account can have multiple fleets (customer numbers) within it.

11.2.1.1 and other relevant information, reporting, account charges, Finance Charges, late interest, fees, and other charges posted to the Account.

11.2.1.2 Detail on each Transaction posted to the Client's Account during the Billing Cycle, including date, Merchant Location, vehicle based on the Card used, employee/driver based on the Driver ID used, product description based on the product type, quantity purchased, total purchase amount, and total applicable taxes.

11.3 **Delivery Methods.** Fuelman offers several different methods for delivering Statements and the standard fleet management report:

11.3.1 **By Mail.** Fuelman reserves the right to charge up to ten dollars (\$10.00) for each mail delivery of each report. Client with failed fax and email deliveries will be charged the mail delivery rate for any resubmission of the reports via mail, performed at Fuelman's discretion.

11.3.2 **Via Facsimile.** Fuelman reserves the right to charge up to five dollars (\$5.00) for each fax delivery of each report. Mailed resubmissions will be charged at the mail delivery rate described in Section 11.3.1.

11.3.3 **Via eMail.** Mailed resubmissions will be charged at the mail delivery rate described in Section 11.3.1.

11.4 **Optional Fleet Management Reports.** Fuelman produces a variety of optional fleet management reports, including Driver ID and Fuelman's optional reports, and tax reports. Fuelman reserves the right to charge Client a fee of up to fifteen dollars (\$15.00) for delivering each of these optional reports or up to one hundred dollars (\$100.00) per quarter.

11.5 **Tax Exempt Processing & Reporting.** Qualified tax exempt Clients may be eligible to purchase Fuel from Fuelman tax-free at the point-of-sale. Fuelman reserves the right to charge a processing fee of up to one percent (1%) of the total purchases for this service except where prohibited by applicable law.

11.6 **Multiple Report Copies.** Fuelman will provide multiple copies of mailed reports upon request. Fuelman may charge up to five dollars (\$5.00) per report copy.

12. **Change In Terms And Conditions.** Fuelman may change the Terms and Conditions of this Agreement at any time by giving Client written notice of such amendment. Guarantor agrees to be bound by any such changes, if written notice is given to Client. Such changes will go into effect as outlined in the changenotice. If permitted by applicable law, such changes will apply to existing balances as well as future purchases and balances. Any modification of or amendment to this Agreement will be delivered to Client through U.S. mail at the address Client provided to and periodically provides updates to Fuelman. All initial amendment notifications will be sent to Client in advance of the effective date thereof and copies as required by law. Client shall be deemed to have accepted such amendments by continued use, after the effective date of the amendment, of any of the Card(s) issued to Client. Notwithstanding any of the foregoing provisions of this Section, Fuelman retains the right to change Spend Limits for the Account or to suspend, cancel, or terminate the Account or any Card

without Client's consent and without the need for notice or opportunity to be heard. Client agrees to be bound by the terms of this Agreement.

13 **Events Of Default.** The occurrence of any of the following shall constitute an "Event of Default" hereunder: 13.1.1 Client shall fail to pay any principal, late interest, or other amount payable in respect of any Obligation when due;

13.1.2 Client shall fail to observe or perform any other covenant contained in this Agreement;

13.1.3 Any representation or warranty made by Client or Guarantor herein or in the Application proves untrue in any material respect as of the date of the making or furnishing thereof;

13.1.4 Either Client or Guarantor shall (i) make an assignment for the benefit of its creditors; (ii) admit in writing its inability to pay its debts as they become due; (iii) file a petition under any applicable insolvency, debtor relief or reorganization statute, including without limitation, the United States Bankruptcy Code; (iv) be subject to an involuntary petition under any applicable insolvency, debtor relief, or reorganization statute; (v) appoint or consent to the appointment of a receiver, conservator, liquidating agent, or committee in any insolvency, reorganization, or liquidation proceeding; (vi) be a party to any proceedings, or relating to Client or Guarantor, or any substantial portion of their assets; or (vii) take any corporate action for the purpose of effecting any of the foregoing; or

13.1.5 Guarantor shall terminate or contest the validity or enforceability of Guarantor's guaranty hereunder or Guarantor's guaranty hereunder shall be determined to be invalid or unenforceable for any reason.

14 **Remedies Upon Event Of Default.** Without limiting any other rights or remedies of Fuelman provided for elsewhere in this Agreement, and, by application of law, or its equity, or otherwise, upon or at any time after the occurrence of any Event of Default, Fuelman shall have and may exercise, at its election, from time to time, any and all rights and remedies available at law, in equity, or otherwise, including, without limitation, (i) declaring the entire unpaid balance of the Obligations hereunder or any part thereof immediately due and payable, whereupon it shall be due and payable; and (ii) demanding payment from the Guarantor.

15. Dispute Resolution.

15.1 **Disputed Transactions.** To dispute any Transaction on Client's Statement, Client must notify Fuelman in writing as set forth below within fifteen (15) days of the date of Client's Statement. Fuelman will promptly investigate the matter and respond to Client within sixty (60) days after receiving written notice. Notice should be sent to: FUELMAN, P. O. Box 924138, Norcross, GA 30010, Attention: Customer Service. Fuelman shall not be responsible for, or Client shall waive any discrepancies or disputes that Client does not report to Fuelman in writing within fifteen (15) days after the date of Client's Statement.

15.2 **Disputed Transaction Notices.** Client may report any dispute to Fuelman by telephone. However, telephone notice will not preserve Client's rights or otherwise serve as effective notice under this Agreement. Client must put in writing any dispute regarding a Transaction on Client's Statement. Client's letter must include the payment amount, the amount in dispute, the amount in question, dollar amount and identification of the Transaction(s) in question; and any possible explanation of the error.

15.3 **Dispute Resolution.** The parties agree that they will work in good faith to resolve any disputes arising under this Agreement. If the dispute cannot be resolved by the parties, then at Fuelman's sole discretion, the dispute will be resolved by binding arbitration in Atlanta, Georgia in compliance with the American Arbitration Association's commercial arbitration rules or by litigation in accordance with Section 25.1. The foregoing does not prohibit either party from seeking injunctive relief without complying with this Section. Client will represent and warrant to Fuelman for all of its Transactions (including collections and drivers' fees and costs) incurred in connection with enforcing any of Fuelman's rights under this Agreement. To accommodate the right to arbitrate, Client agrees that Client will neither assert, nor participate in, a class action or other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Client's relationship with Fuelman.

16. Security, Loss, Theft Or Unauthorized Use Of Card.

16.1 **General Security.** Each Card can be programmed to only allow Fuel or both Fuel & Maintenance services such as oil changes, car washes, vehicle washes, vehicle waxing, tire rotations and tire balancing. Fuelman reserves the right to issue, deactivate, suspend, or replace any Card. Fuelman is authorized with the Card number, product code, quantity and driver's Driver ID across the proprietary Fuelman network to ensure that the purchase is authorized and limited to the product and quantity (e.g. gallons of Fuel or dollars of Maintenance) that have been pre-approved. This system also helps prevent unauthorized Driver IDs and stolen Cards from being used to make purchases. The product and quantity controls are subject to each Merchant Location's POS Authorization/Limitations described in Section 16.3.

16.2 **Fuelman's Liability.** In the event an unauthorized Transaction occurs, subject to the limitations and Client responsibilities explained in Section 16.3, and in the event the Account has been issued fewer than ten (10) Cards, Fuelman will assume full responsibility for those purchases. If the Account has been issued ten (10) or more Cards, Client assumes all liability and responsibility for unauthorized Transactions or Account activity.

16.3 **Client's Responsibility.** It is the responsibility of Client to ensure proper security controls are kept in place to protect the Cards and Driver IDs and that only authorized employees or agents of Client use them to make purchases. It is also the Client's responsibility to lock any inactive, misplaced, or stolen Cards and Driver IDs immediately. Fuelman is not responsible for fraudulent Transactions made on unlocked Cards with valid Driver IDs referred to as "Unauthorized Transactions." Client's responsibility to protect the Cards and Driver IDs includes, but is not limited to, the following: (a) Client can contact Fuelman Customer Service during regular business hours via phone call with the requested change, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. All Transactions in which a valid/unlocked Card number was used in conjunction with a valid/active Driver ID will be considered to be authorized Transactions in which Client is fully responsible for payment. It is also the Client's responsibility to review the standard fleet management reports and optional email exception alerts to identify potential purchasing discrepancies. Client should instruct its employees to report any unauthorized purchases to Fuelman immediately.

16.4 **Lost or Stolen Cards.** Client shall report all lost or stolen Cards to Fuelman immediately via phone call to Fuelman Customer Service identifying the Card number and such other details concerning the loss or theft of the Cards as are known by Client, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. Client shall be liable for all Transactions made by lost or stolen Cards until 24 hours after the time Fuelman receives Client's notice of such lost or stolen Cards. Client and Guarantor(s) agree to and acknowledge full liability for any losses resulting from any failure to report the loss of this Card(s) in accordance with the terms hereof.

16.5 **Terminated Drivers.** It is the Client's responsibility to lock a terminated driver's Driver ID as explained in Section 16.3.

16.6 **Miscellaneous Product Purchase Limitations.** In addition to the vehicle-related product categories (Fuel, Maintenance supplies, and Maintenance services) a Card can be allowed to purchase non-vehicle related items under the Miscellaneous product category. If a Client does not want to allow non-vehicle related purchases, Client should set each Card's Miscellaneous product category spending limit to zero dollars (\$0).

16.7 **Governance of Laws.** Client's purchase of Fuel or Maintenance services from Fuelman is governed by Louisiana law. **Tax Reporting Limitations.** Fuelman calculates applicable taxes for Fuel. Applicable taxes for Maintenance and other non-Fuel purchases are dependent on the information provided to Fuelman by the applicable Merchant Location.

16.8 **Merchant Limitations.** The personnel (if any) at a Merchant Location are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by any of the Merchants or any other liability or damage which arises from the action or negligence of the personnel of any of the Merchants or any other liability or damage which arises from the action or negligence of the personnel of any of the Merchants.

16.9 **POS Authorization/Limitations.** Authorization controls are provided as a convenience to the Client and are not guaranteed to prevent unauthorized purchases. Specifically, depending on the particular point-of-sale (POS) equipment and Fuel dispenser controls being used by a particular Merchant Location, the product type and spending limit may not be enforceable prior to completing the Transaction. In these situations the Transaction will be considered to be authorized, but will be identified as an exception on the Client's standard fleet management report and reported via email if desired by Client.

16.10 **Class Claims.** All claims for defective Fuel or Maintenance must be made to the Merchant operating the Merchant Location where such Fuel or Maintenance was purchased. Any claim for defective Fuel or Maintenance is waived by Client unless made in writing to Merchant, with a copy to Fuelman, within fifteen (15) days from the date of the purchase of the alleged defective Fuel or Maintenance giving rise to the claim. Fuelman will not accept any claims for defective Miscellaneous.

17. Term and Termination.

17.1 **Term.** The term of the Account shall be one (1) year from the date the Cards are issued to Client unless either party terminates the Account as provided in this Agreement. Thereafter, Fuelman will automatically renew Client's Account for additional one (1) year periods unless either Fuelman or Client gives the other party notice of intent not to renew at least thirty (30) days before its scheduled expiration date. At the outset of any such one year renewal period, Fuelman, at its discretion, may issue replacement Cards to Client.

17.2 **Termination.** Fuelman may terminate Client's Account and its use of the Cards for any reason, including, but not limited to, if Client fails to pay any amounts due to Fuelman, fails to pay for any reason by providing notice of non-payment to Fuelman, fails to pay any amounts due to Fuelman for any reason and all transactions, balances, fees, and other amounts incurred up until midnight of the day Fuelman receives notice of such termination.

17.3 **Termination by Fuelman.** Fuelman may terminate Client's Account and its use of the Cards for any reason, including, but not limited to, if Client fails to promptly pay any amounts due to Fuelman, fails to use the Cards exclusively for business purposes, or Fuelman's decision to terminate the Fuelman Program. Fuelman will notify Client's Representative at the time of termination that the Client's Account or Card(s) will be terminated along with the reason(s) for such termination.

17.4 **Change In Ownership.** Client must notify Fuelman immediately in the event of any sale of a majority ownership of its equity, any sale of a majority of its assets, any merger, reorganization or other transaction which results in a change of ownership of Client. Fuelman may terminate the Account in its sole discretion upon any change of ownership.

19. Contact Us Notices.

19.1 **Fleet Contact.** The "Fleet Contact" listed on the Application is authorized to provide Fuelman with the information necessary to establish Client's Account records and Cards, including, but not limited to vehicle, driver and card user related information. Fuelman is authorized to send all Account information and Client's Cards to the Fleet Contact's attention.

19.2 **Accounts Payable Contact.** The "Accounts Payable Contact" listed on the Application is authorized to provide Fuelman with payment information about payments on the Account. This contact may be the same person as the Fleet Contact and will be Fuelman's primary contact in the event that the Account becomes delinquent or exceeds the assigned Spend Limit.

19.3 **Notices.** Except as specified otherwise in this Agreement, all notices, requests, demand, or other communications required to be made pursuant to this Agreement shall be in writing and shall be given by mail by first class, certified or registered mail, postage prepaid, or by the sending by facsimile (with confirmation by mail to be provided by the party giving notice) or by reputable overnight delivery service (such as FEDEX or UPS) or by personal delivery to the recipient party, to the address indicated on file for Fuelman and in the Application, or to the Client's Representative, if any, at the Client's address including the notice in this Statement provided to Client. A notice will be deemed received on the actual date of receipt. Fuelman's address for notices is: FUELMAN, P. O. Box 924138, Norcross, GA 30010, Attention: Customer Service.

20 **Maximum Lawful Rate.** In no event shall any Finance Charges or other rates payable under any Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Client and Fuelman, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment of Finance Charges, and to agree to pay, however, that anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *in no event*, as of the date of this Agreement, Client is and shall be liable only for the payment of such maximum amount as allowed by law, and payment received from Client in excess of such legal maximum amount, whenever received, shall be applied to reduce the principal balance of the Obligations hereunder to the extent of such excess.

21 **Credit Reporting Agencies.** Client and Guarantor(s) authorize Fuelman to report to any commercial credit reporting agency, Client's or Guarantor's performance under this Agreement, including but not limited to Dunn & Bradstreet, Experian Business or Equifax Credit Information Services. If the Account is personally guaranteed, Fuelman reserves the right to report Account information to consumer credit reporting agencies, including but not limited to Equifax Credit Information Services, Experian and TransUnion. Client and Guarantor have the right to notify the consumer reporting agencies not to use its respective credit report in connection with a credit transaction it did not initiate. To do so, contact Equifax Credit Information Services, P.O. Box 740123, Atlanta, GA 30374-0123, Experian, P.O. Box 919, Allen, TX 75013; and TransUnion, P.O. Box 97328, Jackson, MS 39287-3238; or Client and Guarantor may notify all three agencies by calling 1-888-567-6688.

22 **Limitation of Liability.** FUELMAN WILL HAVE NO LIABILITY FOR INDIRECT, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING CLAIMS FOR LOSS OF PROFITS, WHETHER RESULTING DIRECTLY OR INDIRECTLY TO CLIENT, GUARANTOR, OR THIRD PARTIES, AND WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR RESULT FROM A BREACH OF THIS AGREEMENT. IN THE EVENT A COURT IN A FINAL, NON-APPEALABLE AWARD FINDS FUELMAN LIABLE FOR ANY DIRECT DAMAGES, FUELMAN'S LIABILITY IN THE AGGREGATE FOR SUCH DIRECT DAMAGES WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CLIENT TO FUELMAN FOR THE MONTH PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

23 **Indemnification.** To the maximum extent allowed by law, Client (the "Indemnitor") will indemnify and hold harmless Fuelman and its affiliates, directors, officers, employees, and agents (the "Indemnitees") from and against any and all third party claims, losses, damages, suits, fees, judgments, costs, and expenses (collectively referred to as "Claims"), including attorneys' fees, in responding to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with (a) the Indemnitor's (or its employees' or agents') negligence, willful misconduct, or breach of any representation, warranty or other obligation under this Agreement; or (b) any personal injury (including death), damage to property, or environmental clean-up and related costs, resulting from the Indemnitor's or its employees' or agent's acts or omissions. The Indemnitees will give prompt notice of any Claim to the Indemnitor, who will defend the Indemnitees at the Indemnitees' request.

24 **Non-Disclosure.** Fuelman may provide to Client access to confidential and proprietary information regarding Fuelman's business, business plans, pricing and reimbursement policies, and other issues ("Confidential Information"). Client will keep all Confidential Information in strict confidence and not disclose or use the Confidential Information during the term of this Agreement and for five (5) years thereafter, provided that for any Confidential Information deemed to be a "trade secret," Client shall protect and not disclose or use such Confidential Information for so long as such Confidential Information is will not disclose its terms except as permitted by Fuelman. Client will inform its employees and agents as to the confidential and proprietary nature of the Confidential Information to which they may be exposed and take all necessary actions to ensure that such employees and agents keep such information strictly confidential. Client will return any Confidential Information upon request from Fuelman. Client agrees that any disclosure of Confidential Information would cause irreparable harm for which monetary damages may not be a sufficient remedy, so Fuelman will be entitled to seek all remedies and damages available at law and in equity, including but not limited to injunctive relief, without the posting of a bond.

25. Miscellaneous Provisions.

25.1 **Governance of Laws/Trial; Binding Arbitration.** This Agreement will be governed by Louisiana law, without regard to its conflicts of laws principles. Many Account maintenance, treasury and accounting functions are performed by Fuelman in Louisiana, where it has a substantial presence.

Arbitration. Client or FleetCor may, without the other's consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between or among such parties relating to the Cards or Account, a prior related account, or the relationship of such parties, including without limitation claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision, and no matter what legal theory such claims may be based on or what remedy (damages, or injunctive or declaratory relief) such claims seek. Client's consent to this arbitration provision is deemed to be a consent to the arbitration provision ("Claim"). To accommodate the right to arbitrate, Client agrees that it will neither assert, nor participate in, a class action or other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Client's relationship with FleetCor. The party filing for arbitration must choose one of the following arbitration firms and follow its rules and procedures for initiating (including paying the filing fee) and pursuing arbitration before a single neutral arbitrator: American Arbitration Association, National Arbitration Forum or JAMS. All other fees will be allocated as provided by the rules of the arbitration firm and applicable law. This includes Claims based on contract, tort (excluding intentional tort), fraud, agency, you or our negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; and Claims made independently or with other claims. A party who initiates a proceeding in court may elect arbitration with respect to any Claim advanced in that proceeding

What Claims are subject to arbitration? All Claims relating to your Cards or Account, a prior related account, or our relationship are subject to arbitration, including Claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision. All Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek.

This includes Claims based on contract, tort (excluding intentional tort), fraud, agency, you or our negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; and Claims made independently or with other claims. A party who initiates a proceeding in court may elect arbitration with respect to any Claim advanced in that proceeding

by any other party. Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only to an individual (non-class, non-representative) basis.

Whose Claims are subject to arbitration? Not only ours and yours, but also Claims made by or against anyone connected with us or you or claiming through us or you, such as a co-applicant or authorized user of your account, an employee, agent, representative, affiliated company, predecessor or successor, heir, assignee, or trustee in bankruptcy.

What time frame applies to Claims subject to arbitration? Claims arising in the past, present, or future, including Claims arising before the opening of your account, are subject to arbitration.

Broadest interpretation. Any questions about whether Claims are subject to arbitration shall be resolved by interpreting this arbitration provision in the broadest way the law will allow it to be enforced. This arbitration provision is governed by the Federal Arbitration Act (the "FAA").

What about Claims filed in Small Claims Court? Claims filed in a small claims court are not subject to arbitration, so long as the matter remains in such court and advances only an individual (non-class, non-representative) Claim.

How Arbitration Works

How does a party initiate arbitration? The party filing an arbitration must choose one of the following three arbitration firms and follow its rules and procedures for initiating and pursuing an arbitration: American Arbitration Association, JAMS, and National Arbitration Forum. Any arbitration hearing that you attend will be held at a place chosen by the arbitration firm in the same city as the U.S. District Court closest to you from the current billing address or at some other place to which you and we agree in writing. You may obtain copies of the current rules of each of the three arbitration firms and forms and instructions for initiating arbitration by contacting them as follows:

American Arbitration Association, 335 Madison Avenue, Floor 10, New York, NY 10017-6605 Web site: www.adr.org

JAMS, 1920 Main Street, Suite 300, Irvine, CA 92610 Web site: www.jamsadr.com

National Arbitration Forum, P.O. Box 503, Minneapolis, MN 55408 Web site: www.arbitration-forum.com

What about Claims pending in court? Claims pending in court are subject to arbitration. If you file the litigation or Claims pending arbitration, even if such Claims are part of a lawsuit, unless a trial has begun or a final judgment has been entered. Even if a party files to exercise these rights at any particular time, or in connection with any particular Claims, that party can still require arbitration at a later time or in connection with any other Claims. What procedures and law are applicable in arbitration? A single, neutral arbitrator will resolve Claims. The arbitrator will be either a lawyer with at least ten years of experience or a retired or former judge, selected in accordance with the rules of the arbitration firm. The arbitrator will follow procedures and rules of the arbitration firm and applicable law. However, we will advance or reimburse your fees if the arbitration firm or arbitrator determines there is good reason for requiring us to do so, or if you ask us and we determine there is good reason for doing so. Each party will bear the expense of that party's attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines.

Who can be a party? Claims must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis. The arbitrator will not award relief for or against anyone who is not a party. If you or we require arbitration of a Claim, arbitration of your fees if the arbitration firm or arbitrator determines there is good reason for requiring us to do so, or if you ask us and we determine there is good reason for doing so. Each party will bear the expense of that party's attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines.

When is an arbitration award final? The arbitrator's award is final and binding on the parties unless a party appeals it or a court vacates the award within fifteen days of notice of the award. The appeal must request a new arbitration before a panel of three neutral arbitrators designated by the same arbitration firm. The panel will consider all factual and legal issues anew, follow the same rules that apply to a proceeding using a single arbitrator, and make decisions based on the vote of the majority. Costs will be allocated in the same way they are allocated for arbitration before a single arbitrator. An award by a panel is final and binding on the parties after fifteen days has passed. A final and binding award is subject to judicial review and enforcement as provided by the FAA or other applicable law.

Survival and Severability of Terms. This arbitration provision is intended to survive the termination or expiration of this Agreement, and any and all rights and obligations between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing.

25.2 **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman's rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.

25.3 **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.

25.4 **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.

25.5 **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of such right. A waiver by any party of any breach or obligation will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party hereto shall be binding upon the party making such waiver in the event of a subsequent default.

25.6 **Severability.** If any provision in this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, such provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.

25.7 **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The captions and headings included in this Agreement have been inserted for convenience only and may not be used in connection with the interpretation of this Agreement. Each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties to this Agreement.

(05232016) FC5644



**FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC
FUELMAN FLEET CARD CLIENT AGREEMENT
TERMS AND CONDITIONS**

1. **Definitions.**

1.1 **Account.** "Account" shall mean the internal Fuelman account established for Client.

1.2 **Agreement.** "Agreement" shall mean this agreement comprised of the Application (if any), the Approval Letter (if any) and this document containing the Terms and Conditions.

1.3 **Agreement Date.** "Agreement Date" shall mean the date on which Fuelman accepts the Client's Application and issues one or more Cards for Client's Account.

1.4 **Application.** "Application" shall mean the application completed by Client in applying for the Account through Fuelman.

1.5 **Approval Letter.** "Approval Letter" shall mean the letter, if any, sent by Fuelman to Client that approves the Application and establishes the Account under these Terms and Conditions.

1.6 **Bank Account.** "Bank Account" shall mean any bank account that Client has designated on the Application or by written notice to Fuelman for electronic funds transfer, automated clearinghouse or other electronic transfer of money to pay amounts due for Client's Account.

1.7 **Billing Cycle.** "Billing Cycle" shall mean the period of time set forth in the Approval Letter or any subsequent notification for which Transactions will be accepted and a Statement for the Account will be provided.

1.8 **Card or Cards.** "Card" or "Cards" shall mean the Fuelman fleet card or cards issued to Client.

1.9 **Cardholder.** "Cardholder" shall mean the person presenting the Card to the Merchant to be used to purchase Fuel and/or Maintenance.

1.10 **Client.** "Client" shall mean the business entity identified in the Application.

1.11 **Client's Representative.** "Client's Representative" shall mean the person(s) identified as Client's representative on the Application.

1.12 **Driver ID.** "Driver ID" shall mean the personal identification number issued to the Client by Fuelman for use with a Card to authorize a particular Transaction.

1.13 **Due Date.** "Due Date" shall mean the date upon which payment from Client is due to Fuelman as stated on Fuelman's Statement to Client.

1.14 **FleetCor.** "FleetCor" shall mean FleetCor Technologies Operating Company, LLC, the company which owns the Accounts and in whose favor all Obligations, as defined in Section 10.3, of Client under this Agreement flow.

1.15 **Fuelman.** "Fuelman" shall mean Fuelman, the division of FleetCor administering the Card(s) and Account.

1.16 **Fuel.** "Fuel" shall mean any combustible material dispensed by volume that is purchased with a Card.

1.17 **Guaranteed Obligations.** "Guaranteed Obligations" shall have the meaning set forth in Section 10.4.

1.18 **Guarantor(s).** "Guarantor" shall mean the person(s) identified on the Application or a separate guaranty document, if any, that guarantees Client will comply with this Agreement and pay all amounts owed to Fuelman.

1.19 **Maintenance.** "Maintenance" shall mean any non-Fuel product or service for a vehicle that is purchased with a Card (e.g., oil, wiper blades, fluids, towing, roadside assistance, parts, supplies, tires, oil changes, brakes, glass, exhaust systems, transmissions, and repair services).

1.20 **Merchant.** "Merchant" shall mean a third party that operates retail locations providing Fuel and/or Maintenance in the Fuelman network.

1.21 **Merchant Location.** "Merchant Location" shall mean a Merchant's Fuel and/or Maintenance site that is participating in the Fuelman network, such that a Card may be used to purchase Fuel and/or Maintenance at such site.

1.22 **Miscellaneous.** "Miscellaneous" shall mean any non-vehicle related product or service that is purchased with a Card (e.g., food, drink, magazines, cigarettes, lottery tickets).

1.23 **Principal.** "Principal" shall mean the person identified on the Application, if any, who applies for the Account as a co-maker with the Client.

1.24 **Reporting.** "Reporting" shall mean related products or services that are purchased to manage the vehicle fleet (e.g., paper report delivery, fax report delivery).

1.25 **Statement.** "Statement" shall mean the billing statement provided at the end of each Billing Cycle.

1.26 **Terms and Conditions.** "Terms and Conditions" shall mean the terms and conditions contained in the Agreement and any other electronic or paper document presented to the Client by or on behalf of Fuelman in connection with this Agreement (e.g. the physical card, driver instructions, site guides, reports, billing/statement inserts, Application, and web site). In the event of a conflict between any such other document and this Agreement, this Agreement will control unless specifically provided otherwise in the other document.

1.27 **Transaction.** "Transaction" shall mean any individual purchase with a Card.

2 **General.**

2.1 **Agreement for Account and Services.** Client and, if applicable, Principal or Guarantor, shall submit an Application to signify Client's application for an Account with Fuelman. If Fuelman accepts such Application, Fuelman shall send

an Approval Letter and the Terms and Conditions. A Client's Representative, along with Cards and Driver IDs issued for the Account. Upon Client's first use of a Card, Client will be deemed to have accepted the Approval Letter and these Terms and Conditions and Client and Fuelman shall be deemed to have entered into this Agreement. If a Guarantor also submits the Application or a separate guaranty then Client and Guarantor shall both be responsible for all payments owed by Client hereunder and for compliance by Client with these Terms and Conditions. If a Principal jointly submits the Application with Client, then Client and Principal are jointly and severally responsible for all payments owed by Client hereunder and for compliance with these Terms and Conditions

2.2 **Entire Agreement.** These Terms and Conditions, together with the Application (if any) and the Approval Letter (if any), are the exclusive statement of the terms and conditions with respect to their subject matter as of the Agreement Date and supersede all prior agreements, negotiations, representations and proposals, whether written or oral. Deviations from the Agreement are not valid unless confirmed in writing by an authorized representative of Fuelman.

3 **Account Administration and Card Issuance.**

3.1 **Establishment of Client Account.** Upon issuance of the Cards, Fuelman will establish an Account for Client that will be used to pay for Fuel, Maintenance and Miscellaneous items purchased through the use of the Cards at Merchant Locations. For purpose of determining Client's domicile, Client acknowledges and agrees that its domicile shall be the state reflected in the Client's mailing address as reflected on the Client's Statement.

3.2 **Government Regulation.** Neither Client nor any Guarantor of the Account shall (a) be or become at any time, and are not currently, subject to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Fuelman from making any advance or extension of credit to Client or any Guarantor of the Account or from otherwise conducting business with Client or any Guarantor of the Account, or (b) fail to provide documentary and other evidence of Client's identity or the identity of any Guarantor of the Account or person to whom Client gives a Card, as may be requested by Fuelman at any time to enable Fuelman to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

3.3 **Spend Limit.** Upon Fuelman's approval of the Client's Application, Fuelman will establish an aggregate spending limit for all the Cards issued to Client under the Account (the "Spend Limit") based on Fuelman's evaluation of the Client's creditworthiness. Fuelman reserves the right to increase or decrease this Spend Limit at any time with or without providing notice to Client. Fuelman may decide, at its own discretion, to decline or approve any transactions made after the Client exceeds the Account Spend Limit, or to lock the Account until the balance due is paid in full.

3.4 **Initial Cards.** Upon Fuelman's approval of Client's Application, Fuelman will issue one or more Cards and Driver ID numbers to Client. Client shall be responsible for distributing the Cards and Driver IDs to its employees or agents.

3.5 **Additional Cards.** If, at some time after the initial issuance of Cards to Client, Client desires one or more additional Cards, Client must notify Fuelman via the online application or in writing or by calling Fuelman Customer Service.

3.6 **Replacement Cards.** If Client desires one or more replacement Cards, including, but not limited to replacing lost or damaged Cards, Client must notify Fuelman via the online application or in writing or by calling Fuelman Customer Service.

3.7 **Administration of Cards.** Client shall be solely responsible for the use, maintenance, administration, and security of the Cards and any personal identification numbers, vehicle identification numbers, employee identification numbers or other information necessary to access your Account or to use any card issued on your Account, including, but not limited to, within your business or distributing cards to, and collecting cards from, your employees and agents. Client shall be solely responsible for monitoring transactions, statement balances, and receipts as well as reviewing and replying to any fraud alert notifications. Notwithstanding any other provision in this Agreement, Client shall be responsible for any loss or misuse of cards by your employees and agents or others who obtain possession or use of cards issued to you. See Section 16 for more information regarding Client responsibilities.

3.8 **Account Administration Fee.** Fuelman shall be responsible for collecting and reporting all Transactions by date, vehicle, Merchant Location, and driver based upon data received by Fuelman. In addition, Fuelman shall be responsible for maintaining the database for the Client with all Card numbers, vehicle data, driver data, and purchase control data. Fuelman reserves the right to charge up to 10c per gallon or two dollars (\$2.00) per transaction Minimum Program Administration Fee for ongoing program operation costs.

3.9 **Card Fees.** Fuelman reserves the right to charge a card fee of up to ten dollars (\$10.00) per Card per month to support the use of the Card.

3.10 **Property.** All Cards remain the property of Fuelman and shall be surrendered immediately by Client to Fuelman upon Fuelman's request or if Client or Fuelman cancels the Card or Account as permitted herein.

3.11 **Cancellation of Cards.** If, at any time, for any reason, Client desires to cancel any particular Card, but not the Account, Client's Representative must notify Fuelman via the online application or in writing of such cancellation. Client's liability for purchases made using the canceled Card shall end at midnight of the day that

the Card is canceled or the Account is closed.

5.12 **Suspension of Cards.** Fuelman, at its sole discretion, may suspend or terminate the use of any Card at any time for any reason, including, but not limited to, inactivity, unusual activity, or suspected loss, theft, fraud, or in compliance with the USA Patriot Act. However, nothing in this Agreement shall obligate Fuelman to monitor the use of any Card, and, as described in this Agreement, Client is solely responsible for the use of any outstanding Cards.

5.13 **Suspension of Account.** Fuelman, at its sole discretion, may suspend or terminate the use of an Account at any time for any reason, including, but not limited to, inactivity, unusual activity, change in creditworthiness, late payment (excessive days beyond terms), aggregate outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) over the Spend Limit or in compliance with the USA Patriot Act.

5.14 **Non-Transferability; Revocability.** All Cards and any and all rights and privileges to which its holders are entitled are not transferable and may be revoked for any reason, including but not limited to, a breach of any of the Terms and Conditions of this Agreement, without prior notice at any time and with no liability to Fuelman, at which time any credit extended hereunder shall be revoked and all sums owed by Client to Fuelman pursuant hereto shall become immediately due and payable.

4 **Services Provided.**

4.1 **General Services.** Fuelman shall provide the following services to Client under this Agreement:

4.1.1 Issue to Client the Cards upon Fuelman's approval of the Application.

4.1.2 Maintain a network of Merchant Locations for Fuel and Maintenance where Client may make purchases with Cards pursuant to this Agreement.

4.1.3 Provide an online directory to identify accepting Merchant Locations.

4.1.4 Maintain an authorization control system to verify that a Card being presented for payment is valid/active and that the Driver ID being used is valid/active for that particular Card. In addition, individual Card-level spending limits can be established by the Client for each product category (e.g., Fuel, Maintenance supplies, Maintenance services, Miscellaneous).

4.1.5 Issue management reports and billing Statements to Client showing details of all posted Card Transactions (as detailed in Section 11.2) during the Billing Cycle.

4.2 **Referrals.** Fuelman reserves the right to deliver informational material in reference to ancillary fleet management related products and services provided by other vendors to the Client. In no case is Fuelman making any representation about the quality or value of any particular product or service.

4.3 **Ancillary Products and Services.** Fuelman reserves the right to make certain ancillary fleet management related products and services (e.g., emergency roadside assistance) that are delivered by other vendors/companies available to the Client for purchase on Cards. For the purpose of reporting the Transactions, these ancillary products and services are considered Maintenance. The act of requesting the ancillary product or service with a valid Card and Driver ID, establishes approval for Fuelman to charge and collect the corresponding balance incurred by these ancillary products and services.

4.3.1 **Roadside Assistance for Unattended Vehicles.** Through an association with a third party, Fuelman may offer roadside assistance for vehicles, including towing services. The services may not be available for unattended vehicles. The personnel of any such third party provider are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by such third party, or for any other liability or damage which arises from the action or negligence of the personnel of the third party, its agents or its employees.

4.3.2 **Additional Services.** Client may be eligible for additional services from time to time. If Client is eligible for an additional service, Fuelman may enroll Account in the service. The terms and fees applicable to such service will be disclosed prior to enrollment. Client will have the opportunity to opt-out of enrollment in such service.

4.4 **Inability to Operate.** Fuelman shall have no responsibility for any person(s) or machine(s) rejection of or refusal to honor a Card. Client agrees there shall be no liability to Fuelman or any other company or entity, if for any reason any Merchant or Merchant Location should fail to allow the purchase of Fuel or Maintenance, fail to authorize Transaction(s) or fail to operate in any other manner, even though a Card is valid.

4.5 **WARRANTY DISCLAIMER. FUELMAN DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ALL FUELMAN ACCOUNTS, PRODUCTS, AND SERVICES ARE PROVIDED ON AN AS-IS BASIS.**

5 **Purchases.**

5.1 **Use of Cards.** Client may use the Cards at any participating Merchant Location for the purchase of Fuel, Maintenance, or Miscellaneous items. To use a Card, the Client should follow the directions for purchase established at the particular Merchant Location.

5.2 **Title.** As between Client and Fuelman, title to Fuel purchased with the Card passes from Fuelman to Client when the Cardholder dispenses Fuel (when fuel leaves the fuel dispensing nozzle), except as otherwise provided by applicable law. Title to any non-Fuel product or service purchased with the Card passes

directly from the Merchant to Client when the Cardholder receives such non-Fuel product and/or service. Fuelman takes no title to Maintenance or Miscellaneous items.

5.3 **Verification of Merchant Locations.** Client acknowledges that not all retail locations selling Fuel and Maintenance accept Fuelman's Cards. If Client is uncertain as to whether a location is able to accept the Cards, Client should visit the online site locator at www.fuelman.com or contact Fuelman's 24x365 Authorization Center at 800-877-9013.

6 **Safety.**

6.1 **Safe Fueling Operation.** Client shall instruct all persons to whom Client provides a Card for purchasing Fuel in safe and proper fueling procedures. Client will ensure that everyone using a Card issued in the name of Client is instructed in applicable safety measures.

6.2 **Safety Laws and Notices.** Client shall comply, and Client shall cause its employees and agents to comply, with all applicable local, state, and federal laws and regulations pertaining to the dispensing and use of Fuel at Merchant Locations as well as all safety notices posted by Merchants.

7 **Representations and Warranties.** Client represents and warrants to Fuelman as of the date of the Application and on the date of each extension of credit under this Agreement that:

7.1.1 Client is duly organized, validly existing and in good standing under the laws of the state of its formation. Client has the power and authority to own its properties and to carry on its business as presently conducted and to execute and deliver, and enter and perform its obligations under this Agreement.

7.1.2 The execution, delivery and performance of this Agreement have been duly authorized by all necessary organizational action. This Agreement has been duly executed and delivered by Client and Guarantor, and constitutes the legal, valid and binding obligations of each such party, enforceable against such parties in accordance with this Agreement, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

7.1.3 The execution, delivery and performance of this Agreement by Client and Guarantor will not violate any applicable law, rule or regulation or the charter, by-laws or other organizational documents of such parties or any judgment, order or ruling of any governmental authority.

7.1.4 The financial and other information furnished by Client and Guarantor to Fuelman in the Application, or otherwise, is true, correct and complete in all material respects.

7.1.5 Cards issued to Client will be used only by Client's employees and agents and will not be distributed or resold to other companies without the express written consent of Fuelman.

7.1.6 CLIENT WILL USE THE CARDS SOLELY FOR COMMERCIAL PURPOSES AND SHALL STRICTLY PROHIBIT ANY PERSONAL USE BY THE USERS OF ITS CARDS.

8 **Conditions To Extension Of Credit.** Any extension of credit under this Agreement shall be subject to, and conditioned upon, satisfaction of the following requirements:

8.1.1 Fuelman's receipt of a duly executed counterpart of the Application by Client and, if requested, the Guarantor, in form and substance acceptable to Fuelman in its sole discretion;

8.1.2 All representations and warranties set forth in this Agreement are true and correct;

8.1.3 No event shall have occurred and be continuing, or would result from the extension of credit hereunder, that constitutes or would constitute (with notice or the lapse of time or both) an Event of Default (defined below);

8.1.4 Outstanding amounts due, including any applicable fees as described in this Agreement, are paid by Due Date. Any amount not paid by the Due Date is subject to Late Fees (Section 10.7) and Finance Charges (Section 10.9).

8.1.5 After giving effect to any requested extension of credit, the aggregate outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) shall not exceed Client's Spend Limit, as determined by Fuelman from time to time in its sole discretion; and,

8.1.6 Receipt of any required Reserve Amount (as defined below) necessary to open the Client's Account.

9 **Pricing.**

9.1 **Methodology.** Fuelman establishes competitive local market Fuel and Maintenance Transaction prices for the Fuelman Fleet Card program depending on a variety of factors (e.g., product costs, purchase volume, market conditions). Transaction pricing can be Merchant Retail-Based, Merchant National Account-Based, Fuelman Cost-Based or a combination thereof. The pricing methodology can vary by product type and is disclosed to Client in the Application, Approval Letter, and/or subsequent written notification. Additional charges/fees and/or discounts may apply based on the Client's agreed-upon program.

9.2 **Merchant Retail-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to the prevailing Merchant Location's retail price plus or minus a fixed adjustment factor but never below Fuelman cost. In the event there is no established retail price (e.g., unattended fueling sites, mobile refueling), the retail price will be established by Fuelman.

9.3 **Merchant National Account-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to the Merchant's prevailing national account

price.

9.4 **Fuelman Cost-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to Fuelman's delivered cost plus a mark-up. Fuelman's cost is dependent on a variety of factors and can include any or all of the following components: wholesale cost; merchant freight; dealer adjustment; network operation costs, merchant commission; and applicable taxes. Under no circumstance will Client's price be below Fuelman's cost.

9.5 **Special Network Pricing.** Fuelman reserves the right to charge for the use of select sites/merchants. The added charge to use these sites will not exceed the greater of ten cents (\$0.10) per gallon or three dollars (\$3.00) per transaction. The list of select sites/merchants is available upon request by calling Fuelman Customer Service.

9.6 **Universal Pricing.** Client price for each Fuel or Maintenance Transaction is equal to an index price established by surveying a subset of transactions in the fueling area. This index can vary from posted retail price and may include a mark-up, but will never be below Fuelman cost. The markup and index calculation basis may vary by region and can change at any time.

9.7 **High Credit Risk Account (Level 2 Pricing).** Fuelman may deem the Client to be High Credit Risk Account and reserves the right to invoke Level 2 Pricing in the event that the Client's Commercial and/or Consumer Credit Score as reported by a credit reporting agency utilized at Fuelman's discretion is below Fuelman's standard threshold for creditworthiness (this threshold is five hundred and twenty (520) for commercial credit scores and six hundred and sixty (660) for individual credit scores), or the score drops by fifty-one (51) points or more in any 3 month rolling period, or the Client incurs more than one late fee in any 12-month rolling period, or is 30 days or more delinquent in any 12-month rolling period, or makes a payment that is not honored by Customer's bank. Level 2 Pricing is an incremental charge above Client's current pricing and the maximum increase is twenty cents (\$0.20) per gallon purchased. Level 2 Pricing remains in effect until such time that Client is no longer considered High Credit Risk Account. Fuelman will review each High Credit Risk Account at least once every three months for changes in creditworthiness. This decision is made solely by Fuelman based on information provided by the credit reporting agency along with the Account's payment history. The credit reporting agency does not participate in the decision. Client questions concerning their commercial and/or consumer credit scores should be directed to the applicable reporting agencies directly. D&B may be contacted at 800-234-3867 or by mail to Dun and Bradstreet Corporation, 103 JFK Parkway, Short Hills, NJ 07078. Equifax may be contacted at 800-727-8495 or at sbf@equifax.com. Experian may be contacted at 888-397-3742 or online at www.experian.com/reportaccess.

9.8 **Rebate/Volume Discount.** Fuelman may provide rebate or volume discount off retail price for fuel and nonfuel purchases under certain customer pricing. Such rebate or volume discount could be at transaction level or as separate credit. The rebate program, if applicable to the Client, is only available if the Account is open, in good standing, and is not in default of the payment terms provided within these card client agreement terms and conditions. Please refer to the account pricing documentation for specifics regarding the rebate program detail. Aviation purchases, bulk fuel purchases, international fuel purchases, transactions at non-qualifying gasoline merchants, and any account in default of the payment terms provided within these card client agreement terms and conditions are excluded from the rebate program. Fuelman also reserve the right to change or terminate the rebate program at any time and in any manner with prior notice. Changes may include, among other things, changing the benefits, imposing additional restrictions, or terminating the program. In addition, reserve the right to remove any account from the rebate program in the event of any fraud or abuse. Participation in the rebate program will be suspended if the account is suspended.

10 **Billing & Payments.**

10.1 **Billing.** Billing cycle is agreed upon with the Client during the Application and Account setup process. Client shall be responsible for all credit extended on the Account. This is not a revolving credit account. The total amount shown on each Account Statement is due and payable in full by the Due Date shown on the Statement. Unless otherwise agreed upon, the standard Due Date is ten (10) days after the date the Account Statement is created, regardless of the delivery method. Regardless of the delivery method selected, it shall be the obligation of the Client to notify Fuelman within five (5) business days of the end of each Billing Cycle if Client does not receive a Statement. If the Client does not receive a Statement and thus payment is not completed by the Due Date, Client is responsible for any Late Fees or Finance Charges.

10.2 **Extended Terms Programs.** Upon Client's request and subject to Fuelman approval, terms can be extended at an additional charge.

10.3 **Payment.** Client hereby unconditionally promises to pay Fuelman, in lawful money of the United States of America and in accordance with this Agreement, all outstanding Obligations (as defined below) which may, from time to time, be owing to Fuelman by Client. As used herein, "Obligations" shall mean all outstanding sums owing to Fuelman by Client, including, without limitation, reimbursement for petroleum products obtained through Fuelman, payments for any products or services obtained using the Card(s), and late interest, penalties, fees, report delivery, reporting, account charges, service charges, costs and expenses (including attorneys' fees) and all other obligations under this

Agreement, other than Client's obligations under this Agreement. Client shall be responsible for all credit extended on the Account. This is not a revolving credit account. The total amount shown on each Account Statement is due and payable in full by the Due Date shown on the Statement. Unless otherwise agreed upon, the standard Due Date is ten (10) days after the date the Account Statement is created, regardless of the delivery method. Regardless of the delivery method selected, it shall be the obligation of the Client to notify Fuelman within five (5) business days of the end of each Billing Cycle if Client does not receive a Statement. If the Client does not receive a Statement and thus payment is not completed by the Due Date, Client is responsible for any Late Fees or Finance Charges.

10.4 **Guaranty.** Guarantor hereby unconditionally and irrevocably guarantees to Fuelman and its successors, endorsees, transferees and assigns, the punctual payment when due (whether at stated maturity, by acceleration or otherwise) and performance of the Obligations, now or hereafter owing, whether for principal, late interest, premiums, fees, expenses or otherwise (collectively, the "Guaranteed Obligations"). Any and all payments by the Guarantor hereunder shall be made free and clear of and without deduction for any set-off, counterclaim, or withholding. Guarantor acknowledges and agrees that this is a guaranty of payment when due, and not of collection, and Guarantor agrees that his obligations under this Agreement shall not be discharged until the payment and performance, in full, of the Guaranteed Obligations. Guarantor shall be regarded, and shall be in the same position, as Client with respect to the Guaranteed Obligations. Guarantor expressly waives all rights he may now or in the future have under any statute, or at common law, or at law or in equity, or otherwise, to compel Fuelman to proceed in respect of the Guaranteed Obligations against Client or any other party before proceeding against, or as a condition to proceeding against, Guarantor. Guarantor acknowledges and agrees that any delay or failure by Fuelman to take any action regarding the Guaranteed Obligations does not limit or prohibit Fuelman from enforcing its rights under this Agreement and further that Guarantor's liability under this Agreement shall not be eliminated or reduced by any such failure or delay on the part of Fuelman. Guarantor further expressly waives and agrees not to assert or take advantage of any defense based upon the failure of Fuelman in respect of the Guaranteed Obligations against Client or any other party for the payment and Guaranteed Obligations. Guarantor agrees that any notice or directive given at any time by any person to Fuelman which is inconsistent with the waivers in the preceding two sentences shall be null and void and may be ignored by Fuelman. Guarantor further hereby waives diligence, presentment and demand (whether for non-payment or protest) or notice of acceptance, maturity, extension of time, change in nature or form of the Guaranteed Obligations (including, without limitation, composition, the amount of, or the terms of, the Guaranteed Obligations), notice of material adverse change in Client's financial condition or any other fact which might materially increase the risk to Guarantor with respect to any of the Guaranteed Obligations or all other demands whatsoever and waives the benefit of all provisions of law which are or might be in conflict with the terms of this Agreement. Guarantor represents, warrants and agrees that Guarantor's obligations under this Agreement are not and shall not be subject to any counterclaims, offsets or defenses of any kind against Fuelman or Client now existing or which may arise in the future. The Guarantor further agrees that the Guaranteed Obligations may be amended, modified, increased, extended or renewed, in whole or in part, without notice to or further assent from Guarantor, and that Guarantor will remain bound upon its guaranty notwithstanding any amendment, modification, increase, extension or renewal of any guaranteed Obligation. The foregoing waivers are of the essence of the transaction contemplated by this Agreement and, but for the guaranty contained herein and such waivers, Fuelman would decline to make the financial accommodations to Client under this Agreement. Each Guarantor is liable on a joint and several basis with Client and each other Guarantor.

10.4.1 **Account Principal Responsibility.** Each Principal for this Account, if any, as shown on the Application, is personally and unconditionally, jointly and severally liable with Client, as principal and not as surety or guarantor, for the payment and performance when due of all obligations owed on the Account, regardless of who made purchases using the Cards, and the Principal agrees to pay such amounts according to the terms of this Agreement. Principal is responsible under this Agreement for all use of all of the Cards issued on the Account to the fullest extent permitted by law.

10.5 **Payment Methods.** The following terms shall apply to each of following payment methods.

10.5.1 **Client Check.** Prior to the Due Date specified on Fuelman's Statement to Client, Client will submit payment by valid check equal to the accumulated balance of the

Account and any other Billing Cycle. Payment of the fee to charge an Exception Handling Fee of fifty dollars (\$50.00) per occurrence for payments sent to any address other than the lockbox facility address as displayed on Statement. If insufficient funds are available in the Account to pay the Account balance at the time a debit is initiated, at Fuelman's option, Client will not be able to make any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account.

10.5.2 **Client Initiated Online Payment.** Prior to the Due Date specified on Fuelman's Statement to Client, Client will submit payment by online method equal to the accumulated balance of the Account for the previous Billing Cycle. If insufficient funds are available on the Account balance at the time a debit is initiated, at Fuelman's option, Client will not be able to make any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account. Payments made on FleetNet.net via CheckFree before 5:30 p.m. Eastern Time on a business day will be credited to Client's Account the next business day. Payment received on iFleet.com before 2:00 p.m. Eastern time on a business day will be credited to Client's Account as of the date received. Otherwise, online payments will be credited to Client's Account within the next 2 business days.

10.5.3 **Pay by Phone.** By the Due Date, Fuelman will initiate, at Client's request, payment by phone either through Customer Service Representative or Interactive Voice Response (IVR) system. Fuelman reserves the right to charge a fee of fifteen dollars (\$15.00) for processing each Pay by Phone payment through IVR system and twenty-five dollars (\$25.00) for processing each Pay by Phone Payment through Customer Service Representative. Payment by phone received by 2:00 p.m. Eastern Time on a business day will be credited to your Account as of the date received, otherwise pay by phone payments will be credited to Client's Account within the next 2 business days.

10.5.4 **Fuelman Initiated Credit Card Charge.** Prior to the Due Date specified on Fuelman's Statement to Client, Fuelman will initiate a charge to the Client's credit card on file to pay the accumulated balance of the Account from the previous Billing Cycle. Fuelman may also charge the credit card to pay the amount charged to the Account any time the balance of the Account reaches the Spend Limit. The exact time that the credit card will be charged for the amount due on the Account may vary, depending on the processing cycle. If insufficient funds are available on the credit card to pay the Account balance at the time a debit is initiated, at Fuelman's option, Client will be prevented from making any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account. Fuelman may change its billing and charge cycle at any time by providing written notice to Client. Fuelman reserves the right to charge a credit card convenience fee up to three percent (3%) of the payment amount.

10.5.5 **Fuelman Initiated Electronic Funds Transfer / Automated Clearinghouse (EFT/ACH) Payment.**

10.5.5.1 **Debits to Bank Account.** On the Due Date identified on the Client's Statement, Fuelman will initiate a debit to the Bank Account to pay the accumulated balance of the Account from the previous Billing Cycle. For daily billed Client, Fuelman will initiate a debit to the Bank Account to pay the accumulated balance of the Account from the previous business day. Fuelman may also debit the Bank Account to pay the amount charged to the Account any time the balance of the Account reaches the Spend Limit. The exact time that the Bank Account will be debited for the amount charged to the Account may vary, depending on the processing capabilities of the bank at which the Bank Account exists. If insufficient funds are available in the Bank Account to pay the Account balance at the time a debit is initiated, Fuelman may prevent the Client from making any further purchases using the Cards until such time that the Client pays the outstanding balance in the Account. Fuelman may change its billing and debiting cycle at any time by providing written notice to Client. Fuelman reserves the right to charge a one-time set up fee up to fifty dollars (\$50.00) per Account and a EFT/ACH bank handling fee of up to five dollars (\$5.00) per debit of the Client's Bank Account.

10.5.5.2 **Change in Bank Account.** To change the Bank Account, Client's Representative must provide a written request of such change to Fuelman. The request should include the following information for the new account: bank name (the bank must be a member of the National Automated Clearinghouse Association (NACHA); branch address; branch number; bank routing number; and account number. The request should also contain a voided check from the new account. It will take approximately ten or more days for Fuelman to change the account. During this time, Client agrees to cooperate with Fuelman to provide additional information necessary to make the change and to execute a test of the change.

10.5.6 **Client Initiated Electronic Funds Transfer / Automated Clearinghouse (EFT/ACH/Wire) Payment.** Prior to the Due Date, Client will initiate a credit to Fuelman's bank account to pay the accumulated balance of the Client Account from the previous Billing Cycle after: notifying and obtaining approval from a Fuelman Customer Service Representative to do so. Fuelman reserves the right to charge a fee of up to fifty dollars (\$50.00) for processing each Client initiated EFT/ACH/Wire payment.

10.5.7 **On Account.** Fuelman may offer Client the ability to pay in advance for its Fuel purchases. The Account will be debited for each purchase. The Account will be replenished by EFT with the amount equal to the prior week's Statement amount.

Residual Account credit balances will be returned upon written request. Escatement laws, where applicable, will be followed.

10.6 **Applying Payments.** Fuelman uses a "balance-forward" based accounting system. Therefore, all payments made by Client to Fuelman will be applied accordingly against the outstanding amount due at the time the payment is received. Subject to applicable law, we will apply and allocate payments and credits among balances owed by Client (whether for purchases, fees, late interest, or otherwise) in any order and manner determined by Fuelman in its sole discretion. Client agrees that Fuelman has the unconditional right to exercise this discretion in a way that is most favorable or convenient to Fuelman.

10.7 **Late Payments.** All payments made by Client to Fuelman that are not received by the Due Date are considered late. Fuelman reserves the right to charge 9.99% of the New Balance (defined below) with a minimum of seventy-five dollars (\$75.00) for each late payment, not to exceed the maximum rate allowable by applicable law. To determine the New Balance for the purposes of late fees, Fuelman starts with the Amount Due on the statement for which the payment is late. Any purchases and other debits posted to the Account through the end date of the current (next succeeding) billing statement may be added to this. Appropriate finance charges or late interest charges and fees are added and other applicable adjustments made.

10.8 **Annual Percentage Rate.** The Annual Percentage Rate for purchases is thirty-two percent (32%), which corresponds to the daily periodic rate of 0.0877%, or the maximum amount allowed by applicable law, whichever is less. The daily periodic rate is the annual percentage rate divided by three hundred sixty-five (365).

10.9 **Finance Charges.** If Client's Statement is paid in full every Billing Cycle by the applicable Due Date, the Account will not incur Finance Charges. Finance Charges begin to accrue for each purchase as of the date the purchase is added to the Account. If payment in full of the Amount Due shown on the Statement for a Billing Cycle is credited to Client's Account by the Due Date shown on that respective Statement, then Finance Charges will not accrue for purchases from the date on which payment in full of that Amount Due is credited to Client's Account, provided the Amount Due of the next Statement attributable to such purchases is paid by the Due Date reflected in such next Statement (late interest due because Client does not pay in full the Amount Due of the next Statement will be reflected in the following Statement). In addition, Finance Charges will not accrue for purchases during a Billing Cycle if the Amount Due shown on the Statement for the prior Billing Cycle is zero (\$0) or a credit balance, provided the Amount Due of the next Statement attributable to such purchases is paid by the Due Date reflected in such next Statement (late interest due because Client does not pay in full the Amount Due of the next Statement will be reflected in the following Statement).

10.9.1 **Periodic Finance Charges** are calculated in two steps as follows: First, for each day of the Billing Cycle, Fuelman multiplies the daily balance by the applicable daily periodic rate.

10.9.2 **Second**, for each day of the prior Billing Cycle, Fuelman multiplies the daily balance for purchases made in that Billing Cycle by the same daily periodic rate. However, Fuelman does not do this second step if it received payment in full of the Amount Due on Client's previous billing Statement by the date the payment was due or if a periodic finance charge was already billed on that balance.

10.9.3 **For finance charge calculation purposes**, the Billing Cycle begins on the day after the Closing Date of the Statement and includes the following Closing Date. The number of days in the Billing Cycle may vary.

10.9.4 **The daily balance is calculated** by taking the beginning balance every day (which may include unpaid Finance Charges from previous Billing Cycles), adding any new transactions and any new fees, subtracting any credits or payments posted as of that day, and any other adjustments. Daily Periodic Finance Charges will be rounded to the nearest cent. Unless Fuelman elects to use a later date, a new Transaction is added to the balance as of the Transaction date shown on Client's billing report. A credit balance is treated as a balance of zero.

10.10 **Returned Payment.** If a check, credit card charge, or EFT/ACH is returned or denied, Fuelman reserves the right to charge the lesser of fifty dollars (\$50.00) Returned Payment Fee or the maximum amount allowable by applicable law for each occurrence. At our option, we will assess this fee the first time your check or payment is not honored even if it is honored upon resubmission. Fuelman may also charge the applicable Late Fees and Finance Charges incurred if balance is not received by Due Date due to returned payment.

10.11 **Reserve Amount.** Fuelman will notify Client of any reserve amount (the "Reserve Amount") necessary to open the Client's Account. The Reserve Amount will be paid to Fuelman by Client prior to using the Cards. Client shall continue paying Fuelman any amounts on any periodic Fuelman Statement by the Due Date. This Reserve Amount will be held by Fuelman and may be returned to Client only after Client has satisfied all Obligations of the Account, the Card(s) have been returned to Fuelman and the Account has been closed. In the Event of Default (defined below), the Reserve Amount will be applied to the Account as a payment on the Account. Any interest earned on the reserve balance in the Account will accrue to Fuelman. As part of our credit reviews, Client may be required to provide a Reserve Amount to Fuelman to secure the full and faithful performance of all of Client's

obligations. If required, Client understands that the credit line will be equal to an amount that is up to 80% of the Reserve Amount. Client understands that the credit line will not be activated for use until Fuelman has received confirmation from its bank that the security deposit funds are available for use. In the event Client defaults or otherwise fails to perform any obligation owed to Fuelman, Client authorizes Fuelman to use, without notice or demand, the Reserve Amount to satisfy any such default or obligation. Client represents that the Reserve Amount is made in the ordinary course of Client's business, and that the Reserve Amount is not a transfer made on account of any antecedent debt. No trust relationship is created between Fuelman and Client as a result of the Client's payment and Fuelman's acceptance of the security deposit. Client authorizes Fuelman to commingle the Reserve Amount with other Fuelman funds. After receiving a written request from Client, Fuelman may, but is not obligated to, reevaluate the necessity and the amount of the Reserve Amount. Client will provide Fuelman financial information requested to conduct its evaluation. Upon evidence of satisfactory improvement in Client's financial condition, Fuelman may determine, in its sole discretion, to return the Reserve Amount. Fuelman may also require an increase in the Reserve Amount at any time from time to time in order to continue the credit relationship between the parties. Fuelman will return the Reserve Amount to Client upon termination of the Account only after Client has satisfied all Obligations of the Account, the Card(s) have been returned to Fuelman and full performance by Client its obligations to Fuelman.

- 11. **Reporting.**
- 11.1 **Statements.** Fuelman shall furnish Client with a Statement at the end of each Billing Cycle.
 - 11.1.1 **Information.** The Statement will include the following information:
 - 11.1.1.1 The Account number and other relevant billing information.
 - 11.1.1.2 The previous unpaid charges.
 - 11.1.1.3 The previous statement balance.
 - 11.1.1.4 Any payments posted to the Account.
 - 11.1.1.5 New charges and adjustments.
 - 11.1.1.6 Amount Due.
 - 11.2 **Standard Fleet Management Report.** Fuelman shall produce a standard fleet management report at the end of each Billing Cycle.
 - 11.2.1.1 **Information.** The standard fleet management report will include the following information: The applicable fleet customer number. A single Client's Account can have multiple fleets (customer numbers) within it.
 - 11.2.1.2 Any rebates, discounts, report delivery, reporting, account charges, Finance Charges, late interest, fees, and other charges posted to the Account.
 - 11.2.1.3 Detail on each Transaction posted to the Client's Account during the Billing Cycle, including date, Merchant Location, vehicle based on the Card used, employee/driver based on the Driver ID used, product description based on the product type, quantity purchased, total purchase amount, and total applicable taxes.
 - 11.3 **Delivery Methods.** Fuelman offers several different methods for delivering Statements and the standard fleet management report: Via US Mail: Fuelman reserves the right to charge up to ten dollars (\$10.00) for each mail delivery of each report. Client with failed fax and email deliveries will be charged the mail delivery rate for any resubmission of the reports via mail, performed at Fuelman's discretion. Via eMail: Mailed resubmissions will be charged at the mail delivery rate described above.
 - 11.4 **Optional Fleet Management Reports.** Fuelman produces a variety of optional fleet management reports, including YTD summaries, Maintenance-specific reports, driver-specific reports, and tax reports. Fuelman reserves the right to charge Client a fee of up to fifteen dollars (\$15.00) per report or up to one hundred dollars (\$100.00) per quarter for delivering each of these optional reports.
 - 11.5 **Tax Exempt Processing & Reporting.** Qualified tax exempt Clients may be eligible to purchase Fuel from Fuelman tax-free at the point-of-sale. Fuelman reserves the right to charge a processing fee of up to one percent (1%) of the total purchases for this service except where prohibited by applicable law.
 - 11.6 **Multiple Report Copies.** Fuelman will provide multiple copies of mailed reports upon request.
 - 12. **Change In Terms And Conditions.** Fuelman may change the Terms and Conditions of this Agreement at any time by giving Client written notice of such amendment. Guarantor agrees to be bound by any such changes, if written notice is given to Client. Such changes will go into effect as outlined in the change notice. If permitted by applicable law, such changes will apply to existing balances as well as future purchases and balances. Any modification of or amendment to this Agreement will be delivered to Client through U.S. mail at the address Client provided to and periodically provides updates to Fuelman. All initial amendment notifications will be sent to Client in advance of the effective date thereof or earlier as required by law. Client shall be deemed to have accepted such amendments by continued use, after the effective date of the amendment, of any of the Card(s) issued to Client. Notwithstanding any of the foregoing provisions of this Section, Fuelman retains the right to change Spend Limits for the Account or to suspend, cancel, or terminate the Account or any Card without prior written notice and Client and Guarantor acknowledge and agree that Fuelman may take such actions without notice.
 - 13. **Events Of Default.** The occurrence of any of the following shall constitute an

- 13.1.1 "Event of Default" if either:
 - 13.1.1 Client shall fail to pay any principal, late interest, or other amount payable in respect of any Obligation when due;
 - 13.1.2 Client shall fail to observe or perform any other covenant contained in this Agreement;
 - 13.1.3 Any representation or warranty made by Client or Guarantor herein or in the Application proves untrue in any material respect as of the date of the making or furnishing thereof;
 - 13.1.4 Either Client or Guarantor shall (i) make an assignment for the benefit of its creditors; (ii) admit in writing its inability to pay its debts as they become due; (iii) file a petition under any applicable insolvency, debtor relief or reorganization statute, including without limitation, the United States Bankruptcy Code; (iv) be subject to an involuntary petition under any applicable insolvency, debtor relief, or reorganization statute; (v) appoint or consent to the appointment of any receiver, conservator, liquidating agent, or committee in any insolvency, readjustment of debts, marshaling of assets or liabilities, or similar proceedings of; or relating to Client or Guarantor, or any substantial portion of their assets; or (vi) take any corporate action for the purpose of effecting any of the foregoing; or
 - 13.1.5 Guarantor shall terminate or contest the validity or enforceability of Guarantor's guaranty hereunder or Guarantor's guaranty hereunder shall be determined to be invalid or unenforceable for any reason.
- 14. **Remedies Upon Event Of Default.** Without limiting any other rights or remedies of Fuelman provided for elsewhere in this Agreement, or by applicable law, or in equity, or otherwise, upon or at any time after the occurrence of any Event of Default, Fuelman shall have and may exercise, at its election, from time to time, any and all rights and remedies available at law, in equity, or otherwise, including, without limitation, (i) declaring the entire unpaid balance of the Obligations hereunder or any part thereof immediately due and payable, whereupon it shall be due and payable; and (ii) demanding payment from the Guarantor.
- 15. **Dispute Resolution.**
- 15.1 **Disputed Transactions.** To dispute any Transaction on Client's Statement, Client must notify Fuelman in writing as set forth below within fifteen (15) days of the date of Client's Statement. Fuelman will promptly investigate the matter and respond to Client within sixty (60) days after receiving written notice. Notice should be sent to: FUELMAN, P. O. Box 924138, Norcross, GA 30010, Attention: Customer Service. Fuelman shall not be responsible for and Client shall waive any discrepancies or disputes that Client does not report to Fuelman in writing within fifteen (15) days after the date of Client's Statement.
- 15.2 **Disputed Transaction Notices.** Client may report any dispute to Fuelman by telephone. However, telephone notice will not preserve Client's rights or otherwise serve as effective notice under this Agreement. Client must put in writing any dispute regarding a Transaction on Client's Statement. Client's letter must include the following information: name; Account number; date of the Statement; dollar amount and identification of the Transaction(s) in question; and any possible explanation of the error.
- 15.3 **Dispute Resolution.** The parties agree that they will work in good faith to resolve any disputes arising under this Agreement. If the dispute cannot be resolved by the parties, then at Fuelman's sole discretion, the dispute will be resolved by binding arbitration in Atlanta, Georgia in compliance with the American Arbitration Association's commercial arbitration rules or by litigation in accordance with Section 25.1. The foregoing does not prohibit either party from seeking injunctive relief without first complying with this Section. Client will reimburse Fuelman for all of its costs and expenses (including collections and attorney's fees and costs) incurred in connection with enforcing any of Fuelman's rights under this Agreement. To accommodate the right to arbitrate, Client agrees that Client will neither assert, nor participate in, a class action or other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Client's relationship with Fuelman.
- 16. **Security, Loss, Theft Or Unauthorized Use Of Card.**
- 16.1 **General Security.** Each Card can be programmed to only allow Fuel or both Fuel & Maintenance services such as oil changes, vehicle washes, etc. Typically, each Transaction is authorized with the Card number, product code, quantity and driver's Driver ID across the proprietary Fuelman network to ensure that the purchase is authorized and limited to the product and quantity (e.g. gallons of Fuel or dollars of Maintenance) that have been pre-approved. This system also helps prevent unauthorized Driver IDs and stolen Cards from being used to make purchases. The product and quantity controls are subject to each Merchant Location's POS Authorization Limitations described in Section 16.9.
- 16.2 **Fuelman's Liability.** In the event an unauthorized Transaction occurs, subject to the limitations and client responsibilities explained in this Section 16, and in the event that the Account has been issued fewer than ten (10) Cards, Fuelman will assume full responsibility for those purchases. If the Account has been issued ten (10) or more Cards, Client assumes all liability and responsibility for unauthorized Transactions or Account activity.
- 16.3 **Client's Responsibility.** It is the responsibility of Client to ensure proper security controls are kept in place to protect the Cards and Driver IDs and that only authorized employees or agents of Client use them to make purchases. It is also the Client's responsibility to lock any inactive, misplaced, or stolen Cards and Driver IDs immediately. Fuelman is not responsible for fraudulent Transactions

- 16.4 **Lost or Stolen Cards.** Client shall report all lost or stolen Cards to Fuelman immediately via phone call to Fuelman Customer Service identifying the Card number and such other details concerning the loss or theft of the Cards as are known by Client, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. Client shall be liable for all Transactions made by lost or stolen Cards until 24 hours after the time Fuelman receives Client's notice of such lost or stolen Cards. Client and Guarantor(s) agree to and acknowledge full liability for any losses resulting from any failure to report the loss or theft of Card(s) in accordance with the terms hereof.
- 16.5 **Terminated Drivers.** It is the Client's responsibility to lock a terminated driver's Driver ID as explained in Section 16.3
- 16.6 **Card Purchasing Controls.** Cards may be configured to attempt to limit acceptance and transaction amounts, for example, by limiting Card authorization to: specific merchant category codes (MCCs), maximum transaction dollar amounts, maximum number of transactions in a given time period, certain days of the week, and times of day, etc. Cards may also be configured to prompt for a valid driver or vehicle identification number (ID) and odometer at most fueling locations prior to turning on the pump. While Merchants may limit the amount of fuel dispensed per transaction, fuel pumps typically do not automatically shut off at a Card's transaction dollar limit. Operator establishes these standard parameter controls as a means of assisting Client in limiting purchase abuse and fraud. While Operator attempts to control the use of the Card to the parameters selected, Client agrees to pay for all transactions on the Account ("Charges") regardless of whether such charges are within or outside the parameters established for each Card.
- 16.7 **Miscellaneous Product Purchase Limitations.** In addition to the vehicle-related product categories (Fuel, Maintenance supplies, and Maintenance services) a Card can be allowed to purchase non-vehicle related items under the Miscellaneous product category. If a Client does not want to allow non-vehicle related purchases, Client should set each Card's Miscellaneous product category spending limit to zero dollars (\$0). Fuelman assumes no responsibility for any unauthorized Miscellaneous purchases.
- 16.8 **Tax Reporting Limitations.** Fuelman calculates applicable taxes for Fuel. Applicable taxes for Maintenance and other non-Fuel purchases are dependent on the information provided to Fuelman by the applicable Merchant Location.
- 16.9 **Merchant Limitations.** The personnel (if any) at a Merchant Location are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by any of the Merchants or any other liability or damage which arises from the action or negligence of the personnel of any of the Merchants, their agents or their employees.
- 16.10 **POS Authorization Limitations.** Authorization controls are provided as a convenience to the Client and are not guaranteed to prevent unauthorized purchases. Specifically, depending on the particular point-of-sale (POS) equipment and Fuel dispenser controls being used by a particular Merchant Location, the product type and spending limit may not be enforceable prior to completing the Transaction. In these situations, the Transaction will still be considered to be authorized, but will be identified as an exception on the Client's standard fleet management report and reported via email if desired by Client.
- 16.11 **Claims.** All claims for defective Fuel or Maintenance must be made to the Merchant operating the Merchant Location where such Fuel or Maintenance was purchased. Any claim for defective Fuel or Maintenance is waived by Client unless made in writing to Merchant, with a copy to Fuelman, within fifteen (15) days from the date of the purchase of the alleged defective Fuel or Maintenance giving rise to the claim. Fuelman will not accept any claims for defective Miscellaneous.
- 17. **Term and Termination.**
- 17.1 **Term.** The term of the Account shall be one (1) year from the date the Cards are issued to Client unless either party terminates the Account as provided in this Agreement. Thereafter, Fuelman will automatically renew Client's Account for additional one (1) year periods unless either Fuelman or Client gives the other party notice of intent not to renew at least thirty (30) days before its scheduled expiration date. At the outset of any such one-year renewal period, Fuelman, at its discretion, may issue replacement Cards to Client.
- 17.2 **Termination by Client.** Client may terminate Client's Account and its use of the Cards for any reason by providing written notice of such termination to Fuelman. Client remains obligated to pay for any and all transactions, balances, fees, and

- 17.3 **Termination by Fuelman.** Fuelman may terminate Client's Account and its use of the Cards for any reason, including but not limited to, inactivity, failure to promptly pay any amounts due Fuelman, failure to use the Cards exclusively for business purposes, or Fuelman's decision to terminate the Fuelman Program. Fuelman will notify Client's Representative at the time of termination that the Client's Account or Card(s) will be terminated along with the reason(s) for such termination.
- 18. **Change In Ownership.** Client must notify Fuelman immediately in the event of any sale of a majority ownership of its equity, any sale of a majority of its assets, any merger, reorganization or other transaction which results in a change of ownership of Client. Fuelman may terminate the Account in its sole discretion upon any change of ownership.
- 19. **Contacts And Notices.**
- 19.1 **Fleet Contact.** The "Fleet Contact" listed on the Application is authorized to provide Fuelman with the information necessary to establish Client's Account records and Cards, including, but not limited to vehicle, driver and card user related information. Fuelman is authorized to send all Account information and Client's Cards to the Fleet Contact's attention.
- 19.2 **Accounts Payable Contact.** The "Accounts Payable Contact" listed on the Application is authorized to provide Fuelman with payment information about payments on the Account. This contact may be the same person as the Fleet Contact and will be Fuelman's primary contact in the event that the Account becomes delinquent or exceeds the assigned Spend Limit.
- 19.3 **Notices.** Except as specified otherwise in this Agreement, all notices, requests, demand, or other communications required to be made pursuant to this Agreement shall be in writing and shall be given by mail by first class, certified or registered mail, postage prepaid, or by the sending by facsimile (with confirmation by mail to be provided by the party giving notice) or by reputable overnight delivery service (such as FEDEX or UPS) or by personal delivery to the recipient party, to the address indicated below for Fuelman and in the Application for Client. Fuelman may provide any such notice to Client by including the notice in the Statement provided to Client. A notice will be deemed received on the actual date of receipt. Fuelman's address for notices is: FUELMAN, P. O. Box 924138, Norcross, GA 30010, Attention: Customer Service.
- 20. **Maximum Lawful Rate.** In no event shall any Finance Charges or other rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Client and Fuelman, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the date of this Agreement, Client is and shall be liable only for the payment of such maximum amount as allowed by law, and payment received from Client in excess of such legal maximum amount, whenever received, shall be applied to reduce the principal balance of the Obligations hereunder to the extent of such excess.
- 21. **Credit Reporting Agencies.** Client and Guarantor(s) authorize Fuelman to report to any commercial credit reporting agency, Client's or Guarantor's performance under this Agreement, including but not limited to Dunn & Bradstreet, Experian Business or Equifax Credit Information Services. If the Account is personally guaranteed, Fuelman reserves the right to report Account information to consumer credit reporting agencies, including but not limited to Equifax Credit Information Services, Experian and TransUnion. Client and Guarantor have the right to notify the consumer reporting agencies not to use its respective credit report in connection with a credit transaction it did not initiate. To do so, contact Equifax Credit Information Services, P.O. Box 740123, Atlanta, GA 30374-0123; Experian, P.O. Box 919 Allen, TX 75013; and TransUnion, P.O. Box 97328, Jackson, MS 39288-7328; or Client and Guarantor may notify all three agencies by calling 1-888-567-8688
- 22. **Limitation of Liability.** FUELMAN WILL HAVE NO LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING CLAIMS FOR LOSS OF PROFITS, WHETHER RESULTING DIRECTLY OR INDIRECTLY TO CLIENT, GUARANTOR, OR THIRD PARTIES, AND WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR RESULT FROM A BREACH OF THIS AGREEMENT. IN THE EVENT A COURT IN A FINAL, NON-APPEALABLE AWARD FINDS FUELMAN LIABLE FOR ANY DIRECT DAMAGES, FUELMAN'S LIABILITY IN THE AGGREGATE FOR SUCH DIRECT DAMAGES WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CLIENT TO FUELMAN FOR THE MONTH PRECEDING THE DATE ON WHICH THE CLAIM AROSE.
- 23. **Indemnification.** To the maximum extent allowed by law, Client (the "Indemnitor") will indemnify and hold harmless Fuelman and its affiliates, directors, officers, employees, and agents (the "Indemnitees") from and against any and all third party claims, losses, damages, suits, fees, judgments, costs, and

expenses (collectively referred to as “Claims”), including attorneys’ fees incurred in responding to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with (a) the Indemitor’s (or its employees’ or agents’) negligence, willful misconduct, or breach of any representation, warranty or other obligation under this Agreement; or (b) any personal injury (including death), damage to property, or environmental clean-up and related costs, resulting from the Indemitor’s or its employees’ or agent’s acts or omissions. The Indemitees will give prompt notice of any Claim to the Indemitor, who will defend the Indemitees at the Indemitees’ request.

24. **Non-disclosure.** Fuelman may provide to Client access to confidential and proprietary information regarding Fuelman’s business, business plans, pricing and reimbursement policies, and other issues (“Confidential Information.”). Client will keep all Confidential Information in strict confidence and not disclose or use the Confidential Information during the term of this Agreement and for five (5) years thereafter, provided that for any Confidential Information deemed to be a “trade secret,” Client shall protect and not disclose or use such Confidential Information for so long as such Confidential Information is will not disclose its terms except as permitted by Fuelman. Client will inform its employees and agents as to the confidential and proprietary nature of the Confidential Information to which they may be exposed and take all necessary actions to ensure that such employees and agents keep such information strictly confidential. Client will return any Confidential Information upon request from Fuelman. Client agrees that any disclosure of Confidential Information would cause irreparable harm for which monetary damages may not be a sufficient remedy, so Fuelman will be entitled to seek all remedies and damages available at law and in equity, including but not limited to injunctive relief, without the posting of a bond.

25. **Miscellaneous Provisions.**
 25.1 **Governing Law; Waiver of Jury Trial; Binding Arbitration.** This Agreement will be governed by Louisiana law, without regard to its conflicts of laws principles. Many Account maintenance, treasury and accounting functions are performed by Fuelman in Louisiana, where it has a substantial presence.

Arbitration Client or FleetCor may, without the other’s consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between or among such parties relating to the Cards or Account, a prior related account, or the relationship of such parties, including without limitation claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision, and no matter what legal theory such claims are based on or what remedy (damages, or injunctive or declaratory relief) such claims seek (a “Claim”). To accommodate the right to arbitrate, Client agrees that it will neither assert, nor participate in, a class action or other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Client’s relationship with FleetCor. The party filing for arbitration must choose one of the following arbitration firms and follow its rules and procedures for initiating (including paying the filing fee) and pursuing arbitration before a single neutral arbitrator: American Arbitration Association, National Arbitration Forum or JAMS. All other fees will be allocated as provided by the rules of the arbitration firm and applicable law. Claims must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis.

Claims Covered
 What Claims are subject to arbitration? All Claims relating to your Cards or Account, a prior related account, or our relationship are subject to arbitration, including Claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision. All Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; and Claims made independently or with other claims. A party who initiates a proceeding in court may elect arbitration with respect to any Claim advanced in that proceeding by any other party. Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis.

Whose Claims are subject to arbitration? Not only ours and yours, but also Claims made by or against anyone connected with us or you or claiming through us or you, such as a co-applicant or authorized user of your account, an employee, agent, representative, affiliated company, predecessor or successor, heir, assignee, or trustee in bankruptcy.

What time frame applies to Claims subject to arbitration? Claims arising in the past, present, or future, including Claims arising before the opening of your account, are subject to arbitration.

Broadest interpretation. Any questions about whether Claims are subject to arbitration shall be resolved by interpreting this arbitration provision in the broadest way the law will allow it to be enforced. This arbitration provision is governed by the Federal Arbitration Act (the “FAA”).

What Claims are subject to arbitration? All Claims relating to your Cards or Account, a prior related account, or our relationship are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; and Claims made independently or with other claims. A party who initiates a proceeding in court may elect arbitration with respect to any Claim advanced in that proceeding by any other party. Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis.

How Arbitration Works
 How does a party initiate arbitration? The party filing an arbitration must choose one of the following three arbitration firms and follow its rules and procedures for initiating and pursuing an arbitration: American Arbitration Association, JAMS, and National Arbitration Forum. Any arbitration hearing that you attend will be held at a place chosen by the arbitration firm in the same city as the U.S. District Court closest to your then current billing address, or at some other place to which you and we agree in writing. You may obtain copies of the current rules of each of the three arbitration firms and forms and instructions for initiating arbitration by contacting them as follows:
 American Arbitration Association, 335 Madison Avenue, Floor 10, New York, NY 10017-4605 Web site: www.adr.org
 JAMS, 1920 Main Street, Suite 300, Irvine, CA 92610 Web site: www.jamsadr.com
 National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405 Web site: www.arbitration-forum.com

At any time you or we may ask an appropriate court to compel arbitration of Claims, or to stay the litigation of Claims pending arbitration, even if such Claims are part of a lawsuit, unless a trial has begun or a final judgment has been entered. Even if a party fails to exercise these rights at any particular time, or in connection with any particular Claims, that party can still require arbitration at a later time or in connection with any other Claims.

What procedures and law are applicable in arbitration? A single, neutral arbitrator will resolve Claims. The arbitrator will be either a lawyer with at least ten years of experience or a retired or former judge, selected in accordance with the rules of the arbitration firm. The arbitration will follow procedures and rules of the arbitration firm in effect on the date the arbitration is filed unless those procedures and rules are inconsistent with this Agreement, in which case this Agreement will prevail. Those procedures and rules may limit the discovery available to you or us. The arbitrator will take reasonable steps to protect Client account information and other confidential information if requested to do so by you or us. The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes of limitations, will honor claims of privilege recognized at law, and will have the power to award to a party any damages or other relief provided for under applicable law. You or we may choose to have a hearing and be represented by counsel. The arbitrator will make any award in writing and, if requested by you or us, will provide a brief statement of the reasons for the award. An award in arbitration shall determine the rights and obligations between the named parties only, and only in respect of the Claims in arbitration, and shall not have any bearing on the rights and obligations of any other person, or on the resolution of any other dispute.

Who pays? Whoever files the arbitration pays the initial filing fee. If we file, we pay; if you file, you pay, unless you get a fee waiver under the applicable rules of the arbitration firm. If you have paid the initial filing fee and you prevail, we will reimburse you for that fee. All fees will be allocated as provided by the rules of the arbitration firm and applicable law. However, we will advance or reimburse your fees if the arbitration firm or arbitrator determines there is good reason for requiring us to do so, or if you ask us and we determine there is good reason for doing so. Each party will bear the expense of that party’s attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines.

Who can be a party? Claims must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis. The arbitrator will not award relief for or against anyone who is not a party. If you or we require arbitration of a Claim, neither you, we, nor any other person may pursue the Claim in arbitration as a class action, private attorney general action or other representative action, nor may such Claim be pursued on your or our behalf in any litigation in any court. Claims, including assigned Claims, of two or more persons may not be joined or consolidated in the same arbitration. However, applicants, co-applicants, authorized users on a single account and/or related accounts, or corporate affiliates are here considered as one person.

When is an arbitration award final? The arbitrator’s award is final and binding on the parties unless a party appeals it in writing to the arbitration firm within fifteen days of notice of the award. The appeal must request a new arbitration before a panel of three neutral arbitrators designated by the same arbitration firm. The panel will consider all factual and legal issues anew, follow the same rules that apply to a proceeding using a single arbitrator, and make decisions based on the vote of the majority. Costs will be allocated in the same way they are allocated for arbitration before a single arbitrator. An award by a panel is final and binding on the parties after fifteen days has passed. A final and binding award is subject to judicial review and enforcement as provided by the FAA or other applicable law.

Survival and Severability of Terms
 This arbitration provision shall survive: (i) termination or changes in the Agreement, the account, or the relationship between you and us concerning the

Account, or the relationship between you and us concerning the assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing.
 25.2 **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman’s rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.

25.3 **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.

25.4 **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.

25.5 **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of such right. A waiver by any party of any breach or obligation will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party hereto shall be binding upon the party making such waiver in the event of a subsequent default.

25.6 **Severability.** If any provision of this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.

25.7 **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The captions and headings included in this Agreement have been inserted for convenience only and may not be used in connection with the interpretation of this Agreement. Each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties to this Agreement.

Summary of Certain Fees^{1,2,3}

Late Fee	Greater of 9.99% or \$15 for each late payment
Finance Charges	32% APR or maximum allowed by applicable law
High Credit Risk Account (Level 2 Pricing)	Incremental charge of up to .20¢ per gallon above current pricing if Account is deemed High Credit Risk based on credit score and payment history
Special Network Pricing	Greater of 10¢ per gallon or \$3.0 per transaction at select sites/merchants
Minimum Program Administration Fee*	Up to 10 cents per gallon or \$2 per transaction
Monthly Card Fee	Up to \$10 per card per month
Optional Fleet Management Report	Up to \$15 for each optional report or up to \$100 per quarter
Non-standard Payment Option	One time set up fee up to \$50 and up to \$5 Bank Handling Fee per debit for Operator initiated EFT/ACH; Up to \$50 per payment for Client initiated ACH/Wire or Checks sent to different payment address displayed on statement; \$15 per payment for Pay by Phone through IVR and \$25 through Customer Service Representative;
Returned Payment Fee	Up to \$50 per occurrence

¹Listed charges/fees not applicable to all Clients.
²Additional charges/fees may apply based on the Client’s agreed-upon program, please refer to the full Client Agreement Terms and Conditions for complete details.
³Charges/fees for additional products/services is available upon request.
⁴Certain exclusions apply, please consult with your sales representative for more details.

FLEETCOR
FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC
FUELMAN FLEET CARD CLIENT AGREEMENT
TERMS AND CONDITIONS

- 1 Definitions**
- 1.1 **Account.** "Account" shall mean the internal Fuelman account established for Client.
 - 1.2 **Agreement.** "Agreement" shall mean this agreement comprised of the Application (if any), the Approval Letter (if any), and this document containing the Terms and Conditions.
 - 1.3 **Agreement Date.** "Agreement Date" shall mean the date on which Fuelman accepts the Client's Application and issues one or more Cards for Client's Account.
 - 1.4 **Application.** "Application" shall mean the application completed by Client in applying for the Account through Fuelman.
 - 1.5 **Approval Letter.** "Approval Letter" shall mean the letter, if any, sent by Fuelman to Client that approves the Application and establishes the Account under these Terms and Conditions.
 - 1.6 **Bank Account.** "Bank Account" shall mean any business bank account that Client has designated on the Application or by written notice to Fuelman for electronic funds transfer, automated clearinghouse or other electronic transfer of money to pay amounts due for Client's Account.
 - 1.7 **Billing Cycle.** "Billing Cycle" shall mean the period of time set forth in the Approval Letter or any subsequent notification for which Transactions will be accepted and a Statement for the Account will be provided.
 - 1.8 **Card or Cards.** "Card" or "Cards" shall mean the Fuelman fleet card or cards issued to Client.
 - 1.9 **Cardholder.** "Cardholder" shall mean the person presenting the Card to the Merchant to be used to purchase Fuel and/or Maintenance.
 - 1.10 **Client.** "Client" shall mean the business entity identified in the Application.
 - 1.11 **Client's Representative.** "Client's Representative" shall mean the person(s) identified as Client's representative on the Application.
 - 1.12 **Driver ID.** "Driver ID" shall mean the personal identification number issued to the Client by Fuelman for use with a Card to authorize a particular Transaction.
 - 1.13 **Due Date.** "Due Date" shall mean the date upon which payment from Client is due to Fuelman as stated on Fuelman's Statement to Client.
 - 1.14 **FleetCor.** "FleetCor" shall mean FleetCor Technologies Operating Company, LLC, the company which owns the Accounts and in whose favor all Obligations, as defined in Section 10.3, of Client under this Agreement flow.
 - 1.15 **Fuelman.** "Fuelman" shall mean Fuelman, the division of FleetCor administering the Cards and Account.
 - 1.16 **Fuel.** "Fuel" shall mean any combustible material dispensed by volume that is purchased with a Card.
 - 1.17 **Guaranteed Obligations.** "Guaranteed Obligations" shall have the meaning set forth in Section 10.4.
 - 1.18 **Guarantor(s).** "Guarantor" shall mean the person(s) identified on the Application or a separate guaranty document, if any, that guarantees Client will comply with this Agreement and pay all amounts owed to Fuelman.
 - 1.19 **Maintenance.** "Maintenance" shall mean any non-Fuel product or service for a vehicle that is purchased with a Card (e.g., oil, wiper blades, fluids, towing, roadside assistance, parts, supplies, tires, oil changes, brakes, glass, exhaust systems, transmissions, and repair services).
 - 1.20 **Merchant.** "Merchant" shall mean a third party that operates retail locations providing Fuel and/or Maintenance in the Fuelman network.
 - 1.21 **Merchant Location.** "Merchant Location" shall mean a Merchant's Fuel and/or Maintenance site that is participating in the Fuelman network, such that a Card may be used to purchase Fuel and/or Maintenance at such site.
 - 1.22 **Miscellaneous.** "Miscellaneous" shall mean any non-vehicle related product or service that is purchased with a Card.
 - 1.23 **Principal.** "Principal" shall mean the person identified on the Application, if any, who applies for the Account as a co-maker with the Client.
 - 1.24 **Reporting.** "Reporting" shall mean related products or services that are purchased to manage the vehicle fleet (e.g., paper report delivery, fax report delivery).
 - 1.25 **Statement.** "Statement" shall mean the billing statement for the Account provided at the end of each Billing Cycle.
 - 1.26 **Terms and Conditions.** "Terms and Conditions" shall mean the terms and conditions contained in the Agreement and any other electronic or paper document presented to the Client by or on behalf of Fuelman in connection with this Agreement (e.g. the physical card, driver instructions, site guides, reports, billing/statement means, Application, and web site). In the event of a conflict between any such other document and this Agreement, this Agreement will control unless specifically provided otherwise in the other document.
 - 1.27 **Transaction.** "Transaction" shall mean any individual purchase with a Card.
- 2 General**
- 2.1 **Agreement for Account and Services.** Client and, if applicable, Principal or Guarantor, shall submit an Application to signify Client's application for an Account with Fuelman. If Fuelman accepts such Application, Fuelman shall send an Approval Letter and these Terms and Conditions to Client's Representative along with Cards and Driver IDs issued for the Account. Upon Client's first use of a Card, Client will be deemed to have accepted the Approval Letter and these Terms and Conditions and Client and Fuelman shall be deemed to have entered into this Agreement. If a Guarantor also submits the Application or a separate guaranty then Client and Guarantor shall both be responsible for all payments owed by Client hereunder and for compliance by Client with these Terms and Conditions. If a Principal jointly submits the Application with Client, then Client and Principal are jointly and severally responsible for all payments owed by Client hereunder and for compliance with these Terms and Conditions.
 - 2.2 **Entire Agreement.** These Terms and Conditions, together with the Application (if any) and the Approval Letter (if any), are the exclusive statement of the terms and conditions with respect to their subject matter as of the Agreement Date and supersede all prior agreements, negotiations, representations and proposals, whether written or oral. Deviations from the Agreement are not valid unless confirmed in writing by an authorized representative of Fuelman.
- 3 Account Administration and Card Issuance**
- 3.1 **Establishment of Client Account.** Upon issuance of the Cards, Fuelman will establish an Account for Client that will be used to pay for Fuel, Maintenance and Miscellaneous items purchased through the use of the Cards at Merchant Locations. For purpose of determining Client's domicile, Client acknowledges and agrees that its domicile shall be the state reflected in the Client's mailing address as reflected on the Client's Statement. Cards may only be used for purchases as described above and not, for example, for cash advances or purchases from persons other than Merchants.
 - 3.2 **Government Regulation.** Neither Client nor any Guarantor of the Account shall (a) be or become at any time, and are not currently, subject to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Fuelman from making any advance or extension of credit to Client or any Guarantor of the Account or from otherwise conducting business with Client or any Guarantor of the Account, or (b) fail to provide documentary and other evidence of Client's identity or the identity of any Guarantor of the Account or person to whom Client gives a Card, as may be requested by Fuelman at any time to enable Fuelman to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5316.
 - 3.3 **Spend Limit.** Upon Fuelman's approval of the Client's Application, Fuelman will establish an aggregate spending limit for all the Cards issued to Client under the Account (the "Spend Limit") based on Fuelman's evaluation of the Client's creditworthiness. Fuelman reserves the right to increase or decrease this Spend Limit at any time with or without providing notice to Client. Fuelman may decide, at its own discretion, to decline or approve any transactions made after the Client exceeds the Spend Limit or to lock the Account until the balance due is paid in full.
 - 3.4 **Initial Cards.** Upon Fuelman's approval of Client's Application, Fuelman will issue one or more Cards and Driver ID numbers to Client. Client shall be responsible for distributing the Cards and Driver IDs to its employees or agents.
 - 3.5 **Additional Cards.** If at some time after the initial issuance of Cards to Client, Client desires one or more additional Cards, Client must notify Fuelman via the online application or in writing or by calling Fuelman Customer Service.
 - 3.6 **Replacement Cards.** If Client desires one or more replacement Cards, including, but not limited to replacing lost or damaged Cards, Client must notify Fuelman via the online application or in writing or by calling Fuelman Customer Service.
 - 3.7 **Administration of Cards.** Client shall be solely responsible for the use, maintenance, administration, and security of the Cards and any personal identification numbers, vehicle identification numbers, employee identification numbers or other information necessary to access the Account or to use any card issued on the Account, including, but not limited to, within Client's business or distributing cards to, and collecting cards from, Client's employees and agents. Client shall be solely responsible for monitoring transactions, statements, invoices, and receipts as well as reviewing and replying to any fraud

alient notifications. Notwithstanding any other provision in this Agreement, Client shall be responsible for any loss or misuse of cards by its employees and agents or others who obtain possession or use of cards issued to Client. See Section 16 for more information regarding Client responsibilities.

3.8 **Account Administration Fee.** Fuelman shall be responsible for collecting and reporting all Transactions by date, vehicle, Merchant Location, and driver based upon data received by Fuelman. In addition, Fuelman shall be responsible for maintaining the database for the Client with all Card numbers, vehicle data, driver data, and purchase control data. Fuelman reserves the right to charge up to 10¢ per gallon or two dollars (\$2.00) per Transaction as a Minimum Program Administration Fee for ongoing program operation costs.

3.9 **Card Fees.** Fuelman reserves the right to charge a card fee of up to ten dollars (\$10.00) per Card per month to support the use of the Card.

3.10 **Property.** All Cards remain the property of Fuelman and shall be surrendered immediately by Client to Fuelman upon Fuelman's request or if Client or Fuelman cancels the Card or Account as permitted herein, but not the Account. Client's responsibility for the Cards ends at the time of such cancellation. Client's liability for purchases made using the cancelled Card shall end at midnight of the day that Fuelman receives notice of such cancellation.

3.12 **Suspension of Cards.** Fuelman, at its sole discretion, may suspend or terminate the use of any Card at any time for any reason, including, but not limited to, inactivity, unusual activity, or suspected loss, theft, fraud, or if compliance with the USA Patriot Act. However, nothing in this Agreement shall obligate Fuelman to monitor the use of any Card, and, as described in this Agreement, Client is solely responsible for the use of any outstanding Cards.

3.13 **Suspension of Account.** Fuelman, at its sole discretion, may suspend or terminate the use of an Account at any time for any reason, including, but not limited to, inactivity, unusual activity, change in creditworthiness, late payment (excessive days beyond terms), aggregate outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) over the Spend Limit or in compliance with the USA Patriot Act.

3.14 **Non-Transferability/Repossibility.** All Cards and any and all rights and privileges to which its holders are entitled are not transferable and may be revoked for any reason, including but not limited to, a breach of any or all of the terms and conditions of this Agreement, without prior notice at any time and with no liability to Fuelman, at which time any credit extended hereunder shall be revoked and all sums owed by Client to Fuelman pursuant hereto shall become immediately due and payable.

4 Services Provided.

4.1 **General Services.** Fuelman shall provide the following services to Client under this Agreement:

4.1.1 Issue to Client the Cards upon Fuelman's approval of the Application.

4.1.2 Maintain a network of Merchant Locations for Fuel and Maintenance where Client may make purchases with Cards pursuant to this Agreement.

4.1.3 Provide an online directory to identify acceptable Merchant Locations.

4.1.4 Maintain an authorization control system to verify that a Card being presented for payment is valid/active and that the Driver ID being used is valid/active for that particular Card. In addition, individual Card-level spending limits can be established by the Client for each product category (e.g., Fuel, Maintenance supplies, Maintenance services, Miscellaneous).

4.1.5 Issue management reports and billing Statements to Client showing details of all posted Card Transactions (as detailed in Section 11.2) during the Billing Cycle.

4.2 **Referrals.** Fuelman reserves the right to deliver informational material in reference to ancillary fleet management related products and services provided by other vendors to the Client. In no case is Fuelman making any representation about the quality or value of any particular product or service.

4.3 **Ancillary Products and Services.** Fuelman reserves the right to make certain ancillary fleet management related products and services (e.g., emergency roadside assistance) that are delivered by other vendors/companies available to the Client for purchase on Cards. For the purpose of reporting the Transactions, these ancillary products and services are considered Maintenance. The act of requesting the ancillary product or service with a valid Card and Driver ID, establishes approval for Fuelman to charge and collect the corresponding balance incurred by these ancillary products and services.

4.3.1 **Roadside Assistance for Unattended Vehicles.** Through an association with a third party, Fuelman may offer roadside assistance for vehicles, including towing services. The services may not be available for unattended vehicles. The personnel of any such third party provider are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by such third party, or for any other liability or damage which arises from the action or negligence of the personnel of the third party, its agents or its employees.

4.3.2 **Additional Services.** Client may be eligible for additional services from time to time. If Client is eligible for an additional service, Fuelman may notify Account Holders of the service. The terms and fees applicable to such service will be disclosed prior to Client's agreement to such service, and will be disclosed in such circumstances as set forth in the applicable service agreement.

4.4 **Liability to Operator.** Fuelman shall have no responsibility for any personal or mechanical rejection of or refusal to honor a Card. Client agrees that shall be liable to Fuelman or any other company or entity, for any reason any Merchant or Merchant Location should fail to allow the purchase of Fuel or Maintenance, fail to authorize Transaction(s) or fail to operate in any other manner, even though a Card is valid.

4.5 **WARRANTY DISCLAIMER. FUELMAN DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTOR, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ALL FUELMAN ACCOUNTS, PRODUCTS, AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS.**

5 Purchases.

5.1 **Use of Cards.** Client may use the Cards at any participating Merchant Location for the purchase of Fuel, Maintenance, or Miscellaneous items. To use a Card, the Client should follow the directions for purchase established at the particular Merchant Location.

5.2 **Title.** As between Client and Fuelman, title to Fuel purchased with the Card passes from Fuelman to Client when the Cardholder dispenses Fuel when fuel leaves the fuel dispensing nozzle, except as otherwise provided by applicable law. Title to any non-Fuel product or service purchased with the Card passes directly from the Merchant to Client when the Cardholder receives such non-Fuel product and/or service. Fuelman takes no title to Maintenance or Miscellaneous items.

5.3 **Verification of Merchant Locations.** Client acknowledges that not all retail locations selling Fuel and Maintenance accept Fuelman's Cards. If Client is uncertain as to whether a location is able to accept the Cards, Client should visit the online site located at www.fuelman.com or contact Fuelman's 24x365 Authorization Center at 800-877-9013.

6 Safety.

6.1 **Safe Fueling Operation.** Client shall instruct all persons to whom Client provides a Card for purchasing Fuel in safe and proper fueling procedures. Client will ensure that everyone using a Card issued in the name of Client is instructed in applicable safety measures.

6.2 **Safety Laws and Notices.** Client shall comply, and Client shall cause its employees and agents to comply, with all applicable local, state, and federal laws and regulations pertaining to the dispensing and use of Fuel at Merchant Locations as well as all safety notices posted by Merchants.

7 **Representations and Warranties.** Client represents, warrants and covenants to Fuelman as of the date of the Application and on the date of each extension of credit under this Agreement that:

7.1 Client is duly organized, validly existing and in good standing under the laws of the state of its formation. Client has the power and authority to own its properties and to carry on its business as presently conducted and to execute and deliver, enter and perform its obligations under this Agreement.

7.2 The execution, delivery and performance of this Agreement have been duly authorized by all necessary organizational action. This Agreement has been duly executed and delivered by Client and Guarantor, and constitutes the legal, valid and binding obligations of each such party, enforceable against such parties in accordance with this Agreement, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

7.3 The execution, delivery and performance of this Agreement by Client and Guarantor will not violate any applicable law, rule or regulation of the creator, by-laws or other organizational documents of such parties or any judgment, order or ruling of any governmental authority.

7.4 The financial and other information furnished by Client and Guarantor to Fuelman in the Application, or otherwise, is true, correct and complete in all material respects.

7.5 Cards issued to Client will be used only by Client's employees and agents and will not be distributed or resold to other companies without the express written consent of Fuelman.

7.6 CLIENT WILL USE THE CARDS SOLELY FOR COMMERCIAL PURPOSES AND SHALL STRICTLY PROHIBIT ANY PERSONAL USE BY THE USERS OF ITS CARDS.

7.7 CLIENT'S BANK ACCOUNT WAS ESTABLISHED FOR BUSINESS PURPOSES AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

8 **Conditions To Extension Of Credit.** Any extension of credit under this Agreement shall be subject to, and conditioned

upon, satisfaction of the following requirements:
8.1.1 Fuelman's request for extension of credit shall be subject to the following conditions: (i) request for extension of credit shall be accompanied by a completed and signed Credit Application; and (ii) the extension of credit shall be subject to the substance acceptable to Fuelman in its sole discretion;

8.1.2 All representations and warranties set forth in this Agreement are true and correct;

8.1.3 No event shall have occurred and be continuing, or would result from the extension of credit hereunder, that constitutes or would constitute (with notice or the lapse of time or both) an Event of Default (defined below);

8.1.4 Outstanding amounts due, including any applicable fees as described in this Agreement, are paid by Due Date. Any amount not paid by the Due Date is subject to Late Fees (Section 10.7) and Finance Charges (Section 10.9).

8.1.5 After giving effect to any requested extension of credit, the aggregate outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) shall not exceed Client's Spend Limit, as determined by Fuelman from time to time in its sole discretion; and,

8.1.6 Receipt of any required Reserve Amount (as defined below) necessary to open the Client's Account.

9 Pricing.

9.1 **Network Pricing.** Fuelman establishes competitive local market Fuel and Maintenance Transaction prices for the Fuelman Fleet Card program dispensing at a variety of factors (e.g., product costs, purchase volume, contract conditions). Transaction pricing can be Merchant Retail-Based, Merchant National Account-Based, Fuelman Cost-Based or a combination thereof. The pricing methodology can vary by product type and is disclosed to Client in the Application, Approval Letter, and/or subsequent written notification. Additional charges/fees and/or discounts may apply based on the Client's agreed-upon program.

9.2 **Merchant Retail-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to the prevailing Merchant Location's retail price plus or minus a fixed adjustment factor but never below Fuelman cost. In the event there is no established retail price (e.g., unattended fueling sites, mobile refueling), the retail price will be established by Fuelman.

9.3 **Merchant National Account-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to the Merchant's prevailing national account price.

9.4 **Fuelman Cost-Based Pricing.** Client price for each Fuel or Maintenance Transaction is equal to Fuelman's delivered cost plus a mark-up. Fuelman's cost is dependent on a variety of factors and can include any or all of the following components: wholesale cost, merchant freight, dealer adjustment, network operation costs, merchant commissions, and applicable taxes. Under no circumstance will Client's price be below Fuelman's cost.

9.5 **Special Network Pricing.** Fuelman reserves the right to charge a Convenience Network Fee for the use of select sites/merchants. The added charge to use these sites will not exceed the greater of ten cents (\$0.10) per gallon or three dollars (\$3.00) per Transaction. The list of select sites/merchants is available upon request by calling Fuelman Customer Service. **Universal Pricing.** Client price for each Fuel or Maintenance Transaction is equal to an index price established by surveying a subset of transactions in the fueling area. This index can vary from posted retail price and may include a mark-up, but will never be below Fuelman cost. The markup and index calculation basis may vary by region and can change at any time.

9.7 **High Credit Risk Account Level 2 Pricing.** Fuelman may deem the Client to be High Credit Risk Account and reserves the right to invoke Level 2 Pricing in the event that the Client's Commercial and/or Consumer Credit Score as reported by a credit reporting agency utilized at Fuelman's discretion is below Fuelman's standard threshold for creditworthiness (this threshold is five hundred and thirty (530) for commercial credit scores and six hundred and seventy (670) for individual credit scores), or the score drops by fifty-one (51) points or more in any 3 month rolling period, or the Client incurs more than one late fee in any 12-month rolling period, or is 30 days or more delinquent in any 12-month rolling period, or makes a payment that is not honored by Customer's bank. Level 2 Pricing is an incremental charge above Client's current pricing and the maximum increase is thirty cents (\$0.30) per gallon purchased. Level 2 Pricing remains in effect until such time that Client is no longer considered High Credit Risk Account. Fuelman will review each High Credit Risk Account at least once every three months for changes in creditworthiness. This decision is made solely by Fuelman based on information provided by the credit reporting agency along with the Account's payment history. The credit reporting agency does not participate in the decision. Client questions concerning their commercial and/or consumer credit scores should be directed to the applicable reporting agencies directly. 368 may be contacted at 800-234-5987 or by mail to Dun and Bradstreet Corporation, 103 JFK Parkway, Short Hills, NJ 07078. Equifax may be contacted at 800-727-9495 or at sales@equifax.com. Experian may be contacted at 588-397-3742 or online at www.experian.com/reportscorers.

9.8 **Private/Volume Discount.** Fuelman may provide rebate or volume discount off retail price for fuel and nonfuel purchases under certain customer pricing. Such rebate or volume discount could be at Transaction level or as separate credit. The rebate program, if applicable to the Client, is only available if the Account is open, in good standing, and is not in default of the payment terms provided within these Terms and Conditions. Access to the account program documentation for the rebate program is restricted to the Client's authorized personnel. Fuelman reserves the right to discontinue the rebate program at any time without notice. Transactions at non-qualifying gasoline merchants, and any Account in default of the payment terms provided within these Terms and Conditions are excluded from the rebate program. Fuelman also reserves the right to change or terminate the rebate program at any time and in any manner with prior notice. Changes may include, among other things, changing the benefits, imposing additional restrictions, or terminating the program. In addition, Fuelman reserves the right to remove any Account from the rebate program in the event of any fraud or abuse. Participation in the rebate program will be suspended if the Account is suspended.

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10 **Billing & Payments.**

10.1 **Billing.** Billing Cycle is agreed upon with the Client during the Application and Account setup process. Client shall be responsible for all credit extended on the Account. This is not a revolving credit account. The total amount shown on each Statement is due and payable in full by the Due Date shown on the Statement. Unless otherwise agreed upon, the standard Due Date is ten (10) days after the date the Statement is created, regardless of the delivery method. Regardless of the delivery method selected, it shall be the obligation of the Client to notify Fuelman within five (5) business days of the end of each Billing Cycle if Client does not receive a Statement. If Client does not receive a Statement and thus payment is not completed by the Due Date, Client is responsible for any Late Fees and Finance Charges.

10.2 **Extended Terms Programs.** Upon Client's request and subject to Fuelman approval, terms can be extended at an additional charge. Payment. Client hereby unconditionally promises to pay Fuelman, in lawful money of the United States of America and in accordance with this Agreement, all outstanding Obligations (as defined below) which may, from time to time, be owing to Fuelman by Client. As used herein, "Obligations" shall mean all outstanding sums owing to Fuelman by Client, including, without limitation, payments for Transactions, reimbursement for petroleum products obtained through Fuelman, payments for any products or services obtained using the Cards(s), and Late Fees, Finance Charges, penalties, fees, report delivery, Reporting, Account charges, service charges, costs and expenses (including attorneys' fees) and all other obligations under this Agreement or otherwise. Client must pay all outstanding Obligations on the Statement by the Due Date to avoid Late Fees and Finance Charges. Failure by Client to pay all amounts by the Due Date shall be a breach of the Terms and Conditions of this Agreement. Continuing payments received at mailbox facility address as displayed on Statement by 4p.m. Eastern Time on a business day (Monday through Friday of each week, excluding banking holidays) will be credited to your Account as of the date received. To be considered a conforming payment, it must be recognized by the mailbox facility as "conforming" which includes, but is not limited to, the following criteria: a single check without check stub, sent in the envelope provided by Fuelman with remittance coupon in the lower portion of the Statement summary; one check per Account per Statement. Non-conforming payments will be credited to your Account as of the next business day. In the event your Statement reflects a Due Date which falls on a day which is not a business day, your payment must be received by 4p.m. Eastern Time on the preceding business day. If we do not receive your payment for the Account Due by the Due Date, you may not be able to make any further purchases until such time that you pay the entire outstanding balance on the Account. We may change our Billing Cycle and debiting cycle at any time by reflecting the change on your Statement.

10.3 **Guaranty.** Guarantor hereby unconditionally and irrevocably guarantees to Fuelman and its successors, endorsees, transferees and assigns, the punctual payment when due (whether or stated maturity, by acceleration or otherwise) and performance of the Obligations, now or hereafter owing, whether for principal, interest, premiums, fees, expenses or otherwise (collectively, the "Guaranteed Obligations"). Any and all payments by the Guarantor hereunder shall be made full and clear of and without deduction for any set-off, counterclaim, or withholding. Guarantor acknowledges and agrees that this is a guarantee of performance in law, and not of collection, and Guarantor agrees that the obligations under this Agreement shall remain unchanged until the payment and performance in full of the Guaranteed Obligations. Guarantor shall be regarded, and shall be in the same position, as Client with respect to the Guaranteed Obligations. Guarantor expressly waives all rights it may now or in the future have under any statute, or at common law, or at law or in equity, or otherwise, to compel Fuelman to proceed in respect of the Guaranteed Obligations against Client, or any other party before proceeding against, or as to conduct to proceeding against, Guarantor. Guarantor acknowledges and agrees that any delay or failure by Fuelman to take any action regarding the Guaranteed Obligations does not limit or prohibit Fuelman from enforcing its rights under this Agreement and further that Guarantor's liability under this Agreement shall not be eliminated or reduced by any such delay or failure.

10.4 **Payment.** Client hereby unconditionally and irrevocably guarantees to Fuelman and its successors, endorsees, transferees and assigns, the punctual payment when due (whether or stated maturity, by acceleration or otherwise) and performance of the Obligations, now or hereafter owing, whether for principal, interest, premiums, fees, expenses or otherwise (collectively, the "Guaranteed Obligations"). Any and all payments by the Guarantor hereunder shall be made full and clear of and without deduction for any set-off, counterclaim, or withholding. Guarantor acknowledges and agrees that this is a guarantee of performance in law, and not of collection, and Guarantor agrees that the obligations under this Agreement shall remain unchanged until the payment and performance in full of the Guaranteed Obligations. Guarantor shall be regarded, and shall be in the same position, as Client with respect to the Guaranteed Obligations. Guarantor expressly waives all rights it may now or in the future have under any statute, or at common law, or at law or in equity, or otherwise, to compel Fuelman to proceed in respect of the Guaranteed Obligations against Client, or any other party before proceeding against, or as to conduct to proceeding against, Guarantor. Guarantor acknowledges and agrees that any delay or failure by Fuelman to take any action regarding the Guaranteed Obligations does not limit or prohibit Fuelman from enforcing its rights under this Agreement and further that Guarantor's liability under this Agreement shall not be eliminated or reduced by any such delay or failure.

10.5 **Client Initiated Electronic Funds Transfer /Automated Clearinghouse EFT/ACH/Wire Payment.** Prior to the Due Date, Client will initiate a credit to Fuelman's bank account to pay the accumulated balance of the Client Account from the previous Billing Cycle after notifying and obtaining approval from a Fuelman Customer Service representative EFT/ACH/Wire payment. Fuelman reserves the right to charge a fee of up to fifty dollars (\$50.00) for processing each Client initiated EFT/ACH/Wire payment.

10.5.1 **On Account.** Fuelman may offer Client the ability to pay in advance for its purchases. The Account will be debited for such purchase. The Account will be replenished by EFT with the amount equal to the prior week's Statement amount. Residual Account credit balances will be returned upon writer request. Escheatment laws, where applicable, will be followed.

10.5.2 **Applying Payments.** Fuelman uses a "balance forward" based accounting system. Therefore, all payments made by Client to Fuelman will be applied accordingly against the outstanding amount due at the time the payment is received. Subject to applicable law, we will apply and allocate payments and credits among balances owed by Client (whether for purchases, Late and other fees, Finance and other charges, or otherwise) in any order and manner determined by Fuelman in its sole discretion. Client agrees that Fuelman has the unconditional right to exercise this discretion in a way that is most favorable or convenient to Fuelman.

10.5.3 **Late Payments and Late Fees.** All payments owed by Client to Fuelman that are not received by the Due Date are considered late, and Client will be obligated to pay Fuelman Late Fees and Finance Charges.

10.5.4 **In the event any required payment is not received by Fuelman by the Due Date, Fuelman may charge Client, and Client agrees to pay, a Late Fee equal to 1.25% of the New Balance (defined below) with a minimum Late Fee of twenty-five dollars (\$25.00) for each late payment, not to exceed the maximum rate allowable by applicable law. To determine the New Balance for the purposes of Late Fees, Fuelman starts with the Amount Due on the Statement for which the payment is late. Any purchases and other debts posted to the Account through the end date of the current (next succeeding) Statement may be added to this amount. Appropriate Finance Charges and fees are added and other applicable adjustments made.**

10.5.5 **Annual Percentage Rate.** When Finance Charges are owed by Client on the Account (see Section 10.9 below), the Annual Percentage Rate on the balance is the two percent (2%) which corresponds to a Daily Periodic Rate of 0.0597%, the maximum amount allowed by applicable law, whichever is less. The Daily Periodic Rate is the Annual Percentage Rate divided by three hundred sixty-five (365).

10.5.6 **Finance Charges.** If Client's Statement is paid in full every Billing Cycle by the applicable Due Date, the Account will not incur Finance Charges. If a payment is late, then Finance Charges begin to accrue for each purchase as of the date the purchase is added to the Account. If payment in full of the Amount Due shown on the Statement for a Billing Cycle is credited to Client's Account by the Due Date shown on that respective Statement, then Finance Charges will not accrue for purchases from the date on which payment in full of that Amount Due is credited to Client's Account, provided the Account

10.5.7 **Change in Bank Account.** To change the Bank Account, Client's Representative must provide a written request (such change to Fuelman. The request should include the following information for the new Bank Account: bank name (the bank must be a member of the National Automated Clearinghouse Association (NACHA); branch address; branch number; bank routing number, and account number. The request should also contain a voided check from the new Bank Account. We will take approximately ten or more days for Fuelman to change the Bank Account. During this time, Client agrees to cooperate with Fuelman to provide additional information necessary to make the change and to execute a test of the change.

10.5.8 **Client Initiated Electronic Funds Transfer /Automated Clearinghouse EFT/ACH/Wire Payment.** Prior to the Due Date, Client will initiate a credit to Fuelman's bank account to pay the accumulated balance of the Client Account from the previous Billing Cycle after notifying and obtaining approval from a Fuelman Customer Service representative EFT/ACH/Wire payment. Fuelman reserves the right to charge a fee of up to fifty dollars (\$50.00) for processing each Client initiated EFT/ACH/Wire payment.

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10.5.13 **Annual Percentage Rate.** When Finance Charges are owed by Client on the Account (see Section 10.9 below), the Annual Percentage Rate on the balance is the two percent (2%) which corresponds to a Daily Periodic Rate of 0.0597%, the maximum amount allowed by applicable law, whichever is less. The Daily Periodic Rate is the Annual Percentage Rate divided by three hundred sixty-five (365).

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10.5.35

Default, Fuelman shall have and may waive, at its election, from time to time, any and all rights and remedies available at law, in equity, or otherwise, including, without limitation, (i) declaring the entire unpaid balance of the Obligations hereunder or any part thereof immediately due and payable, whereupon it shall be due and payable; and (ii) demanding payment from the Guarantor.

- 15. Dispute Resolution.**
- 15.1 **Disputed Transactions.** To dispute any Transaction on Client's Statement, Client must notify Fuelman in writing as set forth below within fifteen (15) days of the date of Client's Statement. Fuelman will promptly investigate the matter and respond to Client within sixty (60) days after receiving written notice. Notice should be sent to: FUELMAN, P.O. Box 824138, Norcross, GA 30013, Attention: Customer Service. Fuelman shall not be responsible for and Client shall waive any discrepancies or disputes that Client does not report to Fuelman in writing within fifteen (15) days after the date of Client's Statement.
- 15.2 **Disputed Transaction Notices.** Client may report any dispute to Fuelman by telephone. However, telephone notice will not preserve Client's rights or otherwise serve as effective notice under this Agreement. Client must put in writing any dispute regarding a Transaction on Client's Statement. Client's notice must include the following information: name, Account number, date of the Transaction, dollar amount and identification of the Transaction(s) in question; and any possible explanation of the error.
- 15.3 **Dispute Resolution.** The parties agree that they will work in good faith to resolve any dispute arising under this Agreement. If the dispute cannot be resolved by the parties, then at Fuelman's sole discretion, the dispute will be resolved by binding arbitration in Atlanta, Georgia in compliance with the American Arbitration Association's commercial arbitration rules or by litigation in accordance with Section 25.1. The foregoing does not prohibit either party from seeking injunctive relief without first complying with this Section. Client will reimburse Fuelman for all of its costs and expenses (including collections and attorney's fees and costs) incurred in connection with enforcing any of Fuelman's rights under this Agreement. To accommodate the right to arbitrate, Client agrees that Client will neither assert, nor participate in, a class action or other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Client's relationship with Fuelman.

- 16. Security, Loss, Theft Or Unauthorized Use Of Card.**
- 16.1 **General Security.** Each Card can be programmed to only allow Fuel or both Fuel & Maintenance services such as oil changes, vehicle washes, etc. Typically, each Transaction is authorized with the Card number, product code, quantity and driver's Driver ID across the proprietary Fuelman network to ensure that the purchase is authorized and limited to the product and quantity (e.g. gallons of Fuel or dollars of Maintenance) that have been pre-approved. This system also helps prevent unauthorized Driver IDs and stolen Cards from being used to make purchases. The product and quantity controls are subject to each Merchant Location's POS Authorization Limitations described in Section 16.9.
- 16.2 **Client's Responsibility.** It is the responsibility of Client to ensure proper security controls are kept in place to protect the Cards and Driver IDs and that only authorized employees or agents of Client use them to make purchases. It is also the Client's responsibility to lock any inactive, misplaced, or stolen Cards and Driver IDs immediately. Fuelman is not responsible for fraudulent Transactions made on unlocked Cards with valid Driver IDs. Client should use the online account application to lock Cards and Driver ID instantly. Alternatively, the Client can contact Fuelman Customer Service during regular business hours via phone call with the requested change, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. All Transactions in which a valid/unlocked Card number was used in conjunction with a valid/active Driver ID will be considered to be authorized Transactions in which Client is fully responsible for payment. It is also the Client's responsibility to review the standard fuel management reports and optional eMail exception alerts to identify potential purchasing discrepancies. Client should instruct its Cardholders to keep any record of their Driver ID separate from the vehicle's Card.

- 16.3 **Lost or Stolen Cards.** Client shall report all lost or stolen Cards to Fuelman immediately via phone call to Fuelman Customer Service identifying the Card number and such other details concerning the loss or theft of the Cards as are known by Client, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. Client understands that it is liable for all Transactions made by lost or stolen Cards until 24 hours after the time Fuelman receives Client's notice of such loss or stolen Cards, and for all unauthorized use of the Account and Cards to the fullest extent permitted by applicable law. Client agrees in any event that if at any time Client has been issued ten (10) or more Cards at Client's request, then Client waives any and all limitations of liability for unauthorized use. This provision does not apply misuse of Cards by Cardholders, for which Client is always obligated. Client and Guarantor(s) agree to not acknowledge full liability for any losses resulting from any failure to report the loss or theft of Card(s) in accordance with the terms hereof. Notwithstanding anything to the contrary in this Section, if Client has opted into FuelCor's Fraud Liability Waiver Program, then the Fraud Liability Waiver Program Terms and Conditions shall continue to apply for the duration of such time as Client remains enrolled in the Fraud Liability Waiver Program.

- 16.4 **Terminated Drivers.** It is the Client's responsibility to lock a terminated driver's Driver ID as explained in Section 16.2.
- 16.5 **Card and Driver ID Controls.** Cards may be configured to limit acceptance and transaction amounts, for example, by limiting Card authorization to specific merchant category codes (MCCs), maximum transaction dollar amounts, maximum number of transactions in a given time period, certain days of the week, and times of day, etc. Cards may also be configured to prompt for a valid driver or vehicle identification number (ID) and odometer at most fueling locations prior to turning on the pump. While Merchants may limit the amount of fuel dispensed per transaction, fuel pumps typically do not automatically shut off at a Card's transaction dollar limit. Operator establishes these standard parameter controls as a means of assisting Client in limiting purchase abuse and fraud. While Operator attempts to control the use of the Card to the parameters selected, Client agrees to pay for all transactions on the Account ("Charges") regardless of whether such charges are within or outside the parameters established for each Card.

- 16.6 **Miscellaneous Product Purchase Limitations.** In addition to the vehicle-related product categories (Fuel, Maintenance supplies, and Maintenance services) a Card can be allowed to purchase non-vehicle related items under the Miscellaneous product category. If a Client does not want to allow non-vehicle related purchases, Client should set each Card's Miscellaneous product category spending limit to zero dollars (\$0). Fuelman assumes no responsibility for any unauthorized Miscellaneous purchases.
- 16.7 **Tax Reporting Limitations.** Fuelman calculates applicable taxes for Fuel. Applicable taxes for Maintenance and other non-Fuel purchases are dependent on the information provided to Fuelman by the applicable Merchant, location.

- 16.8 **Merchant Limitations.** The personnel (if any) at a Merchant Location are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by any of the Merchants or any other liability or damage which arises from the action or negligence of the personnel of any of the Merchants, their agents or their employees.
- 16.9 **POS Authorization Limitations.** Authorization controls are provided as a convenience to the Client and are not guaranteed to prevent unauthorized purchases. Specifically, depending on the particular point-of-sale (POS) equipment and Fuel dispenser controls being used by a particular Merchant Location, the product type and spending limit may not be enforceable prior to completing the Transaction. In these situations, the Transaction will still be considered to be authorized, but will be identified as an exception on the Client's standard fleet management report and reported via email if caused by Client.

- 16.10 **Claims.** All claims for defective Fuel or Maintenance must be made to the Merchant operating the Merchant Location where such Fuel or Maintenance was purchased. Any claim for defective Fuel or Maintenance is waived by Client unless made in writing to Merchant, with a copy to Fuelman, within fifteen (15) days from the date of the purchase of the alleged defective Fuel or Maintenance giving rise to the claim. Fuelman will not accept any claims for defective Miscellaneous.

- 17. Term and Termination.**
- 17.1 **Term.** The term of the Account shall be one (1) year from the date the Cards are issued to Client unless either party terminates the Account as provided in this Agreement. Thereafter, Fuelman will automatically renew Client's Account for additional one (1) year periods unless either Fuelman or Client gives the other party notice of intent not to renew at least thirty (30) days before its scheduled expiration date. At the outset of any such one-year renewal period, Fuelman, at its discretion, may issue replacement Cards to Client.
- 17.2 **Termination by Client.** Client may terminate Client's Account and its use of the Cards for any reason by providing written notice of such termination to Fuelman. Client remains obligated to pay for any and all transactions, balances, fees, and other amounts incurred up until midnight of the day Fuelman receives notice of such termination.
- 17.3 **Termination by Fuelman.** Fuelman may terminate Client's Account and its use of the Cards for any reason, including but not limited to: inactivity; failure to promptly pay any amounts due; Fuelman's failure to use the Cards exclusively for business purposes; or Fuelman's decision to terminate the Fuelman Program. Fuelman will notify Client's Representative at the time of termination that the Client's Account or Cards will be terminated along with the reason(s) for such termination.

- 18. Change In Ownership.** Client must notify Fuelman immediately in the event of any sale of a major ownership of its equity, any sale of a majority of its assets, any merger, reorganization or other transaction which results in a change of ownership of Client. Fuelman may terminate the Account in its sole discretion upon any change of ownership.

- 19. Contacts And Notices.**
- 19.1 **Fleet Contact.** The "Fleet Contact" listed on the Application is authorized to provide Fuelman with the information necessary to establish Client's Account records and Cards, including, but not limited to vehicle, driver and card use related information. Fuelman is authorized to send all Account information and Client's Cards to the Fleet Contact's attention.

- 19.2 **Accounts Payable Contact.** The "Accounts Payable Contact" listed on the Application is authorized to provide Fuelman with payment information for Client's Account, including, but not limited to, the name and address of the person to whom bills should be Fuelman's primary contact in the event that the Account becomes delinquent or exceeds the assigned Spend Limit.

- 19.3 **Notices, Statements and other Communications.** Except as specified otherwise in this Agreement, all notices, requests, demand, or other communications required to be made pursuant to this Agreement shall be in writing and shall be given by mail by first class, certified or registered mail, postage prepaid, or by the sending by facsimile (with confirmation by mail to be provided by the party giving notice) or by reputable overnight delivery service (such as FedEx or UPS) or by personal delivery to the recipient party, to the address indicated below for Fuelman and in the Application for Client. Fuelman may provide all written communications to Client at the address for Client maintained in Fuelman's records. It is Client's responsibility to notify Fuelman of any changes to Client's address. Without limiting the foregoing, Fuelman may give any notice to Client by including the notice in the Statement provided to Client. A notice will be deemed received on the actual date of receipt. Fuelman's address for notices is: FUELMAN, P.O. Box 924138, Norcross, GA 30070, Attention: Customer Service.

- 20. Maximum Limit of Liability.** In no event shall any Finance Charge or other mtes payable under this Agreement, plus any other amount paid in connection herewith, exceed the principal amount payable under any law that is not subject to limitation shall in no event be deemed a final determination, claim applicable. Client and Fuelman, in accepting and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it, provided, however, that anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, in no event, as of the date of this Agreement, Client is and shall be liable only for the payment of such maximum amount as allowed by law, and payment received from Client in excess of such legal maximum amount, whenever received, shall be applied to reduce the principal balance of the Obligations hereunder to the extent of such excess.

- 21. Credit Reporting Agencies.** Client and Guarantor(s) authorize Fuelman to report to any commercial credit reporting agency, Client's or Guarantor's performance under this Agreement, including but not limited to Dunn & Bradstreet, Experian Business or Equifax Credit Information Services, if the Account is personally guaranteed. Fuelman reserves the right to report Account information to consumer credit reporting agencies, including but not limited to Equifax, Credit Information Services, Experian and TransUnion. Client and Guarantor have the right to notify the consumer reporting agencies not to use its respective credit report in connection with a credit transaction it did not initiate. To do so, contact Equifax Credit Information Services, P.O. Box 740223, Atlanta, GA 30374-0123, Experian, P.O. Box 919 Allen, TX 75013, and TransUnion, P.O. Box 97326, Jackson, MS 39298-7326; or Client and Guarantor may notify all three agencies by calling 1-888-567-9898.

- 22. Limitation of Liability.** FUELMAN WILL HAVE NO LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING CLAIMS FOR LOSS OF PROFITS, WHETHER RESULTING DIRECTLY OR INDIRECTLY TO CLIENT, GUARANTOR, OR THIRD PARTIES, AND WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR RESULT FROM A BREACH OF THIS AGREEMENT. IN THE EVENT A COURT IN A FINAL, NON-APPEALABLE AWARD FINDS FUELMAN LIABLE FOR ANY DIRECT DAMAGES, FUELMAN'S LIABILITY IN THE AGGREGATE FOR SUCH DIRECT DAMAGES WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CLIENT TO FUELMAN FOR THE MONTH PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

- 23. Indemnification.** To the maximum extent allowed by law, Client (the "Indemnitor") will indemnify and hold harmless Fuelman and its affiliates, directors, officers, employees, and agents (the "Indemnitees") from and against any and all third party claims, losses, damages, suits, fees, judgments, costs, and expenses (collectively referred to as "Claims"), including attorneys' fees incurred in responding to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with (a) the Indemnitor's (or its employees' or agents') negligence, willful misconduct, or breach of any representation, warranty or other obligation under this Agreement, or (b) any personal injury (including death), damage to property, or environmental clean-up and related costs, resulting from the Indemnitor's or its employees' or agents' acts or omissions. The Indemnitees will give prompt notice of any Claim to the Indemnitor, who will defend the Indemnitees at the Indemnitees' request.

- 24. Nondisclosure.** Fuelman may provide to Client access to confidential and proprietary information regarding Fuelman's business, business plans, pricing and reimbursement policies, and other issues ("Confidential Information"). Client will keep all Confidential Information in strict confidence and not disclose or use the Confidential Information during the term of this Agreement and for five (5) years thereafter, provided that for any Confidential Information deemed to be a "trade secret," Client shall protect and not disclose or use such Confidential Information for so long as such Confidential Information is so secret. Client shall protect and not disclose or use such Confidential Information for so long as such Confidential Information is so secret. Client shall not disclose its terms except as permitted by Fuelman. Client will inform its employees and agents as to the confidential and proprietary nature of the Confidential Information to which they may be exposed and take all necessary actions to ensure that such employees and agents keep such information strictly confidential. Client will return any Confidential Information upon request from Fuelman. Client agrees that any disclosure of Confidential Information would cause irreparable harm for which monetary damages may not be a sufficient remedy, so Fuelman will, except as otherwise provided, seek all remedies and damages available at law and in equity, including but not limited to injunctive relief, without the posting of a bond.

- 25. Miscellaneous Provisions.**
- 25.1 **Governing Law; Waiver of Jury Trial; Binding Arbitration.** This Agreement will be governed by the law of Client's domicile (see Section 3.1), without regard to its conflicts of laws principles.
- Arbitration: Client or FleetCor may, without the other's consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between or among such parties relating to the Cards or Account, a prior related account, or the relationship of such parties, including without limitation claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision, and no matter what legal theory such claims are based on or what remedy (damages, or injunctive or declaratory relief) such claims seek (a "Claim"). To accommodate the right to arbitrate, Client agrees that it will neither assert, nor participate in, a class action or other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Client's relationship with FleetCor. The party filing for arbitration must choose one of the following arbitration firms and follow its rules and procedures for initiating (including paying the filing fee) and pursuing arbitration before a single neutral arbitrator: American Arbitration Association, National Arbitration Forum or JAMS. All other fees will be allocated as provided by the rules of the arbitration firm and applicable law. Claims must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis. Claims Covered

- What Claims are subject to arbitration? All Claims relating to your Cards or Account, a prior related account, or our relationship are subject to arbitration, including Claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision. All Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other source of law. Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise, and Claims made independently or with other claims. A party who initiates a proceeding in court may elect arbitration with respect to any Claim advanced in that proceeding by any other party. Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis.
- Whose Claims are subject to arbitration? Not only ours and yours, but also Claims made by or against anyone connected with us or you or claiming through us or you, such as a co-applicant or authorized user of your account, an employee, agent, representative, affiliated company, predecessor or successor, heir, assignee, or trustee or bankruptcy.
- What time frame applies to Claims subject to arbitration? Claims arising in the past, present, or future, including Claims arising before the opening of your account, are subject to arbitration.
- Broadest interpretation. Any questions about whether Claims are subject to arbitration shall be resolved by interpreting this arbitration provision in the broadest way the law will allow it to be enforced. This arbitration provision is governed by the Federal Arbitration Act (the "FAA").

- What about Claims filed in Small Claims Court? Claims filed in a small claims court are not subject to arbitration, so long as the matter remains in such court and advances only an individual (non-class, non-representative) Claim.
- How Arbitration Works

- How does a party initiate arbitration? The party filing an arbitration must choose one of the following three arbitration firms and follow its rules and procedures for initiating and pursuing an arbitration: American Arbitration Association, JAMS, and National Arbitration Forum. Any arbitration hearing will be held at a place chosen by the arbitrator firm in the same city as the U.S. District Court closest to your then current billing address, or at some other place to which you and we agree in writing. You may obtain copies of the current rules of each of the three arbitration firms and forms and instructions for initiating arbitration by contacting them as follows:
- American Arbitration Association, 336 Madison Avenue, Floor 10, New York, NY 10017-4605 Web site: www.adr.org
 JAMS, 1920 Main Street, Suite 300, Irvine, CA 92614 Web site: www.jamsadr.com
 National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55495 Web site: www.arbitration-forum.com

- At any time you or we may choose to bring a lawsuit in court to resolve arbitration of Claims or to stay the litigation of Claims pending the resolution of an arbitration hearing, you or we will provide a brief statement of the reasons for the lawsuit. An award in arbitration shall be enforceable as if it were a court judgment. A lawsuit filed in court to resolve a Claim that has been entered, Even if a party fails to exercise these rights at any particular time, or in connection with any particular Claims, that party can still require arbitration at a later time or in connection with any other Claims.

- When procedures and law are applicable in arbitration? A single, neutral arbitrator will resolve Claims. The arbitrator will be either a lawyer with at least ten years of experience or a retired or former judge, selected in accordance with the rules of the arbitration firm. The arbitration will follow procedures and rules of the arbitration firm in effect on the date the arbitration is filed unless those procedures and rules are inconsistent with this Agreement, in which case this Agreement will prevail. Those procedures and rules may limit the discovery available to you or us. The arbitrator will take reasonable steps to protect Client account information and other confidential information if requested to do so by you or us. The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes or limitations, will honor claims of privilege recognized at law, and will have the power to award to a party any damages or other relief provided for under applicable law. You or we may choose to have a hearing and be represented by counsel. The arbitrator will make any award in writing and, if requested by you or us, will provide a brief statement of the reasons for the award. An award in arbitration shall determine the rights and obligations between the named parties only and only in respect of the Claims in arbitration, and shall not have any bearing on the rights and obligations of any other person, or on the resolution of any other dispute.

- Who pays? Whoever files the arbitration pays the initial filing fee. If we file, if you file, if you file, you pay unless you get a fee waiver under the applicable rules of the arbitration firm. If you have paid the initial filing fee and you prevail, we will reimburse you for that fee. All fees will be allocated as provided by the rules of the arbitration firm and applicable law. However, we will advance or reimburse your fees if the arbitration firm or arbitrator determines there is good reason for requiring us to do so, or if you ask us and we determine there is good reason for doing so. Each party will bear the expense of that party's attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines.

- Who can be a party? Claims must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis. The arbitrator will not award relief for or against anyone who is not a party. If you or we require arbitration of a Claim, neither you, we, nor any other person may pursue the Claim in arbitration as a class action, private attorney general action or other representative action, nor may such Claim be pursued on your or our behalf in any litigation in any court. Claims, including assigned Claims, of two or more persons may not be joined or consolidated in the same arbitration. However, applicants, co-applicants, authorized users on a single account and/or related accounts, or corporate affiliates are here considered as one person.

- What is an arbitration award final? The arbitrator's award is final and binding on the parties unless a party appeals it in writing to the arbitration firm within fifteen days of notice of the award. The appeal must request a new arbitration before a panel of three neutral arbitrators designated by the same arbitration firm. The panel will consider all factual and legal issues anew, follow the same rules that apply to a proceeding using a single arbitrator, and make decisions based on the vote of the majority. Costs will be allocated in the same way they are allocated for arbitration before a single arbitrator. An award by a panel is final and binding on the parties after fifteen days has passed. A final and binding award is subject to judicial review and enforcement as provided by the FAA or other applicable law.

- Survival and Severability of Terms
- This arbitration provision shall survive: (i) termination or changes in the Agreement, the account, or the relationship between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing.

- 25.2 **Assignment.** Client will not assign, including by operation of law, this Agreement or any right or obligation under this Agreement without the prior written consent of Fuelman. This Agreement, and any and all rights and obligations associated with the Agreement, may be assigned by Fuelman upon notice to Client. All of Fuelman's rights under this Agreement and subsequent amendments shall also apply to any assignee of this Agreement. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.

- 25.3 **Relationship of Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employment, or agency relationship between the parties for any purpose.

- 25.4 **Force Majeure.** Except for payment obligations, neither party is liable for delays or failures in performance of any obligations under this Agreement due to a cause beyond its reasonable control.

- 25.5 **No Waiver.** No delay or omission by either party to exercise any right under this Agreement will impair or be construed as a waiver of such right. A waiver by any party of any provision or obligation will not be construed to be a waiver of any other breach or obligation. The party waiving its rights must sign all waivers. No waiver of any default, expressed or implied, made by either party herein shall be binding upon the party making such waiver in the event of a subsequent default.

- 25.6 **Severability.** If any provision of this Agreement is declared invalid, illegal, or unenforceable, the validity of the remaining provisions will not be affected. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of this Agreement.

- 25.7 **Interpretation.** This Agreement will not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The options and headings included in this Agreement have been inserted for convenience only and may not be used in connection with the interpretation of this Agreement. Each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties to this Agreement.

Summary of Certain Fees ^{1,2}	
Late Fee	Greater of 12.25% or \$75 for each late payment
Finance Charges	32% APR or maximum allowed by applicable law
High Credit Risk Account (Level 2 Pricing)	Incremental charge of up to \$0.25 per gallon above current pricing if Account is opened (Level 2 Pricing)
Special Network Pricing	Greater of 10c per gallon or \$3.00 per transaction at select sites/merchants
Minimum Program Administration Fee*	Up to 10 cents per gallon or \$2 per transaction
Monthly Card Fee	Up to \$10 per card per month
Optional Fleet Management Report	Up to \$15 for each optional report or up to \$100 per quarter
Non-standard Payment Option	One time set up fee up to \$50 and up to \$5 Bank Handling Fee per debit for Operator Initiated EFT/ACH: Up to \$50 per payment for Client Initiated ACH/Wire or Checks sent to different payment address displayed on statement; \$15 per payment for Pay by Phone through AFR and \$25 through Customer Service Representative.
Returned Payment Fee	Up to \$50 per occurrence

¹ Listed charges/fees not applicable to all Clients.
² Additional charges/fees may apply based on the Client's agreed-upon program; please refer to the full Client Agreement Terms and Conditions for complete details.
³ Charges/fees for additional products/services is available upon request.
⁴ Certain exclusions apply; please consult with your sales representative for more details.