



CHECKLIST

For enrollment and
Required documents

TO ENROLL PLEASE:

<input type="checkbox"/>	<p><u>Merchant Agreement:</u> Please make sure the below pages are completed, signed and dated.</p> <ul style="list-style-type: none"> ○ Page 1- HELPCard Merchant Agreement (complete and sign) ○ Page 17 – Schedule A - Designation of Merchant, Merchant Affiliates and Notice Addresses (complete and sign) ○ Page 18 – Schedule B – HELPCard Merchant Application (complete) ○ Page 19 – Schedule B - HELPCard Merchant Application (sign) ○ Page 22 – Schedule D – Deposit Account ACH Authorization (complete and sign) ○ Page 23 – Schedule E – Promotional Offerings (choose and sign) ○ Page 30 – Schedule H – Continuing Personal Guaranty (complete and sign)
<input type="checkbox"/>	<p><u>Banking Information:</u> Please include a copy of a voided check for funding your checking account. <u>Please note:</u> Name on check must match the name used on merchant agreement.</p>
<input type="checkbox"/>	<p><u>Financial Information:</u> Include a copy of current two years Business Tax Returns Professional Corporation and Corporation: Please send complete pages of Business Tax Returns S Corporation: Please send complete pages of Business Tax Returns Limited Liability Company, Partnership: Please send one year Personal Tax Returns and one year Business Tax Returns including Schedule C Sole Proprietorship: Please send two years Personal Tax Returns</p>
<input type="checkbox"/>	<p><u>Verification of Authorizing Signatory:</u> For Corporation, Professional Corporation and Limited Liability Company: Please include Articles of Incorporation, Articles of Organization, Corporate Resolution or Operating Agreement.</p>

Please fax these documents to 858-707-7879 or email support@firstlookapproval.com

If you have any questions, please contact First Look Approval and we will be happy to assist you!

Thank You!

HELPCard Merchant Agreement

Contract No. _____

This HELPCard Merchant Agreement ("Agreement"), after execution by the Parties, shall be effective as of the Effective Date shown below. This Agreement is by and between: (i) the entity identified below as the Merchant, for itself and on behalf of any of its Affiliates designated by the attached Schedule "A" (individually and collectively, "Merchant"); and (ii) Dent-a-Med Inc. doing business as The HELPCard and HC Processing Center ("HC Processing"), for itself and on behalf of the Authorized Financial Institution. Any reference to a "Party" shall mean either Merchant or HC Processing, individually. Any reference to the "Parties" shall mean both Merchant and HC Processing, collectively. The "Agreement" means and includes the following, all of which are incorporated in full by this reference:

- the following Terms of Service, including the Glossary of Terms in Exhibit "A" to the Terms of Service;
 - the Designation of Merchant, Merchant Affiliates, and Notice Addresses in the attached Schedule "A";
 - the Merchant Application in the attached Schedule "B";
 - the Schedule of Fees and Charges in the attached Schedule "C";
 - the Deposit Account ACH Authorization in the attached Schedule "D";
 - the Promotional Offerings in the attached Schedule "E";
 - the Information Privacy and Security Schedule in the attached Schedule "F";
 - the Merchant Operating Guide (available at www.helpcard.com/OperatingGuide.pdf last rev. date 12/01/2013);
 - the Reserve Account Schedule in the attached Schedule "G" (applicable if checked);
 - the Continuing Personal Guaranty in the attached Schedule "H" (applicable if checked); and
 - the following additional Schedules or other documents (applicable if checked and completed):
- _____.

Merchant acknowledges that it received and has agreed to be bound by all of the documents checked above, including the referenced Merchant Operating Guide, as part of its Agreement with HC Processing. The "Agreement" also means and includes any amendments and additions that may be made from time to time to any part of the Agreement, and any Schedules, exhibits, and addenda, when such amendments and additions are made in accordance with the terms of the Agreement.

The person signing on behalf of Merchant below represents and warrants that he or she is duly authorized by Merchant and any Merchant Affiliate listed in Schedule "A" to sign on its behalf and their behalf, for purposes of binding Merchant and the Merchant Affiliate to this Agreement. In consideration of the mutual promises and agreements set forth in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties have entered into the Agreement and have agreed to be bound by its terms and conditions, as may be amended from time to time.

_____, on behalf of itself and each Affiliate identified on Schedule "A" (individually and collectively, "Merchant")	Dent-A-Med Inc. d/b/a The HELPCard and HC Processing Center ("HC Processing")
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Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date Accepted and Approved by HC Processing:
_____ (the "Effective Date")

Terms of Service

- 1. Definitions.** Capitalized terms used in the Agreement that are not defined above are generally defined by the Glossary of Terms in Exhibit "A" to the Terms of Service or in the context of their first use in the Agreement. Any reference to a "Section" of any part of the Agreement includes all sub-sections in the referenced section, except when only a particular sub-section is specified. The word "day" means a calendar day, unless the Agreement uses a defined term, such as Business Day, or specifically states otherwise.
- 2. Scope and Purpose of Agreement.** Merchant understands that HC Processing has entered into a separate agreement with the Authorized Financial Institution that provides Accounts and issues Cards for the Program. Merchant has requested that HC Processing and the Authorized Financial Institution make Program financing available to Customers who want to purchase goods and services from Merchant, if those Customers request and qualify for an Account based on the Program criteria, including the credit criteria established from time to time by the Authorized Financial Institution. Merchant shall not assume Account credit and default risks on behalf of any Cardholder, but Merchant shall remain subject to all terms, conditions, representations, warranties, covenants, and duties that apply to Merchant pursuant to the Agreement, including the Merchant Operating Guide. HC Processing and the Authorized Financial Institution have agreed to make the Program available to Merchant and its qualifying Customers, subject to the terms and conditions of the Agreement.
- 3. Program Marketing and Account Forms.** During the term of the Agreement, HC Processing will make available to Merchant the form of all Applications, Charge Slips, Credit Slips, Program marketing, Account Agreements, other documents that describe the cost and availability of Cards and Accounts, and other Account and Program documents expressly approved for use by HC Processing and the Authorized Financial Institution. Merchant understands and agrees that HC Processing and the Authorized Financial Institution may change such forms and documents from time to time at their sole discretion and expense, after giving reasonable advance notice of the change to Merchant. During the term of the Agreement, Merchant may not display or use any form of Applications, Charge Slips, Credit Slips, Program marketing, Account Agreements, or any other documents that describe the cost and availability of Cards and Accounts, other than the then-current versions that have been prepared or expressly approved by HC Processing and the Authorized Financial Institution. Merchant must not display or use any Program, Application and Account forms after the termination of the Agreement. Merchant agrees to pay HC Processing for any additional costs it requires to: (a) prepare or approve any non-standard or customized form of any such documents at Merchant's request, including any materials intended to advertise or promote the Program and Account use; and (b) provide any such Program or Account documents in any non-standard or customized manner or amount at Merchant's express request.
- 4. Applications, Account Origination, and Account Use.** Merchant understands and agrees that the Authorized Financial Institution establishes and/or approves: (a) the criteria, procedures, and methods used to accept and evaluate Applications and originate Accounts; (b) the applicable rates, fees, terms and conditions of all Accounts and Account Agreements; and (c) the criteria, procedures, and methods used to permit use of the Accounts by Cardholders. The only credit applications that HC Processing and the Authorized Financial Institution will accept from Merchant are the Applications approved for use in connection with the Program, which allow Applicants to request the open-end, consumer-purpose Accounts available through the Program. Merchant must comply with all provisions in the Merchant Operating Guide that relate to the acceptance, submission and transmission of Applications, Charge Slips, Credit Slips, and other Program documents and information. All Applications that HC Processing or the Authorized Financial Institution receive from an Applicant will be evaluated by HC Processing, based on the criteria, procedures, and methods established and approved from time to time by the Authorized Financial Institution. Merchant may not participate in any way in the credit decisions made with respect to any Application or Account. Nothing in this Agreement requires that HC Processing or the Authorized Financial Institution take any particular action at Merchant's request with respect to approving any Application, authorizing use of any Account, making Account credit available to any Cardholder, or servicing and collecting amounts due in connection with the Accounts.

5. **Rights, Title, and Ownership of Accounts.** The Authorized Financial Institution shall establish and initially own the Accounts and the associated Account credit risks, subject to its right to retain service providers and transfer any part of its ownership, rights, and title in such Accounts to others, including HC Processing. Merchant understands and agrees that it shall not hold any ownership, rights, title, or interest in the Accounts or any Customer receivable evidenced by a Charge Slip acquired from Merchant pursuant to the Agreement, except to the extent Merchant acquires such rights in a Customer receivable back after processing of a Chargeback in accordance with the Agreement.

6. **Promotional Terms, Additional Services, Program Enhancements.** From time to time, the Parties and the Authorized Financial Institution may agree on certain Promotional Offerings intended to promote the use and availability of Accounts and related Program services and enhancements to Customers, Applicants, and Cardholders. Schedule "E" to the Agreement describes the Promotional Offerings that the Parties and the Authorized Financial Institution have agreed to make available as of the Effective Date, including any compensation that may be due from Merchant or unique terms that HC Processing and the Authorized Financial Institution may require as a condition of providing certain Promotional Offerings. The Promotional Offerings in Schedule "E" are subject to terminate or change from time to time during the Agreement term, as described in the referenced Schedule.

7. **Chargebacks.** The events and circumstances that could result in a Chargeback of a Card Sale and Charge Slip acquired from Merchant are described in the Merchant Operating Guide. Merchant agrees to accept for Chargeback, and agrees to be liable to HC Processing and the Authorized Financial Institution, for any such Chargeback. The Merchant Operating Guide describes the time and manner in which Merchant must respond to any Chargeback notice it receives from HC Processing. For payment of any Chargeback, Merchant authorizes HC Processing, in its discretion and at its earliest opportunity, to deduct all Chargeback amounts due from Merchant from any other amounts that may otherwise be due to Merchant in connection with the Agreement or to debit Merchant's Transaction Processing Account for any such amount. Merchant understands and agrees that HC Processing may terminate the Agreement, require establishment of a Reserve Account, or pursue other rights and remedies in the time and manner authorized by the Agreement or Applicable Law, in the event of Excessive Chargebacks. If any Card Sale is the subject of a Chargeback for which HC Processing and the Authorized Financial Institution are fully compensated by Merchant, then HC Processing and/or the Authorized Financial Institution shall assign, without recourse, all right to payment for such Card Sale to Merchant, free and clear of right, claim of title or lien. If this happens, Merchant shall be entitled all payments made after the Chargeback with respect to such Customer receivable. Merchant shall also bear all liability and risk of loss associated with any such Customer receivable, without warranty of any kind made by HC Processing or the Authorized Financial Institution and without any recourse or liability of any kind to HC Processing or the Authorized Financial Institution.

8. **Merchant Representations and Warranties.** Merchant represents and warrants to HC Processing, as of the Effective Date of the Agreement and throughout its term, the following:

- (a) That each Application that any Applicant makes through Merchant shall be valid, authorized and made by the persons identified as Applicants by any such Application;
- (b) That each Card Sale, Charge Slip, and each use of a Card and Account, shall arise only from a *bona fide* sale of Goods and Services by Merchant to a Cardholder;
- (c) That each Card Sale shall be made to a Cardholder only for his or her personal, family or household purposes, and not any business or commercial purposes;
- (d) That Merchant shall obtain an Authorization number from the Authorization Center before submitting any Charge Slip or attempting to complete any Card Sale;
- (e) That each Charge Slip, Credit Slip, and other Card Sale and Account documents shall be prepared and submitted to HC Processing in the time and manner required by the Agreement, including the Merchant Operating Guide;

(f) That all information provided in or with the Merchant Application is true, correct, and complete, and properly reflects the business, financial condition, and ownership of Merchant; and

(g) That all information provided by Merchant or its designees before and after the Effective Date about Merchant's business, financial condition, and ownership, is true, correct, and complete as of the date provided; and

(h) That Merchant has and shall maintain all required licenses, registrations, bonds, and insurances needed to conduct its business and perform its obligations under this Agreement.

9. **Merchant Covenants.** Merchant agrees:

(a) That Merchant shall comply with all duties and requirements established by the Agreement, including but not limited to those established by the Merchant Operating Guide;

(b) Merchant shall, not later than ninety (90) days after the end of each fiscal year for Merchant, provide HC Processing and the Authorized Financial Institution with an audited financial statement for Merchant, including, but not limited to, all footnotes;

(c) Merchant shall provide HC Processing and the Authorized Financial Institution, on an annual or more frequent basis, with all information they reasonably request for purposes of evaluating Merchant's financial condition and its ability to fulfill its duties pursuant to the Agreement;

(d) HC Processing and the Authorized Financial Institution may, at their own expense, verify the information they receive about Merchant's financial condition and obtain information about Merchant from credit reporting agencies, governmental agencies, and other sources of business information that HC Processing and the Authorized Financial Institution consider reliable;

(e) HC Processing and the Authorized Financial Institution may provide each other, their respective Affiliates, creditors, financial services providers and potential investors, with information about the Program, subject to the limitations and restrictions in the Information Privacy and Security Schedule attached as Schedule "F" to the Agreement;

(f) Merchant shall honor and accept all valid Cards and Accounts without discrimination, when properly presented by Cardholders to pay for Merchant's Goods and Services;

(g) Merchant shall not establish any minimum or maximum Card Sale or Charge Slip amounts, unless Merchant has obtained prior written approval to do so from HC Processing and the Authorized Financial Institution;

(h) Merchant shall not require that any Cardholder compensate Merchant in any manner for any part of the fees, charges, discounts, expenses, or other amounts assessed to Merchant by HC Processing and the Authorized Financial Institution associated with the authorization of any Card Sale and the acceptance and funding of a Charge Slip, whether through an increase in the cash price of Goods and Services, a surcharge, convenience fee, or other additional or different fee or charge that causes an increase to the cash price of the Goods and Services that Merchant assesses at the time of a Card Sale as a result of any Cardholder's use or request to use a Card or Account;

(i) That Merchant shall provide the approved form of Applications and make them available to the public without regard to any person's race, color, religion, national origin, sex, marital status, or age (provided the person has the capacity to enter into a binding contract), or any other basis prohibited by Applicable Law;

(j) That Merchant shall not make any oral or written statement to any Applicant or prospective Applicant that would discourage a reasonable person from making or pursuing an Application on the basis of race, color, religion, national origin, sex, marital status, or age (provided the person has the capacity to enter into a binding contract), or any other basis prohibited by Applicable Law;

(k) That Merchant shall prominently display, in any retail location area at which Merchant may accept Customer payments or accept Program inquiries, the Applications, Program marketing materials, and all

related documents prepared or expressly approved for use from time to time by HC Processing and the Authorized Financial Institution, for purposes of marketing the Program and describing the availability, use, and terms of the Cards and Accounts;

(l) That Merchant shall not change the type of business in which it engages, the types of products and services it provides, the locations from which it conducts business, or the manner in which it provides and sells such products and services, from those Merchant described in its Merchant Application and Schedule "A" (Designation of Merchant, Merchant Affiliates, and Notice Addresses), unless Merchant provides thirty (30) days advance notice of any such change to HC Processing and obtains its express written approval for any such change; and

(m) That Merchant shall comply with all Applicable Laws that affect the manner in which Merchant conducts its business, promotes and provides its Goods and Services, and interacts with Customers, Applicants, and Cardholders, including but not limited to all federal and state laws that govern telemarketing, telephone solicitations, mail order sales, trade practices, credit discrimination, privacy and information security.

10. **HC Processing Representations and Warranties.** HC Processing represents and warrants to Merchant, as of the Effective Date of the Agreement and throughout its term, the following:

(a) That Applications shall be provided and made available to the public by HC Processing without regard to any person's race, color, religion, national origin, sex, marital status, or age (provided the person has the capacity to enter into a binding contract), or any other basis prohibited by Applicable Law;

(b) That HC Processing shall not make any oral or written statement to Applicants or prospective Applicants that would discourage a reasonable person from making or pursuing an Application, on the basis of race, color, religion, national origin, sex, marital status, or age (provided the person has the capacity to enter into a binding contract), or any other basis prohibited by Applicable Law;

(c) That HC Processing and the Authorized Financial Institution have and shall retain all required licenses, registrations, bonds, and insurances needed to perform their obligations under this Agreement; and

(d) That HC Processing shall comply with all Applicable Laws that affect the manner in which HC Processing conducts its business, provides Account services, and interacts with Customers, Applicants, and Cardholders, including but not limited to federal and state laws that govern consumer credit transactions, telemarketing, telephone solicitations, mail order sales, trade practices, credit discrimination, privacy and information security.

11. **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party, as of the Effective Date of the Agreement and throughout its term, the following:

(a) That such Party has full corporate power and authority to enter into the Agreement, on its own behalf and on behalf of any identified Affiliate;

(b) That such Party has taken all corporate action required by any organizational documents to make this Agreement binding and valid against the Party and any identified Affiliate according to its terms;

(c) That this Agreement is and shall be binding, valid, and enforceable against such Party and any identified Affiliate according to its terms;

(d) That the execution, delivery, and performance of the Agreement, and the consummation of the transactions contemplated by the Agreement, shall not constitute a violation of Applicable Law or a violation or default by such Party under its articles of organization, articles of incorporation, by-laws or any other applicable formation or governance documents, or under any debt instruments or other material agreement or contract between such Party and any other entity or person;

(e) That no authorization of any governmental authority is required in connection with the performance by such Party of its obligations under the Agreement; and

(f) That there are no proceedings or investigations pending, or to such Party's knowledge threatened, before any court, regulatory body, administrative agency, or other tribunal or governmental instrumentality having jurisdiction over such Party or its properties, asserting the invalidity of this Agreement, seeking to prevent consummation of the transactions contemplated by the Agreement, or which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the such Party's ability to perform its obligations under the Agreement.

12. Transaction Processing.

(a) Deposits. Merchant agrees that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 365, as amended from time to time. Merchant understands and agrees that its obligations to HC Processing and the Authorized Financial Institution for all amounts owed under the Agreement arise from the same transaction as any obligation they have to deposit funds to the Transaction Processing Account, and that such amounts are owed in the ordinary course of business.

(b) Transaction Processing Account. Merchant shall establish and maintain a Transaction Processing Account with a depository institution authorized to participate in an automated clearing house ("ACH") and otherwise acceptable to HC Processing. Merchant shall maintain sufficient funds in its Transaction Processing Account at all times to accommodate all Chargebacks, returns, refunds, adjustments, fees, and other payments and amounts that may be due from Merchant under the Agreement.

(c) Payments To Acquire Charge Slips From Merchant; Provisional Credit. Any payment that HC Processing and/or the Authorized Financial Institution make to acquire a Charge Slip from Merchant shall be provisional and not a final payment, until HC Processing and the Authorized Financial Institution determine that Merchant has complied with the terms and conditions in the Agreement and that Merchant is not in violation of any representation, warranty, or covenant it made in the Agreement. Merchant acknowledges that all credits for funds provided to it are provisional and subject to reversal if HC Processing does not receive payment of corresponding settlement amounts from the Authorized Financial Institution. Merchant also acknowledges that all credits are subject to adjustments for inaccuracies and errors (including rejects) and Chargebacks in accordance with the Agreement, regardless of whether the Chargeback is initiated by the Authorized Financial Institution, a Cardholder, or a Customer. Merchant authorizes HC Processing to initiate reversal or adjustment (debit or credit) entries and to initiate or suspend such entries in accordance with the Agreement as may be necessary to grant or reverse provisional credit given for any transaction. The payment amount required for HC Processing and/or the Authorized Financial Institution to acquire any Charge Slip from Merchant shall never exceed the total Card Sale amount shown as due from the Cardholder on the Charge Slip. The amounts acceptable to Merchant that HC Processing and the Authorized Financial Institution must pay to acquire all rights, title, and interest in a Charge Slip from Merchant are set forth in the Schedule of Fees and Charges (Schedule "C") and the Promotional Offerings Schedule (Schedule "E"), as applicable.

(d) Collection of Amounts Due From Merchant; Chargebacks. Merchant authorizes HC Processing, at its sole discretion, to use either: (i) a "direct debit" payment method to be compensated for any amounts that HC Processing determines is owed by Merchant under the Agreement, based on Merchant's authorization for HC Processing to initiate debit entries to Merchant's Transaction Processing Account or any Reserve Account that may be established; or (ii) a "net" payment method to be compensated for any amounts that HC Processing determines is owed by Merchant under the Agreement, by deducting such amounts from any amounts that may otherwise be owed to Merchant under the Agreement for Charge Slips or otherwise. The amounts that Merchant owes pursuant to the Agreement include, but are not limited to, amounts due for Chargebacks and amounts due for fees, charges, and other amounts specified in the Schedule of Fees and Charges (Schedule "C"), the Promotional Offerings Schedule (Schedule "E"), and other applicable provisions of the Agreement. To the extent required, Merchant authorizes and appoints HC Processing to act as Merchant's agent for the limited purpose of collecting amounts that may be due from a Customer, the Authorized Financial Institution, or a Customer's depository institution.

13. Change in Ownership; Assignments. This Agreement may not be assigned or transferred by Merchant, directly or by operation of law, except with the prior express written consent of HC Processing. If, despite this prohibition, Merchant assigns this Agreement without the express consent of HC Processing, then: (a) the

Agreement shall be binding on any such assignee of Merchant; and (b) Merchant and any guarantors of Merchant shall remain liable for any nonperformance by any such assignee of Merchant. Merchant must send HC Processing at least thirty (30) days prior written notice of any change in the name(s) and location(s) of Merchant and any identified Merchant Affiliate, any material change in ownership of Merchant's business, or any change in Charge Slip information concerning Merchant and any identified Merchant Affiliate. Merchant understands that HC Processing has contracted with, or may contract with, more than one Authorized Financial Institution, and that an Authorized Financial Institution may succeed or otherwise take the place of another Authorized Financial Institution during and after the term of the Agreement. This Agreement shall cover all Accounts issued by any Authorized Financial Institution for the Program and the receivables generated by all such Accounts. Merchant understands and agrees that HC Processing and any Authorized Financial Institution may assign their rights and/or delegate their duties under this Agreement at any time and without advance notice to Merchant.

14. Indemnification.

(a) Indemnification by Merchant. Merchant shall be liable to and shall indemnify and hold harmless HC Processing, the Authorized Financial Institution, their respective Affiliates associated with the Program, and their respective officers, employees, agents and directors from any losses, damages, claims or complaints incurred by HC Processing, the Authorized Financial Institution, any of their respective Affiliates, or their respective officers, employees, agents and directors arising out of: (i) Merchant's failure to comply with this Agreement, including the Merchant Operating Guide and any Schedule to the Agreement; (ii) any claim, dispute, complaint or setoff made by a Cardholder in good faith with respect to anything done or not done by Merchant in connection with Card Sales or Credit Slips that constitutes a violation of a duty or promise by Merchant; (iii) anything done or not done by Merchant in connection with the furnishing of any Goods and Services purchased by Cardholders that constitutes a violation of a duty or promise by Merchant; (iv) the death or injury to any person or the loss, destruction or damage to any property arising out of the design, manufacture or furnishing by Merchant of any Goods and Services purchased by Cardholders; (v) any claim or complaint of a third party in connection with Merchant's advertisements and promotions relating to the Card which have not been reviewed or approved by HC Processing; (vi) any illegal or improper conduct of Merchant or its employees or agents; and (vii) any claim or complaint by a consumer that Merchant has violated any Applicable Law, including but not limited to the Equal Credit Opportunity Act and the Truth in Lending Act.

(b) Indemnification by HC Processing. HC Processing shall be liable to and shall indemnify and hold harmless Merchant and its identified Affiliates and their respective officers, employees, agents and directors from any losses, damages, claims or complaints incurred by Merchant or any of its Affiliates or their respective officers, employees, agents and directors, arising out of: (i) HC Processing's failure to comply with this Agreement; (ii) any claim, dispute or complaint by a Cardholder made in good faith resulting from anything done or not done by HC Processing in connection with such Cardholder's Account; (iii) any illegal or improper conduct of HC Processing, its Affiliates, or their respective employees or agents with respect to the Card, a Card Sale, an Account or any other matters relating to the Program; (iv) any claim, dispute, complaint or setoff by a consumer made in good faith resulting from a violation by HC Processing, with respect to the Application or Account agreement, of the Equal Credit Opportunity Act, Truth in Lending Act or any other related Applicable Laws; and (v) any claim, dispute or complaint of any third party made in good faith in connection with advertisements and promotions prepared by HC Processing relating to the Card. Notwithstanding the foregoing, the indemnification by HC Processing shall not apply to any claim or complaint relating to the failure of Merchant to resolve a billing inquiry or dispute with a Cardholder where such failure was not caused by HC Processing.

(c) Notice of Claim & Survival. In the event that HC Processing or Merchant shall receive any claim or demand or be subject to any suit or proceeding of which a claim may be made against the other under this Section, the Party seeking indemnification shall give prompt written notice thereof to the indemnifying Party, and the indemnifying Party will be entitled to participate in the settlement or defense thereof with counsel satisfactory to indemnified Party at the indemnifying Party's expense. In any case, the indemnifying Party and the indemnified Party shall cooperate (at no cost to the indemnified Party) in the settlement or defense of any such claim, demand, suit, or proceeding. The terms of this Section shall survive the termination of this Agreement.

15. **Term and Termination.**

(a) **Term.** This Agreement shall be effective as of the Effective Date and shall remain in effect for one (1) year ("Initial Term"), subject to earlier termination as set forth below. After that, this Agreement shall be automatically renewed for successive one year terms (each, a "Renewal Term") unless and until terminated as provided in the Agreement.

(b) **Termination of Agreement.** This Agreement shall continue until terminated by either Party by giving the other Party not less than thirty (30) days advance written notice as required by the Agreement. Each Party's obligations on Charge Slips and Card Sales that HC Processing authorizes or funds before the effective date of the termination shall survive such termination. The acceptance of Charge Slips and Card Sales after such notice shall be at the sole discretion of HC Processing on a case by case basis. Termination of this Agreement by either Party does not relieve Merchant or HC Processing from obligations that either Party incurred by HC Processing's acceptance of Charge Slips before receipt of notice. Each Party's indemnification obligations as provided in the Agreement shall survive any termination of this Agreement, and shall remain in effect until the unpaid balance of all unpaid Charge Slips and related accounts receivable generated by Merchant have been paid in full by the respective Cardholders. If a modification to the Program or Agreement is reasonably determined by a Party to be required by any Applicable Law, such Party shall notify the other Party, and either Party may terminate this Agreement if an acceptable amendment is not agreed upon within ten (10) days of the notice. HC Processing also reserves the right to terminate this Agreement immediately in the event of substantive non-performance or conflict. Reasons for immediate termination include but are not limited to: (i) Excessive Chargebacks; (ii) Merchant's failure to pay HC Processing or the Authorized Financial Institution any undisputed amount Merchant owes under the Agreement; (iii) Merchant's failure to communicate with HC Processing in the time and manner required by the Agreement; (iv) Merchant's misrepresentation to HC Processing of the goods and services provided and performed by Merchant; (v) fraud, bankruptcy, sale or significant changes to the Merchant's organizational structure; (vi) Merchant's failure to maintain sufficient funds in the Transaction Processing Account; (vii) Merchant's closure of the Transaction Processing Account; or (viii) Merchant's cancellation of the authority for HC Processing to initiate debit and credit entries to the Transaction Processing Account as provided in the Agreement. If HC Processing elects to terminate in the event of substantive non-performance or conflict, notice shall be effective provided it complies with the requirements set forth in the Agreement.

(c) **Termination of Card Acceptance and/or Agreement.** HC Processing, upon notice to Merchant, may elect to terminate the acceptance of Cards and/or Accounts at one or more Merchant locations, if HC Processing determines there are Excessive Chargebacks or high fraudulent activity levels at such locations, or other business conduct that may be injurious to the Program or the business relationship between the Parties. In addition, HC Processing may terminate this Agreement upon fifteen (15) days prior notice to Merchant if the termination of a particular Merchant location materially affect(s) the volume of Card Sales generated by Merchant.

(d) **Duties and Rights Upon Termination.** All rights and duties of a Party related to Card Sales and Charge Slips processed before termination shall survive termination. HC Processing may place funds for Card Sales and Charge Slips processed before termination in a Reserve Account, until Merchant pays all amounts it owes HC Processing or for which Merchant is liable under the Agreement. Merchant must maintain sufficient funds in the Transaction Processing Account after termination to cover all Chargebacks, returns, adjustments, fees, charges, and other amounts due under the Agreement for a reasonable time, but in any event, not less than one hundred eighty (180) days after termination. Upon termination of this Agreement, Merchant will promptly submit to HC Processing all Card Sales, Charge Slips, credits and other data made through the date of termination. Neither Party shall be liable to the other Party for any direct or indirect damages that either Party may suffer as a result of any rightful termination of this Agreement in accordance with the terms of this Agreement.

16. **Miscellaneous Provisions.**

(a) **Limitation of Liability; Disclaimer of Warranties.** In no event shall either Party, or its agents, officers, directors, or employees be liable to the other Party, for indirect, exemplary, punitive, special, or consequential damages. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, HC PROCESSING AND THE AUTHORIZED FINANCIAL INSTITUTION MAKE NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE

TRANSACTION PROCESSING SERVICES AND NOTHING CONTAINED IN THE AGREEMENT SHALL CONSTITUTE SUCH A WARRANTY. HC PROCESSING AND THE AUTHORIZED FINANCIAL INSTITUTION EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE EXTENT ALLOWED BY APPLICABLE LAW.

(b) **Fraud Monitoring.** Merchant is solely responsible for monitoring its own Card Sales and Account transactions for purposes of detecting fraudulent or suspicious activity. HC Processing and the Authorized Financial Institution are under no duty to monitor Merchant's Card Sales and Account transactions for such fraudulent or suspicious activity.

(c) **Audit Rights.** If HC Processing or the Authorized Financial Institution reasonably suspect that they may be subject to a financial or reputational risk due to Merchant's actions or omissions, Merchant authorizes HC Processing and/or the Authorized Financial Institution to perform an audit or inspection of Merchant's operations and records to confirm compliance with the Agreement, upon reasonable advance notice to Merchant and at the expense of HC Processing or the Authorized Financial Institution. Merchant agrees to cooperate, in good faith, with any such audit conducted by HC Processing or the Authorized Financial Institution.

(d) **Taxes.** Merchant must pay all taxes and other charges imposed by any governmental authority on the Goods and Services provided by Merchant, excluding income taxes attributable to HC Processing and/or the Authorized Financial Institution. If Merchant is a tax-exempt entity, Merchant agrees to provide HC Processing and the Authorized Financial Institution with an appropriate certificate of tax exemption.

(e) **Relationship of Parties.** In performing their respective duties pursuant to the Agreement, HC Processing and Merchant are in the position of independent contractors. In no circumstances shall either Party be deemed to be the agent or employee of the other Party. This Agreement is not intended to create, does not create, and shall not be construed to create, a relationship of partner or joint venturer or an association for profit between HC Processing and Merchant. Any amounts ever owing by Merchant pursuant to this Agreement represent contractual obligations only and are not a loan or debt.

(f) **Force Majeure.** Neither Party shall be liable to the other Party by reason of any failure in performance of this Agreement in accordance with its terms, if such failure arises out of a cause beyond the control and without the fault or negligence of such Party. Such causes may include but are not limited to acts of God, a public enemy, or of civil or military authority, unavailability of energy resources, system or communication failure, delay in transportation, fires, strikes, riots or war. In the event of any force majeure event, the disabled Party shall use its best efforts to meet its obligations as set forth in this Agreement.

(g) **Limited License; Marks.** Merchant may not display or use any name, logo, service mark or trade mark of HC Processing or its Affiliates, including but not limited to "The HELPcard" and "HELP card," in any manner without the prior express written consent of HC Processing. Merchant may display and use, during the term of the Agreement, the form of Applications, Charge Slips, Credit Slips, Program marketing, documents that describe the cost and availability of Cards and Accounts, and other Account and Program documents that have been expressly approved for use by HC Processing and the Authorized Financial Institution, without violating the limitations in this Section. Merchant authorizes HC Processing and the Authorized Financial Institution, for purposes of this Agreement, to use and display Merchant's name, logo, trademarks, service marks, and any other proprietary designations ("Merchant Proprietary Materials") on Cards, Applications, periodic statements, collection letters or documents, promotional or advertising materials and otherwise in connection with the Program, subject to Merchant's periodic reasonable review of such use and reasonable specifications of Merchant. Merchant represents and warrants that it maintains all appropriate federal and/or state registrations of trademarks and service marks needed to protect its interest in the use and ownership of the Merchant Proprietary Materials. Merchant shall, indemnify, defend and hold HC Processing and the Authorized Financial Institution harmless from any loss, damage, expense or liability arising from any claims of alleged infringement of the Merchant Proprietary Materials (including attorneys' fees and costs).

(h) **Additional Products and Services.** Except as may be restricted by Applicable Law or a binding contract between HC Processing and a person or entity other than Merchant, Merchant understands and agrees

that HC Processing, the Authorized Financial Institution, and/or any of their respective Affiliates may solicit Cardholders at any time for other financial products and services available through HC Processing, the Authorized Financial Institution, or their respective Affiliates (including but not limited to financial accounts, payment cards, insurance), during and after the term of this Agreement and regardless of whether Accounts are owned and/or serviced by HC Processing.

(i) **Notices.** All notices required or permitted by this Agreement must be in writing and sent to the respective Parties at the addresses set forth in the Agreement. Notices to Merchant and any identified Merchant Affiliate may be sent to the address shown in the Designation of Merchant, Merchant Affiliates, and Notice Addresses, attached as Schedule "A," as may be amended from time to time in accordance with its terms. Unless HC Processing notifies Merchant that it must use a different address, notices to HC Processing may be sent to: HC Processing Center, Attn: Legal Department, P.O. Box 829, Springdale, AR 72765-0829 (notices sent by regular mail); or HC Processing Center, Attn: Legal Department, 203 East Emma Avenue, Ste A, Springdale, AR 72764 (notices sent by overnight/express courier service). Said notices, when sent to the referenced addresses, shall be deemed to be received: (i) three (3) Business Days after deposit in the U.S. first class mail with postage prepaid; (ii) as of the date of any personal delivery; or (iii) as of any confirmed receipt by telex, facsimile, or overnight/express courier service or certified mail.

(j) **Amendments.** Any amendment or modification to the Agreement must be in writing and signed by a duly authorized officer of HC Processing and Merchant to be effective and binding on the Parties, except as otherwise provided in the Agreement, including any applicable Schedule to the Agreement. **No oral amendments or modifications shall be binding upon the Parties.** Any alteration or strike-through in the text of the preprinted Terms of Service or any preprinted part of the Agreement will have no binding effect and will not be deemed an amendment of the Agreement.

(k) **Counterparts.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement.

(l) **Nonwaiver and Extensions.** Neither Party shall be deemed to have waived any rights or remedies under the Agreement by any act, delay, omission, or otherwise, unless any such waiver is in a writing signed by a duly authorized officer of the waiving Party. Each Party agrees that the other Party's failure to enforce any of its rights under this Agreement shall not amend the Agreement or affect any other right of such Party, or the same right in any other instance.

(m) **Third-Party Beneficiaries.** The Authorized Financial Institution is a third party beneficiary of the rights held by HC Processing pursuant to the Agreement. This Agreement shall not create any rights on the part of any person or entity other than the Parties and the Authorized Financial Institution, whether as a third party beneficiary or otherwise.

(n) **Rules of Construction.** All terms using the singular form in the Agreement shall also include their plural form and *vice versa*. The terms of a Schedule shall be superior to and control over any conflicting or inconsistent terms that may be contained in the Terms of Service. The Section headings in the Agreement are for reference only. The Section headings are not a substantive part of the Agreement, and are not to be used to affect the validity, construction or interpretation of this Agreement or any of its provisions. The language used in the Agreement shall be deemed to be language chosen by both Parties to express their mutual intent and no rule of strict construction may be applied against any Party.

(o) **Integration; Entire Agreement.** This Agreement contains the entire agreement between the Parties. There are merged in the Agreement all prior oral or written agreements, amendments, representations, promises and conditions in connection with the subject matter of the Agreement. Any representations, warranties, promises or conditions not expressly incorporated in the Agreement shall not be binding on HC Processing or Merchant.

(p) **Governing Law; Severability.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas. If any provision of this Agreement is determined by a court or arbitrator of competent jurisdiction to be invalid, unenforceable, or contrary to Applicable Law, then any such

determination shall not affect any of the remaining provisions of the Agreement and the Agreement shall be construed as if the offending provision is not contained in the Agreement.

(q) **Bankruptcy.** Merchant must notify HC Processing of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its guarantors. Merchant must include HC Processing and the Authorized Financial Institution on the list and matrix of creditors as filed with the Bankruptcy Court, regardless of whether Merchant has verified the existence and/or final amount of any such claim at the time of filing. Merchant's failure to do so will be cause for immediate termination of the Agreement and any other action available to HC Processing under the Agreement or Applicable Law.

(r) **Survival.** The following Sections of the Terms of Service and the following Schedules shall survive termination of the Agreement: Terms of Service Sections 3; 5; 6; 7; 8; 9; 10; 11; 12; 14; 15(d); and 18; Schedules "A," "C," "D," "E," and "F"; and, if checked and made applicable by page 1 of the Agreement, Schedules "G" and "H."

(s) **Responsibility For Employees and Agents.** Merchant agrees that it is fully responsible and liable to HC Processing under the Agreement for any action, omission, violation, or failure to comply by any person or entity that is an employee or agent of Merchant or its Affiliates.

(t) **JURISDICTION AND VENUE.** ANY SUIT, COUNTERCLAIM, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT BY EITHER PARTY IN THE COURTS OF THE STATE OF ARKANSAS OR IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS (FAYETTEVILLE). MERCHANT HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND ANY APPELLATE COURTS THEREOF FOR THE PURPOSE OF ANY SUCH SUIT, COUNTERCLAIM, ACTION, PROCEEDING OR JUDGMENT, IT BEING UNDERSTOOD THAT SUCH CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WAIVES ANY RIGHT TO SUBMIT ANY DISPUTES HEREUNDER TO ANY COURTS OTHER THAN THOSE ABOVE.

17. **Arbitration.**

(a) **Mandatory Arbitration.** Any Dispute of any kind shall, at the election of either Party, be resolved by a neutral, binding arbitration and not by a court of law, except as otherwise stated in the Agreement. This procedure includes any Dispute of any kind over the interpretation, scope, or validity of the Agreement, this arbitration provision, or the arbitrability of any issue, with the sole exception of the Parties' waiver of any right to bring a class action or participate in a class action as provided for in this Section, which shall be solely determined by the appropriate court, if necessary.

(b) **Rules; Fee and Costs.** Except as otherwise provided in this Section, any arbitration must be administered by the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The AAA Rules may be obtained by mail from 1633 Broadway, 10th Floor, New York, NY 10019; by telephone at #800-778-7879; or on the Internet at www.adr.org. If the AAA is unable or unwilling to serve as an arbitration administrator and the Parties cannot agree on a substitute, then a substitute administrator and/or arbitrator will be appointed in accordance with the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*). The arbitration will be conducted under the applicable AAA Rules or the applicable rules of any substitute administrator in effect on the date the arbitration begins, unless those rules are inconsistent with the arbitration provisions of this Agreement, in which case the arbitration provisions in this Section shall govern. In any arbitration, the arbitrator must apply all applicable laws and the arbitration provisions in this Section in deciding any Dispute. Unless the applicable arbitration rules require otherwise, the arbitration award shall be issued without a written opinion. The arbitration hearing shall be conducted in the federal judicial district where HC Processing accepted and executed this Agreement (the U.S. District Court for the Western District of Arkansas, Fayetteville, AR). Fees and costs shall be paid and allocated in accordance with the procedures and rules of the applicable arbitration administrator.

(c) **Standards and Law.** The Parties agree that the Agreement involves interstate commerce and that the arbitration provisions of the Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, as may be amended ("FAA"). The arbitrator shall strictly apply all applicable substantive law and applicable statutes of

limitation that are consistent with the FAA and shall honor claims of privilege recognized at law. Judgment on any arbitrator's award may be entered by any court having competent jurisdiction.

(d) Waiver of Jury Trials, Class Actions, and Punitive Damages. The Parties agree to give up their respective rights to a trial by jury. The Parties also agree to give up any right they may have to bring a class action lawsuit or class arbitration or to participate in either as a claimant. The Parties agree to give up any right to consolidate or join any arbitration proceeding with the arbitration of others. The Parties give up the right to serve as a private attorney general in any jurisdiction in which such procedure may be permitted. The Parties waive any right to seek or recover punitive damages in any Dispute. No arbitrator shall have the power or authority to award punitive damages.

(e) Self-Help. Notwithstanding the arbitration provisions in this Section, the Parties retain the right to exercise self-help remedies and to seek provisional remedies from a court, pending final determination of the Dispute by the arbitrator. No Party waives the right to elect arbitration of a Dispute by exercising self-help remedies, filing suit, or seeking or obtaining provisional remedies from a court.

(f) Survival of Arbitration Agreement. The arbitration provisions in this Section shall survive and continue in full force and effect, regardless of any cancellation, termination, amendment, payment in full, discharge in bankruptcy, or other expiration or conclusion of the Agreement or any other contract or transaction between the Parties, unless otherwise agreed in writing. In addition, Merchant understands and agrees that the rights and responsibilities afforded to HC Processing under the arbitration provisions in this Section shall survive any assignment of the Agreement by HC Processing and that HC Processing can enforce these arbitration provisions in the event a Dispute arises after any assignment of the Agreement.

FOR ALL DISPUTES COVERED BY THE ARBITRATION PROVISIONS IN THIS SECTION OF THE AGREEMENT, THE PARTIES HAVE AGREED TO WAIVE THEIR RIGHT TO A TRIAL BY JURY, THEIR RIGHT TO PARTICIPATE IN CLASS ACTIONS, AND THEIR RIGHT TO SEEK PUNITIVE DAMAGES. EXCEPT FOR DISPUTES AND CLAIMS NOT SUBJECT TO THIS ARBITRATION AGREEMENT, ARBITRATION SHALL BE IN PLACE OF ANY CIVIL LITIGATION IN ANY COURT AND IN PLACE OF ANY TRIAL BY JURY. THE TERMS OF THIS ARBITRATION AGREEMENT AFFECT YOUR LEGAL RIGHTS. IF YOU DO NOT UNDERSTAND ANY TERMS OF THIS PROVISION OR THE COST, ADVANTAGES OR DISADVANTAGES OF ARBITRATION, SEEK INDEPENDENT ADVICE AND/OR CONTACT THE AMERICAN ARBITRATION ASSOCIATION AT (800) 778-7879 BEFORE SIGNING THIS AGREEMENT. BY SIGNING THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU READ, UNDERSTOOD AND AGREED TO BE BOUND BY EACH OF THE PROVISIONS, COVENANTS, STIPULATIONS AND AGREEMENTS SET FORTH IN THIS SECTION.

Exhibit "A" to Terms of Service

Glossary of Terms

"Account" means any open-end line of credit account initially established by the Authorized Financial Institution and serviced by HC Processing, that Cardholders may use from time to time to purchase goods or services from the Merchant or otherwise pay amounts due to Merchant, and that is accessible by a Card or other access methods approved by HC Processing and the Authorized Financial Institution.

"Account Agreement" means the agreement between a Cardholder and the Authorized Financial Institution, as may be amended from time to time, that establishes the rates, fees, terms and conditions of the Cardholder's Account and makes disclosures about the cost and availability of Account credit.

"Affiliate" means any entity that Controls, is Controlled by, or is under common Control with HC Processing, the Authorized Financial Institution, or Merchant, as applicable. Schedule "B" to the Agreement identifies any "Affiliates" of Merchant covered by and subject to the Agreement.

"Applicable Law" means any federal, state, or local law, rule, regulation, or regulatory guidance, and any binding determination of an arbitrator, court, or other governmental authority, each as amended or otherwise in effect from time to time, that applies to or is binding on a Party, its property, or the transaction of its business, or to which a Party, its property, or its business is subject.

"Applicant" means a Customer of Merchant whose principal residence and billing address is in the District of Columbia or a state in the United States (excluding its overseas territories and possessions), and who applies for a Card and Account, after submitting a Telephone Application, an Electronic Commerce Application, or a Written Application.

"Application" means any Telephone Application, Electronic Commerce Application, or Written Application for a Card and an Account submitted by a Customer of Merchant whose principal residence and billing address is in the District of Columbia or a state in the United States (excluding its overseas territories and possessions).

"Authorization" means the permission that HC Processing and the Authorized Financial Institution expressly grant for Merchant to make a Card Sale and submit a related Charge Slip.

"Authorization Center" means the facility and personnel designated by HC Processing and the Authorized Financial Institution at which Merchant may obtain Authorization for Card Sales.

"Authorized Financial Institution" means the financial institution that issues the Card and provides the Account that Cardholders use to finance their purchase of Goods and Services from Merchant. As of the Effective Date, the Authorized Financial Institution is First Electronic Bank, a Utah industrial bank, or any different financial institution designated in the initial Merchant Application for purposes of the Program. The identity of the Authorized Financial Institution is subject to change after the date of the Merchant Application, without advance notice to Merchant.

"Business Day" means all calendar days, except Saturday, Sunday, and any legal public holiday on which banking institutions are closed for business in the State of Arkansas (including, without limitation, New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day).

"Card" means any card, plate, or other single credit device displaying the names and logos of HC Processing (including but not limited to "The HELP Card" and "HELPcard"), and its associated Account number, which Cardholders may use from time to time to obtain Account credit for purchasing Goods and Services from Merchant or otherwise paying an amount due to Merchant.

"Card Not Present" means the processing environment where HC Processing will allow Merchant to make certain Card Sales to a Cardholder who is not physically present at the Merchant's business facilities and who cannot physically present his or her Card to the Merchant as the form of payment at the time of the Card Sale. The "Card

Not Present” transactions authorized to Merchant under the Agreement are limited to those that qualify as a Mail Order Card Sale, Telephone Order Card Sale, or Electronic Commerce Card Sale.

“Card Present” means the processing environment where HC Processing will allow the Merchant to make Card Sales only if the Cardholder is physically present at the Merchant’s business facilities and can physically present his or her Card to the Merchant as the form of payment at the time of the Card Sale. All Card Sales and any related Charge Slips that Merchant submits must be processed as “Card Present” transactions for which a Cardholder signature is required, except those that qualify as a Mail Order Card Sale, Telephone Order Card Sale, or Electronic Commerce Card Sale.

“Card Sale” means any purchase of Goods and Services that a Cardholder is allowed to make from Merchant using a Card and Account pursuant to the Agreement.

“Cardholder” means an individual in whose name a Card has been issued, or any individual who possesses or uses a Card and who purports to be the person in whose name the Card was issued, or who purports to be an authorized user of the Card.

“Charge Slip” means the written, oral, or electronic evidence of a Card Sale made by Merchant, when Merchant prepares and provides such evidence to HC Processing in the time, manner, form and format approved by HC Processing and the Authorized Financial Institution.

“Chargeback” means the reimbursement due from Merchant, or made by Merchant, for an amount it previously received from HC Processing and/or the Authorized Financial Institution in connection with a Charge Slip and/or Card Sale. The reasons for which a Chargeback is or may be due are set forth in the Merchant Operating Guide.

“Confidential Information” has the meaning set forth in the Information Privacy and Security Schedule attached as Schedule “F” to the Agreement.

“Consumer” has the meaning set forth in the Information Privacy and Security Schedule attached as Schedule “F” to the Agreement.

“Control” and “Controlled” means having the ability, directly or indirectly, to direct the management and policies of the entity in question.

“Customer” means a current or prospective customer, client, or patient of Merchant who may also apply for and use a Card and Account as a Cardholder to pay for purchases from Merchant, subject to the terms and conditions established by the Application and Account agreement.

“Discloser” has the meaning set forth in the Information Privacy and Security Schedule attached as Schedule “F” to the Agreement.

“Dispute” means any action, dispute, claim, or controversy of any kind arising out of, in connection with or in any way related to: the Agreement; the provision of services and the processing, transfer, acquisition of Charge Slips and Chargebacks before, on, or after the Effective Date of the Agreement; or any other aspect whatsoever of the past, present, or future relationship or conduct of the Merchant, HC Processing, their respective Affiliates, and/or the Authorized Financial Institution. The term “Dispute” includes but is not limited to: claims under federal or state laws; claims in tort or contract; claims under statutes or common law; claims at law or in equity; any other past, present or future claims, counterclaims, cross-claims, third party claims, interpleaders or otherwise; and any claim relating to the interpretation, applicability, enforceability or formation of the arbitration provisions of the Agreement, other than its class action waiver, is void, voidable or unconscionable.

“Electronic Commerce Application” means an Application for a Card or an Account submitted by a Customer, or on behalf of a Customer by Merchant, through an Internet web site that HC Processing maintains and operates in connection with the Program.

“Electronic Commerce Card Sale” means a Card Sale that occurs when the Merchant allows a Cardholder to use an Internet web site for purchasing Goods and Services from the Merchant.

“Excessive Chargebacks” shall occur if: (i) the aggregate number of Charge Slips subject to Chargeback exceeds three percent (3.0%) of the total number of all Charge Slips submitted by Merchant, with respect to an individual Merchant location or all Merchant locations, in any calendar quarter; or (ii) the aggregate dollar amount of all Charge Slips subject to Chargeback in any monthly billing cycle exceeds five percent (5.0%) of the total unpaid balances of all Accounts at the end of such monthly billing cycle.

“Goods and Services” means the products or services that Merchant provides to its Customers, as described in the Merchant Application or any other part of the Agreement, certain warranties expressly authorized by HC Processing, and related services sold by Merchant in the ordinary course of its business to Customers for their personal, family, or household purposes.

“Mail Order Card Sale” means a Card Sale that occurs when a Cardholder uses the mail to make a purchase of Goods and Services from Merchant.

“Merchant” means the entity identified on the first page of the Agreement and its Affiliates listed on Schedule “A” attached to the Agreement, jointly and severally. To add or remove entities listed on the term of the Agreement, entities may be added to or removed from Schedule “A” during the term of the Agreement.

“Merchant Application” means and includes the document attached as Schedule “B” to the Agreement and any additional documents containing information about Merchant’s business that is submitted to HC Processing in connection with Merchant’s application for services and transactions set forth in the Agreement.

“Merchant Operating Guide” means the operating manual of HC Processing that sets forth the rules and procedures that govern Applications, Charge Slips, Chargebacks, and other processing requirements and services related to the Program. The Merchant Operating Guide may be amended from time to time by HC Processing and the Authorized Financial Institution in their sole discretion, and any such amendments shall be effective as of the date specified by HC Processing in its notice to the Merchant.

“Nonpublic Personal Information” has the meaning set forth in the Information Privacy and Security Schedule attached as Schedule “F” to the Agreement.

“Program” means the products, services, information and support that HC Processing and the Authorized Financial Institution provide that allows certain Customers to finance their purchase of goods and services from Merchant, if such Customers request and qualify for an Account based on the criteria established and implemented from time to time by the Authorized Financial Institution and HC Processing.

“Promotional Offerings” means the marketing, services, terms, and enhancements associated with the Program and Accounts that are mutually acceptable to the Parties and the Authorized Financial Institution from time to time, for purposes of promoting the use and availability of Accounts and any related services, features, and enhancements to Customers, Applicants, and Cardholders.

“Proprietary Information” has the meaning set forth in the Information Privacy and Security Schedule attached as Schedule “F” to the Agreement.

“Recipient” has the meaning set forth in the Information Privacy and Security Schedule attached as Schedule “F” to the Agreement.

“Reserve Account” has the meaning assigned by Schedule “G” to the Agreement (Reserve Account Schedule).

“Reserve Amount” has the meaning assigned by Schedule “G” to the Agreement (Reserve Account Schedule).

“Reserve Event” has the meaning assigned by Schedule “G” to the Agreement (Reserve Account Schedule).

“Retrieval Request” means a request initiated by a Cardholder or the Authorized Financial Institution that requires Merchant to produce a legible copy of the Cardholder’s signed Application and/or Charge Slip within a specified period of time.

“Telephone Application” means an Application for a Card or an Account that a Customer submits by telephone to Merchant, HC Processing, or the Authorized Financial Institution, as applicable.

“Telephone Order Card Sale” means a Card Sale that occurs when a Cardholder uses a telephone to make a purchase of Goods and Services from Merchant.

“Transaction Processing Account” means the commercial purpose demand deposit account at a depository institution designated by Merchant, and acceptable to HC Processing and the Authorized Financial Institution, for purposes of either Party making a payment due to the other Party in connection with Charge Slips, Credit Slips, Chargebacks, or other amounts a Party owes the other Party as provided in the Agreement.

“Written Application” means an Application for a Card or an Account that a Customer submits in writing to Merchant, HC Processing, or the Authorized Financial Institution, as applicable.

Schedule "A"

Designation of Merchant, Merchant Affiliates, and Notice Addresses

Any change to this Designation of Merchant, Merchant Affiliates, and Notice Addresses after the Effective Date of the Agreement must be in writing and signed by a duly authorized officer of HC Processing and Merchant to be effective and binding on the Parties.

Check and complete one of the following:

COMPLETE IF ONE LOCATION, OR MULTIPLE LOCATIONS ARE FILING TAXES TOGETHER.

As of the Schedule "A" Effective Date shown below, the entity operating as "Merchant" under the Agreement is _____, and this entity operates all Merchant business locations using the following Federal Tax Identification Number (EIN): _____. The address that used to provide any notice to Merchant required or allowed by the Agreement, other than Retrieval Requests, is: _____. The address that used to submit Retrieval Requests to Merchant is: _____. Merchant may make Card Sales and submit Charge Slips for funding from only the following business location(s):

Merchant Location Name	Street Address, City, State, Zip	Telephone Number

COMPLETE IF MULTIPLE LOCATIONS, ALL FILING INDIVIDUAL TAX RETURNS.

As of the Schedule "A" Effective Date shown below, the entity principally operating as "Merchant" under the Agreement is _____ and other entities that are "Affiliates" of Merchant are identified below. The address used to provide notice to Merchant or and any Merchant Affiliate required or allowed by the Agreement, other than Retrieval Requests, is: _____. The address that may be used to submit Retrieval Requests to Merchant or a Merchant Affiliate is: _____. The Federal Tax Identification Numbers (EINs) of Merchant and Merchant Affiliates, and the business locations from which Merchant and Merchant Affiliates may make Card Sales and submit Charge Slips for funding are limited to the following:

Name of Merchant or Merchant Affiliate	Federal Tax Identification Number (EIN)	Street Address, City, State, Zip	Telephone Number

Merchant and the person signing below represent and warrant that such person is duly authorized by Merchant, and by any Merchant Affiliate listed above, to sign on its behalf and their behalf, for purposes of binding Merchant and any listed Merchant Affiliate to the Agreement and this Designation of Merchant, Merchant Affiliates and Notice Addresses. If any Merchant Affiliates are listed above, Merchant represents, warrants and covenants that: (a) Merchant has the necessary legal authority to bind itself and any listed Merchant Affiliate to the terms of the Agreement; (b) the submission of Applications and Charge Slips to HC Processing and the Authorized Financial Institution by a Merchant Affiliate constitutes its agreement to be bound by the terms and conditions of the Agreement; and (c) Merchant shall be solely responsible for ensuring compliance by any such Merchant Affiliate with the Agreement, and fully liable for any failure of a Merchant Affiliate to comply with the Agreement.

_____, on behalf of itself and each Affiliate identified above (collectively, the "Merchant")	Dent-A-Med Inc. d/b/a The HELPCard and HC Processing Center ("HC Processing")
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By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

("Schedule 'A' Effective Date")

Schedule "B"
HELPCard Merchant Application

1. Tell Us About Company Applying To Become Merchant			
Merchant's Legal Entity/Corporate Name (as reported to IRS)		Merchant's Trade Name (Doing Business As)	
Merchant's Federal Tax ID # (EIN)	# Years in Business	# of Locations	# of Employees
Type of Goods Sold and/or Services Provided		Referred By: First Look Approval	
Merchant's Primary Business Location and Billing Address - Street Address, City, State & ZIP Code		Merchant's Primary Business Location (check all that apply) <input type="checkbox"/> Use To Send Notices To Merchant <input type="checkbox"/> Use To Request Records From Merchant	
Merchant's Additional Business Location(s) - Street Address, City, State, & ZIP Code (supplement with other pages, if necessary)			
Merchant's Primary Business Telephone #	Merchant's Business Fax #	Merchant's Web Site URL/Address	
Name and Title of Primary Officer/Manager to Contact at Merchant's Primary Business Location		Email Address of Merchant's Primary Contact Person	
Type of Legal Entity & State In Which Merchant Is Organized, Incorporated, or Formed (For Sole Proprietors, the State In Which the Merchant's Certificate of Assumed Name Is Filed) <input type="checkbox"/> Corporation <input type="checkbox"/> 501(c)(3) Tax Exempt Org. <input type="checkbox"/> Professional Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Other (explain): _____ State: _____			
2. Additional Risk Management & Site Survey Evaluation			
Any prior bankruptcies? <input type="checkbox"/> No <input type="checkbox"/> Yes (provide case number(s) and explain): _____			
Gross Annual Revenues for Most Recent Fiscal Year \$		Estimated Average Ticket Size for Credit Card Transactions \$	Estimated/Projected Volume Total Annual Sales \$
Approximate Square Footage: <input type="checkbox"/> 0-500 <input type="checkbox"/> 501-2,000 <input type="checkbox"/> >2,001		Location <input type="checkbox"/> Mall <input type="checkbox"/> Office <input type="checkbox"/> Shopping Area <input type="checkbox"/> Other: _____	
Does Merchant Have a Disclosed Return/Refund Policy? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, policy disclosed to customers is: <input type="checkbox"/> Exchange <input type="checkbox"/> Store Credit <input type="checkbox"/> Full Refund/Credit <input type="checkbox"/> Other: _____			
Marketing Methods (Provide at least one sample): <input type="checkbox"/> Catalog <input type="checkbox"/> Brochure <input type="checkbox"/> Direct Mail <input type="checkbox"/> TV/Radio <input type="checkbox"/> Internet <input type="checkbox"/> Phone <input type="checkbox"/> Newspaper/Journals <input type="checkbox"/> other: _____			
Percentage of transactions authorized at (must equal 100%): In-Person at Business Location _____% + Mail Orders _____% + Telephone Orders _____% + Internet Orders _____% = 100%			
Does any cardholder billing involve automatic renewals, recurring transactions, or goods/services that are not individually authorized by cardholder on transaction-by-transaction basis? <input type="checkbox"/> No <input type="checkbox"/> Yes (explain): _____			
Mail / Telephone / Internet Orders (All Questions Must be Answered) 1. What is time frame from transaction request to delivery or completion? (% of orders provided in): 0-7 days _____% + 8-14 days _____% + 15-30 days _____% over 30 days _____% = 100% 2. Who performs the product/service fulfillment for order? <input type="checkbox"/> Direct <input type="checkbox"/> Vendor. If vendor used: (a) add vendor's name, address & phone: _____; and (b) describe transaction processing, from taking orders to fulfillment: _____			
3. Professional Licensing Information Provide information requested about any professional license issued to Merchant and/or its owners, members, officers, employees, agents, and representatives if relevant to the business conducted by Merchant. Add an additional sheet if necessary.			
Name of Licensee	State Issued	Licensee Number	Specialty/License Type
Name of Licensee	State Issued	Licensee Number	Specialty/License Type
4. Banking Information			
Name of Depository Institution Holding Your Primary Deposit Account(s):			
Name of Your Primary Contact/Reference at Depository Institution:		Telephone # of Primary Contact/Reference at Depository Institution:	
Depository Institution's 9-digit ABA Routing #:	Checking Account # Merchant May Use for ACH:	Documents Confirming ABA/Account # (check one): <input type="checkbox"/> Voided Check <input type="checkbox"/> Bank Letter	

5. SIGNATURE(S) & AGREEMENT

The terms "you," "your" and "Merchant" mean the business identified in Section 1 as the Merchant. The terms "we," "us," "our" and "HC Processing Center" mean Dent-A-Med, Inc. d/b/a HC Processing Center. The term "Authorized Financial Institution" means the financial institution that provides The HELPcard credit card account and issues the credit card used for account access. As of the date of this application, you understand and agree that First Electronic Bank, a Utah industrial bank, is the "Authorized Financial Institution," and that the identity of the Authorized Financial Institution may change in the future without advance notice to you, as provided in any applicable HC Processing Center Merchant Agreement that may be established if we approve this HC Processing Center Merchant Application.

You agree that the combined amount of the mail, telephone, and internet orders you accept shall not exceed fifty percent (50%) of all of the credit card transactions you submit to us pursuant to the HC Processing Center Merchant Agreement, unless you specified a higher percentage for such mail, telephone, and internet orders in Section 2 and we approve your HC Processing Center Merchant Application based on the percentages you specified in Section 2.

You consent to receiving commercial electronic mail messages from us from time to time. You authorize us, the Authorized Financial Institution, and our respective service providers to investigate and verify the references, statements, and other information contained in your HC Processing Center Merchant Application. For purposes of making our decision about your HC Processing Center Merchant Application and in connection with any HC Processing Center Merchant Agreement that may be established between you and us in the future, you authorize us, the Authorized Financial Institution, and our respective service providers to: (1) obtain and use information about you from any credit reporting agency that has a bearing on your credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and (2) obtain and use additional information about you from your references, financial institutions, creditors, governmental agencies, licensing and accreditation entities, customers, employees, and other lawful sources. You authorize us, the Authorized Financial Institution and our respective service providers to share information with each other from this Application and all information obtained from any source in connection with processing and evaluating this HC Processing Center Merchant Application and/or in connection with any HC Processing Center Merchant Agreement that may be established between you and us in the future, except as expressly prohibited by law.

Merchant acknowledges and agrees that Merchant must not use any merchant account and/or the related services for any illegal transaction, including without limitation those that are prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. § 5361 *et seq*, as amended from time to time. **Merchant certifies that the federal taxpayer identification number and corresponding filing name for Merchant provided in this HC Processing Center Merchant Application are correct. Merchant agrees to all terms of this HC Processing Center Merchant Application.**

The person who signs for you below certifies and represents to us that all information and documents provided in or with this HC Processing Center Merchant Application is true, accurate, and complete. The person who signs for you below also represents that he and/or she has read and understands this HC Processing Center Merchant Application and is authorized to sign and submit this HC Processing Center Merchant Application on behalf of the Merchant. The person who signs for you below authorizes and directs us and our service providers to inform the undersigned person directly or through the Merchant of reports about the undersigned person that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report.

Merchant Signature

Signature:

Title:

Date:

X. _____

Print Signer's Name:

Schedule "C"
Schedule of Fees and Charges

1. **Promotional Offerings.** The Parties understand and agree that any amounts, terms and conditions specified for Promotional Offerings in Schedule "E," shall control over any different amounts, terms and conditions set forth in this Schedule of Fees and Charges, but only with respect to Account transactions that qualify for such Promotional Offerings. Sections 3, 5, and 6 of this Schedule of Fees and Charges shall also apply to any Charge Slips for Promotional Offerings that Merchant may submit in connection with the Agreement.
2. **Schedule Amendments.** Merchant understands and agrees that HC Processing and the Authorized Financial Institution may propose a change to the terms of this Schedule of Fees and Charges from time to time at their sole discretion, after HC Processing gives reasonable advance notice of any such change to Merchant. Merchant understands and agrees that notice of a change to the Schedule of Fees and Charges shall be considered reasonable if HC Processing sends it in the manner and to the location Merchant specified in its most recent Designation of Merchant, Merchant Affiliates, and Notice Addresses (Schedule "A" to the Agreement), at least ten (10) Business Days before the effective date of any such change. Merchant shall be deemed to have accepted and agreed to any such changes if it presents Charge Slips for new Card Sales to HC Processing on or after the effective date for the change that HC Processing specified in its notice.
3. **Charge Slip Acceptance and Payment.** HC Processing agrees to pay Merchant the amounts due for the Charge Slips it presents for acceptance during the term of the Agreement, subject to all terms, conditions, representations, and warranties made by Merchant in the Agreement, the compliance by Merchant with all duties assigned to it by the Agreement, and the satisfaction by Merchant of all conditions related to the authorization, acceptance and processing of Charge Slips established by the Agreement, including those described in the Merchant Operating Guide.
4. **Discount Applied To Charge Slips Acquired From Merchant.** For any qualifying Charge Slip that Merchant presents for acceptance and funding in the manner contemplated by the Merchant Operating Guide, Merchant authorizes HC Processing to: (a) multiply the total amount due to Merchant shown on any such Charge Slip by 6.5%, for Card Sales made with an Account that HC Processing classifies as a Gold Account as of the date of acceptance and funding by HC Processing; (b) multiply the total amount due to Merchant shown on any such Charge Slip by 18%, for Card Sales made with an Account that HC Processing classifies as a Silver Account as of the date of acceptance and funding by HC Processing; (c) add together the amount of all discounts as of the date of acceptance and funding by HC Processing; and (d) deduct and retain the resulting sum from any Charge Slip and Card Sale amounts or other amounts that may otherwise be due to Merchant in connection with this Agreement.
Discounts shown in table below:

Gold	6.5%
Silver	18%

5. **Return Fee Related To Credits Due From Merchant.** HC Processing may assess a return fee associated with any credit amounts that become due from Merchant for Chargebacks or other reasons authorized by the Agreement. The amount of any such return fee shall be based on the amount of time that elapses between: (i) the transaction date on which the Card Sale first posted to the Account; and (ii) the date on which HC Processing is compensated by Merchant for any related Account credit due from Merchant, through the Chargeback process or otherwise.
- a. 0 to 45 days: No return fee will be assessed to Merchant if HC Processing receives the full credit amount due from Merchant within 45 days after the date on which the related Card Sale first posted to the Account. For payment of any such credit amount, Merchant authorizes HC Processing, in its discretion and at its earliest opportunity, to deduct the credit amount due from Merchant from any other amounts that may otherwise be due to Merchant in connection with the Agreement or to debit Merchant's Transaction Processing Account for any such amount.
 - b. 46 to 75 days: For any credit amount due from Merchant that HC Processing receives between 46 days and 75 days after the related Card Sale first posted to the Account, HC Processing will multiply the credit amount due by six percent (6%) to calculate the return fee due from Merchant. For payment of the credit amount due and this return fee, Merchant authorizes HC Processing, in its discretion and at its earliest opportunity, to deduct all such amounts due from Merchant from other amounts that may otherwise be due to Merchant in connection with the Agreement or to debit Merchant's Transaction Processing Account for any such amount.
 - c. 76 days or more: For any credit amount due from Merchant that HC Processing receives 76 days or more after the related Card Sale first posted to the Account, HC Processing will multiply the requested credit amount by six percent (6%) to calculate the return fee due from Merchant and add the resulting amount to all accrued interest, fees and charges due from the Cardholder for the related Card Sale. For payment of any such credit amount, this return fee, and all related Cardholder interest, fees, and charges, Merchant authorizes HC Processing, in its discretion and at its earliest opportunity, to deduct all such amounts due from Merchant from other amounts that may otherwise be due to Merchant in connection with the Agreement or to debit Merchant's Transaction Processing Account for any such amount.
6. **Liability for Amounts Not Timely Paid by Merchant.** If Merchant has not made payment in full of any amounts due for credits, return fees, and Cardholder interest, fees, and charges in the time and manner described above, Merchant must pay such amounts to HC Processing within ten (10) days after Merchant receives a written notice from HC Processing requiring payment of these amounts. If Merchant does not pay HC Processing the full amount due within ten (10) days after Merchant receives this notice from HC Processing, Merchant agrees that it is also liable to HC Processing and the Authorized Financial Institution for an amount equal to the lesser of: (i) seventeen percent (17%) per year on the amount specified in HC Processing's written notice from the date such amount became due until it is paid in full; or (ii) the maximum daily rate of interest that may be permitted by Applicable Law on the amount specified in HC Processing's written notice from the date such amount became due until it is paid in full.

Schedule "E"
Promotional Offerings

1. **Schedule Amendments.** Merchant understands and agrees that HC Processing and the Authorized Financial Institution may change the terms of the Promotional Offerings from time to time at their sole discretion, after HC Processing gives reasonable advance notice of any such change to Merchant. Merchant understands and agrees that notice of a change to the Promotional Offerings shall be considered reasonable if HC Processing sends it in the manner and to the location Merchant specified in its most recent Designation of Merchant, Merchant Affiliates, and Notice Addresses (Schedule "A" to the Agreement), at least ten (10) Business Days before the effective date of any such change. Merchant shall be deemed to have agreed to any such changes if, on or after the effective date of the Promotional Offerings, it presents Charge Slips and Card Sales to HC Processing that describe and apply the terms of such Promotional Offerings. Sections 3, 5, and 6 of this Schedule of Fees and Charges (Schedule "C") shall also apply to any Charge Slips for Promotional Offerings that Merchant may submit in connection with the Agreement.

2. **Promotional Prices.** Merchant understands and agrees to uniformly present the promotional offerings below to every consumer which qualifies unless Merchant specifically elects not to offer promotional prices.

Merchant elects to **not** participate in **Promotional Offerings**. All discounts will be applied as referenced in Schedule C, Section 4.

Merchant elects to participate in the following **Promotional Offerings**. Merchant understand that discounts will be applied as referenced in Schedule C, Section 4, and additional promotional fees will apply as stated below:

<i>Transaction Type</i>	<i>Charge Amount</i>	<i>Add-On Fee</i>
Standard Charge	\$0-\$399.99	0%
6 Months Deferred	\$400 – \$1999.99	1.9%
18 Mo Reduced APR 17.75%	\$2000 – greater	1.9%

Merchant elects to **Tailor Promotional Offerings**. Merchant understand that discounts will be applied as referenced in Schedule C, Section 4, and additional promotional fees will apply as stated below. Charge amounts chosen MUST NOT overlap for 2 or more promos and MUST be at least \$400:

<input checked="" type="checkbox"/>	<i>Transaction Type</i>	<i>Charge Amount (please specify)</i>	<i>Add-On Fee</i>
<input type="checkbox"/>	6 Months Deferred	\$ _____ - \$ _____	1.9%
<input type="checkbox"/>	18 Mo Reduced APR 17.75%	\$ _____ - \$ _____	1.9%
<input type="checkbox"/>	12 Month Reduced Def. APR 4.9%	\$ _____ - \$ _____	4.9%
<input type="checkbox"/>	12Month Deferred Interest	\$ _____ - \$ _____	7.9%

Signature: _____

Printed Name: _____

Title: _____

Schedule "F"
Information Privacy and Security Schedule

1. Definitions. Capitalized terms used in, but not defined by, this Schedule to the Agreement between Merchant and HC Processing shall have the meanings assigned to them by the Agreement.

(a) **"Confidential Information"** means and includes:

(i) The Agreement, its Schedules, and any information, other than Nonpublic Personal Information about a Consumer of Discloser, that Recipient receives, obtains, maintains, processes or otherwise is permitted to access from or about Discloser, or that is derived from or associated in any way with the Agreement and its Schedules, and which is generally not known to the public or which has been identified as confidential or proprietary by Discloser, including without limitation any non-public information about marketing plans, financial condition, products, processes, clients, vendors and other confidential and proprietary business information of Discloser (**"Proprietary Information"**); and

(ii) Any information from or about a Consumer of Discloser that is received or made available to Recipient in connection with the Agreement and that: (i) relates to any such Consumer; (ii) relates to or derives from any transaction directly between Discloser and any Consumer; or (iii) is a list, description or other grouping of Discloser's Consumers (**"Nonpublic Personal Information"**).

(b) **"Consumer"** means: (i) any Applicant or Cardholder who applies for, who obtains, or who has applied for or obtained a financial product or service from or through HC Processing and/or the Authorized Financial Institution, which is to be used primarily for the personal, family, or household purposes of any such Applicant or Cardholder; and (ii) any Customer of Merchant who requests or obtains any Goods and Services from or through Merchant that it must keep private to comply with Applicable Law or to comply with a disclosed Merchant policy or agreement with such Customer.

(c) **"Discloser"** means either Merchant, HC Processing (for itself and on behalf of the Authorized Financial Institution), or their respective Affiliates, when any such entity discloses or makes available its own Confidential Information to the other Party, the Authorized Financial Institution or their respective Affiliates in the capacity of a Recipient.

(d) **"Recipient"** means either Merchant, HC Processing (for itself and on behalf of the Authorized Financial Institution), or their respective Affiliates, when any such entity receives or is given access to the Confidential Information of the other Party, the Authorized Financial Institution, or their respective Affiliates in the capacity of a Discloser.

2. Rights, Title, and Interest in Nonpublic Personal Information about Consumers.

(a) The Parties understand and agree that an individual can, at the same time, be a Consumer of each Party and the Authorized Financial Institution.

(b) If HC Processing receives Nonpublic Personal Information from Merchant about a Consumer who is not an Applicant or Cardholder, then HC Processing shall consider such Nonpublic Personal Information to be exclusively owned and provided by Merchant in its capacity as Discloser. Any Nonpublic Personal Information of a Consumer who does not become an Applicant or Cardholder shall, if received or kept by HC Processing, be treated as Nonpublic Personal Information of Merchant in its capacity as Discloser, which is subject to the restrictions on use and disclosure below that apply to HC Processing in its capacity as a Recipient of such Nonpublic Personal Information.

(c) For any Consumer of Merchant who becomes an Applicant or Cardholder, Merchant understands that HC Processing and the Authorized Financial Institution must use, disclose and keep Nonpublic Personal Information about such Consumers to provide the Program, review Applications, and permit the use and servicing of Accounts and Cards. Merchant understands and agrees that any Nonpublic Personal Information about an Applicant or Cardholder that HC Processing and/or the Authorized Financial Institution may receive for purposes of providing the Program, or in connection with Applications, Charge Slips, Card Sales, Credit Slips, or otherwise as a result of the use or servicing of Cards and Accounts, shall be deemed Nonpublic Personal Information about a Consumer of HC Processing and the Authorized Financial Institution when any such Nonpublic Personal Information is received or prepared by HC Processing or the Authorized Financial Institution, and regardless of its source. Any Nonpublic Personal Information of an Applicant or Cardholder who becomes a Consumer of HC Processing and the Authorized Financial Institution shall, if received or kept by Merchant for reasons related to the Program and the use, origination or servicing of Accounts, be treated as Nonpublic Personal Information of HC Processing and the Authorized Financial Institution in the capacity of Discloser, which is subject to the restrictions on use below that apply to Merchant in its capacity as a Recipient of such Nonpublic Personal Information. HC Processing agrees to use and disclose Nonpublic Personal Information of any such Applicants and Cardholders only as described to Consumers in any applicable privacy notice, and as otherwise required or permitted by Applicable Law.

3. Use and Confidentiality of Confidential Information. Recipient agrees that it shall use Discloser's Confidential Information solely for performing Recipient's obligations under the Agreement, including any applicable Schedule to the Agreement. Recipient agrees that it shall not sell, rent, lease or otherwise directly or indirectly disclose Discloser's Confidential Information to any third party, except as expressly authorized by the Agreement, any applicable Schedule to the Agreement, or as otherwise expressly authorized in advance and in writing by Discloser. Recipient agrees that it shall take all reasonable steps to protect the confidentiality of Discloser's Confidential Information, using the same standard of care that Recipient uses to protect its own Confidential Information, and not less than any standard of care required by Applicable Law and that is considered commercially reasonable under the circumstances. Recipient agrees that it shall give access to Discloser's Confidential Information only to those employees, officers or agents of Recipient who have a need to know in connection with the performance of Recipient's obligations under the Agreement or any applicable Schedule to the Agreement. Recipient agrees that it shall not copy or duplicate Discloser's Confidential Information, except as necessary to fulfill Recipient's obligations under the Agreement, any applicable Schedule to the Agreement, or as expressly required by Applicable Law. Recipient agrees that it shall comply with all Applicable Laws related to privacy and information security that apply to Discloser's Confidential Information and the respective businesses of Recipient and Discloser. Recipient agrees that it shall not monitor or edit Discloser's Confidential Information, unless Recipient is expressly authorized to do so by the Agreement or any applicable Schedule to the Agreement, or unless Recipient determines in good faith that it is required to do so by Applicable Law. If Recipient is expressly permitted under the terms of this Schedule or any part of the Agreement to disclose Discloser's Confidential Information to a third party, then Recipient shall ensure that any such third party is subject to binding confidentiality obligations with respect to such Confidential Information that are at least as restrictive as those contained in this Schedule.

4. Exclusions and Exceptions. The confidentiality obligations in this Schedule do not apply to Proprietary Information that: (a) is a part of the public domain when disclosed to Recipient, or that subsequently becomes a part of the public domain through no act or omission of Recipient; (b) was in Recipient's lawful possession without an accompanying secrecy obligation prior to disclosure by Discloser, as documented in Recipient's written records; (c) is lawfully disclosed to Recipient by a third party without an accompanying secrecy obligation or breach of any duty or agreement by which such third party is bound; or (d) is independently developed by Recipient for purposes and uses that are unrelated to the Agreement and its Schedules, with written verifiable proof thereof provided to Discloser upon its request. This Schedule shall not be deemed to prohibit disclosures: (i) required by Applicable Law, provided that prior notice of any such disclosure not prohibited by Applicable Law has been given to Discloser, in a time and manner that would permit Discloser to take legal action at its own costs and expenses to prevent the disclosure or seek an appropriate protective order; (ii) required to protect and defend Recipient's rights or property or protect under exigent circumstances the personal safety of the public or Recipient's clients or

customers; (iii) as required in the course of an examination by a governmental authority with supervisory or enforcement jurisdiction over Recipient; or (iv) to Recipient's professional auditors and counsel, provided that such advisors are obligated to maintain the confidentiality of the information they receive.

5. **Confidentiality of the Agreement.** The terms and conditions of the Agreement shall be treated as Confidential Information. A Party may not refer to or disclose the terms and conditions of the Agreement or activities pertaining to the Agreement in any form without the prior written consent of the other Party, except as expressly authorized by this Schedule or the Agreement. The general existence of this Agreement shall not be treated as Confidential Information. Either Party may disclose the terms and conditions of this Agreement: (i) as required by any court or other governmental authority; (ii) as otherwise required by Applicable Law, including a party's obligations under applicable securities laws; (iii) to legal counsel of a Party; (iv) in confidence to accountants, proposed investors, and financing sources and their advisors; (v) to enforce the Agreement or rights under the Agreement; or (vi) in confidence in connection with a merger or acquisition or proposed merger or acquisition, or the like.

6. **Retransmission, Return, and Destruction of Discloser's Confidential Information.** If Recipient is permitted to retransmit any Confidential Information of Discloser under the terms of the Agreement or any applicable Schedule, Recipient's mode of retransmission must be at least as secure as the mode by which Discloser transmitted such Confidential Information to Recipient. Upon Discloser's request, Recipient shall promptly return Discloser's Confidential Information to Discloser in the same format as provided by Discloser or destroy Discloser's Confidential Information, except to the limited extent that Recipient is required to maintain copies of Discloser's Confidential Information for legal, regulatory, or accounting reasons. Any copies of Discloser's Confidential Information that Recipient maintains for legal, regulatory, or accounting reasons shall remain subject to the duties of confidentiality, privacy, and security set forth in this Schedule. Nothing in this Schedule or the Agreement shall be construed to grant Recipient any rights, title or interest in or to any of Discloser's Confidential Information, except as otherwise provided by the express terms of any applicable Schedule to the Agreement.

7. **Information Security and Disposal Standards.** Recipient agrees to implement and maintain a comprehensive written information security program that complies with all applicable laws and includes appropriate administrative, technical and physical safeguards to: (a) ensure the safety and confidentiality of Discloser's Confidential Information; (b) protect against unauthorized access to and use of Discloser's Confidential Information; (c) protect against anticipated threats or hazards to the security or integrity of Discloser's Confidential Information; and (d) properly dispose of Discloser's Confidential Information. Recipient agrees that such measures shall comply with and meet the objectives of all applicable laws, including without limitation the federal Gramm-Leach-Bliley Act, the administrative rules and regulations implementing the Gramm-Leach-Bliley Act (including but not limited to 16 C.F.R. Part 314), and the Interagency Guidelines Establishing Information Security Standards. Recipient shall implement a written security and disaster recovery plan consistent with the standards and practices of the respective industries of Recipient and Discloser, and all applicable laws. Recipient further agrees to cooperate the monitoring by Discloser of Recipient's compliance with the foregoing obligations as reasonably requested by Discloser from time to time, including, without limitation, by providing Discloser with an opportunity to review and obtain copies of relevant audits, test results, reports and similar materials that Recipient might prepare or have prepared for it from time to time.

8. **Notification of Security Breach.** Recipient agrees to comply with all Applicable Laws and take appropriate actions to address incidents of unauthorized access to Discloser's Confidential Information, including by notifying Discloser as soon as possible of any unauthorized access to or disclosure of Discloser's Confidential Information, any breach of this Schedule, or any breach or attempted breach of Recipient's security related to areas, locations or computer systems that contain any Confidential Information of Discloser (including without limitation any instance of theft, unauthorized access by fraud, deception or other malfeasance or inadvertent access). In the event of any such breach of this Schedule, unauthorized access, disclosure or breach or attempted breach of security, Recipient shall further provide to Discloser, in writing, such details concerning the incident in question as Discloser may request. Recipient shall obtain Discloser's express written approval for the form, content and timing

of any communication that Discloser may allow Recipient to provide Consumers about any breach or potential breach of information security related to any such Consumers. In the event of any known breach or suspected potential breach of security related to a Consumer, Recipient shall: (a) conduct an investigation of the security breach and collect and preserve all data and evidence concerning the security breach; (b) take all steps appropriate and necessary to contain, prevent and mitigate any further security breach; (c) provide immediate notice to Discloser of any such known or suspected security breach, which shall not be later than twenty-four (24) hours after Discloser learns about or discovers any breach or potential breach of information security; (d) provide Discloser with a written report concerning any such known or suspected security breach within three (3) Business Days; (e) document and detail the remedial action taken by Recipient, and planned to be taken by Recipient, to remediate any such known or suspected breach of information security; (f) permit a post-breach security assessment or audit to be performed by Discloser, upon its request; and (g) allow Discloser to perform its own on-site forensic examination of any such known or suspected security breach, upon Discloser's request.

9. Remedies; Indemnification. Recipient agrees that breach of this Schedule shall give rise to irreparable injury to Discloser that is inadequately compensable in damages. Recipient agrees that Discloser is authorized to seek injunctive relief against the breach or threatened breach by Recipient of this Schedule, in addition to such legal remedies as may be available to Discloser, including the recovery of damages. Recipient also agrees to indemnify, defend, and hold Discloser harmless from and against any and all claims, demands, liabilities, actions, disputes, controversies, losses, damages, and expenses, including but not limited to reasonable attorney fees and costs, asserted by any person or entity other than Discloser that may result from or are related to any breach by the Recipient of any duty or obligation assigned to it by this Schedule.

Schedule "G"
Reserve Account Schedule

- 1) **SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.** Capitalized terms used in, but not defined by, this Schedule to the Agreement between Merchant and HC Processing shall have the meanings assigned to them by the Agreement.
- a) **Security Interests.**
- i) **Security Agreement.** The Agreement constitutes a security agreement under the Uniform Commercial Code. Merchant grants to HC Processing and the Authorized Financial Institution a lien on and security interest in: (a) all funds at any time in the Reserve Account, regardless of the source of such funds; and (b) all funds underlying present and future Charge Slips processed by the Authorized Financial Institution or HC Processing (collectively, the "Secured Assets"). These security interests and liens will secure all of Merchant's obligations under the Agreement. HC Processing and the Authorized Financial Institution may execute this security interest, without notice or demand of any kind, by making an immediate withdrawal or by restricting Merchant's access to the Secured Assets.
- ii) **Perfection.** Upon request of HC Processing or the Authorized Financial Institution, Merchant will execute one (1) or more control agreements or other documents to evidence or perfect this security interest. Merchant represents and warrants that no other person or entity, other than HC Processing and the Authorized Financial Institution, has a security interest in the Secured Assets. With respect to such security interests and liens, HC Processing and the Authorized Financial Institution will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from HC Processing and the Authorized Financial Institution written consent before granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and HC Processing and the Authorized Financial Institution are not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay that may be filed in the future by HC Processing or the Authorized Financial Institution.
- b) **Reserve Account.**
- i) **Establishment of Reserve Account by HC Processing.** Upon the occurrence of a Reserve Event, Merchant agrees that HC Processing is authorized to establish a Reserve Account in the Reserve Amount for the purpose of providing security and a source of funds to pay HC Processing and the Authorized Financial Institution for any and all amounts that may be owed by Merchant under the Agreement. HC Processing shall have sole control of the Reserve Account, and shall have the rights of a secured creditor established by this Agreement and Applicable Law, but Merchant shall remain the owner of all funds deposited to the Reserve Account.
- ii) **Calculation of Reserve Amount by HC Processing.** The Reserve Amount is the greater of: (a) an amount not to exceed twenty percent (20%) of the total of all Card Sales that HC Processing estimates from time to time will be made by Merchant and any Affiliate or all Affiliates during the twelve months after the date on which HC Processing prepares any such estimate; or (b) an amount equal to one hundred fifty percent (150%) of the total of all Account credits, Chargebacks, and first payment Account defaults by Merchant's Customers and Cardholders that HC Processing estimates from time to time will occur during the twelve months after the date on which HC Processing prepares any such estimate. For purposes of each calculation of the Reserve Amount, the factors HC Processing evaluates will include, without limitation, the total amount of all credits, Chargebacks, and first payment Account defaults over a specified period of time, as a percentage of all Card Sales made during the same period of time. Merchant understands and agrees that HC Processing, in its sole reasonable discretion, shall determine: (a) when and how to prepare any estimate for purposes of calculating the Reserve Amount; and (b) the period of time to be used by HC Processing for evaluating prior Card Sales, credits, Chargebacks, and first payment Account defaults.

- iii) **Reserve Event.** The following will constitute Reserve Events: (A) fraudulent Account activity in any monthly period that equals or exceeds two percent (2%) of Merchant's average monthly Charge Slip volume over the preceding twelve (12) month period; (B) Excessive Chargebacks; (C) HC Processing's reasonable belief that Merchant has made or attempted to make Card Sales before delivery of the Goods and Services evidenced on the related Charge Slip; (D) the commencement of a bankruptcy proceeding by or against Merchant; (E) termination of the Agreement by HC Processing following the occurrence of any event of immediate termination listed in Section 15(b) of the Agreement; (F) assignment of the Agreement by Merchant in violation of Section 13 of the Agreement; or (G) revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or any other alternate security provided by Merchant in connection with the Agreement, if applicable.
- iv) **Funding.** HC Processing and the Authorized Financial Institution may fund the Reserve Account, in each case up to the Reserve Amount, by any one or more of the following means:
 - (A) HC Processing and the Authorized Financial Institution may notify the Merchant that it is required to deposit funds into the Reserve Account;
 - (B) HC Processing and the Authorized Financial Institution may debit the Transaction Processing Account; and/or
 - (C) HC Processing and the Authorized Financial Institution may deposit into the Reserve Account funds they would otherwise be obligated to pay Merchant and deposit into the Transaction Processing Account.
- v) **Use of Funds in Reserve Account.** HC Processing or the Authorized Financial Institution may, without notice to Merchant, apply funds in the Reserve Account against any outstanding amounts Merchant owes under the Agreement. HC Processing or the Authorized Financial Institution may also debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to HC Processing or the Authorized Financial Institution. Merchant agrees that HC Processing or the Authorized Financial Institution may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.
- vi) **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account, and shall be used only to pay amounts due to HC Processing and the Authorized Financial Institution (except as otherwise provided in the Agreement), until the Merchant has paid in full all amounts owing or that may be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, and any other payments due under the Agreement. In no event shall Merchant be entitled to a return of any funds remaining in the Reserve Account before one hundred eighty (180) days following the effective date of termination of the Agreement. If, however, HC Processing and the Authorized Financial Institution determine that the Reserve Event that gave rise to the establishment of the Reserve Account has been sufficiently cured, HC Processing and the Authorized Financial Institution may, in their discretion, terminate the Reserve Account and/or release funds from the Reserve Account before expiration of one hundred eighty (180) days after termination of the Agreement.
- c) **Recoupment and Set-off.** HC Processing and the Authorized Financial Institution have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them under the Agreement from: (i) any amounts they would otherwise be obligated to deposit into the Transaction Processing Account or Reserve Account; and (ii) any other amounts they may owe Merchant under the Agreement. Merchant acknowledges that in the event of a bankruptcy proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code Section 362 to HC Processing and/or the Authorized Financial Institution, HC Processing and the Authorized Financial Institution may require the creation of a Reserve Account and either of them shall have the right to offset against the Reserve Account for any and all obligations Merchant may owe to HC Processing and the Authorized Financial Institution, without regard to whether the obligations relate to Card Sales and Charge Slips initiated or processed before or after the initiation of the bankruptcy proceeding.
- d) **Remedies Cumulative.** The rights conferred upon HC Processing and the Authorized Financial Institution in this Schedule are not intended to be exclusive of each other or of any other rights and remedies of HC Processing and the Authorized Financial Institution under the Agreement, at law or in equity. Each and every right of HC Processing and the Authorized Financial Institution under the Agreement, at law, or in equity, is cumulative and concurrent and in addition to every other right.

Schedule "H"
Continuing Personal Guaranty

Any individual identified and signing below ("Guarantor") agrees, as of the Effective Date of the HELPCard Merchant Agreement (the "Agreement") between Dent-A-Med, Inc. d/b/a The HELPCard and HC Processing Center ("HC Processing") and _____ ("Merchant"), to become a guarantor of Merchant's obligations to HC Processing under the Agreement pursuant to the terms of this Continuing Personal Guaranty ("Guaranty").

Guarantor unconditionally and absolutely guarantees to HC Processing the prompt and full payment and performance of any obligation and all obligations of Merchant set forth in the Agreement, any applicable Schedule to the Agreement, and any amendments to the Agreement or a Schedule made in accordance with the terms of the Agreement. Guarantor agrees that he or she is personally liable to HC Processing, both as an individual and jointly with the Merchant, its Affiliates, or any other guarantors, for each obligation that applies to Guarantor pursuant to this Guaranty. In the event of any default by Merchant under the Agreement, any applicable Schedule to the Agreement, and any amendments to the Agreement or a Schedule made in accordance with the terms of the Agreement, Guarantor agrees to pay the total balance due to HC Processing upon its demand, without requiring that HC Processing make demand and/or proceed first to enforce the Agreement against Merchant, any Affiliate, any other guarantor, or any other person or entity. Guarantor waives notice of any modifications, amendments, or extensions of the Agreement and of Merchant's non-performance or breach of the Agreement. Guarantor understands and agrees that his or her payment obligations are the direct, primary, and continuing obligations of Guarantor and his or her heirs, successors, and assigns, and not merely a guaranty of collection. This is a continuing Guaranty that shall remain in effect, until HC Processing receives written notice from Guarantor asking to terminate or modify this Guaranty and HC Processing has a reasonable period of time to act on any such notice. If this happens, Guarantor understands and agrees that the termination of the Agreement or this Guaranty shall not release Guarantor from his or her obligations under this Guaranty with respect to any obligations incurred before the effective date of such termination. Guarantor understands and agrees that HC Processing may seek to enforce this Guaranty during the term of the Agreement or after termination of the Agreement, as applicable. Guarantor agrees that his or her obligations under this Guaranty shall survive any sale or other disposition of Guarantor's interest in Merchant and that this Guaranty shall not be affected by any change in the legal status of Guarantor or the Merchant, or in any change in the Guarantor's relationship with the Merchant. Guarantor agrees to subordinate to this Guaranty any debts the Merchant may owe Guarantor now or in the future. Guarantor agrees to pay any costs HC Processing incurs in collecting and enforcing this Guaranty, including reasonable attorney's fees, to the extent permitted by law.

Guarantor agrees to provide any additional information and reports that HC Processing may reasonably request to evaluate Guarantor's financial condition. Guarantor agrees that HC Processing may obtain consumer credit reports about Guarantor for purposes of reviewing the Agreement and/or the HELPCard Merchant Application. Guarantor also agrees that HC Processing may obtain consumer credit reports about Guarantor in the future for purposes such as reviewing, updating, renewing, collecting, and servicing the Merchant's account and for other purposes permitted by law. HC Processing agrees, upon request, to tell Guarantor whether HC Processing obtained a consumer credit report about Guarantor and to tell Guarantor the name and address of any consumer reporting agency that provides Guarantor's consumer report to HC Processing. By signing, Guarantor: (a) certifies that he or she received, read and understood the Agreement and this Continuing Personal Guaranty; (b) agrees to all terms and conditions of the Agreement, the HELPCard Merchant Application, and this Continuing Personal Guaranty; and (c) agrees that all information and documents provided with the Agreement, the HELPCard Merchant Application, and this Continuing Personal Guaranty are true, correct, and complete.

<i>Guarantor Signature</i> X	<i>Date</i>	<i>Guarantor Name (Print)</i>	
<i>Residential Address (Street, City, State, Zip Code)</i>		<i>Guarantor Date of Birth</i>	<i>Guarantor Social Security Number</i>
<i>Telephone Number</i>		<i>Alternative Telephone Number or Email Address</i>	
<i>Guarantor Signature (if applicable)</i> X		<i>Date</i>	<i>Guarantor Name (Print)</i>
<i>Residential Address (Street, City, State, Zip Code)</i>		<i>Guarantor Date of Birth</i>	<i>Guarantor Social Security Number</i>
<i>Telephone Number</i>		<i>Alternative Telephone Number or Email Address</i>	