SIGNET JEWELERS LIMITED
(Exact name of registrant as specified in its charter)

Commission File Number: 1-32349

Bermuda
(State or other jurisdiction of incorporation)

Clarendon House
2 Church Street
Hamilton
HM11
Bermuda
(Address of principal executive offices, including zip code)

(441) 296 5872
(Registrant’s telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐
Item 1.01Entry into a Material Definitive Agreement.

Purchase Agreement

On May 25, 2017, Signet Jewelers Limited ("Signet," or the "Company"), through its subsidiary Sterling Jewelers Inc. ("Sterling"), entered into a Sale and Purchase Agreement ("Purchase Agreement") with Comenity Bank ("Comenity"). The Purchase Agreement provides for, among other things, the purchase by Comenity of a portion of Sterling's existing credit card portfolio and the assumption from Sterling of certain liabilities related to Sterling's credit card portfolio.

The purchase price will be approximately $1.0 billion and will be a cash amount calculated at the time of closing. The Purchase Agreement contains customary representations, warranties, and covenants.

The Purchase Agreement is subject to customary closing conditions, including receipt of regulatory antitrust approval, and Comenity’s obligation to close is subject to the termination of the Sterling securitization program (as defined in the Purchase Agreement). The Purchase Agreement is not subject to any financing condition.

Program Agreement

In connection with the Purchase Agreement, Sterling and Comenity entered into a Credit Card Program Agreement ("Program Agreement") with an initial term of seven years commencing upon a launch date specified in the Program Agreement and, unless terminated by either party, additional renewal terms of two years. The Program Agreement provides for, among other things, that Comenity establish a program to issue Sterling credit cards to be serviced, marketed and promoted in accordance with the terms therein. The Program Agreement includes a signing bonus, which may be repayable under certain conditions if the Program Agreement is terminated.

Subject to limited exceptions, Comenity will be the exclusive issuer of private label credit cards or an installment or other closed end loan product in the United States bearing specified Company trademarks, including "Kay," "Jared" and specified regional brands, but excluding "Zale," during the term of the agreement. The existing arrangement for the issuing of Zale credit cards will be unaffected by the execution of the Program Agreement.

The Program Agreement contains customary representations, warranties, and covenants. Upon expiration or termination by either party of the Program Agreement, Sterling retains the option to purchase, or arrange the purchase by a third party of, the program assets from Comenity on terms that are no more onerous to Sterling than those applicable to Comenity under the Purchase Agreement, or in the case of a purchase by a third party, on customary terms.

This description is a summary and does not purport to be a complete description of the Purchase Agreement and the Program Agreement. It is qualified in its entirety by the full text of the Purchase Agreement and Program Agreement, which are attached hereto as Exhibit 10.1 and 10.2 and incorporated herein by reference.
On May 25, 2017, Sterling and Genesis Financial Solutions, Inc., a Delaware corporation ("Genesis") entered into a letter agreement, which contains both binding and non-binding provisions (the “Letter of Intent”). The Letter of Intent provides that Genesis will become a servicer for Sterling’s existing non-prime accounts receivable, which includes customer servicing and administrative activities, pursuant to a servicing agreement (the “Servicing Agreement”) with a term of five years subject to renewal for successive two year terms.

Pursuant to the Letter of Intent, Sterling will pay a monthly servicing fee to Genesis that is equal to a servicing fee multiplied by the number of accounts with a balance at any time during a monthly period (prorated for partial months). Sterling will also pay a fee to Genesis, in amounts that are to be negotiated, if the number of accounts decreases below certain levels.

The Letter of Intent provides that the Servicing Agreement will be subject to customary representations and warranties, indemnification provisions and termination provisions for cause. The Letter of Intent also provides that, simultaneous with the execution of the Servicing Agreement, Sterling and Genesis will enter into an employee transition agreement and a sublease agreement, in each case, pursuant to agreed upon terms and conditions.

The Letter of Intent requires the parties to negotiate and execute a definitive Servicing Agreement by June 15, 2017, otherwise the Letter of Intent terminates.

Item 9.01 Financial Statements and Exhibits

The exhibits required to be filed as a part of this Current Report on Form 8-K are listed in the Exhibit Index attached hereto, which is incorporated herein by reference.

<table>
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<tr>
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<td>Credit Card Program Agreement, by and among Sterling Jewelers Inc. and Comenity Bank, dated May 25, 2017</td>
</tr>
</tbody>
</table>

*Filed herewith
†Confidential treatment requested as to certain portions of this exhibit, which portions are omitted and filed separately with the SEC.
Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SIGNET JEWELERS LIMITED

Date: May 25, 2017

By: /s/ Lynn Dennison
Name: Lynn Dennison
Title: Chief Legal, Risk & Corporate Affairs Officer
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SALE AND PURCHASE AGREEMENT

BY AND AMONG

STERLING JEWELERS INC.

AND

COMENITY BANK

Dated as of May 25, 2017
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SALE AND PURCHASE AGREEMENT

This Sale and Purchase Agreement (this “Agreement”) is made and entered into as of the 25th day of May, 2017 by and among Sterling Jewelers Inc., a Delaware corporation (the “Seller”) and Comenity Bank, a Delaware state-chartered bank (“Purchaser”).

WITNESSETH

WHEREAS, Purchaser establishes programs to extend credit via private label credit cards to qualified customers for the purchase of goods and services;

WHEREAS, pursuant to the Securitization Documents (defined below) certain of the Accountholder Indebtedness (defined below) has been acquired by the Sterling Jewelers Receivables Master Note Trust (the “Securitization Trust”) and pledged to secure certain indebtedness of the Securitization Trust;

WHEREAS, simultaneously with the execution and delivery of this Agreement, Seller and Purchaser are entering into that certain Program Agreement (the “Program Agreement”), dated as of the date hereof; and

WHEREAS, upon the terms and subject to the conditions of this Agreement, Seller wishes to sell, convey, transfer, assign and deliver to Purchaser, and Purchaser wishes to acquire and assume from Seller, the Acquired Assets and the Assumed Liabilities (each as defined below).

NOW, THEREFORE, in consideration of the terms, conditions and mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. Except as otherwise specifically indicated, the following terms shall have the meanings specified herein.

“6050W Reporting Rules” has the meaning specified in Section 5.7(e).

“Account” means an open-ended credit account linked to a Credit Card and usable solely for the purpose of financing the purchase of Goods and Services (and all fees and charges relating thereto) through the Company Channels (as defined in the Program Agreement) and for financing any other charges that may be made using such Credit Card pursuant to the terms of the relevant Credit Card Agreement; provided that, an Excluded Account, a Credit Card originated by the Purchaser under the Program Agreement and a Credit Card originated by the Secondary Program provider under the Secondary Program Agreement shall not be an Account.

“Account Documentation” has the meaning set forth in the Program Agreement.
“Accountholder” means any Person in whose name an Account has been established pursuant to a Credit Card Agreement and who is responsible for payment of sums due under such Account, including any guarantor, co-signor or surety.

“Accountholder Indebtedness” means, with respect to each Account: (a) any and all amounts billed and owing by Accountholder(s) with respect to such Account (including any billed but unpaid balances, interest, NSF fees, late fees, returned check fees and any other charges or fees that have been billed to the Accountholder(s)); less (b) the amount of any credit balances owing by Seller on such Account, whether or not billed or posted.

“Accountholder List” means any list derived from any information obtained by Seller (itself or through one or more of its Affiliates or third party service providers) as a result of the ownership or operation of the Acquired Assets or the Program by Seller containing the names, social security numbers and most recent addresses (including street addresses), e-mail addresses (if available) and phone numbers of Accountholders, and such data elements as are available with respect to an authorized user under an Account, whether in documentary form or on microfilm, microfiche, magnetic tape, computer disk or other form.

“Accountholder Master File” means the account file or files of the system of record (commonly known as a master file) that are maintained by or on behalf of Seller or an Affiliate of Seller with respect to the Accounts, formatted in a manner reasonably acceptable to each party and approved by the Integration Committee, and substantially in the form provided by Seller to Purchaser on or about April 25, 2017, and supplemented with data dictionaries, Seller’s Account status codes and definitions, a file manifest or checklist that identifies each file and each files’ block and record size and such other information, in each case in such formats, as is reasonably acceptable to each party, as approved by the Integration Committee.

“Accountants” has the meaning specified in Section 3.7(b).

“Acquired Assets” has the meaning specified in Section 2.1(a).

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person; provided, however, that, for purposes of this Agreement, no member of the Zale Group shall be considered an Affiliate of Seller. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning specified in the preamble hereof.

“Allocated Purchase Price” has the meaning specified in Section 2.4.

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement in the form attached hereto as Exhibit A to effect the assignment of the Acquired Assets and the assumption of Assumed Liabilities.

“Assumed Liabilities” has the meaning specified in Section 2.2(a).
“Bankruptcy and Equity Exception” has the meaning specified in Section 4.1(b).


“Business Day” has the meaning specified in the Program Agreement.

“Charged-Off Accounts” means any Account (i) (***) in each case set forth in clauses (i) through (v), determined as of the Cut-Off Time.

“Charge-Off Policies” has the meaning specified in Section 4.1(g)(ii).

“Closing” has the meaning specified in Section 3.1.

“Closing Date” has the meaning specified in Section 3.1.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Confidentiality Agreement” means the letter agreement, dated as of July 18, 2016, between Seller and Purchaser.

“Conversion” means the transfer of the Accountholder Master File and all other Account records from Seller’s or its Affiliate’s facilities and processing system to Purchaser’s or its Affiliate’s facilities and processing system.

“Credit Card” means the plastic card or other device or method, including any temporary card, tokenized payment credentials, or mobile wallet, which card, device or method corresponds to an Account, or an Excluded Account, as applicable, established under the Program (and for the avoidance of doubt, “Credit Cards” shall not include credit cards established by the Purchaser under the Program Agreement or credit cards established by the Secondary Program provider under the Secondary Program Agreement).

“Credit Card Agreement” means each agreement between Seller and an Accountholder governing the use of an Account, including agreements assigned to the Seller pursuant to any purchase agreement, together with any amendments, modifications or supplements thereto and any replacement of such agreement (including in each case through issuance of a change in terms notice).

“Credit Card Business” means the proprietary Credit Card business relating to the Accounts, including the extension of credit to Accountholders, the servicing of the Accounts, billing, collections, processing of Account transactions and the administration of the Accounts and Accountholder Indebtedness.

“Credit Insurance Product” means the credit insurance product offered by or through Seller as of the date of this Agreement that is the subject to Section 5.19.
“Cut-Off Time” means the time when the processing of the Accounts by Seller, its Affiliates and/or their respective contractors for the day immediately preceding the Closing Date has been completed.

“(****)” has the meaning specified in Section 7.5(d)(i).

“(****)” has the meaning specified in Section 7.5(d)(i).

“Effective Time” means 12:00:01 a.m., New York time, on the Closing Date.

“Employee Transfer Agreement” means the agreement between ADS Alliance Data Systems, Inc., an Affiliate of Purchaser and Seller, dated as of the date of this Agreement, relating to the transfer of certain employees from Seller to Purchaser’s Affiliate, as the same may be modified or amended by the parties thereto from time to time.

“Enhancement Services” shall mean any enhancements, features, services, products and programs offered or provided by Seller, or any third party authorized by Seller, with respect to the Accounts, including any debt protection, identity theft protection, insurance or credit score tracking products or services. For clarity, the Credit Insurance Product is an Enhancement Service, but warranties of Goods and Services are not Enhancement Services.

“Escalated Dispute” has the meaning specified in Section 3.8(e).

“Estimated Purchase Price” has the meaning specified in Section 2.3.

“Excluded Account” means as of the Cut-Off Time, any Credit Card account under the Program, whether closed or open, that meets any of the criteria set forth in Schedule 1.1(a).

“Excluded Assets” means all right, title and interest in, to and under any and all assets of Seller and its Affiliates that are not included in the Acquired Assets, including the following: (i) all Intellectual Property (including any solicitation materials not included in the Account Documentation) of Seller and its subsidiaries, (ii) any customer data relating to customers of Seller or its Affiliates (whether or not a portion thereof is duplicated in the Account Documentation or Accountholder Master File; provided that for clarity the Account Documentation and Accountholder Master File are not Excluded Assets), (iii) any Excluded Accounts; and (iv) any Enhancement Services offered by or through Seller in connection with the Accounts.

“Federal Funds Rate” means the offered rate as reported in The Wall Street Journal in the “Money Rates” section for reserves (or as determined in such other mutually acceptable manner as the parties agree if The Wall Street Journal is no longer reporting such rate) traded among commercial banks for overnight use in amounts of one million dollars or more, as published in the most recent Friday edition prior to any required payment or settlement date.

“FICO” has the meaning set forth in the Program Agreement.
“Final Purchase Price” has the meaning specified in Section 3.6(a).

“Goods and Services” means the products and services sold, charged or offered by or through the Company Channels (as defined in the Program Agreement), including accessories, delivery services, protection agreements, gift cards, shipping and handling, and work or labor to be performed for the benefit of customers of the Company Channels and any sales tax relating to the foregoing charges and to such customers in connection therewith.

“Governmental Authority” has the meaning specified in the Program Agreement.


“Indemnified Party” has the meaning specified in Section 7.5(a)(i).

“Indemnifying Party” has the meaning specified in Section 7.5(a)(i).

“Information” has the meaning specified in Section 5.5.

“Integration Committee” has the meaning specified in the Program Agreement.

“Integration Plan” has the meaning specified in the Program Agreement.

“Intellectual Property” has the meaning specified in the Program Agreement.

“Knowledge of Purchaser” or any similar formulation means the actual knowledge of the individuals listed on Schedule 1.1(b).

“Knowledge of Seller” or any similar formulation means the actual knowledge of the individuals listed on Schedule 1.1(c).

“Law” means any federal, state or local law (including common law), statute, rule or regulation, or any written interpretation of a Governmental Authority thereunder, or any Applicable Order (as defined in the Program Agreement), or any guidance, directive or instruction, directed to or binding on a party or generally binding on participants in a party’s industry from a Governmental Authority (whether or not published).

“Lease Agreement” means the agreement between Comenity Servicing LLC, an Affiliate of Purchaser and Seller, dated as of the date of this Agreement, relating to the transfer of certain real property leases from Seller to Purchaser’s Affiliate, as the same may be modified or amended by the parties thereto from time to time.

“Lien” means any lien, mortgage, pledge, conditional or installment sale agreement, encumbrance, covenant, restriction, option, right of first refusal, easement, security interest, deed of trust, right-of-way, encroachment, community property interest or other claim or restriction of any nature, whether voluntarily incurred or arising by operation of Law.

“Losses” has the meaning specified in Section 7.3(a).
“Material Adverse Effect” means any event, fact, circumstance, development, occurrence, change or effect (each, an “Effect”) that has or would reasonably be expected to have, individually or in the aggregate, (i) a material adverse effect on the Acquired Assets (***) provided, however, that none of the following, and no Effect arising out of or resulting from the following shall constitute or be taken into account in determining whether there has been, a “Material Adverse Effect”: (a) the entry into or the announcement or pendency of this Agreement or the Program Agreement or the transactions contemplated hereby or thereby or the performance of (or compliance with) this Agreement or the Program Agreement or the consummation of the transactions contemplated hereby or thereby, in each case, including (i) by reason of the identity of, or any facts or circumstances relating to, Purchaser or any of its respective Affiliates, (ii) by reason of any communication by Purchaser or any of its Affiliates regarding the plans or intentions of Purchaser with respect to the conduct of the Program, and (iii) the impact of any of the foregoing on any relationships with customers, Accountholders, suppliers, vendors, business partners, employees or regulators; (b) any Effect affecting the economy or the financial, credit or securities markets in the United States or elsewhere in the world, including interest rates or exchange rates or any changes therein, or any Effect affecting any business or industries in which Seller or any of its subsidiaries operates; (c) any changes or fluctuations to commodity prices, including the price of gold and diamonds; (d) any events, conditions or occurrences in economic, business or financial conditions generally affecting the credit card services, consumer credit, jewelry or banking industries; (e) the suspension of trading in securities generally on New York Stock Exchange; (f) any change in any applicable Law or GAAP or other applicable accounting rules or the interpretation of any of the foregoing; (g) any action taken by Seller or any of its Affiliates that is expressly required by this Agreement or with Purchaser’s written consent; (h) the commencement, occurrence, continuation or escalation of any war, armed hostilities or acts of terrorism; (i) the existence, occurrence or continuation of any force majeure events, including any earthquakes, floods, hurricanes, tropical storms, fires or other natural disasters or any national, international or regional calamity; or (j) any changes in any analyst’s recommendations or ratings with respect to Seller or any of its Affiliates or any failure of Seller or any of its Affiliates to meet any internal or public projections, budgets, guidance, forecasts or estimates of revenues, earnings or other financial results for any period ending on or after the date of this Agreement (it being understood that the exceptions in this clause (j) shall not prevent or otherwise affect the underlying cause of any such change or failure referred to therein (to the extent not otherwise falling within any of the exceptions provided by clauses (a) through (i)) from being taken into account in determining whether a Material Adverse Effect has occurred), provided, that this clause (j) shall not be construed as implying that Seller is making any representation or warranty with respect to any internal or public projections, budgets, guidance, forecasts or estimates of revenues, earnings or other financial results for any period.

“Officer’s Certificate” means a certification by a senior officer of the Seller or the Purchaser (as the case may be) in favor of the other party with respect to the matters contemplated by Section 6.2(a) and 6.3(a).

“Ordinary Course Modifications” means individual modifications under the Servicemembers Civil Relief Act, consumer credit counseling agreements, forbearance arrangements, modifications resulting from reviews performed pursuant to 12 CFR § 1026.59 and any other modifications in the ordinary course of business, in each case to the extent undertaken consistently with Seller’s past practice during the twelve (12) months prior to this Agreement, on an individual Account basis and otherwise in accordance with Seller’s Policies and Procedures.
“Permitted Liens” means (a) easements, covenants, conditions, restrictions and other Liens that do not materially detract from the value of an Acquired Asset or impair the use or operation of any Acquired Asset for the purposes for which it is currently used in connection with the business of Seller and its Affiliates, (b) statutory Liens for current Taxes or other governmental charges or levies not yet due or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate proceedings, (c) mechanics’, carriers’, workers’, repairers’ and other similar Liens arising or incurred in the ordinary course of business relating to obligations as to which there are no sums due and payable on the part of Seller or any Affiliate thereof, as the case may be, or the validity or amount of which is being contested in good faith by appropriate proceedings, or pledges, deposits or other Liens securing the performance of bids, contracts, leases or statutory obligations (including workers’ compensation, unemployment insurance or other social security legislation), (d) leases, subleases, licenses or occupancy agreements pursuant to which third parties unrelated to Seller occupy a portion of the applicable real property encumbered or affected thereby so long as disclosed on the Seller Disclosure Schedule, and (e) any other Liens affecting the Acquired Assets which do not impede the ownership, operation or value of such Acquired Assets, taken as a whole, in any material respect.

“Person” has the meaning specified in the Program Agreement.

“Post-Closing Reconciliation Period” has the meaning set forth in Section 3.8(b) hereof.

“Program” means the credit card program operated by Seller prior to the Closing.

“Program Agreement” has the meaning specified in the recitals hereof.

“Program Eligible Applicant” has the meaning set forth in the Program Agreement.

“Purchase Price” means an amount in cash equal to the result of the following formula:

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“Purchaser” has the meaning specified in the preamble hereof.

“Representatives” means, with respect to any Person, such Person’s Affiliates and its and their respective directors, officers, employees, agents and advisors (including financial advisors, counsel and accountants).
“Retained Account Documentation” has the meaning specified in Section 5.1(b) hereof.

“Retained Liabilities” means any and all liabilities and obligations of Seller and its Affiliates that are not included in the Assumed Liabilities, including (i) all liabilities to the extent arising from the Excluded Assets (ii) all accounts payable of Seller and its subsidiaries, (iii) all liabilities relating to any applications for Accounts received and not decisioned by Seller prior to the Cut-Off Time (which for clarity excludes all applications received by Seller and passed through to Purchaser for decisioning between Launch and the Cut-Off Time in accordance with the Program Agreement) and (iv) any liabilities (whether arising through contract or otherwise) relating to the Enhancement Services offered by or through the Seller in connection with the Accounts.

“Retention Period” has the meaning specified in Section 5.1(b) hereof.

“Secondary Program” has the meaning specified in the Program Agreement.

“Secondary Program Agreement” means the program agreement between the Seller, Zale Delaware, Inc., a Delaware corporation, the Secondary Program provider and Genesis Financial Solutions, Inc., a Delaware corporation, as the servicer.

“Securitization Documents” means the documents listed on Schedule 1.1(d).

“Securitization Program” means the transactions evidenced and governed by the Securitization Documents.

“Securitization Trust” has the meaning specified in the recitals hereof.

“Seller” has the meaning specified in the preamble hereof.

“Seller Disclosure Schedule” means the disclosure schedules delivered to Purchaser by Seller on or prior to the date of this Agreement and forming part of this Agreement.

“Seller Licensed Marks” means the Trademarks and other proprietary designations of Seller or its Affiliates listed in the Program Agreement as may be modified from time to time in accordance with the Program Agreement, together with the trade name of Seller and any successor Trademarks and proprietary designations that Seller adopts as successors to those listed in the Program Agreement.

“Seller’s Policies and Procedures” means Seller’s (a) policies and operating procedures, including the Charge-Off Policies, and (b) practices, which are, (i) to the extent such practices are covered thereby, in compliance with such policies and procedures or (ii) to the extent such practices are not covered thereby, not inconsistent with such policies and procedures, all as such policies, procedures, practices and guidelines existed as of the applicable date through the date hereof or as are amended hereafter in compliance with this Agreement.
“Settlement Statement” means a statement, substantially in the form of Exhibit B attached hereto, showing in reasonable detail the calculation of the Final Purchase Price, computed as of the Cut-Off Time.

“Solicitation Materials” has the meaning set forth in the Program Agreement.

“Solvency” means, when used with respect to any Person on a particular date, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (iv) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (v) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital.

“Tax” (and, with correlative meaning, “Taxes”) means any federal, state, local or foreign net income, gross income, gross receipts, windfall profit, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add on minimum, ad valorem, value added, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, additional tax or additional amount imposed by any Governmental Authority.

“Trailing Transactions” shall mean, with respect to each Account, any of the following occurring prior to the Cut-Off Time, but not posted to the applicable Account prior to the Cut-Off Time: all sales transactions, purchases, balance transfers, credits, adjustments, accrued interest and payments.

“Transfer Taxes” has the meaning specified in Section 5.7(a).

“Transferred Employee” has the meaning specified in the Employee Transfer Agreement.

“Transition Date” has the meaning specified in the Employee Transfer Agreement.

“True Sale Opinion” means an opinion from counsel for the Seller, addressed to Seller and to Purchaser, subject to customary qualifications, assumptions (including, but not limited to, the assumption that there have been no changes to the facts and circumstances existing and in effect as of the date of this Agreement relating to the transactions contemplated by this Agreement (without giving effect to any amendments, modifications or supplements thereto) and the Program Agreement (without giving effect to any amendments, modifications or supplements thereto), limitations and exceptions, in form and substance reasonably satisfactory to Seller and Purchaser, that a United States federal or state court of appropriate jurisdiction, which reasonably and properly analyzed the facts and the law, would uphold the characterization of the transfer of the Accountholder Indebtedness (except for any Accountholder Indebtedness related to any Excluded Account purchased pursuant to Section 3.8(c)) existing as of the Cut-Off Time (the “Receivables”) by Seller to Purchaser pursuant to this Agreement (without giving effect to any amendments, modifications or supplements thereto) as a sale or an absolute transfer of the Receivables, and that a trustee, receiver or creditor of Seller would not be able to compel the turnover of the Receivables or the proceeds thereof to Seller under Section 542 of the Bankruptcy Code and would not be entitled to treat the Receivables or the proceeds thereof as assets included in the estate of Seller pursuant to Section 541 of the Bankruptcy Code, and therefore, the Receivables, the payments thereon and the proceeds thereof would not be subject to the automatic stay under Section 362 of the Bankruptcy Code imposed in such a case with respect to Seller.
“Unposted Interest and Charges” means, with respect to each Account, any and all interest and fees (including any finance charges, NSF fees, late fees, returned check fees and any other charges or fees), in each case, that have been earned, but not billed or posted, between such Account’s most recent billing date prior to the Cut-Off Time and the Cut-Off Time.

“Valuation Date” means a date not less than five (5) Business Days before the Closing Date or such other date as mutually agreed upon by the parties.

“Valuation Statement” means a statement, substantially in the form of Exhibit C attached hereto, showing in reasonable detail Seller’s computation of the Estimated Purchase Price in accordance with Section 2.3, but determined as of the Valuation Date.

“Willful Breach” means with respect to any breaches of or failures to perform any of the covenants or other agreements contained in this Agreement, a breach that is a consequence of an act or failure to act undertaken by the breaching party with actual or constructive knowledge (which shall be deemed to include knowledge of facts that a Person acting reasonably should have, based on reasonable due inquiry) that such party’s act or failure to act would or would reasonably be expected to, result in or constitute a breach of this Agreement; provided, that a party’s good faith assertion of any rights provided for under this Agreement shall not constitute a “Willful Breach”.

“Zale Group” means Zale Corporation, a Delaware corporation, and its current and future subsidiaries.

1.2 Construction.

(a) As used herein, references to:

(i) the preamble or the recitals, Sections or Schedules refer to the preamble, recitals, Sections or Schedules to this Agreement,

(ii) any agreement (including this Agreement) refer to the agreement as amended, modified, supplemented, restated or replaced from time to time,

(iii) any statute or regulation refer to the statute or regulation as amended, modified, supplemented or replaced from time to time,

(iv) any Governmental Authority include any successor to the Governmental Authority;
this Agreement means this Agreement and the Schedules hereto; provided that, in the event of any conflict between this Agreement and the Schedules, this Agreement shall govern;

(vi) references to any Section in this Agreement include references to any Schedule attached thereto;

(vii) the plural number shall include the singular number (and vice versa);

(viii) “herein,” “hereunder,” “hereof” or like words shall refer to this Agreement as a whole and not to any particular section, subsection or clause contained in this Agreement;

(ix) “include,” “includes” or “including” shall be deemed to be followed by the words “without limitation”;

(x) the phrase “to the extent” shall mean the degree to which a thing extends and not merely “if”; and

(xi) “$” or “dollars” shall be deemed references to United States dollars.

(b) The table of contents and headings contained in this Agreement are for reference purposes only and do not limit or otherwise affect any of the provisions of this Agreement.

(c) Unless the context otherwise requires, the word “or” when used in this Agreement will be deemed to have the inclusive meaning represented by the phrase “and/or.”

(d) Unless otherwise explicitly set forth herein, any consent or approval that may be given by a party hereunder may be given or withheld in such party’s sole and absolute discretion.

(e) Unless otherwise specified, all references herein to days, months or years shall be deemed references to calendar days, calendar months or calendar years.

(f) Unless otherwise expressly specified herein, any payment that otherwise would be due on a day that is not a Business Day shall be deemed to be due on the first Business Day thereafter.

(g) This Agreement is the product of negotiation by the parties having the assistance of counsel and other advisers. It is the intention of the parties that this Agreement not be construed more strictly with regard to one party than with regard to the other.
ARTICLE II

PURCHASE, SALE AND ASSUMPTION

2.1 Purchase and Sale of Assets; Excluded Assets.

   (a) Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and accept from Seller, all of Seller’s right, title and interest in, to and under the following assets of Seller existing as of the Cut-Off Time (other than the Excluded Assets):

   (i) the Accounts, including all Charged-Off Accounts;

   (ii) the Accountholder Indebtedness and all Unposted Interest and Charges;

   (iii) the Account Documentation;

   (iv) the Accountholder Master Files and the Accountholder List;

   (v) the rights under the Credit Card Agreements;

   (vi) all books and records of Seller relating solely to the Acquired Assets listed in Sections 2.1(a)(i) – (v) above;

   (vii) all accounts receivable of Seller and its subsidiaries in respect of the Acquired Assets listed in Sections 2.1(a)(i) – (v); and

   (viii) all benefits, rights, rights of action and claims (express or implied) related to the Acquired Assets and Assumed Liabilities acquired and assumed by Purchaser pursuant to the terms of this Agreement

   (the assets referred to in (i) through (viii), collectively, the “Acquired Assets”).

   (b) For the avoidance of doubt, and notwithstanding any provision of this Agreement to the contrary, Purchaser is not acquiring from Seller or any of its Affiliates, and Seller and its Affiliates shall retain ownership of all right, title and interest in, to and under, the Excluded Assets.

   (c) the parties intend that the transfer of the Acquired Assets by Seller to Purchaser be an absolute sale and not a secured borrowing

2.2 Assumption of Liabilities; Retained Liabilities.

   (a) Subject to the terms and conditions set forth herein, at the Closing and effective as of the Effective Time, Purchaser shall assume, and from and after the Closing shall pay, discharge and perform as and when due, the following liabilities and obligations of Seller, except in the case of item (i) to the extent such obligations, but for a breach or default by Seller or any of its Affiliates would have been paid, performed or otherwise discharged prior to the Cut-Off Time or to the extent the same arise out of any such breach or default:
all of the liabilities and obligations of Seller and its Affiliates to the Accountholders under the Credit Card Agreements, including those relating to the Charged-Off Accounts;

(ii) any expenses or liabilities related to any of the Accounts or the ownership and use of the Acquired Assets, in each case, to the extent arising or accruing after the Cut-Off Time; and

(iii) all liabilities, obligations, duties and responsibilities (express or implied) related to the Acquired Assets and Assumed Liabilities acquired and assumed by Purchaser pursuant to the terms of this Agreement, in each case, to the extent arising or accruing after the Cut-Off Time,

(the liabilities and obligations referred to in (i) through (iii), collectively, the “Assumed Liabilities”).

(b) Notwithstanding any provision in this Agreement to the contrary, Purchaser shall assume only the Assumed Liabilities. Seller shall retain all Retained Liabilities.

2.3 Estimated Purchase Price. The estimated purchase price for the Acquired Assets (the “Estimated Purchase Price”) shall be the estimate of the Purchase Price set forth in the Valuation Statement prepared and delivered pursuant to Section 3.3.

2.4 Allocation of Purchase Price. The parties hereto hereby agree that the Final Purchase Price shall be allocated among the Acquired Assets (the “Allocated Purchase Price”) in accordance with the rules under Section 1060 of the Internal Revenue Code of 1986, as amended (the “Code”) and Treasury Regulations promulgated thereunder for U.S. federal income tax purposes (and any applicable state and local income tax purposes). Purchaser and Seller shall each be entitled to use their own allocation of the Final Purchase Price (including the amount of Assumed Liabilities and any other relevant amounts) among the Acquired Assets. For the avoidance of doubt, neither Purchaser nor Seller is obligated hereunder to use the Allocated Purchase Price in its financial accounting or financial reporting.

ARTICLE III

THE CLOSING

3.1 The Closing. Subject to the satisfaction or written waiver of all conditions set forth in Article VI, the closing of the sale and purchase of the Acquired Assets and assignment and assumption of the Assumed Liabilities contemplated hereby shall occur remotely on (i) October 20, 2017, provided that, all of the conditions set forth in Article VI (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or, if permissible, written waiver of such conditions are then satisfied or waived by the appropriate party, or (ii) if one or more conditions are not satisfied or waived as of October 20, 2017, but are subsequently satisfied or waived, another time, date or place as agreed to in writing by the parties hereto, or in the absence of such agreement, March 31, 2018 (the “Closing Date”) (the date on which the Closing actually occurs being referred to herein as the “Closing Date”).
3.2 Closing Deliverables.

(a) At the Closing, Seller shall have delivered or caused to be delivered to Purchaser:

(i) the Assignment and Assumption Agreement, dated the Closing Date, and appropriately completed and duly executed by Seller;

(ii) the Officer’s Certificate of Seller;

(iii) financing statements, prepared by Purchaser, each in the form of Exhibit D; and

(iv) the final Accountholder Master File, reflecting the Accounts as of the Cut-Off Time.

(b) At the Closing, Purchaser shall have delivered or caused to be delivered to Seller:

(i) the Assignment and Assumption Agreement, dated the Closing Date, and appropriately completed and duly executed by Purchaser;

(ii) the Officer’s Certificate of Purchaser; and

(iii) the Estimated Purchase Price.

(c) Each of Purchaser and Seller shall, at or prior to the Closing Date, execute and deliver all such additional instruments, documents or certificates as may be reasonably requested by the other party for the consummation at the Closing of the transactions contemplated by this Agreement.

3.3 Valuation Statement. Not less than three (3) Business Days prior to the Closing Date, Seller shall deliver to Purchaser the Valuation Statement showing Seller’s good faith determination of the Estimated Purchase Price, together with supporting documentation and calculations for the Accountholder Indebtedness on the Accounts used to calculate the Estimated Purchase Price. Purchaser shall have the right to review the Valuation Statement, together with any supporting documents reasonably requested by Purchaser to verify the accuracy and completeness of the valuations set forth therein, and the Valuation Statement shall be revised by Seller to reflect any corrections mutually agreed to by Purchaser and Seller acting in good faith.

3.4 Payments on the Closing Date. At the Closing, Purchaser shall pay Seller the Estimated Purchase Price set forth in the Valuation Statement (as such statement may be revised pursuant to Section 3.3). Payment to Seller on the Closing Date shall be made by a wire transfer of immediately available U.S. dollars to an account designated in writing by Seller. Seller shall provide Purchaser with wire instructions no later than two (2) Business Days prior to the Closing Date.
3.5 Settlement Statement. Within sixty (60) days following the Closing Date, Purchaser shall deliver to Seller the Settlement Statement setting forth Purchaser’s good faith determination of the Final Purchase Price, along with supporting documentation and calculations for the Accountholder Indebtedness on the Accounts used to calculate the Estimated Purchase Price, determined in accordance with Section 3.6. Seller shall have the right to review the Settlement Statement, together with any supporting documents reasonably requested by it to verify the accuracy and completeness of the valuations set forth therein, and the Settlement Statement shall be revised by Purchaser to reflect any corrections mutually agreed to by Purchaser and Seller or finally determined pursuant to Section 3.7.

3.6 Final Purchase Price.

(a) The final purchase price for the Acquired Assets (as may be finally determined pursuant to Section 3.7, the “Final Purchase Price”) shall be an amount, determined as of the Cut-Off Time, equal to the Purchase Price. If the Final Purchase Price for the Acquired Assets is greater than the Estimated Purchase Price paid by Purchaser on the Closing Date, Purchaser shall, within five (5) Business Days following the determination of the Final Purchase Price, remit the difference to Seller, together with interest on such amount at the Federal Funds Rate divided by three hundred sixty five (365) for each day during the period from the Closing Date to the date of such payment. If the Final Purchase Price for the Acquired Assets is less than the Estimated Purchase Price paid by Purchaser on the Closing Date, Seller shall, within five (5) Business Days following the determination of the Final Purchase Price, remit the difference to Purchaser together with interest on such amount at the Federal Funds Rate divided by three hundred sixty five (365) for each day during the period from the Closing Date to the date of such payment.

(b) Payments made pursuant to Section 3.6(a) shall be remitted by a wire transfer of immediately available U.S. dollars to an account designated in writing by the party to which payment is due. Wire instructions shall be forwarded to the paying party no later than two (2) Business Days prior to the date that such payment is to be made.

3.7 Dispute Resolution.

(a) If Seller has any objections to the Settlement Statement, then Seller shall submit such objections in writing to Purchaser, stating in reasonable detail the reason and basis for any such objections, within twenty-five (25) Business Days after delivery by Purchaser to Seller of the Settlement Statement. Each party will use its commercially reasonable efforts to resolve any disputes regarding the contents of the Settlement Statement; provided, however, that if Purchaser and Seller cannot mutually agree upon a final Settlement Statement within twenty (20) Business Days after delivery by Seller to Purchaser of the written objection, the parties shall:

(i) pay to each other any undisputed amounts in the Settlement Statement that are owed, plus interest calculated at the Federal Funds Rate divided by three hundred and sixty-five (365) for each day from the Closing Date to the date the undisputed payments are made; and
(ii) resolve any outstanding disputed line items in the Settlement Statement by following the dispute resolution procedures that are set forth in Section 3.7(b).

(b) In the event Purchaser and Seller are unable to resolve any dispute regarding the contents of the Settlement Statement in accordance with Section 3.7(a), the parties shall submit the items remaining in dispute for resolution to a mutually selected nationally recognized independent accounting firm (which such independent accounting firm shall not be, for the avoidance of doubt, the auditor of Seller, Purchaser or any of their respective Affiliates) (such accounting firm being referred to herein as the “Accountants”). Seller and Purchaser shall direct the Accountants to determine and report to Purchaser and Seller, within forty-five (45) days after such submission, upon such remaining disputed items, and such report shall (absent manifest error) be final, binding and conclusive on Purchaser and Seller. With respect to each designated item and amount, the Accountant’s determination shall not be in excess of the higher, or less than the lower, of the amounts advocated by Purchaser in the Settlement Statement or by Seller in the dispute notice provided under Section 3.7(a). Purchaser and Seller shall cooperate fully in assisting the Accountants in their review, including by providing the Accountants full access to all files, books and records relevant thereto and providing such other information as the Accountants may reasonably request in connection with any such review, subject to entry into a customary confidentiality agreement. None of Seller, Purchaser or any of their Representatives will engage in any ex parte communications with the Accountant relating to the disputed items. The fees and disbursements of the Accountants shall be allocated between Purchaser and Seller in the same proportion that the aggregate amount of such remaining disputed items so submitted to the Accountants that is unsuccessfully disputed by each such party (as finally determined by the Accountants) bears to the total amount of such remaining disputed items so submitted. In the event the determination made by the Accountants requires either party to make payment to the other of any additional amount, such party shall make such payment no later than five (5) Business Days following receipt from the Accountants of written notice to both parties of such determination plus interest on any amount due at a rate equal to the Federal Funds Rate divided by three hundred sixty-five (365) for each day during the period from the Closing Date through the date of payment.

3.8 Mischaracterized Accounts.

(a) The parties will use their respective reasonable best efforts to ensure that (i) each test Accountholder Master File will not include the Excluded Accounts and (ii) the Accountholder Master File used to calculate the Valuation Statement will not include any Excluded Accounts.

(b) Subject to Section 3.8(c), if, during the ninety (90) day period following the Closing Date (“Post-Closing Reconciliation Period”), it is determined that an account transferred as an Account at Closing was an Excluded Account as of the Cut-Off Time, then within five (5) Business Days of either party’s demand (or final determination pursuant to Section 3.8(e) in the case of any disputed demand), Seller shall pay Purchaser an amount equal to the portion of the Purchase Price paid in respect of such Excluded Account; provided that, for clarity, Purchaser shall retain title to such Excluded Account and such Excluded Account shall not be converted back to Seller’s systems.
(c) Notwithstanding anything to the contrary contained herein, if an account transferred from Seller to Purchaser as part of the Accountholder Master file for the Closing Date was an (**). 

(d) If during the Post-Closing Reconciliation Period it is determined that an account designated as an Excluded Account as of the Cut-Off Time was an Account as of the Cut-Off Time, then, unless otherwise agreed to by the parties in writing, Seller shall retain such account and Purchaser shall not be required to purchase or convert such account as part of the Settlement Statement or otherwise.

(e) Upon the occurrence of any dispute under Section 3.8(b) (each an “Escalated Dispute”) and for which notice thereof has been given by one party to the other, the parties first shall endeavor to settle the matter informally by good faith negotiations between the appropriate members of each party’s management team. The party that believes that an Escalated Dispute exists shall give written notice of the Escalated Dispute to the other party describing the nature of the Escalated Dispute, the circumstances giving rise to the Escalated Dispute, the actions desired and the grounds upon which such actions are sought. The parties shall meet and discuss the Escalated Dispute either in person or by teleconference within two (2) Business Days of the notice. If such negotiations do not promptly (and in not more than fifteen (15) days) settle the Escalated Dispute, senior executives from each party shall attempt in good faith to resolve the Escalated Dispute. If no resolution is reached within thirty (30) days from receipt of the initial notice (which time may be extended by written agreement between the senior executives), then either party shall have the rights and remedies available to them pursuant to this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Seller. Except as set forth in the Seller Disclosure Schedule, Seller hereby represents and warrants to Purchaser as follows as of the date hereof and as of the Closing Date:

(a) Organization. Seller is duly incorporated and validly existing and in good standing under the laws of the State of Delaware. Except as would not have a Material Adverse Effect, Seller has the requisite power and authority to own and operate the Acquired Assets owned and operated by it prior to the sale hereunder. Seller is duly qualified and in good standing to do business in each jurisdiction in which the nature of its business or the ownership of the Acquired Assets makes such qualification necessary, except where the failure to be so qualified or in good standing would not have a Material Adverse Effect.
(b) Capacity, Authority, Validity. Seller has all necessary corporate power and authority to execute and deliver this Agreement, and to perform all of the obligations to be performed by it under this Agreement. Seller has all necessary entity power and authority to execute and deliver the Assignment and Assumption Agreement, and to perform all of its obligations thereunder. The execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby and by the Assignment and Assumption Agreement have been duly and validly authorized by all necessary action of Seller, and this Agreement has been duly executed and delivered by Seller. This Agreement constitutes the valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar Laws of general application, now or hereafter in effect, affecting or relating to the enforcement of creditors’ rights generally and (ii) is subject to general principles of equity, whether considered in a proceeding at law or in equity (the "Bankruptcy and Equity Exception"). The Assignment and Assumption Agreement, when executed and delivered by Seller will constitute the valid and binding obligation of Seller enforceable against Seller in accordance with its terms, subject to the Bankruptcy and Equity Exceptions.

(c) Conflicts, Defaults. None of the execution and delivery by Seller of this Agreement, the consummation of the transactions contemplated hereby by Seller, the execution and delivery of the Assignment and Assumption Agreement by Seller or the consummation by Seller of the transactions contemplated thereby will (i) conflict with, result in the breach of, constitute a default under, or accelerate the performance required by, the terms of any order or Law by which Seller is bound; (ii) violate the articles of incorporation or bylaws or any other equivalent organizational document of Seller; (iii) require any consent, approval or authorization under any Law, permit, license or agreement to which Seller is a party or by which Seller is bound; or (iv) require the consent or approval of any other party to any contract, instrument or commitment to which Seller is a party, other than (1) approvals of Governmental Authorities, if any, which have been obtained or will be obtained prior to or on the Closing Date and (2) items in clauses (i) through (iv), which would not have a Material Adverse Effect. Seller is not subject to any agreement with any Governmental Authority which would prevent the consummation by Seller of the transactions contemplated by this Agreement and the Assignment and Assumption Agreement. No receiver or conservator has been appointed for Seller nor has any proceeding been instituted or, to the Knowledge of Seller, threatened for such appointment.

(d) Acquired Assets. Except with respect to any rights, claims and interests arising under the Securitization Documents, which rights, claims and interests shall all be terminated prior to the Closing Date pursuant to Section 5.17:

(i) Seller is the sole owner of and has good title to all of the Acquired Assets, free and clear of all Liens other than Permitted Liens.

(ii) Other than this Agreement there are no outstanding options, other rights, arrangements, commitments or obligations of Seller or any of its subsidiaries, at any time or upon the occurrence of certain events, to offer, sell, transfer or otherwise dispose of any of the Acquired Assets, other than in the ordinary course of business consistent with past practice.

(e) Litigation. As of the date hereof, there is no litigation, arbitration or governmental proceeding pending or, to the Knowledge of Seller, threatened in writing, against Seller or otherwise involving the Acquired Assets, other than counterclaims by Accountholders filed in the ordinary course of business in connection with Seller’s collection activities.
Subject to any Ordinary Course Modifications, except as would not have a Material Adverse Effect:

(i) Seller has provided to Purchaser each version of the Credit Card Agreements used under the Program that governs the terms of the Accounts as of the date hereof along with each prior form of Credit Card Agreement that was in effect at the time any Account Indebtedness being purchased by Purchaser was initially created;

(ii) each Credit Card Agreement for an Account is the legal, valid and binding obligation of each obligor thereunder and to the Knowledge of Seller, is enforceable against the such obligor (as a matter of Law without regard to the ability of such obligor to pay) in accordance with its terms, (A) subject to Bankruptcy and Equity Exceptions; and (B) is not subject to offset, recoupment, adjustment or any other claim except for (1) the rights of Accountholders pursuant to the Servicemembers Civil Relief Act or (2) possible claims and defenses asserted by an Accountholder in connection with ordinary course disputes;

(iii) all Accounts are governed by a Credit Card Agreement and Seller (itself or through one or more of its Affiliates or third party service providers) have performed in all respects the obligations required to be performed by them under the Credit Card Agreements;

(iv) none of Seller or any of its Affiliates are in material default under, and no event has occurred with respect to Seller or any of its Affiliates, which, with notice or the lapse of time or both, will or is reasonably likely to result in a material default by Seller under any such Credit Card Agreement; and

(v) the terms of such Credit Card Agreements have not been waived, altered or modified in any material respect except by written instruments contained in the Account Documentation or the Accountholder Master File and all Ordinary Course Modifications are accurately reflected in the Account Documentation and the Accountholder Master File.

Accuracy of Master File; Compliance with Charge-Off Policies.

(i) When delivered, the Accountholder Master File (A) will be true, complete and correct in all material respects and (B) will reflect the terms and conditions of the Accounts listed therein on the date of delivery; provided, however, that the foregoing representation and warranty in clause (A) above, solely with respect to any information on the Accountholder Master File that was provided by any Person other than Seller or any Affiliate of Seller, or any of their respective officers, directors or employees, or any third party agents retained by or on behalf of Seller or any Affiliate of Seller, including any third party contractors, shall be limited to Knowledge of Seller.
(ii) Since (****), Seller has complied in all material respects with Seller's Policies and Procedures with respect to the charge-off of accounts under the Program, including the processing and coding of accounts that should have been charged-off (the “Charge-Off Policies”), the current version (as of the date hereof) of which has been made available to Purchaser.

(iii) Since (****), Seller has not effected any material change to the Charge-Off Policies or its policies and procedures relating to risk management, underwriting, re-aging, collection, origination and delinquency, except for: (A) changes made in the ordinary course of business consistent with past practice or the transactions contemplated hereby or (B) changes required by, or advisable pursuant to, applicable Law or the Federal Financial Institutions Examination Council’s Uniform Retail Credit Classification and Account Management Policy.

(h) Accounts; Accountholder Indebtedness. Except as would not have a Material Adverse Effect:

(i) A Credit Card has been issued in connection with each Account.

(ii) All Accounts have been originated, maintained and serviced by Seller or its Affiliates in accordance with the applicable Credit Card Agreements and Seller’s Policies and Procedures the current version (as of the date hereof) of which has been made available to the Purchaser.

(iii) With respect to Accountholder Indebtedness: (A) such Accountholder Indebtedness has arisen under an Account and (B) such Accountholder Indebtedness has been originated in compliance with all requirements of Law applicable to Seller and pursuant to a Credit Card Agreement.

(iv) The terms and conditions of each Account comply with the applicable Credit Card Agreement to which they relate.

(i) Compliance with Laws. (i) The Accounts, Credit Card Agreements related thereto and Credit Insurance Product were solicited, originated and continue to comply with all applicable Laws in all material respects, (ii) Seller has complied with all applicable Laws in all material respects with respect to the solicitation, origination, maintenance and servicing of the Accounts and Credit Insurance Product, including any change in the terms of any Account, (iii) except as would not have a Material Adverse Effect Seller has implemented policies and procedures reasonably designed to prevent, detect and mitigate the risk of identity theft in the Accounts, and (iv) except as would not have a Material Adverse Effect Seller has complied with all applicable Law relating to the protection of the confidential information and privacy rights of the Accountholders or Account applicants.

(j) Absence of Certain Changes or Events. Since (****), except as would not have a Material Adverse Effect, Seller (itself or through one or more of its Affiliates or third party service providers), with respect to the Program and the Acquired Assets, (i) has conducted and serviced the Program in the ordinary course of business consistent with past practice and Seller’s Policies and Procedures and (ii) has not implemented any changes to the terms and conditions contained in the Credit Card Agreements except for Ordinary Course Modifications.
(k) **Finders or Brokers.** Seller has not agreed to pay any fee or commission to any agent, broker, finder, or other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby which would give rise to any valid claim against Purchaser for any brokerage commission or finder’s fee or like payment.

(l) **Solvency.** Seller is, and immediately after the consummation of the transactions contemplated by this Agreement, will be, Solvent.

(m) **Credit Balances.** Seller and its Affiliates have not solicited or otherwise advertised the availability of credit balances with respect to the Accounts. The Credit Card Agreements do not (A) permit their respective Accountholders to transfer their credit balances to another account with Seller or any other Person or (B) allow such Accountholders to withdraw their credit balances for payment to third parties. As of the Closing Date, the total amount of Credit Balances on Accounts shall not exceed one percent (1%) of the Accountholder Indebtedness.

(n) **Enhancement Services.** Each Enhancement Service offered by or through Seller or its Affiliates in connection with the Accounts is identified on the Seller Disclosure Schedule. As of the Closing Date, Seller shall (***)

(o) **Taxes.** To the extent required to be filed in respect of the Acquired Assets or in connection with the operation of the Credit Card Business (a) Seller has filed all material Tax returns required to be filed and has paid all Taxes due in respect of such Tax returns or pursuant to any assessment which has become payable; (b) all such Tax returns are true, correct and complete in all material respects; and (c) Seller has materially complied with all information reporting obligations and all monies required to be withheld by Seller have been collected or withheld and have been (or will be) timely paid to the relevant Governmental Authority.

(p) **Reports.** To the extent that any of the information or data required to be delivered by Seller pursuant to Section 5.13(h) is the same as any information or data previously delivered by Seller to the Securitization Trust, such information and data delivered by Seller pursuant to Section 5.13(h) will, as of the time of delivery to Purchaser, be the same as that provided to the Securitization Trust.

(q) **Licensed Marks.** The Company Licensed Marks (as defined in the Program Agreement) constitute all of the Trademarks used in the Account Documentation or on any Credit Card as of the Closing Date.

(r) **No Other Representations.** Seller acknowledges and agrees that Purchaser makes no representations or warranties, express or implied, other than as expressly set forth in Section 4.2 and that it has not relied on any representations or warranties, express or implied, other than those expressly set forth in Section 4.2.

4.2 **Representations and Warranties of Purchaser.** Purchaser hereby represents and warrants to Seller as follows as of the date hereof:
(a) **Organization.** Purchaser is a state-chartered bank, duly organized, validly existing and in good standing under the Laws of Delaware. Purchaser has all requisite power and authority to own and operate its properties and assets and to carry on its business as it is presently conducted, and is duly qualified and in good standing to do business in each jurisdiction in which the nature of its business or the ownership of its assets makes such qualification necessary, except where the failure to be so qualified or in good standing would not have a material adverse effect on Purchaser or its ability to perform its obligations under, or to consummate the transactions contemplated by, this Agreement.

(b) **Capacity; Authority; Validity.** Purchaser has all necessary power and authority to enter into this Agreement and the Assignment and Assumption Agreement and to perform all of the obligations to be performed by it under this Agreement and the Assignment and Assumption Agreement. This Agreement and the Assignment and Assumption Agreement, and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action of Purchaser, and this Agreement has been duly executed and delivered by Purchaser. This Agreement constitutes, and the Assignment and Assumption Agreement, when executed by Purchaser will constitute, the valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms except as such enforcement may be limited by Bankruptcy and Equity Exceptions.

(c) **Conflicts; Defaults.** Neither the execution and delivery by Purchaser of this Agreement or the Assignment and Assumption Agreement, nor the consummation by Purchaser of the transactions contemplated hereby and thereby will (i) conflict with, result in the breach of, constitute a default under, or accelerate the performance required by, the terms of any order, Law, contract, instrument or commitment to which Purchaser is a party or by which Purchaser is bound; (ii) violate the articles of incorporation or bylaws or any other equivalent organizational document of Purchaser; (iii) require any consent, approval, authorization or filing under any Law, permit, license or agreement to which Purchaser is a party; or (iv) require the consent or approval of any other party to any contract, instrument or commitment to which Purchaser is a party, other than the approvals of Governmental Authorities, if any, which have been obtained or will be obtained prior to or on the Closing Date (other than, in the cases of clauses (i) and (iv), those that would not have an adverse effect, in any material respect, on Purchaser’s ability to consummate the transactions). Purchaser is not subject to any agreement with any Governmental Authority which would prevent the consummation by Purchaser of the transactions contemplated by this Agreement and the Assignment and Assumption Agreement. No receiver or conservator has been appointed for Purchaser nor has any proceeding been instituted or, to the Knowledge of Purchaser, threatened for such appointment.

(d) **Litigation.** As of the date hereof, there is no litigation, arbitration or governmental proceeding pending or, to the Knowledge of Purchaser, threatened in writing, against Purchaser that will have a material adverse effect on Purchaser’s ability to consummate the transactions contemplated hereby or by the Assignment and Assumption Agreement.

(e) **Source of Funding.** (****) Purchaser will have, the necessary funds to complete the transactions contemplated in this Agreement in accordance with the terms hereof.

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(f) Finders or Brokers. Purchaser has not agreed to pay any fee or commission to any agent, broker, finder, or other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby which would give rise to any valid claim against Seller for any brokerage commission or finder’s fee or like payment.

(g) Solvency. Purchaser is, and immediately after the consummation of the transactions contemplated by this Agreement, will be, Solvent.

(h) No Other Representations. Purchaser acknowledges and agrees that Seller make no representations or warranties, express or implied, other than as expressly set forth in Section 4.1 and that it has not relied on any representations or warranties, express or implied, other than those expressly set forth in Section 4.1.

ARTICLE V

COVENANTS

5.1 Access to Properties and Records Relating to the Acquired Assets. To the extent permitted by applicable Law, from the date hereof until the earlier of the Closing Date and the termination of this Agreement, upon reasonable prior notice, Seller will provide to Purchaser and to its officers, accountants, counsel, and other representatives reasonable access (including for the purpose of transition planning) during Seller’s normal business hours to the properties, books, contracts, employees and records of Seller for purposes related to the consummation of the transactions contemplated by this Agreement, to the extent that such access does not materially interfere with the business of such party; provided, however, that the party requiring such access complies with the confidentiality obligations contained herein and in the Program Agreement and in the Confidentiality Agreement and provided, further, however, that in no event shall Purchaser have access to any information that (i) based on advice of Seller’s counsel, would violate applicable Law or would destroy any legal privilege or (ii) would (A) result in the disclosure of any trade secrets of a third party or trade secrets of such party or its Affiliates unrelated to the Credit Card Business or (B) violate any obligation of Seller with respect to confidentiality if Seller shall have used commercially reasonable efforts to have obtained the consent of such third party to such access by Purchaser. All requests for information made pursuant to this Section 5.1 shall be directed to an executive officer of Seller or such Person or Persons as may be designated by Seller. All information received pursuant to this Section 5.1 shall be governed by Section 5.5. No investigation by Purchaser or its representative shall constitute a waiver of or otherwise affect the representations, warranties, covenants or agreements of Seller set forth herein.
(b) Seller shall use commercially reasonable efforts to deliver (or cause to be delivered) to Purchaser, at Seller’s expense, no later than ten (10) Business Days after the Closing, the Account Documentation not included in the Account Master File that the Integration Plan requires Seller to deliver to Purchaser. For a period of seven (7) years following the Closing Date, or the period required by applicable Law, whichever period is longer (the “Retention Period”), Seller shall hold and retain the Account Documentation not otherwise transferred to Purchaser (the “Retained Account Documentation”); provided, however, that Seller may elect at any time and from time to time upon reasonable notice to Purchaser to deliver any such Retained Account Documentation to Purchaser, and thereafter such Account Documentation so delivered shall cease to be Retained Account Documentation. During the Retention Period, Seller shall provide Purchaser with such copies of the Retained Account Documentation or information contained in such Retained Account Documentation as Purchaser may reasonably request from time to time, upon reasonable advance notice by Purchaser and no later than fifteen (15) Business Days of any such request in the case of requests made by the Purchaser for Retained Account Documentation reasonably relevant to a specific consumer dispute or response to a Governmental Authority. After the Retention Period, Seller shall provide to Purchaser at least ninety (90) days’ written notice prior to destroying or disposing of any Retained Account Documentation and shall refrain from destroying or disposing of any Retained Account Documentation to the extent reasonably requested by Purchaser (with all storage expenses related to such Retained Account Documentation borne by Purchaser). For clarity, the Retained Account Documentation is the Confidential Information of Purchaser and subject to the terms of Section 5.1(c) and Section 5.5 of this Agreement.

(c) Following the Closing, or the Transition Date in respect of the Transferred Employee; Purchaser will grant Seller and its representatives reasonable access during Purchaser’s normal business hours to all books, records and other data related to the Acquired Assets and the Transferred Employees (including making such persons reasonably available to Seller for depositions, witness preparation, trial preparation and fact-gathering, but excluding any proceedings, or threatened proceedings, among Purchaser and Seller or an Affiliate of Purchaser or Seller) upon reasonable prior notice, if such access is reasonably deemed necessary or desirable by Seller in connection with its tax, regulatory, litigation, contractual or other legitimate matters, including for purposes of handling claims related to Retained Liabilities for which Transferred Employees may have relevant information. In addition, the Seller shall be entitled to access the Retained Account Documentation for the foregoing purposes. Nothing in the foregoing shall prevent Seller or any of its subsidiaries from seeking to make such persons available via subpoena or other legal or similar process. To the extent that such books, records and other data are related to the Acquired Assets and the Transferred Employees, and are not Retained Account Documentation, Purchaser shall maintain such books, records and other data in accordance with its record retention policies, but in no event for a period less than the Retention Period; provided, that after such Retention Period Purchaser shall provide to Seller at least ninety (90) days’ written notice prior to destroying or disposing of any such books, records and other data and shall refrain from destroying or disposing of any such books, records and other data to the extent reasonably requested by Seller (with all storage expenses related to such books, records and other data borne by Seller).

5.2 Efforts; Regulatory Filings and Other Actions.

(a) Subject to the terms and conditions of this Agreement, Purchaser and each Seller shall (and Purchaser and Seller shall cause each of their respective Affiliates to) use its reasonable best efforts to consummate the transactions contemplated hereby and to cause the conditions set forth in Article VI to be satisfied. Without limiting the generality of the foregoing, Purchaser shall (and shall cause its Affiliates to) and Seller shall (and shall cause each of its subsidiaries to) use its commercially reasonable efforts to (i) promptly obtain all actions or nonactions, consents, waivers, approvals, authorizations and orders from Governmental Authorities or other persons necessary or advisable in connection with the consummation of the transactions contemplated hereby or thereby, (ii) defend all lawsuits or other legal, regulatory, administrative or other proceedings to which it or any of its Affiliates is a party challenging or affecting this Agreement or the consummation of the transactions contemplated by this Agreement, in each case until the issuance of a final, non-appealable order with respect to each such lawsuit or other proceeding, (iii) seek to have lifted or rescinded any injunction or restraining order which may adversely affect the ability of the parties to consummate the transactions contemplated hereby, in each case until the issuance of a final, non-appealable order with respect thereto, and (iv) seek to resolve any objection or assertion by any Governmental Authority challenging this Agreement or the transactions contemplated hereby.
Subject to the terms and conditions of this Agreement, Purchaser and Seller will each file or cause to be filed with the Federal Trade Commission and the Antitrust Division of the United States Department of Justice (collectively, the “agencies”) any notifications required to be filed under the HSR Act with respect to the transaction contemplated under this Agreement, and to make any other notification filings that may be required by the transaction. Each party will, and will cause its Affiliates to, consult and cooperate with the other party as to the appropriate time of filing such notifications and will (i) make such filings as promptly as practicable, and in any event within (****) after the date hereof, (ii) furnish to the other party such necessary information and reasonable assistance in connection with the preparation of such filings, (iii) respond promptly to any request for additional information made by either of the agencies, and (iv) use their commercially reasonably efforts to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of such filings.

Each party shall (and shall cause each of its Affiliates to) use reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all other things necessary, proper or appropriate to resolve the objections, if any, as may be asserted by the agencies or any other authority with respect to the transactions contemplated by this Agreement under any antitrust or competition laws or regulations.

Without limiting the generality of anything contained in this Section 5.2, each party hereto shall: (i) give the other parties prompt notice of the making or commencement of any request, inquiry, investigation, action or legal proceeding by or before any Governmental Authority with respect to the transactions contemplated by this Agreement; (ii) keep the other parties informed as to the status of any such request, inquiry, investigation, action or legal proceeding; and (iii) promptly inform the other parties of any communication to or from any Governmental Authority regarding the transactions contemplated by this Agreement. Each party hereto will consult and cooperate with the other parties and will consider in good faith the views of the other parties in connection with any filing, analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal made or submitted to any Governmental Authority in connection with the transactions contemplated by this Agreement. In addition, except as may be prohibited by any Governmental Authority or by any Law, in connection with any such request, inquiry, investigation, action or legal proceeding, each party hereto will, to the extent allowed by any Governmental Authority or other applicable third party, permit authorized representatives of the other parties to be present at each substantive meeting or conference relating to such request, inquiry, investigation, action or legal proceeding and to have access to and be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Authority in connection with such request, inquiry, investigation, action or legal proceeding.
The filing fees under the HSR Act (***)

5.3 Further Assurances. The parties agree that, from time to time, whether before, on or after the Closing Date, each of them will execute and deliver such further instruments of conveyance and transfer and take such other action as may be reasonably necessary to carry out the purposes and intents of this Agreement.

5.4 Notice of Changes.

(a) Purchaser shall promptly advise Seller, and Seller shall promptly advise Purchaser of (i) any change or event that would or would be reasonably likely to cause or constitute a breach of any of Purchaser’s or Seller’s, as applicable, representations, warranties or covenants contained herein, (ii) the existence of any event or item that if existing or known as of the date hereof would have been required to be disclosed on any Schedule or Exhibit, or (iii) the extent permitted by applicable Law and to the Knowledge of Purchaser or the Knowledge of Seller, as applicable, any governmental complaints, any change or event, including investigations or hearings (or communications indicating that the same may be contemplated) or the institution or the threat of significant litigation, in each of the cases described in clauses (i) through (iii), solely to the extent the reported matter would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby (including causing any closing condition under Article VI not to be satisfied) or otherwise result in a Material Adverse Effect. For all purposes, hereunder, the representations, warranties and covenants set forth in this Agreement and the closing conditions set forth in Article VI shall be unaffected by any update provided pursuant to this Section 5.4(a).

(b) Notwithstanding anything to the contrary herein, a party’s good-faith failure to comply with its obligations under this Section 5.4 shall not provide the other party hereto or any of such other party’s Affiliates with a right not to effect the transactions contemplated by this Agreement, except that the underlying material breach of a representation, warranty or covenant would independently provide such right.

5.5 Confidentiality. Each party to this Agreement shall hold, and shall cause its respective directors, officers, Affiliates, employees, agents, consultants and advisors to hold, in strict confidence, except to the extent necessary to discharge obligations pursuant to Section 5.2 or unless compelled to disclose by judicial or administrative process or, based on the advice of its counsel, by other requirements of applicable Law or the applicable requirements of any regulatory agency or relevant stock exchange, all non-public records, books, contracts, instruments, computer data and other data and information (collectively, “Information”) concerning the other party (or, if required under a contract with a third party, such third party) furnished to it by such other party or its representatives pursuant to the Confidentiality Agreement or otherwise in connection with the transactions contemplated by this Agreement (except to the extent that such information can be shown to have been (i) previously known by such party on a non-confidential basis, (ii) in the public domain through no fault of such party or (iii) later lawfully acquired from other sources by the party to which it was furnished), and neither Seller nor Purchaser shall release or disclose such Information to any other person, except its auditors, attorneys, financial advisors, bankers, other consultants and advisors with a duty of confidentiality and, to the extent permitted above, any Governmental Authority. To the extent permitted by applicable Law, each party will notify the other party promptly upon becoming aware that any of the Information has been disclosed to or obtained by a third party (otherwise than as permitted by this Section 5.5). If this Agreement is terminated pursuant to its terms, each party agrees to promptly destroy all Information in its possession and, if requested by the other party, will deliver a certificate of a senior officer certifying compliance with this provision. The parties acknowledge and agree that, after the Closing, Accountholder Master Files (and all information contained therein), Account Documentation and Accountholder List shall be the Confidential Information (as that term is defined in the Program Agreement) of Purchaser and the exclusions in the provision above shall not apply to Seller with respect to such Confidential Information.
5.6 Public Announcements. Purchaser and Seller shall consult with each other before issuing any press release or otherwise making any public statements with respect to the transactions contemplated by this Agreement and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange or national securities quotation system. In the event that either Purchaser or Seller is required by Law or under any listing agreement with any national securities exchange or national securities quotation system to publicly file a copy of this Agreement or any related documentation (including the Program Agreement), the party subject to such requirement shall first provide a proposed redacted copy of such document(s) to be filed to the other party and will consider in good faith any request by the other party to redact any confidential information or trade secrets; provided, that the party subject to such filing requirement shall retain final control of the form of such filing.

5.7 Responsibility for Taxes.

(a) Notwithstanding anything herein to the contrary, all sales and use Taxes, excise Taxes, and stamp, documentary, filing, recording, permit, license, authorization duties or fees, or similar charges incurred or imposed in connection with the transactions contemplated by this Agreement (collectively, such Taxes, “Transfer Taxes”), regardless of upon whom such Taxes are levied or imposed by Law shall be borne and paid by Purchaser. Any Tax returns with respect to Transfer Taxes shall be prepared by the party that customarily has primary responsibility for filing such Tax returns pursuant to applicable Law. Seller and Purchaser shall provide to each other a true copy of each such return as filed and evidence of the timely filing thereof.

(b) No party nor any of its Affiliates shall be entitled to any information regarding, any access to, any right to review or any right to obtain any consolidated, combined, affiliated or unitary Tax return which includes Seller or Purchaser. From and after Closing, Seller and Purchaser shall provide each other with such assistance as reasonably may be requested by either of them in connection with (A) the preparation of any Tax return, or (B) any audit or other examination by any Governmental Authority, or any judicial or administrative proceedings relating to liability for Taxes; provided, that, in accordance with the previous sentence of this Section 5.7(b), in no event shall any party or its respective Affiliates be required to provide the other party with access to or copies of its or its Affiliates’ Tax returns. The party requesting assistance hereunder shall reimburse the other party for reasonable out-of-pocket expenses incurred in providing such assistance, provided, however, that, for purposes of receiving reimbursement, no independent contractors, such as accountants or attorneys, shall be consulted without the written consent of the party requesting assistance, which consent shall not be unreasonably withheld or delayed.
With regards to the preparation and filing of U.S. information returns on Forms 1099-C “Cancellation of Debt” for “identifiable events,” within the meaning of the Treasury Regulations under Section 6050P of the Code, with respect to the Accounts, Seller shall be responsible for preparing and filing such forms for “identifiable events” that occur prior to the Closing Date and Purchaser shall be responsible for preparing and filing such forms for “identifiable events” that occur on or after the Closing Date.

With regards to the preparation and filing of U.S. information returns on Forms 1099-MISC, if any, with respect to the Accounts, Seller shall be responsible for preparing and filing such forms for events that occur prior to the Closing Date and Purchaser shall be responsible for preparing and filing such forms for events that occur on or after the Closing Date.

In accordance with Section 6050W of the Code and the regulations and other guidance thereunder, as well as with similar state laws, regulations and other guidance (altogether, the “6050W Reporting Rules”), Seller and Purchaser agree (A) that Seller and/or its electronic payment facilitator (other than Purchaser) shall file in a timely fashion all federal and state tax forms and other documentation required by the 6050W Reporting Rules with respect to transactions that were settled by (i.e., payment was made by) Seller and/or its electronic payment facilitator (other than Purchaser), and Purchaser and/or its electronic payment facilitator (other than Seller) shall file in a timely fashion all federal and state tax forms and other documentation required by the 6050W Reporting Rules with respect to transactions that were settled by (i.e., payment was made by) Purchaser and/or its electronic payment facilitator (other than Seller), and (B) to reasonably cooperate with each other to the extent necessary to allow each of them to perform its obligations under the 6050W Reporting Rules. For the avoidance of doubt, for the purposes of this Section 5.7(e), “transaction” means a merchant accepting an account number or other indicia associated with a payment card as payment.

5.8 **Remediation and Compliance Actions.** For a period of five (5) years after the Closing, each of Seller and Purchaser, at the other party’s request, shall reasonably cooperate with the requesting party to facilitate any remediation or compliance actions reasonably determined by the requesting party to be necessary in connection with any claim, action, suit, arbitration, proceeding or investigation by any Governmental Authority with respect to the Accounts, including providing to such requesting party and its Affiliates with Account Documentation (to the extent retained) reasonably necessary to facilitate such remediation or compliance actions; provided, however, that any such access or furnishing of information shall be conducted during normal business hours, under the supervision of the cooperating party’s personnel and in such a manner as not to interfere with the normal operations of the other party. Without limiting any rights of either party under Article VII, the requesting party shall reimburse the cooperating party for all costs and expenses incurred by it and its Affiliates in connection with its cooperation in accordance with this Section 5.8.
5.9 [Reserved].

5.10 Conduct of Business. Except as required by Law or as contemplated or permitted by this Agreement or the Program Agreement or as set forth in Section 5.10 of the Seller Disclosure Schedule, Seller, with respect to the Program and the Acquired Assets, from the date hereof through the Closing, shall (i) conduct the Program in all material respects in the ordinary course of business consistent with past practice and in accordance with Seller’s Policies and Procedures, (ii) use commercially reasonable efforts to maintain all relationships with third parties related to the Program in the ordinary course of business consistent with past practice and (iii) not to implement any changes to the terms and conditions contained in Credit Card Agreements except for Ordinary Course Modifications, provided Seller may make changes to the Credit Card Agreements (1) as required by or to conform with applicable Law (and Seller agrees to inform Purchaser as promptly as reasonably practicable prior to the time any such change implemented which is required by or to conform with applicable Law) or set forth in Section 5.10 of the Seller Disclosure Schedule or (2) as otherwise consented to by an instrument in writing signed by Purchaser. Except as required by Law or as expressly contemplated or permitted by this Agreement or the Program Agreement, Seller, with respect to the Program and the Acquired Assets, from the date hereof through the Closing, shall not, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed) or as set forth in Section 5.10 of the Seller Disclosure Schedule:

(a) implement any change in the terms and conditions of the Accounts that would reasonably be expected to have an adverse effect on Seller or the Acquired Assets, other than changes made on an individual, case-by-case basis in connection with collection efforts or dispute resolutions in the ordinary course of business consistent with past practice with respect to such Accounts;

(b) implement any material change in credit criteria or Seller’s Policies and Procedures with respect to underwriting, collection, risk management, re-aging, delinquency or charge-off, or implement any material change to any other of Seller’s Policies and Procedures (except for changes in the ordinary course of business consistent with past practice and not in contemplation of the consummation of the transactions contemplated hereby);

(c) other than in connection with a securitization arrangement or other cash management, financing or collections arrangement made in the ordinary course of business consistent with past practice (which arrangement will not be applicable to the Acquired Assets as of the Closing), pledge, assign, transfer, sell, Lien or otherwise dispose of any of the Acquired Assets to any Person other than Purchaser;

(d) implement any new Enhancement Service or make any material changes to any existing Enhancement Service, including the Credit Insurance Product;

(e) close any Accounts other than in the ordinary course of business consistent with past practice;
other than in the ordinary course of business consistent with past practice, settle any material claim, action or proceeding or waive any material right or claims in respect of the Acquired Assets;

(g) take any action in connection with the Acquired Assets at the direction of any Secondary Program provider to the extent such action has, or reasonably could be expected to have, an adverse impact on the Acquired Assets; or

(h) agree to do any of the foregoing described in Section 5.10(a) through (g).

5.11 Third-Party Consents. Each party shall use respective reasonable best efforts to obtain any third party consent or waiver or license and give any notice necessary for the transfer or assignment of any and all Acquired Assets and the transactions contemplated by this Agreement. In furtherance and not in limitation of the foregoing, promptly upon the execution of this Agreement and subject to applicable Law, Purchaser and Seller will reasonably coordinate in good faith in respect of any communications by Seller with such parties from whom such consent or waiver or to whom such notice is required.

5.12 [Reserved].

5.13 Delivery of Accountholder Master Files; Conversion and Conversion Support.

(a) Each of the parties shall comply with its obligations pursuant to the Integration Plan applicable to the Conversion as specified in Schedule 1.1(e) of the Program Agreement and shall pursue the Conversion on a priority basis.

(b) Without limiting the generality of 5.13(a), the parties recognize and agree that, as to each Accountholder Master File exchange and analysis, each shall cooperate with the other (including through and with their respective agents) in order to facilitate the interpretation of the file by Purchaser and the proper identification and extraction of the information contained therein as needed. Concurrently with the delivery of each Accountholder Master File, Seller shall deliver data questionnaires, sample statements and reporting packages, each to be delivered in a mutually agreed form. The parties further agree that they shall cooperate with each other, in good faith (directly and/or acting through their respective agents) to develop and follow a schedule pursuant to which Seller shall provide Purchaser with at least three (3) pre-Closing Accountholder Master Files (or such other number as may be specified in the Integration Plan) on such dates as are specified in the Integration Plan to facilitate pre-Conversion testing. The Accountholder Master Files shall be delivered to Purchaser as physical tapes or in such other format as otherwise agreed by the parties.

(c) In addition to the information contemplated in Section 5.13(b), Seller shall deliver such other information as may be contemplated by the Integration Plan within the time periods for such delivery set forth in the Integration Plan or as otherwise agreed to by the Integration Committee.

(d) Without limiting any specific actions required by the Agreement and the Program Agreement, Purchaser and Seller shall each use commercially reasonable efforts to enable the Conversion to be effected on the timeframe specified in the Program Agreement and the Integration Plan.
Prior to the Closing Date, Seller shall continue to handle and attempt to resolve Accountholder disputes in the ordinary course of business consistent with past practice. Seller shall identify any Accounts subject to unresolved billing disputes that arose prior to the Closing Date on the final Accountholder Master File. Prior to the Closing Date, at a mutually agreed upon time, the Integration Committee or its designees shall meet to discuss outstanding Accountholder disputes that are likely to be identified on the Accountholder Master File and Seller shall provide post-Closing assistance to Purchaser in respect of Accounts with outstanding disputes to the extent reasonable in light of the documentation relevant thereto and personnel familiar therewith that are within the control or employ of Purchaser following the Closing Date; provided that Seller shall use reasonable efforts to maintain the availability of such documentation and personnel familiar with such disputes (to the extent not Transferred Employees or transferred to the Secondary Program provider) for at least ninety (90) days following the Closing Date.

Seller shall provide (****) occurring during the Conversion process for a period of up to (****)(unless Purchaser provides earlier notice that such support is no longer necessary).

During the period commencing on the Closing Date and ending (****), Seller shall:

(i) Promptly (and in any event within (****) of receipt thereof) forward, or cause to be forwarded, to Purchaser all funds received by or credited to Seller relating to the Accounts and all correspondence and customer inquiries received relating directly or indirectly to the Accounts. Seller shall forward, at Purchaser’s expense, all such funds and correspondence to Purchaser by overnight mail or courier service.

(ii) Transmit any Trailing Transactions daily by electronic communication to Purchaser, in a format agreed to by the parties, by (****) (****). Seller shall initiate settlement of Trailing Transactions via wire transfer and such net settlement shall include those transactions and payments that are posted to an Account. The parties shall work together to address any requests made pursuant to this Section 5.13(g)(ii) outside the ordinary course.

(iii) Promptly (****) forward, or cause to be forwarded, to Purchaser all returned payment checks and access checks relating to the Accounts. Seller shall forward, at Purchaser’s expense, all such returned items to Purchaser by overnight mail or courier service. Settlement of such returned items will be handled on a case-by-case basis and shall be settled via wire transfer.
(h) (***) and again (***) the Seller shall provide Purchaser with (***) as mutually agreed upon between the parties on April 19, 2017 and attached as Schedule (***) 

Notwithstanding Section 5.5, Purchaser may (***) pursuant to Section 5.13(b) or (c), with third-parties, including rating agencies or investment bankers, solely in connection with (***) provided that, any such disclosure by Purchaser shall be made subject to an industry-standard confidentiality agreement that restricts the recipient’s use and disclosure of such information in any manner inconsistent with the Confidentiality Agreement. Without limiting any of the representations and warranties given by Seller to Purchaser in Section 4.1, Purchaser shall (***) contemplated by this Section 5.13(h).

5.14 Notice to Accountholders.

(a) Prior to the Closing, Purchaser and Seller shall cooperate with each other in good faith, consistent with applicable Law, to prepare, print and mail (or email) a communication relating to the transactions contemplated by this Agreement to be sent to Accountholders (and authorized users under any Account); provided that, no such communication shall be sent without the prior written consent of Seller (such consent not to be unreasonably withheld, conditioned or delayed). Such pre-Closing communication will be sent approximately (***) and may include a notice in mutually agreeable form notifying each Accountholder of: (i) the pending purchase of the Accounts by Purchaser; (ii) matters of which Accountholders are required, in Purchaser’s good faith judgment (after consultation with Seller), by applicable Law to be notified as a result of the transactions contemplated by this Agreement; and (iii) other matters as the parties determine are appropriate, including information required as a result of the change in Account terms contemplated to be effected pursuant to Section 4.7 of the Program Agreement. Any such permitted communication shall be sent by Seller at Purchaser’s sole cost and expense. Purchaser shall notify Accountholders of the change in ownership of the Accounts (***)

5.15 Financing Statements. Seller hereby authorize Purchaser to execute and file such financing statements on or after the Closing Date, which shall be prepared by Purchaser for filing, as are necessary or desirable to give notice of Purchaser’s interest in the Acquired Assets and the termination of Seller’s rights with respect thereto. Purchaser shall provide to Seller a copy of each financing statement Purchaser intends to file no less than three (3) Business Days prior to the date Purchaser intends to file such financing statement. Seller agrees to cooperate with Purchaser in effectuating the intent of this provision, including by means of executing and filing appropriate release or termination documentation as Purchaser shall reasonably request.

5.16 Seller Licensed Marks. Except as expressly provided in the Program Agreement, Purchaser is not purchasing or acquiring any right, title or interest in or to (or any license to or right to use) any Seller Licensed Marks; provided, that Seller hereby grants to Purchaser a limited, non-exclusive, royalty-free, non-transferable right and license to use the Seller Licensed Marks and any other Trademark (as defined in the Program Agreement) of Seller or its Affiliates to the extent and in the same manner used in the Account Documentation or on any Credit Card as of the Closing Date to: (i) provide Accountholders (including authorized users) or any Governmental Authority with copies of any Account Documentation generated prior to the Closing Date and (ii) continue to use the existing Credit Cards until such time as new plastics are reissued to Accountholders and authorized users in each case in accordance with the Program Agreement and all Trademark quality guidelines therein.
5.17 **Securitization Matters.** Seller shall take all actions to the extent within its control (including causing the payment of all money, the delivery of all notices, and the delivery of all certificates and any other documents) to effect the termination of the Securitization Program and the transfer and reassignment of the Accountholder Indebtedness (and any other Acquired Assets that were conveyed to the Master Trust pursuant to the Securitization Documents) and any proceeds thereof to Seller, and Seller represents and warrants that all notes and other securities outstanding under the Securitization Program may be prepaid and/or surrendered and cancelled at the election and discretion of the Securitization Trust, subject only to the delivery of such notices or other documents, and to the making of such payments, by the Securitization Trust as are provided for in the Securitization Documents. Such actions, to the extent necessary, shall include, on or prior to the Closing Date: (i) the reduction to zero of the Invested Amount (as defined in the Securitization Documents) for each outstanding series of securities issued in the Securitization Program, (ii) the surrender and cancellation of all outstanding securities issued in the Securitization Program, (iii) the assignment and conveyance to Seller of all right, title and interest of the Securitization Trust in and to the Accountholder Indebtedness (and any other Acquired Assets that were conveyed to the Master Trust pursuant to the Securitization Documents) and any proceeds thereof and (iv) the release of all Liens arising under the Securitization Documents with respect to the Accountholder Indebtedness (and any other Acquired Assets that were conveyed to the Master Trust pursuant to the Securitization Documents). Seller shall provide the forms of all such notices, assignments and releases to be provided under the Securitization Documents or Securitization Program to Purchaser prior to the Closing Date.

5.18 **Bulk Sales Law.** Purchaser hereby waives compliance by the Seller, in connection with the transactions contemplated hereby, with the provisions of any applicable bulk sales law (including the Uniform Commercial Code Bulk Transfer provisions), other than any applicable bulk sales regulation promulgated by the Office of the Comptroller of the Currency.

5.19 (**). Purchaser hereby agrees that, subject to the terms of Schedule 5.19, Seller shall (**)(as defined in the Program Agreement) to the same Accountholders enrolled in receiving such (**)(as defined in the Program Agreement) for (**)(the Effective Date, and Purchaser shall take such actions as may be necessary to (**)(as defined in the Program Agreement). For the avoidance of doubt, (**)(Purchaser shall perform, and be responsible for (**)(as of the Closing Date. If subsequent to the Closing Date Seller or its agent requests changes to any necessary process or interface, Purchaser shall (**)(Such reimbursement shall be made within (**))

5.20 **Credit Bureau Reporting.** No later than five (5) Business Days after the Closing Date, Seller shall, for all Accounts, provide to all credit bureaus the appropriate notation and reporting (including a K2 Segment Transfer File as utilized by the Credit Bureaus) of (i) credit information concerning Accountholders; and (ii) any and all Accounts on which the Accountholder’s spouse is an authorized user. In order to comply with the requirements of the Fair Credit Reporting Act, Seller agrees to provide Purchaser (within 60 days of the Closing Date and on an electronic transmission formatted the same way as the Accountholder Master Files are formatted) with the date on which each Account that is reported to a credit reporting agency as being contractually delinquent as of the Closing Date first went delinquent.
ARTICLE VI
CONDITIONS OF CLOSING

6.1 Conditions Applicable to Each Party. The obligations of the parties to this Agreement to consummate the transactions contemplated by this Agreement is subject to the satisfaction or written waiver by each party of the following conditions at or prior to the Closing:

(a) **Governmental Consents.** The HSR Act waiting period (and any extensions thereof) shall have expired or have been earlier terminated.

(b) **No Injunction.** No Governmental Authority of competent jurisdiction shall have issued an order that prohibits or makes illegal the consummation of the transactions contemplated hereby.

(c) **Program Agreement.** The Program Agreement shall be in effect and neither party shall have validly delivered a notice of termination under the Program Agreement.

(d) **Other Agreements.** Each of the Employee Transfer Agreement and the Lease Agreement shall remain in effect; provided that the effectiveness of certain rights and obligations of the parties to the Employee Transfer Agreement and Lease Agreement may be conditioned upon the Closing occurring.

(e) **Launch Requirements.** The Effective Date (as defined in the Program Agreement) shall have occurred (or be capable of occurring subject only to remaining conditions that will be satisfied simultaneously upon the occurrence of the Closing).

6.2 Conditions Applicable to Purchaser. The obligation of Purchaser under this Agreement to consummate the transactions contemplated by this Agreement is subject to the satisfaction or written waiver by Purchaser of the following conditions at or prior to the Closing:

(a) **Accuracy of Representations and Warranties.** The representations and warranties of Seller in Section 4.1 shall be true and correct as of Closing Date (except to the extent expressly made as of a specific date, in which case such representations and warranties shall be true and correct as of such date) (without giving effect to any qualifier as to “materiality” or other similar qualifiers set forth therein), except where the failures of such representations and warranties to be so true and correct, individually or in the aggregate, would not have a Material Adverse Effect.

(b) **Performance of this Agreement.** All the material terms, covenants and conditions of this Agreement to be complied with and performed by Seller at or prior to the Closing shall have been complied with and performed in all material respects.

(c) **Closing Deliverables.** Seller shall have delivered to the appropriate recipients all of the deliverables set forth in Section 3.2(a).
(d) **Termination of the Securitization Program.** Purchaser shall have received reasonable evidence indicating that the Securitization Program shall have been terminated and (i) the Invested Amount (as defined in the Securitization Documents) for each outstanding series of securities issued in the Securitization Program shall have been reduced to zero, (ii) all outstanding securities issued in the Securitization Program shall have been surrendered and cancelled, (iii) all right, title and interest of the Securitization Trust in and to the Accountholder Indebtedness (and any other Acquired Assets that were conveyed to the Master Trust pursuant to the Securitization Documents) and any proceeds thereof shall have been conveyed to Seller and (v) all Liens arising under the Securitization Documents with respect to the Accountholder Indebtedness (and any other Acquired Assets that were conveyed to the Master Trust pursuant to the Securitization Documents) shall have been released.

6.3 **Conditions Applicable to Seller.** The obligation Seller under this Agreement to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Seller of the following conditions at or prior to the Closing:

(a) **Accuracy of Representations and Warranties.** The representations and warranties of Purchaser shall be true and correct in all material respects in each case as of the Closing Date (except to the extent expressly made as of a specific date, in which case such representations and warranties shall be true and correct as of such date).

(b) **Performance of this Agreement.** All the material terms, covenants and conditions of this Agreement to be complied with and performed by Purchaser on or prior to the Closing shall have been complied with and performed in all material respects.

(c) **Closing Deliverables.** Purchaser shall have delivered to the appropriate recipients all of the deliverables set forth in Section 3.2(b).

(d) **True Sale Opinion.** The Seller and the Purchaser shall have received the True Sale Opinion, in form and substance reasonably satisfactory to the Seller and the Purchaser; provided that, notwithstanding the foregoing, an opinion substantially in the form attached hereto as Exhibit F shall satisfy this condition.

**ARTICLE VII**

**INDEMNIFICATION**

7.1 **Seller’s Indemnification Obligations.** Subject to the limits set forth in this Article VII, from and after the Closing, Seller shall indemnify, defend and hold harmless Purchaser and its Affiliates and their respective officers, directors and employees from and against any and all Losses (as hereinafter defined) to the extent arising from or relating to: (a) the breach of any representation or warranty of Seller contained in Section 4.1 (disregarding for purposes of this Section 7.1(a) any qualification in the text of the relevant representation or warranty as to materiality or Material Adverse Effect); (b) the failure by Seller to perform any of its covenants contained in this Agreement or the Assignment and Assumption Agreement; (c) the Retained Liabilities and the Excluded Assets, (****).
Purchaser’s Indemnification Obligations. Subject to the limits set forth in this Article VII, from and after the Closing, Purchaser shall indemnify, defend and hold harmless Seller and its Affiliates and their respective officers, directors and employees from and against any and all Losses to the extent arising from or relating to: (a) the breach of any representation or warranty of Purchaser contained in Section 4.2 (disregarding for purposes of this Section 7.2(a) any qualification in the text of the relevant representation or warranty as to materiality or Material Adverse Effect); (b) the failure by Purchaser to perform any of its covenants contained in this Agreement or the Assignment and Assumption Agreement; (c) the Acquired Assets and the Assumed Liabilities; or (d) (***)

Definition of Losses.

(a) For purposes of this Agreement, the term “Losses” shall mean any and all liabilities, damages, claims, losses, fines, fees, penalties, interest, costs and expenses (including Accountholder remediation and reasonable disbursements and attorneys’ fees incurred in connection therewith and in seeking indemnification therefor, and any amounts or expenses required to be paid or incurred in connection therewith and in seeking indemnification therefor, and any amounts or expenses required to be paid or incurred in connection with any action, suit, proceeding, claim, appeal, demand, assessment or judgment) that are imposed, sustained, suffered by or asserted against an Indemnified Party.

(b) In calculating the amount of any Losses of an Indemnified Party under this Article VII, there will be subtracted the amount of any (i) insurance proceeds, (ii) third-party payments and (iii) Tax benefits, in each case, actually received by the Indemnified Party with respect to such Losses. In the event that the Indemnifying Party reimburses the Indemnified Party for any Losses prior to the occurrence of any events contemplated by clauses (i), (ii) or (iii) above, the Indemnified Party will remit to the Indemnifying Party any such amounts that the Indemnified Party subsequently receives or realizes with respect to such Losses.

(c) Without limitation of its respective rights and obligations as set forth elsewhere in this Article VII, and subject to the procedures for indemnification claims set forth in this Article VII, each of the parties agrees to use reasonable efforts to mitigate its respective Losses.

(d) Notwithstanding anything to the contrary contained herein, but subject to Section 7.6, the indemnification provided for herein shall not cover, and in no event shall any party hereto be liable for, any indirect, consequential, incidental, exemplary, special or punitive damages, (***) provided, however, that the foregoing limitations shall not apply to fraudulent misrepresentation with respect to any of the representations or warranties set forth in Article IV or Willful Breach. For the avoidance of doubt, any amounts imposed by a regulatory authority with jurisdiction over the Indemnified Party to the extent such amounts are in respect of actions by the Indemnified Party that are indemnifiable pursuant to this Article VII shall not be subject to this Section 7.3(d).

Tax Consequences of Indemnification. Purchaser and Seller agree that, for purposes of computing the amount of any indemnification payment under this Article VII, any such indemnification payment shall be treated as an adjustment to the Final Purchase Price for all Tax purposes, except as otherwise required by the Code or any applicable Tax Law.
Other Indemnification Provisions

(a) **Procedures; Notice of Claims.** The parties agree that in case any claim is made or any suit or action is commenced which may give rise to a right of indemnification for such party (or its Affiliates or its respective officers, directors or employees) hereunder (the “Indemnified Party”) from the other party (the “Indemnifying Party”), the Indemnified Party will give notice to the Indemnifying Party as promptly as reasonably practicable (and, in any event, within fifteen (15) Business Days) after the Indemnified Party has become aware of and determined that such claim, suit or action has given or may reasonably be expected to give rise to a right of indemnification hereunder. The failure to give such notice shall not relieve an Indemnifying Party of its obligation to indemnify except to the extent the Indemnified Party is actually prejudiced by such failure. The Indemnified Party shall reasonably cooperate with the Indemnifying Party in respect of the defense of any such claim for indemnification, and each party hereunder will render to the other such assistance as it may reasonably require of the other in order to insure prompt and adequate defense of any suit, claim or proceeding based upon a state of facts which gives rise to a right of indemnification hereunder.

(b) **Defense of Claims.** The Indemnifying Party shall have the right to defend any third-party suit, claim or proceeding in the name of the Indemnified Party; provided, however, that if counsel for the Indemnified Party reasonably advises the Indemnified Party that there are issues which raise conflicts of interest between the Indemnifying Party and the Indemnified Party, then the Indemnified Party may retain one counsel reasonably satisfactory to it to participate in such defense, and the Indemnifying Party shall pay the reasonable fees and expenses of such counsel. Notwithstanding the foregoing, (i) if the Indemnifying Party elects not to defend such suit, claim or proceeding, the Indemnified Party may defend such claim at the expense of the Indemnifying Party and, (ii) in the case of a suit, claim or proceeding is brought by a Governmental Authority with jurisdiction over the Indemnified Party, even in the event the Indemnifying Party elects to defend such suit, action or proceeding, the Indemnified Party at its own cost and expense shall be entitled to control the elements of such defense involving injunctive relief or other nonmonetary remedies against the Indemnified Party (but not any elements thereof involving claims subject to indemnification hereunder); provided that in the case of clauses (i) and (ii), the Indemnified Party may not compromise or settle any such claim without the Indemnifying Party’s prior written consent (not to be unreasonably withheld, conditioned or delayed, it being understood that such consent right shall apply only to the monetary Losses for which the Indemnifying Party may be responsible under this Agreement and not to any other terms of such settlement for which the Indemnifying Party is not liable under this Agreement); provided further, that the Indemnifying Party may later participate in any such claim with counsel of its choice and at its own expense. The Indemnifying Party’s right to defend shall include the right to compromise or enter into an agreement settling any claim by a third party; provided that no such compromise or settlement shall obligate the Indemnified Party to make any admission of fault or wrongdoing or to take any action other than the delivery of a customary release relating to such claim (it being understood that any such customary release shall fully and unconditionally release the Indemnified Party from any liability related to such suit, claim or proceeding). The Indemnified Party shall have the right to employ its own counsel if the Indemnifying Party is entitled to assume and elects to assume such defense, but the fees and expenses of such counsel shall be at the Indemnified Party’s expense.
(c) **Subrogation.** The Indemnifying Party shall be subrogated to any claims or rights of the Indemnified Party as against any other Persons with respect to any amount paid by the Indemnifying Party under this Article VII. The Indemnified Party shall cooperate with the Indemnifying Party, at the Indemnifying Party’s sole expense, in the assertion by the Indemnifying Party of any such claim against such other Persons.

(d) **Limitations on Indemnification Relating to Breaches of Representations and Warranties.**

(i) Notwithstanding anything to the contrary set forth in this Article VII, Purchaser and its Affiliates and their respective officers, directors and employees shall not be entitled to indemnification pursuant to Section 7.1(a) (other than in respect of any claim for indemnification relating to any alleged or actual breach of any of the representations and warranties set forth in Section 4.1(a), (b), (d) or (k)) (i) with respect to any claim (or series of related claims arising from the same underlying facts, events or circumstances) unless such claim (or series of related claims arising from the same underlying facts, events or circumstances) involves Losses (****) (****) and (ii) until the aggregate amount of all Losses of Purchaser and its Affiliates and their respective officers, directors and employees (****), it being understood that Seller shall be responsible only for Losses in excess of the Deductible Amount; provided, however, that Seller shall have no obligation to indemnify Purchaser from and against Losses pursuant to Section (****) in which case the maximum amount of Losses Seller shall be liable for shall be an amount (****)) to the extent such Losses (****).

(ii) Notwithstanding anything to the contrary set forth in this Article VII, Seller and its Affiliates and their respective officers, directors and employees shall not be entitled to indemnification pursuant to Section 7.2(a) (****) with respect to any claim (or series of related claims arising from the same underlying facts, events or circumstances) unless such claim (or series of related claims arising from the same underlying facts, events or circumstances) involves Losses in excess of the De Minimis Threshold, and (ii) until the aggregate amount of all Losses of Seller and its Affiliates and their respective officers, directors and employees exceeds the Deductible Amount, it being understood that Purchaser shall be responsible only for Losses in excess of the Deductible Amount; provided, however, that Purchaser shall have no obligation to indemnify Seller from and against Losses pursuant to Section 7.2(a) (****) to the extent such (****).

(e) **Survival of Covenants and Representations of Warranties.** The representations and warranties of the parties set forth in Article IV shall survive the Closing for a period of (****); provided, however, that a reasonably specific claim for indemnification for breach of a representation or warranty with respect to which notice was validly given pursuant to Section 7.5(a)(i) by an Indemnified Party prior to the end of such (****) shall survive until such claim is fully and finally determined. No agreement or covenant in this Agreement will survive the Closing Date, other than agreements or covenants which by their terms require performance after the Closing Date. Such agreements or covenants shall survive the Closing for a period of (****) following such required performance.
7.6 **Exclusive Remedy.** The parties acknowledge that, from and after the Closing, except with respect to claims relating to fraudulent misrepresentation with respect to any of the representations or warranties set forth in Article IV or Willful Breach by a party or any equitable remedies pursuant to Section 9.9, this Article VII will constitute Seller’s and Purchaser’s sole and exclusive remedy for any matters addressed herein or other claim relating to this Agreement and the transactions contemplated hereby.

**ARTICLE VIII**

**TERMINATION**

8.1 **Termination.** Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated prior to the Closing:

(a) by either Purchaser or Seller, respectively, in the event of a breach or default in the performance by the other party of any representation, warranty, covenant or agreement of such other party, which breach or default (i) would, individually or in the aggregate with all other uncured breaches and defaults of such other party, constitute grounds for the conditions set forth in Section 6.2(a) or (b), or Section 6.3(a) or (b), as the case may be, not to be satisfied at the Closing, and (ii) has not been, or cannot be, cured within thirty (30) days after written notice, describing such breach or default in reasonable detail, is given by the terminating party to the breaching or defaulting party; *provided, however,* that Purchaser or Seller, as the case may be, shall not be permitted to terminate this Agreement pursuant to this Section 8.1(a) if such party seeking termination is then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement;

(b) by the mutual written consent of Seller and Purchaser;

(c) by either Seller or Purchaser, if the Closing shall not have occurred on or before (****); *provided, however,* that neither Purchaser, on the one hand, nor the Seller, on the other hand, may terminate this agreement pursuant to this subsection if its (or one of its Affiliates’) breach of any representation, warranty or covenant contained herein or otherwise has failed to satisfy any closing condition within such party’s control has been the cause or resulted in the failure to consummate such transactions by such date;

(d) by either Seller or Purchaser, in the event that (i) any permanent injunction or action by any Governmental Authority of competent jurisdiction prohibiting consummation of the transactions contemplated by this Agreement becomes final and nonappealable, (ii) any Law makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited, or (iii) consummation of the transactions contemplated by this Agreement would violate any nonappealable final order, decree or judgment of any Governmental Authority having competent jurisdiction.

8.2 **Effect of Termination.** In the event that this Agreement is terminated pursuant to Section 8.1, this Agreement shall forthwith become void and of no further force or effect and there shall be no liability on the part of any party hereto for any matters addressed herein or other claim relating to this Agreement and the transactions contemplated hereby, except that (a) Section 5.5, this Section 8.2 and Article IX shall survive any such termination, (b) the Confidentiality Agreement shall survive any such termination and (c) nothing herein shall relieve any party hereto from liability for any intentional breach of this Agreement occurring prior to such termination.
ARTICLE IX

MISCELLANEOUS

9.1 Notices. Any notice, approval, acceptance or consent required or permitted by a party under this Agreement shall be in writing to the other party and shall be deemed to have been duly given when delivered in person, when received via overnight courier, when sent by facsimile (with written confirmation of transmission), or when posted by United States registered or certified mail, with postage prepaid, addressed as follows:

If to the Seller:
Sterling Jewelers, Inc.
375 Ghent Road
Akron, OH 44333
Attention: Laurel Krueger, SVP Legal
Email: laurel.krueger@signetjewelers.com

With a copy to:
Sterling Jewelers, Inc.
375 Ghent Road
Akron, OH 44333
Attention: Michele Santana, Chief Financial Officer
Email: michele.santana@signetjewelers.com

With a copy to:
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Maripat Alpuche, Esq.
Facsimile: (212) 455-2502
Email: malpuche@stblaw.com

If to Purchaser:
Comenity Bank
President
One Righter Parkway, Suite 100
Wilmington, DE 19803

With a copy to:
Comenity LLC
Law Department
3100 Easton Square Place
Columbus, OH 43219

9.2 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. None of the Seller, on the one hand, or Purchaser, on the other hand, shall assign this Agreement or any of its rights hereunder without the prior written consent of the other party.
9.3 **Entire Agreement.** This Agreement, the Program Agreement, the Employee Transfer Agreement, the Lease Agreement and the Confidentiality Agreement, together with the Exhibits, Schedules and Annexes hereto and thereto, supersede any other agreement, whether written or oral, that may have been made or entered into by the Seller and Purchaser (or by any officer or employee of any such parties) relating to the matters specified herein and therein, and constitute the entire agreement by the parties related to the matters specified herein or therein.

9.4 **Amendments and Waivers.** Except as provided herein, this Agreement may not be amended, supplemented or otherwise modified except by a written instrument signed by Purchaser and Seller. No delay by a party hereto in exercising any of its rights hereunder, or partial or single exercise of such rights, shall operate as a waiver of that or any other right. The exercise of one or more of a party’s rights hereunder shall not be a waiver of, or preclude the exercise of, any rights or remedies available to such party under this Agreement or in law or at equity. Any waiver by a party shall only be made in writing and executed by a duly authorized officer of such party.

9.5 **Expenses.** The parties will each bear their own legal, accounting and other costs in connection with the transactions contemplated hereby that are imposed upon a party attributable to its activities hereunder, except as otherwise specified in this Agreement.

9.6 **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same instrument, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Any facsimile or PDF emailed version of an executed counterpart shall be deemed an original.

9.7 **Governing Law; Jurisdiction.**

(a) This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made to be performed within such State.

(b) Each party hereby irrevocably submits to the jurisdiction of the United States District Court for the Southern District of New York or, if such federal jurisdiction is unavailable, in the state courts of the State of New York located in the borough of Manhattan over any action arising out of this Agreement, and each party hereby irrevocably waives any objection which such party may now or hereafter have to the laying of improper venue or forum non conveniens. Each party agrees that a judgment in any such action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any manner provided by law. Any and all service of process and any other notice in any such suit, action or proceeding with respect to this Agreement shall be effective against a party if given as provided herein.
9.8 Severability. In case any one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, and this Agreement shall be reformed, construed and enforced as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein and there had been contained herein instead such valid, legal and enforceable provisions as would most nearly accomplish the intent and purpose of such invalid, illegal or unenforceable provision.

9.9 Specific Enforcement.

(a) The parties agree that money damages would not be a sufficient remedy for any breach or the failure of a party to perform any of its material obligations hereunder, and that, in addition to all other remedies, each party will be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or failure to perform its material obligations hereunder. Each party waives any requirements for the securing or posting of any bond in connection with such remedy.

9.10 No Joint Venture. For all purposes, including federal and state tax purposes, nothing contained in this Agreement shall be deemed or construed by the parties or any third party to create the relationship of principal and agent, or a partnership, joint venture or any association between Seller and Purchaser, and no act of either party shall be deemed to create any such relationship. Seller and Purchaser each agree to such further actions as the other may request to evidence and affirm the non-existence of any such relationship.
9.11 **No Third-Party Rights.** Except for the Indemnified Parties with respect to indemnity claims pursuant to Article VII, the parties do not intend: (i) the benefits of this Agreement to inure to any third party; or (ii) any rights, claims or causes of action against a party to be created in favor of any Person or entity other than the other party.

9.12 **Seller Disclosure Schedule.** The Seller Disclosure Schedule is qualified in its entirety by reference to the specific provisions of this Agreement and nothing in the Seller Disclosure Schedule is intended to broaden the scope of any representation or warranty contained in this Agreement or to create any representation, warranty, agreement or covenant on the part of Seller. The inclusion of any matter, information, item or other disclosure set forth in any section of the Seller Disclosure Schedule shall not be deemed to constitute an admission of any liability of Seller to any third party or otherwise imply that such matter, information or item is material or creates a measure for materiality for purposes of this Agreement or is required to be disclosed under this Agreement. Each section of the Seller Disclosure Schedule corresponds to the section of this Agreement to which it relates; **provided**, that any fact or condition disclosed in any section in such a way as to make its relevance to another section that relates to a representation or representations made elsewhere in this Agreement reasonably apparent on its face shall be deemed to be an exception to such representation or representations notwithstanding the omission of a reference or cross reference thereto. Certain matters disclosed in the Seller Disclosure Schedule are not material and/or have been disclosed for informational purposes only.

[Signature page follows]
IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be duly executed as of the date first above written.

STERLING JEWELERS INC.

By: /s/ Michele Santana
Name: Michele Santana
Title: Chief Financial Officer

COMENITY BANK

By: /s/ John Marion
Name: John Marion
Title: President
Excluded Accounts shall consist of any Credit Card account for which any of the following is applicable as of the Cut-Off Time (regardless of whether Seller or Purchaser have Knowledge of such event as of the Cut-Off Time):

1. the account is (***)
2. such account has been (***)
3. the account was opened (***)
4. the Accountholder is (***)
5. the account is maintained (***)
6. the account was established (***)
7. the Accountholder (***)
8. the Accountholder’s address is (***)
9. the Credit Card has been (***)
10. the Accountholder has (***)
11. either (a) the account has (***) or (b) if Seller issued (***)
12. the Accountholder on the account has (***)
13. Seller is (***)
14. the account is (***)
15. the account is (***)
16. (***)
17. the account has a (***)
18. the account was part of (***)
19. the accounts were established (***)
or
20. the account would not have (***)
Schedule 1.1(b)

Knowledge of Purchaser

Bank President

Chief Client Officer
Schedule 1.1(c)

Knowledge of Seller

Chief Financial Officer

Senior Vice President, In-House Credit Operations
Schedule 1.1(d)

Securitization Documents

1. Master Indenture, dated as of November 2, 2001, among the Sterling Jewelers Receivables Master Note Trust, as issuer, Sterling Jewelers Inc., as servicer, and Deutsche Bank Trust Company Americas, as indenture trustee

2. Series 2014-A Indenture Supplement, dated as of May 15, 2014, among Sterling Jewelers Receivables Master Note Trust, as issuer, Deutsche Bank Trust Company Americas, as indenture trustee, and Sterling Jewelers Inc., as servicer

3. Trust Agreement, dated as of October 18, 2001, between Sterling Jewelers Receivables Corp, as transferor, and Wilmington Trust Company, as owner trustee

4. Administration Agreement, dated as of November 2, 2001, between Sterling Jewelers Receivables Master Note Trust, as issuer, and Sterling Jewelers Inc., as administrator

5. Third Amended and Restated Receivables Purchase Agreement, dated as of May 15, 2014, between Sterling Jewelers Inc., as seller, and Sterling Jewelers Receivables Corp., as purchaser


7. Note Purchase Agreement, dated as of May 15, 2014, among Sterling Receivables Master Note Trust, as issuer, Sterling Jewelers Receivables Corp., as transferor, Sterling Jewelers Inc., as servicer, each conduit purchaser party thereto from time to time, each committed purchaser party thereto from time to time, and JPMorgan Chase Bank, N.A., as administrative agent
Schedule 5.13(h)

Account Reports

(****)

(****)
### Schedule 5.19

#### (***)

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#### Rules for Interpreting (***) Requirements

- Notwithstanding any receipt of materials relating to the (***) by Purchaser or Purchaser’s exercise of, or failure exercise, any related review, approval or other rights of Purchaser set forth in the foregoing table, Purchaser shall (***)

#### Termination of (***)

(***)
## Exhibit B
Settlement Statement

### Final Purchase Price:

<table>
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<th>Description</th>
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<table>
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<th>Description</th>
<th>Amount</th>
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<td>Less: Purchase Price paid at Closing</td>
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<td>Amount due to (owing from) Seller</td>
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<td>Purchase Price (estimated as of the Cut-Off time):</td>
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</tr>
<tr>
<td>--------------------------------------------------</td>
<td></td>
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<tr>
<td>(****) $</td>
<td></td>
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<tr>
<td>(****) $</td>
<td></td>
</tr>
<tr>
<td><strong>Purchase Price</strong> $ $</td>
<td></td>
</tr>
<tr>
<td><strong>Purchase Price due to Seller</strong> $ $</td>
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</table>
**Exhibit D**

Financing Statement

---

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

| A. NAME & PHONE OF CONTACT AT FILER [optional] |
| A. E-MAIL CONTACT AT FILER [optional] |

| B. SEND ACKNOWLEDGEMENT TO: (Name and Address) |
| THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY |

---

1. **DEBTOR’S NAME** - Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor’s name); if any part of the Individual Debtor’s name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

| 1a. ORGANIZATION’S NAME |
| Sterling Jewelers Inc. |

| 1b. INDIVIDUAL’S SURNAME |
| FIRST PERSONAL NAME |
| ADDITIONAL NAME(S)/INITIALS |
| SUFFIX |

| 1c. MAILING ADDRESS |
| 375 Ghent Road |
| CITY |
| Akron |
| STATE |
| OH |
| POSTAL CODE |
| 44333 |
| COUNTRY |
| USA |

2. **DEBTOR’S NAME** - Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor’s name); if any part of the Individual Debtor’s name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

| 2a. ORGANIZATION’S NAME |
| |

| 2b. INDIVIDUAL’S SURNAME |
| FIRST PERSONAL NAME |
| ADDITIONAL NAME(S)/INITIALS |
| SUFFIX |

| 2c. MAILING ADDRESS |
| |
| CITY |
| STATE |
| POSTAL CODE |
| COUNTRY |
| |

3. **SECURED PARTY’S NAME** (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

| 3a. ORGANIZATION’S NAME |
| Comenity Bank |

| 3b. INDIVIDUAL’S SURNAME |
| FIRST PERSONAL NAME |
| ADDITIONAL NAME(S)/INITIALS |
| SUFFIX |

| 3c. MAILING ADDRESS |
| One Righter Parkway, Suite 100 |
| CITY |
| Wilmington |
| STATE |
| DE |
| POSTAL CODE |
| 19803 |
| COUNTRY |
| USA |

4. **COLLATERAL**: This financing statement covers the following collateral:

See Exhibit A attached hereto and made part hereof.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and Instructions) being administered by a Decedent’s Personal Representative

| 6a. Check only if applicable and check only one box: |
| Public-Finance Transaction |
| Manufactured-Home Transaction |
| Transmitting Utility |
| A Debtor is a |
| Agricultural Lien |
| Non-UCC Filing |

| 6b. Check only if applicable and check only one box: |
| Lessee/Lessor |
| Consignee/Consignor |
| Seller/Buyer |
| Bailee/Bailor |

7. **ALTERNATIVE DESIGNATION** (if applicable):

| Licensee/Licensor |

8. **OPTIONAL FILER REFERENCE DATA**

| Delaware |

---

International Association of Commercial Administrators (IACA)
EXHIBIT A

TO

FINANCING STATEMENT

(****)
Exhibit F

Form of True Sale Opinion
CONFIDENTIAL TREATMENT REQUESTED

INFORMATION FOR WHICH CONFIDENTIAL TREATMENT THAT HAS BEEN REQUESTED IS OMITTED AND NOTED WITH (****).

AN UNREDACTED VERSION OF THIS DOCUMENT WILL ALSO BE PROVIDED TO THE SECURITIES AND EXCHANGE COMMISSION.

CREDIT CARD PROGRAM AGREEMENT

by and between

STERLING JEWELERS INC.

and

COMENITY BANK
<table>
<thead>
<tr>
<th>Article</th>
<th>Section</th>
<th>Page</th>
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<td>ARTICLE I DEFINITIONS</td>
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<td>2.3 Mobile Technology</td>
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<td>ARTICLE III PROGRAM MANAGEMENT AND ADMINISTRATION</td>
<td>3.1 Program Objectives</td>
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<td>3.2 Committees</td>
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<td>3.3 Program Relationship Managers; Program Team</td>
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<td>4.5 Branding of Accounts/Company Credit Cards/Credit Card Documentation/Solicitation Materials</td>
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<td>4.6 Underwriting and Risk Management</td>
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<td>4.8 Program Website; Mobile Apps</td>
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<td>4.9 Sales Taxes</td>
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<td>4.10 Value Propositions; Loyalty Programs</td>
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<td>5.3 Communications with Cardholders</td>
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<td>In-Store Payments</td>
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<td>Settlement Procedures</td>
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CREDIT CARD PROGRAM AGREEMENT

This Credit Card Program Agreement is made as of the 25th day of May, 2017, by and between Sterling Jewelers Inc., a Delaware corporation (the “Company”), and Comenity Bank, a Delaware state-chartered bank (the “Bank”), each referred to herein as a “Party”, and collectively, the “Parties”.

WHEREAS, the Bank has established programs to extend credit via private label Credit Cards to customers for the purchase of goods and services;

WHEREAS, concurrently with the execution of this Agreement, the Company and the Bank are entering into a purchase and sale agreement (the “Purchase Agreement”) pursuant to which the Bank shall (a) purchase from the Company certain Credit Card accounts, associated receivables and other assets related to the Company consumer Credit Card program and (b) assume from the Company certain liabilities related to the Company consumer Credit Card program, as designated in the Purchase Agreement;

WHEREAS, the Company has requested that the Bank establish a program pursuant to which, following the Effective Date of this Agreement, the Bank shall issue Company Credit Cards (as hereinafter defined) to be serviced, marketed and promoted in accordance with the terms hereof (the program established in accordance with this Agreement, the “Program”);

WHEREAS, the Parties hereto agree that the goodwill associated with the Company Licensed Marks (as hereinafter defined) contemplated for use hereunder are of substantial value that is dependent upon the maintenance of high quality services and appropriate use of the Company Licensed Marks pursuant to this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Generally. The following terms shall have the following meanings when used in this Agreement:

“Advertising Guide” has the meaning set forth in Section 4.5(d) hereof.

“Account” means an open-ended credit account linked to a Company Credit Card and usable solely for the purpose of financing the purchase of Goods and Services (and all fees and charges relating thereto) through any Company Channel and for financing any other charges that may be made using such Company Credit Card pursuant to the terms of the relevant Credit Card Agreement.
“Account Documentation” means any and all documentation relating to the Accounts, to the extent reflected in individual Account files, including Credit Card Documentation, electronic payment authorization agreements, checks or other forms of payment with respect to the Accounts, notices to Cardholders, electronic payment authorization agreements, adverse action notices, change of terms notices, other notices, correspondence, memoranda, documents, stubs, instruments, certificates, agreements, magnetic tapes, disks, hard copy formats or other computer-readable data transmissions, microfilm, electronic or other copy of any of the foregoing, and any other written, electronic or other records or materials of whatever form or nature, arising from or relating or pertaining to any of the foregoing to the extent related to the Program; provided that Account Documentation shall not include (i) Solicitation Materials, (ii) the Company’s or any of its Affiliates’ register tapes, invoices, sales or shipping slips, delivery or (iii) other receipts or other indicia of the sale of Goods and Services, any reports, analyses or other documentation prepared by the Company or its Affiliates for use in the retail business operated by the Company and its Affiliates, regardless of whether derived in whole or in part from the Account Documentation.

“Acquired Portfolio Issuer” has the meaning set forth in Section 14.1(b) hereof.

“Acquired Portfolio Program Agreement” has the meaning set forth in Section 14.1(b)(i) hereof.

“Affiliated Party” has the meaning set forth in Section 6.1(d) hereof.

“Affiliate” means, with respect to any Person, each Person that controls, is controlled by, or is under common control with, such Person; provided, however, that, for purposes of this Agreement, no member of the Zale Group shall be considered an Affiliate of the Company. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this Credit Card Program Agreement, together with all of its schedules and exhibits, as amended, supplemented or otherwise modified from time to time.

“Applicable Law” means, with respect to any Party, any United States federal, state or local law (including common law), statute, rule or regulation, or any written interpretation of a Governmental Authority thereunder applicable to or binding upon such Party, or any Applicable Order with respect to such Party, or any guidance, directive or instruction, directed to or binding on such Party or generally binding on participants in the Party’s industry from a Governmental Authority (whether or not published), as any of the foregoing may be amended and in effect from time to time during the Term, including, to the extent applicable to such Party, (i) the Truth in Lending Act and Regulation Z; (ii) the Equal Credit Opportunity Act and Regulation B; (iii) the Fair Debt Collection Practices Act; (iv) the Fair Credit Reporting Act; (v) the Gramm-Leach-Bliley Act; (vi) the USA PATRIOT Act; and (vii) Section 1031 of the Consumer Financial Protection Act of 2010 and other statutes, rules and regulations prohibiting unfair, deceptive or abusive acts or practices; provided, however, that in the case of any non-published guidance, directive or interpretation or other non-published item asserted by the Bank to constitute Applicable Law, the Bank shall have delivered to the Company a written or other item in reasonable detail, including the Bank’s basis for concluding such guidance, directive or interpretation or other item is binding upon the Bank (or, if the Bank is not permitted to disclose such a detailed description, a written confirmation from an officer of the Bank that such guidance, directive or interpretation is binding on the Bank and such disclosure is prohibited by Applicable Law).
“Applicable Order” means, with respect to any Person, a judgment, injunction, writ, decree or order of any Governmental Authority, in each case legally binding on that Person.

“Applicant” means a Person that has submitted an Application under the Program.

“Application” means the credit application that must be completed and submitted in order to establish an Account (including any such application submitted at the POS, by phone or via the Internet or a mobile phone or tablet).

“Approved Ancillary Products” means any Credit Card enhancement products (other than the Company Credit Cards) specified in Section 5.5(b) or approved by the Strategic Operating Committee for offering to Cardholders under the Program from time to time.

“Bank” has the meaning set forth in the preamble hereof.

“Bank Designee” has the meaning set forth in Section 3.2(b) hereof.

“Bank Event of Default” means the occurrence of any one of the events listed in Section 15.2 hereof or of any other Bank Event of Default specified in any other provision of this Agreement or an Event of Default where the Bank is the defaulting Party.

“Bank Licensed Marks” means those Trademarks of the Bank that are listed on Schedule 1.1(a), as such schedule may be amended from time to time by the Bank, and any Trademark of the Bank that (x) includes, in whole or in part, any Trademark listed on Schedule 1.1(a) or (y) is otherwise confusingly similar to or derivative of any such Trademark.

“Bank Material Adverse Effect” means any change, circumstance, occurrence, event or effect that, individually or in the aggregate, has had or would be reasonably expected to have a material adverse effect upon the Program or the Accounts taken as a whole or the ability of the Bank to perform its obligations pursuant to this Agreement.

“Bank Matters” has the meaning set forth in Section 3.2(f) hereof.

“Bank Program Materials” has the meaning set forth in Section 4.5(a) hereof.

“Bank Systems” means Systems owned, leased or licensed by and operated by or on behalf of the Bank or any of its Affiliates.

“Bankruptcy Code” means Title 11 of the United States Code, as amended, or any other applicable state or federal bankruptcy, insolvency, moratorium or other similar law and all laws relating thereto.
“Batch Prescreen” shall mean a process where the Bank’s offer of credit is made to certain customers prequalified by the Bank (per its criteria), in a batch mode (often but not exclusively within a direct to consumer environment).

“Billing Cycle” means the interval of time between regular periodic Billing Dates for an Account.

“Billing Date” means, for any Account, the last day of a Billing Cycle as of when the Account is recorded as billed.

“Billing Statement” means a summary (in electronic or paper form) of Account credit and debit transactions for a Billing Cycle including a descriptive statement covering purchases, charges, payments, calculation of payment due past due account information, any relevant Value Proposition information and any information required by Applicable Law.

“Business Day” means any day, other than a federal holiday, Saturday or Sunday, on which both of the Bank and the Company are open for business at their respective U.S. headquarters.

“Cardholder” means any Person who has been issued a Company Credit Card (including, as applicable in accordance with the context of the reference herein, any Person contractually obligated under a Credit Card Agreement and any authorized user(s) of the Accounts).

“Cardholder Data” means (i) all Cardholder Lists and (ii) (****) For the avoidance of doubt, information submitted by a prospective Applicant pursuant to a Prequalification Request shall not be deemed Cardholder Data except to the extent such prospective Applicant is validly determined to be a Program Eligible Applicant pursuant to the terms of this Agreement.

“Cardholder Indebtedness” means (a) all amounts owing by Cardholders with respect to Accounts, including outstanding loans, cash advances and other extensions of credit, finance charges (including accrued interest), charges for Approved Ancillary Products, late payment fees, and any other fees, charges and interest on the Accounts, in each case, whether or not posted and whether or not billed; less (b) any credit balances owed to Cardholders, any credits associated with returns, and any similar credits or adjustments with respect to the Accounts, in each case whether or not posted and whether or not billed.

“Cardholder List” means any list (whether in hardcopy, magnetic tape, electronic or other form) compiled by or on behalf of the Bank that identifies (or provides a means of differentiating) Cardholders, including any such list that sets forth the names, addresses, email addresses (as available), telephone numbers or social security numbers of any or all Cardholders to the extent such information is compiled by or on behalf of the Bank.

“Change of Control” means, with respect to any Person (the “subject Person”):

(i) a Person or group becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 (except that a Person or group shall be deemed to own all securities it has the right to acquire)), directly or indirectly, of more than (****) of the total voting power of the subject Person or of any Person of which the subject Person is a Subsidiary;
such subject Person (or any Person of which such subject Person is a Subsidiary) merges, consolidates, acquires, is acquired by, or otherwise combines with any other Person in a transaction in which the subject Person (or such Person of which such subject Person is a Subsidiary) is not the surviving entity or which constitutes a “merger of equals”, it being understood that a Person shall not be considered the “surviving entity” of a transaction if either (A) the members of the board of directors of the Person immediately prior to the transaction constitute less than a majority of the members of the board of directors of the ultimate parent entity of the entity surviving or resulting from the transaction or (B) securities of such Person that are outstanding immediately prior to the transaction (or securities into which such securities are converted in the transaction) represent less than (***) of the total voting power of the ultimate parent entity of the entity surviving or resulting from the transaction;

(iii) the subject Person sells all or substantially all of its assets to a Person that is not a wholly-owned Subsidiary of the ultimate parent entity of such subject Person prior to such transaction; or

(iv) if the subject Person is the Bank, the subject Person (or any Affiliate thereof) (A) sells, transfers, conveys, assigns or terminates all or a substantial part of the Bank’s Credit Card business or any portion thereof that includes all or any portion of the Accounts or that services the Accounts, (B) enters into any definitive agreement (whether or not subject to conditions) that would upon consummation in accordance with its terms (and assuming the receipt of all approvals and satisfaction of all conditions contemplated thereby) result in any such sale, transfer, conveyance, assignment or termination; or (C) enters into any other transaction, whether through a subcontracting arrangement, change in directorships or otherwise, which has the purpose or effect of changing the Persons entitled to direct the affairs of such subject Person or any parent entity thereof or the operations relating to the conduct of the Programs to any Person other than the ultimate parent entity of the Bank prior to such transaction or any wholly-owned Subsidiary thereof.

Notwithstanding the foregoing, a Change of Control shall not be deemed to have occurred as a result of any internal transaction solely among a Party and/or one or more of its wholly-owned Subsidiaries or any Person of which a Party is a wholly-owned Subsidiary, whether through a merger, reorganization, asset transfer or otherwise.

“Charge Transaction Data” means the transaction information required to authorize, process and settle each purchase of Goods and Services or Approved Ancillary Products charged to an Account and each return of Goods and Services or Approved Ancillary Products or other adjustment for credit to an Account.

“Clean Up Call Option” means the Company’s option to purchase the Existing Receivables if the outstanding balance of Existing Receivables on the Program Purchase Date or other purchase date agreed upon by the parties, as applicable, is ten percent (10%) or less of the outstanding balance of Existing Receivables on the Closing Date.
“Closing” shall mean the closing of the transactions contemplated by the Purchase Agreement.

“Closing Date” means the date of the Closing as contemplated by the Purchase Agreement.

“Co-Branded Credit Card” means a Credit Card that bears a Company Licensed Mark and the trademarks, tradenames, service marks, logos and other proprietary designations of American Express, Visa International Inc., Visa U.S.A., Inc. or MasterCard International Inc., or any other payment system that is generally acceptable to sellers of goods and services.

“Collections Policies” means the policies, procedures and practices for the Program with respect to collections, account closures, charge-offs, recoveries and similar matters.

“Company” has the meaning set forth in the preamble hereof.

“Company Channels” means (i) all retail establishments owned or operated by the Company or its Affiliates, (ii) all websites owned or operated by the Company or its Affiliates, and (iii) all mail order, catalog and other direct access media (including all mobile media, whether or not accessible through a website) that are owned or operated by the Company or its Affiliates.

“Company Credit Card” means a Credit Card offered or maintained pursuant to this Agreement that bears a Company Licensed Mark and may be used solely to finance purchases of Goods and Services through any Company Channel and Approved Ancillary Products, including the Credit Cards listed on Schedule 1.1(f).

“Company Designee” has the meaning set forth in Section 3.2(b) hereof.

“Company Event of Default” means the occurrence of any one of the events listed in Section 15.3 hereof or an Event of Default where the Company is the defaulting Party.

“Company Licensed Marks” means Trademarks of the Company that are listed on Schedule 1.1(b), as such schedule may be amended from time to time by the Company, and any Trademark of the Company that (x) includes, in whole or in part, any Trademark listed on Schedule 1.1(b) or (y) is otherwise confusingly similar to or derivative of any such Trademark.

“Company Material Adverse Effect” means any change, circumstance, occurrence, event or effect that, individually or in the aggregate, has had or would be reasonably expected to have a material adverse effect upon the Program or the Accounts taken as a whole or the ability of the Company to perform its obligations pursuant to this Agreement.

“Company Matters” has the meaning set forth in Section 3.2(e) hereof.

“Company Program Materials” has the meaning set forth in Section 4.5(b) hereof.
“Company Systems” means Systems owned, leased or licensed by and operated by, or on behalf of, the Company or its Affiliates.

“Comparable Partner Programs” means from time to time the major Credit Card programs of the Bank or any of its Affiliates that are comparable to the Program, including in terms of (**). As of the date hereof, the “Comparable Partner Programs” are those listed on Schedule 1.1(c). To the extent the Bank becomes the issuer or servicer with respect to any Relevant Retail Program, such program shall also be a “Comparable Partner Program” for so long as the Bank acts in any such capacity. The Company shall have the right from time to time to add to Schedule 1.1(c) additional Credit Card programs that meet the definition set forth in the first sentence hereof (whereupon such programs shall be “Comparable Partner Programs”), subject to the Bank’s consent, not to be unreasonably withheld, conditioned or delayed.

“Competing Credit Product” has the meaning set forth in Section 2.2(a) hereof.

“Competitive” with respect to features and aspects of the Program referred to where such term is used in this Agreement therein, means that such features or aspects are both (i) (***) and (ii) (**).

“Confidential Information” has the meaning set forth in Section 13.1 hereof.

“Conversion” has the meaning set forth in Section 7.4(a) hereof.

“Credit Card” means a credit card or other access device (whether tangible or intangible) pursuant to which the cardholder or authorized user may purchase goods and services through open-end revolving credit; and for the avoidance of doubt the term does not include: (i) any gift card; (ii) any debit card, smart card, stored value card, electronic or digital cash card or any other card that does not provide the holder thereof with the ability to obtain credit other than through an overdraft line or similar feature; (iii) any secured card, including any card secured by a lien on real or other property or by a deposit; or (iv) any card issued to the holder of a securities brokerage account that allows the holder to obtain credit through a margin account. For purposes of this Agreement, an intangible access device shall be deemed to “bear” a trademark if the association or identification between such trademark and the credit product accessed by such access device is similar in nature and intent to the association or identification created by imprinting such trademark on a card-accessed credit product.

“Credit Card Agreement” means each agreement between the Bank and a Cardholder governing the use of an Account, including agreements assigned to the Bank pursuant to the Purchase Agreement, together with any amendments, modifications or supplements thereto (including through issuance of a change in terms notice) and any replacement of such agreement.

“Credit Card Documentation” means, with respect to the Accounts, Prequalification Requests, all Applications, Credit Card Agreements, Company Credit Cards, POS brochures, welcome brochures, new Account membership kits, and Billing Statements relating to such Accounts, in each case, in every form, whether printed, mobile or online.

“Credit Reporting Agency” means either of Equifax or Experian.
“Disclosing Party” means the meaning set forth in Section 13.1(d) hereof.

“Dispute” has the meaning set forth in Section 3.2(d)(ii)(D) hereof.

“Disqualified Shopper” has the meaning set forth in Schedule 2.1(a) hereof.

“Effective Date” means the date on which the Launch shall occur, which shall be the earlier of (i) the Conversion date, or (ii) the date of the first credit application processed pursuant to the Program Agreement, but in any event, subject to the terms and conditions of the Integration Plan, no later than February 20, 2018.

“Employee Fraud” means an instance in which an employee of the Company or its Subsidiaries has committed fraud as evidenced by (i) a written or email admission of guilt by the relevant employee, (ii) a conviction of such employee for fraud in a court of law, (****).

“Event of Default” means the occurrence of any one of the events listed in Section 15.1 hereof.

“Existing Receivables” means, as applicable, (i) as of the Closing Date, the Cardholder Indebtedness purchased by the Bank on the Closing Date pursuant to the Purchase Agreement, or (ii) as of the Program Purchase Date, the Cardholder Indebtedness purchased by the Bank on the Closing Date pursuant to the Purchase Agreement that remains outstanding on the Program Purchase Date, excluding any amounts that have been charged off in accordance with the Risk Management Policies.

“Fair Market Value” means the value determined in accordance with the procedures specified in Schedule 17.3.

“FDIC” means the Federal Deposit Insurance Corporation.

“FICO” means, (i) for purposes of the definition of Program Eligible Applicant and Section 4.6(d), the credit score designated as such and derived from the credit model developed by the Fair Isaac Corporation and deployed at any Credit Reporting Agency, and (ii) otherwise the credit score determined to be used pursuant to the Risk Management Policies as in effect from time to time in accordance with this Agreement.

“Fiscal Month” means each four (4) or five (5) week period designated as such in the calendar published by the National Retail Federation for retailers on a Fiscal Year-reporting basis; provided that the Fiscal Month in which the Effective Date occurs shall be deemed to begin on the Effective Date.

“Fiscal Year” means the fiscal year set forth in the calendar published by the National Retail Federation setting forth the fiscal year for retailers on a 52/53 week fiscal year ending on the Saturday closest to January 31; provided that the first Fiscal Year under this Program shall be the period beginning on the Effective Date and ending on the Saturday closest to January 31, 2018.

“Force Majeure Event” has the meaning set forth in Section 19.18 hereof.
“GAAP” means United States generally accepted accounting principles, consistently applied.

“Goods and Services” means the products and services sold, charged or offered by or through Company Channels, including accessories, delivery services, protection agreements, gift cards, shipping and handling, and work or labor to be performed for the benefit of customers of the Company Channels and any sales tax relating to the foregoing charges and to such customers in connection therewith.

“Governmental Authority” means any United States federal, state or local governmental or regulatory authority, agency, court, tribunal, commission or other entity exercising executive, legislative or judicial functions of or pertaining to government in the United States.

“Indemnified Party” has the meaning set forth in Section 18.3 hereof.

“Indemnifying Party” has the meaning set forth in Section 18.3 hereof.

“Independent Appraiser” means a nationally recognized investment banking firm, valuation firm or firm of independent certified public accountants of recognized standing that is experienced in the business of appraising credit card businesses or receivables, and that is not an Affiliate of the Company or the Bank and that is not either Party’s principal auditor.

“Industry Standards” means all industry standards and certifications relating to privacy or data in the credit card industry; provided that, the Payment Card Industry Data Security Standards maintained by the PCI Security Standards Council, LLC or any successor organization or entity shall apply only with respect to Co-Branded Credit Cards.

“Initial Term” has the meaning set forth in Section 16.1 hereof.

“Inserts” has the meaning set forth in Section 5.3(a) hereof.

“Instant Credit” means an Application procedure designed to open Accounts as expeditiously as possible at POS, or through online mobile or other channels, whereby the Application information is communicated to the Bank systemically at POS or during the order entry process and without a paper Application being completed by an Applicant, through the electronic submission by the Applicant of a credit card or other Bank-approved identification to facilitate the necessary credit analysis required by the Risk Management Policies.

“In-Store Payment” means any payment on an Account made to the Bank via the Company in a physical store Company Channel by a Cardholder or a person acting on behalf of a Cardholder.

“Integration Committee” has the meaning set forth in Section 3.2(a) hereof.

“Integration Matters” has the meaning set forth in Section 3.2(c) hereof.

“Integration Plan” shall mean the integration plan as to the actions the Parties shall take to initiate the Program in accordance with this Agreement and to effect the Launch and Conversion in accordance with Section 7.4, which shall include the components set forth in Schedule 1.1(c) and such other provisions as the Strategic Operating Committee may approve.
“Intellectual Property” means, on a worldwide basis, all intellectual property rights, including (i) copyrights, copyrighted works and works of authorship including software; (ii) trade secrets and know-how; (iii) patents, designs, inventions, algorithms and other industrial property rights; (iv) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (v) applications, registrations, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing), but excluding trademarks, service marks, trade dress, logos, trade names, internet domain names, corporate names, social and mobile media identifiers and other source indicators and proprietary designations and the goodwill associated therewith (“Trademarks”).

“Internet Services” has the meaning set forth in Section 4.8(a) hereof.

“Key Program Management Resources” has the meaning set forth in Section 3.3(e) hereof.

“Knowledge” means, (i) with respect to the Company, the actual knowledge of any of the individuals listed on Schedule C-1 and (ii) with respect to the Bank, the actual knowledge of any of the individuals listed on Schedule C-2.

“Launch” means the date on which the Bank and the Company shall agree in writing that the Bank shall start issuing Company Credit Cards.

“Launch Requirements” has the meaning set forth in Schedule 1.1(e) hereof.

“Losses” has the meaning set forth in Section 18.1 hereof.

“Manager” has the meaning set forth in Section 3.3(a) hereof.

“Manager Matters” has the meaning set forth in Section 3.2(c) hereof.

“Marketing Commitment” means the obligation of the Bank to fund the amount per Fiscal Month set forth on Schedule 5.2(b) for the purposes set forth in Section 5.2(b).

“Marketing Committee” has the meaning set forth in Section 3.2(a) hereof.

“Marketing Committee Matters” has the meaning set forth in Section 3.2(c) hereof.

“Marketing Fund” means an accounting entry on the books of the Bank representing the unused portion of the Marketing Commitment, as set forth in Section 5.2(a) hereof.

“Marketing Plan” means the document that outlines the objectives, targets, strategies and tactics, including marketing and promotional programs, including with respect to new account solicitation, usage and awareness programs for the applicable Fiscal Year.
“Monthly Settlement Sheet” has the meaning set forth in Section 7.1(b) hereof.

“Net Credit Revenue” has the meaning set forth in Schedule 9.1.

“Net Credit Sales” means, for any date or measurement period, an amount equal to (A) gross credit sales on Accounts (****) minus (B) the sum of credits for returned goods and cancelled services and other credits (****) on Accounts(****) (****).

“Net Proceeds” shall mean the amount of purchases of Goods and Services on Accounts: (i) less credits to Accounts for the return or exchange of Goods, or a credit on an Account (****); (ii) less payments from Cardholders received by the Company from Cardholders on the Bank’s behalf; (iii) less any applicable (****) (iv) plus any (****) and (v) plus or minus, as applicable, any other (****) in the specific instance to have such amounts paid through the settlement procedures of Section 8.4.

“New Mark” has the meaning set forth in Section 10.1(c) hereof.

“New Portfolio” has the meaning set forth in Section 14.1 hereof.

“Nominated Purchaser” has the meaning set forth in Section 17.2(a) hereof.

“Open Account” means an Account that has not been closed by the Bank for risk, has not been closed by the Cardholder or has not been closed by the Bank for inactivity.

“Operating Procedures” means the operating procedures for the Program in effect from time to time in accordance with Section 4.1 hereof.

“Opt-in Notice” has the meaning set forth in Section 10.1(c) hereof.

“Parent” has the meaning set forth in Section 12.3 hereof.

“Party” has the meaning set forth in the preamble hereof.

“Payment Card Industry Data Security Standards” means the Payment Card Industry Data Security Standards maintained by the PCI Security Standards Council, LLC, or any successor organization or entity.

“Payment Plans” means any “Payment Plan” set forth in Schedule 4.7(c) and any other “Payment Plan” approved by the Strategic Operating Committee in accordance with Section 4.7(c).

“Peak Sales Period” means, for any given year, October 1 through February 15 and the four (4) weeks prior to Mother’s Day in the United States (i.e., the second Sunday in May) in such year.
“Person” means any individual, corporation, business trust, partnership, association, limited liability company, joint venture, unincorporated association or similar organization, or any Governmental Authority.

“POS” means point of sale.

“Prequalification Request” means the information that must be completed and submitted in order to permit the Bank to determine whether a prospective Applicant is a Program Eligible Applicant as expeditiously as possible at POS, or through online mobile or other channels, whereby such information is communicated to the Bank systemically at POS or during the order entry process and without a paper Prequalification Request being completed by a prospective Applicant.

“Previously Disclosed” means a disclosure in writing setting forth an exception to the representations and warranties of the Company or the Bank, as applicable, in each case as set forth in the corresponding Schedule to this Agreement, which Schedules are being delivered by the Company and the Bank concurrently with the execution and delivery of this Agreement by the Parties.

“Prime Rate” means the rate per annum listed in the “Money Rates” Section of The Wall Street Journal as the “prime rate”. If The Wall Street Journal ceases publication of such rate, then the Prime Rate means the so-called prime rate as announced by an alternate publication to be mutually agreed by the Parties.

“Program” has the meaning set forth in the recitals.

“Program Assets” means the Accounts (including written off Accounts to which the Bank has retained title) and copies of all Account numbers associated therewith, Account Documentation, the Cardholder List, Cardholder Data, all Cardholder Indebtedness, but to the extent set forth in Section 17.2(i), excluding the Existing Receivables except to the extent otherwise provided in such Section, all dedicated Program Toll-Free Numbers and all rights, claims, credits, causes of action and rights of set-off against third parties to the extent relating to the foregoing (in each case, whether held by the Bank or a third party). Program Assets shall not include the Shopper Data or Solicitation Materials, which Shopper Data and Solicitation Materials shall be and remain the property of the Company at all times.

“Program Decision Matters” means, collectively, Manager Matters, Marketing Committee Matters, SOC Matters and Integration Matters.

“Program Eligible Applicant” means an Applicant that is not a Disqualified Shopper with (****).

“Program Generated Shopper Data” has the meaning set forth in Section 6.1(b) hereof.

“Program Objectives” has the meaning set forth in Section 3.1 hereof.

“Program Privacy Policy” shall mean the privacy policy and associated disclosures to be provided by the Bank to Applicants and Cardholders in connection with the Program, initially in the form set forth as Schedule 6.2(b), as the same may be modified from time to time in accordance with this Agreement.
“Program Purchase Date” has the meaning set forth in Section 17.2(c) hereof.

“Program Toll-Free Numbers” has the meaning set forth in Section 7.2(c) hereof.

“Program Website” has the meaning set forth in Section 4.8(a) hereof.

“Purchase Agreement” has the meaning set forth in the recitals hereof.

“Purchase Notice” has the meaning set forth in Section 17.2(b) hereof.

“Purchased Account” means an Account existing as of the Closing Date and purchased by the Bank pursuant to the Purchase Agreement.

“Qualified Signet Customer” shall mean certain customers of the Company that the Company determines are available to be solicited for Accounts under the Program.

“Qualified Signet Customer List” means the list of Qualified Signet Customers provided from time to time by the Company to the Bank for purposes of soliciting such Persons for the Program in accordance with a Marketing Plan.

“Real-Time Prescreen” means a process where the Bank’s firm offer of credit is made to certain customers in a real-time manner, at the POS in any Company Channel at the time of a transaction.

“Receiving Party” has the meaning set forth in Section 13.1(d) hereof.

“Relevant Decision Maker” shall mean the Managers in respect of any Manager Matters, the Marketing Committee in respect of any Marketing Committee Matters, the Integration Committee in respect of any Integration Matters and the Strategic Operating Committee in respect of all other matters, including any SOC Matters.

“Relevant Laws” has the meaning set forth in Section 12.3 hereof.

“Relevant Retail Programs” means from time to time the Credit Card programs, whether or not the Bank or any of its Affiliates participate therein, of (****). Notwithstanding anything to the contrary in the foregoing provisions of this definition, as of the date hereof, the “Relevant Retail Programs” shall include the programs(****). To the extent the Bank or any of its Affiliates ceases being the issuer or servicer with respect to any Comparable Partner Program, such program shall also be a “Relevant Retail Program” to the extent (****). The Company shall have the right from time to time to add to (****) additional Credit Card programs that meet the definition set forth in the first sentence hereof (whereupon such programs shall be “Relevant Retail Programs”) (****).

“Renewal Term” has the meaning set forth in Section 16.1 hereof.
“Representative” means a Person’s employees, officers, directors, accountants, consultants and advisors (including outside counsel).

“Retail Day” means any day on which a physical retail store owned or operated by the Company or any of its Subsidiaries is open for business.

“Retail Jeweler” means any retailer whose total sales of jewelry in the most recent fiscal year aggregated either (a) (***) in the aggregate; or (**).

“Retail Merchant” means the Company and any of its Affiliates that accept the Company Credit Cards in accordance with this Agreement.

“Risk Management Policies” means the underwriting and risk management policies, procedures and practices applicable to the Program adopted in accordance with the terms of this Agreement, including risk management policies, procedures and practices for credit and Account openings, transaction authorization, credit line assignment, increases and decreases, over-limit decisions, Account closures and payment crediting. Notwithstanding the foregoing, Risk Management Policies does not include Collections Policies.

“Secondary Program” has the meaning set forth in Section 2.2(b) hereof.

“Second-Look Program” has the meaning set forth in Section 2.2(b) hereof.

“Security Breach Costs and Expenses” has the meaning set forth in Section 6.1(d) hereof.

“Security Incident” has the meaning set forth in Section 6.1(d) hereof.

“Service Providers” means, with respect to a Person, the unaffiliated vendors, service providers and subcontractors utilized by such Person in connection with the performance of services and obligations provided under this Agreement. For the avoidance of doubt, neither Party (nor such Party’s respective Affiliates or Service Providers) shall be deemed to be a Service Provider of the other Party for purposes of this Agreement.

“Settlement File” means the daily file containing Charge Transaction Data submitted by the Company to the Bank each Retail Day pursuant to Section 8.4.

“Shopper” means any Person who makes purchases of Goods and Services or otherwise uses, enters or accesses Company Channels or otherwise contacts or is contacted by the Company or its Affiliates in connection with their retail operation (whether or not such Person makes any purchases).

“Shopper Data” means (i) all personally identifiable information, and all other information (including information recorded on a tokenized, aggregated or anonymized basis) regarding a prospective or actual Shopper that was obtained by or on behalf of the Company or its Affiliates prior to the Closing Date or is obtained by or on behalf of the Company following the Closing Date, including all transaction, search, experience and purchase information obtained in connection with (A) (**), or (B) such Shopper (**), in each case in clause (A) or (B), whether such information is obtained by the Company and its Affiliates from the Bank or otherwise, (ii) any personally identifiable information regarding a Shopper that is otherwise obtained by (or on behalf of) the Company or any of its Affiliates at any time (including prior to the date hereof) and (iii) for any Cardholder or any Person who has applied for a Company Credit Card, (**).
“SLA” means each individual performance standard set forth on Schedule 7.3.

“SOC Matters” has the meaning set forth in Section 3.2(c) hereof.

“Solicitation Materials” means documentation, materials, artwork, copy, brochures or other written or recorded materials, in any format or media (including television, radio and internet), used to promote or identify the Program to Cardholders and potential Cardholders, including direct mail solicitation materials and coupons and solicitation materials contained on the Program Website or other mobile applications used in connection with the Program.

“Special Condition” means any Applicable Order or any other requirement of Applicable Law binding on or applicable to the Bank or any of its Affiliates and affecting (****) other than any such (****).

“Specifications Book” means the publication reflecting the Bank’s requirements for the design, form and non-customizable content of certain cardholder communications as delivered by the Bank to the Company prior to the date hereof, provided that any changes to such publication following the Effective Date shall be applied by the Bank consistently to all of its Comparable Partner Programs and shall not release the Bank from any of its obligations under this Agreement or remove customizability or materially reduce the Company’s ability to reflect the Company’s brand look and feel and messaging as compared to the Specifications Book as of the Effective Date.

“Strategic Operating Committee” has the meaning set forth in Section 3.2(a) hereof.

“Subsidiary” when used with respect to any Person, means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or similar governing body (or if there are not such voting interests, more than fifty percent (50%) of the equity interest of which) is owned directly or indirectly by such first Person or by another Subsidiary of such Person; provided, however, that, for purposes of this Agreement, no member of the Zale Group shall be considered a Subsidiary of the Company.

“Systems” means, with respect to any party, software, databases, computers, hardware, systems and networks owned, leased, licensed or operated by such party or its Affiliates or on behalf of such party or its Affiliates by third parties engaged by such party or its Affiliates; provided that, a System shall not be a System of a particular party if access to or permission to use such System must be granted by the other party or its Affiliates.

“Systems Conversion Date” has the meaning set forth in Section 7.4 hereof.

“Term” means the Initial Term and each Renewal Term.
“Termination Period” means the period (i) beginning with (a) in the case of termination pursuant to Section 16.2 or 16.3, the date of any notice of termination, or (b) in the case of termination pursuant to Section 16.1, the date that is eighteen (18) months prior to the expiration date and ending on either (i) the date the Program Assets are purchased pursuant to Section 17.2, if the Company or a Nominated Purchaser purchases the Program Assets, or (ii) the date that either (A) the Company delivers written notice to the Bank of its election not to purchase the Program Assets or (B) the right of the Company to purchase the Program Assets expires in accordance with the terms of this Agreement.

“Trademark Style Guide” means any rules or guidelines of the Company or the Bank provided to the other party governing the other party’s use of the providing party’s Trademarks.

“Trademarks” has the meaning set forth in the definition of “Intellectual Property” in Section 1.1 hereof.

“Transaction” means any purchase, exchange or return of (i) Goods and Services through a Company Channel, or (ii) Approved Ancillary Products, in each case using an Account.

“Unamortized Signing Bonus” means the portion of the Signing Bonus payable pursuant to Schedule 9.1 equal to a fraction the numerator of which is the number of full months remaining in the Initial Term and the denominator of which is eighty-four (84).

“Unapproved Matter” has the meaning set forth in Section 3.2(d)(ii)(B) hereof.

“United States” means the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and all United States territories.

“Value Proposition” means any loyalty, promotional, discount or reward program offered to Cardholders or segments of Cardholders in respect of Transactions.

“Zale” means Zale Corporation, a Delaware corporation.

“Zale Group” means Zale and its current and future Subsidiaries.

“Zale Program Agreement” means that certain Private Label Credit Card Program Agreement, dated as of the July 9, 2013, by and among Zale Delaware, Inc., a Delaware corporation, Zale Puerto Rico, Inc., a Puerto Rico corporation and Comenity Capital Bank, as such agreement may be amended from time to time.

1.2 Miscellaneous.

(a) As used herein, references to:

(i) the preamble or the recitals, Sections or Schedules refer to the preamble, recitals, Sections or Schedules to this Agreement,

(ii) any agreement (including this Agreement) refer to the agreement as amended, modified, supplemented, restated or replaced from time to time,
any statute or regulation refer to the statute or regulation as amended, modified, supplemented or replaced from time to time,

any Governmental Authority include any successor to the Governmental Authority;

d this Agreement means this Agreement and the Schedules hereto; provided that, in the event of any conflict between this Agreement and the Schedules, this Agreement shall govern;

references to any Section in this Agreement include references to any Schedule attached thereto;
the plural number shall include the singular number (and vice versa);
“herein,” “hereunder,” “hereof” or like words shall refer to this Agreement as a whole and not to any particular section, subsection or clause contained in this Agreement;
“include,” “includes” or “including” shall be deemed to be followed by the words “without limitation”; and
“$” or “dollars” shall be deemed references to United States dollars.

(b) The table of contents and headings contained in this Agreement are for reference purposes only and do not limit or otherwise affect any of the provisions of this Agreement.

(c) Unless the context otherwise requires, the word “or” when used in this Agreement will be deemed to have the inclusive meaning represented by the phrase “and/or.”

(d) Unless otherwise explicitly set forth herein, any consent or approval that may be given by a Party hereunder may be given or withheld in such Party’s sole and absolute discretion.

(e) Unless specified as Business Days, Retail Days, Fiscal Months or Fiscal Years, all references herein to days, months or years shall be deemed references to calendar days, calendar months or calendar years.

(f) Unless otherwise expressly specified herein, any payment that otherwise would be due on a day that is not a Business Day shall be deemed to be due on the first Business Day thereafter.

(g) This Agreement is the product of negotiation by the Parties having the assistance of counsel and other advisers. It is the intention of the Parties that this Agreement not be construed more strictly with regard to one party than with regard to the other.
ARTICLE II

ESTABLISHMENT OF THE PROGRAM

2.1 Credit Program.

(a) General. Beginning as of the Effective Date, the Bank shall offer and issue the Company Credit Cards. From the Launch until the Closing Date, the Bank shall offer and issue Company Credit Cards in a phased-in manner as determined by the Company and approved by the Bank (which approval shall not be unreasonably conditioned, delayed or withheld). The Bank shall cause Instant Credit procedures and, to the extent approved by the Company, Real-Time Prescreen and Batch Prescreen procedures to be available for use in the Program by the Effective Date (or in the case of Real-Time Prescreen and Batch Prescreen, such later date as reasonably requested by the Company), and the Company shall make Prequalification Requests available for use in the Program from and after the Effective Date wherever Instant Credit procedures are available. Immediately upon receipt of a Prequalification Request, the Bank shall determine whether the prospective Applicant submitting such Prequalification Request meets the criteria for a Program Eligible Applicant and (i) if such prospective Applicant meets the criteria for a Program Eligible Applicant and is not a Disqualified Shopper the Bank shall inform the Company to request the prospective Applicant to complete an Application and (ii) if such prospective Applicant does not meet the criteria for a Program Eligible Applicant and is not a Disqualified Shopper, the Bank shall inform the Company that the Company may request the prospective Applicant to submit an application for a Credit Card to be issued pursuant to the Secondary Program. The Bank shall promptly open a new Account and issue a new Company Credit Card with respect to each Application submitted by a Program Eligible Applicant approved in accordance with the credit criteria set forth in the Risk Management Policies and Applicable Law. To the extent approved in accordance with the terms of this Agreement, the Program shall include and the Bank shall be permitted to offer such Approved Ancillary Products and other payment products as may be incorporated in the Program in the future. If the Bank receives a Prequalification Request from a prospective Applicant that does not meet the criteria for a Program Eligible Applicant, the Bank will immediately inform the Company of its decision so that the Company may forward the name and address of the non-prequalified prospective Applicant to the issuer in a Secondary Program in accordance with Section 2.2(b); provided, however, that if such prospective Applicant is determined by the Bank to be a Disqualified Shopper, then the Bank shall issue an adverse action notice to such Person in accordance with Applicable Law and the Company shall not forward the name and address of the Disqualified Shopper for consideration for the Secondary Program or any Second-Look Program. If the Bank receives an Application from an Applicant and declines such Application, the Bank shall, to the extent permitted by Applicable Law, pass the Application data for the declined Applicant directly to the issuers in any Second-Look Program in accordance with Section 2.2(b). Subject to the credit criteria set forth in the Risk Management Policies, the Bank shall continue to extend credit to existing Cardholders (including all Cardholders of Purchased Accounts). In the event Prequalification Requests are or become unavailable in a Company Channel for any reason, all prospective Applicants in such Company Channel will be directed to the Bank’s Instant Credit Application procedures until the availability of Prequalification Requests is restored, it being understood that notwithstanding anything to the contrary contained in this Agreement, any such Applicant that is not a Program Eligible Applicant shall be declined by the Bank upon application of such Instant Credit procedures. The Bank shall comply with the prequalification procedures set forth on Schedule 2.1(a). The Bank shall ensure the terms of the Accounts associated with each Company Credit Card permit, and shall take all commercially reasonable actions necessary to facilitate, acceptance of each Company Credit Card in all Company Channels of all Retail Merchants; provided that, the Company shall have the right to set policies with respect to whether and under what circumstances the Company will accept Company Credit Cards branded with a particular Company Licensed Mark in the Company Channels of Retail Merchant operating under different Company Licensed Marks. With respect to each change in such policies that requires the Bank to take action, the Bank shall be afforded sufficient time to implement such change in a commercially reasonable manner. In the event that any change in Applicable Law would result in the compliance by the Bank of any of its obligations pursuant to this Section 2.1 or Section 2.2(b) being deemed a “consumer reporting agency” for purposes of the Fair Credit Reporting Act, the Bank shall not be required to take such actions affected by such change in Applicable Law that would so result in Bank being deemed a “consumer reporting agency.” In such an event, the Bank shall take all actions reasonably requested by the Company and permitted by Applicable Law in order to permit the processing Applications or Credit Card applications pursuant to the Secondary Program or any Second-Look Program, as applicable, without delay and in a manner that would not cause the Bank to be considered a consumer reporting agency.
(b) **Notice to Cardholders.** Prior to the Closing Date, the Bank and the Company shall prepare jointly a form or forms of notices to each Cardholder of a Purchased Account to the effect that such Cardholder’s Account has been acquired by the Bank and, if applicable, also containing any change of terms notices with respect to any change of terms to be implemented pursuant to Section 4.7. Such notice shall be in the form approved by both Parties, which approval will not be unreasonably withheld or delayed, and the Bank shall ensure that such notice will comply with all requirements of Applicable Law, all as if the notice were Credit Card Documentation. The costs of preparation and mailings of such notices and new Company Credit Cards (**).
(b) **Secondary Credit Card Program.** Notwithstanding Section 2.2(a), the Bank acknowledges that (i) the Company intends to establish, substantially concurrently with the Program, a program for issuing, either directly by the Company or through an Affiliate or pursuant to an agreement with a third party, Credit Cards using the Company Licensed Marks to Applicants that do not meet the criteria for Program Eligible Applicants as defined herein (and (A) during the pendency of any Bank Systems failure, issuing Credit Cards using the Company Licensed Marks to any Applicants, regardless of whether such Applicants qualify as Program Eligible Applicants and (B) in the event a prospective cardholder elects to apply directly for a Credit Card under the Secondary Program, issuing Credit Cards using the Company Licensed Marks to any Applicants, regardless of whether such Applicants qualify as Program Eligible Applicants) (any such program referred to in subsection (i) above a “Secondary Program”) and (ii) the Company and its Subsidiaries shall have the right at any time during the Term to establish one or more additional programs offered by the Company directly or through one or more third parties for issuing Credit Cards, including co-branded or private label Credit Cards, or an installment or other closed-end loan product, using the Company Licensed Marks to Program Eligible Applicants whose Applications have been declined by the Bank or closed by the Bank for any reason (any such programs referred to in subsection (ii) above, a “Second-Look Program,” it being understood that the Secondary Program issuer shall also act as a Second-Look Program issuer). Subject to the restrictions and limitations set forth in Article X and Article XIII on the use of the Bank Licensed Marks and the use or disclosure of Confidential Information, at the Company’s reasonable discretion, to the extent permitted by Applicable Law, the Secondary Program or any Second-Look Program may be similar or identical to the Program in its terms, features, positioning and appearance; provided, that the Company shall use commercially reasonable efforts to ensure that the positioning and appearance of the Secondary Program and any Second-Look Program are sufficiently distinct to avoid customer confusion as to which financial institution is underwriting and providing credit for the Secondary Program or any Second-Look Program (and the Company shall consider in good faith the Bank’s reasonable requests designed to achieve the foregoing). To the extent permitted by Applicable Law, the Bank shall, (***) , take the following actions in relation to a Secondary Program and any Second-Look Program: (i) with prior notice to the Applicant or prospective Applicant, (***) (ii) allow the Secondary Program provider and any Second-Look Program providers to (***) (iii) collaborate with the Company and the Secondary Program provider to (***) and (iv) facilitate (***) (**) Notwithstanding anything to the contrary set forth herein, the Bank shall (***)

(c) **Retail Portfolio Acquisition.** Notwithstanding Section 2.2(a), the Bank’s sole rights with respect to Credit Card portfolios acquired by the Company and its Subsidiaries during the Term, including New Portfolios, are set forth in Article XIV hereof.

(d) **International Products.** For the avoidance of doubt, this Agreement does not restrict in any way the Company’s rights with respect to (i) any Credit Card, whether or not bearing a Company Licensed Mark, in any country, territory or jurisdiction outside of the United States or (ii) any activities primarily directed at any Person whose primary residence is not in the United States.

(e) **Other Products.** Except to the extent expressly set forth in this Section 2.2 and Section 4.10(c), the Company and its Affiliates shall not be restricted in any way with respect to any activities or payment products. For the avoidance of doubt, the Company, its Subsidiaries and its Affiliates shall be free to do any of the following at any time:
issue, offer or market, whether itself or through an agreement with a third party, any payment products not expressly covered in Section 2.2(a) (e.g., the Company and its Affiliates shall not be restricted from taking any action with respect to (A) general purpose credit cards (including without limitation, American Express Card, MasterCard, Visa, or Discover) or any other form of payment not bearing a Company Licensed Mark, gift cards, charge cards, pre-paid cards, smartcards or stored value cards, whether or not bearing a Company Licensed Mark, (B) debit cards, (C) prepaid cards or (D) payment plans, in each case, regardless of form factor (e.g., card, virtual, mobile, etc.));

(ii) accept any form of payment or payment product (including for the avoidance of doubt mobile payment devices) in any Company Channel; and

(iii) subject to Section 4.10(c), participate in rewards programs and promotions by card associations or other Persons for cards not branded with any of the Company Licensed Marks (e.g., American Express Membership Rewards) including, but not limited to, general purpose Credit Cards, internet-only payment products, or internet-only or mobile payment products such as e-wallet, in any sales channel.

(f) Co-Branded Credit Cards. In the event the Company desires to enter into discussions with any third Person to issue a Co-Branded Credit Card, the Company shall provide notice to the Bank indicating the interest of the Company to establish the Co-Branded Credit Card program. The Bank shall have twenty (20) Business Days following receipt of such notice to notify the Company whether it wishes to negotiate with the Company with respect to the establishment of such program. If the Bank chooses to negotiate with respect to such Co-Branded Credit Card program, the Company shall negotiate in good faith with the Bank for a period of ninety (90) days to attempt to arrive at a definitive agreement with respect to such a program. If the Parties fail to enter into such an agreement within such period, then, notwithstanding anything to the contrary set forth in the proviso below, shall thereafter not restrict the offering or issuance of Co-Branded Credit Cards), the Company shall be free to enter into an agreement with respect to such program with any other Person; provided, however, (i) the Company shall not enter into any such agreement unless (****) and (ii) if the Company fails to enter into such agreement (****) the Company shall once again follow the procedures set forth in this Section 2.2(f) prior to entering into such an agreement with a third Person. If the Company enters into an agreement with a third Person to issue a Co-Branded Credit Card pursuant to this Section 2.2(f), the Company shall ensure that (****).

2.3 Mobile Technology. The Company and the Bank intend to be innovative and market-leading with respect to the methods or devices used to access Accounts, including mobile phones or tablets. In the event the Company shall determine it would be beneficial for the Company Credit Cards to participate in one or more mobile payments initiatives used in Company Channels, whether operated by the Bank, the Company or third parties, (****). For purposes of clarity, the Parties understand that (****). Notwithstanding the foregoing, the Parties acknowledge that Cardholders may be able to elect to have their Company Credit Cards participate in a mobile payments initiative, without the Company’s or the Bank’s consent. Subject to the foregoing provisions of this Section 2.3, nothing in this Agreement shall require the Company to participate, or restrict the Company from participating, in any mobile payments initiative, which shall be in the Company’s sole discretion.
3.1 **Program Objectives.** In performing its responsibilities with respect to the management and administration of the Program, each Party shall be guided by the following Program objectives (the “Program Objectives”):

(a) to continue to make credit available to Shoppers in all Company Channels and credit tiers of Program Eligible Applicants currently served by the Company through the economic cycle to the maximum extent possible;

(b) to maintain best-in-class servicing for the Program that maximizes value to the Bank and maintains and enhances the service experience for Shoppers;

(c) to maintain visibility into and influence over risk management and other key program policies in a manner that benefits each of the Company and the Bank consistent with Applicable Law and the terms of this Agreement;

(d) to drive incremental value to the Program using the capabilities of both the Company and the Bank;

(e) to seamlessly transition through the Launch and Conversion;

(f) to operate the Program in a manner that provides each Party with a reasonable return; and

(g) to seamlessly integrate with the Company’s strategic marketing plan and promotional cadence.

3.2 **Committees.**

(a) **Establishment of Committees.** The Company and the Bank hereby establish three committees to, in addition to the Managers (described in Section 3.3(a) below), oversee and review the conduct of the Program pursuant to this Agreement and perform any other action that, pursuant to any express provision of this Agreement (including Section 3.2(d)(ii)(D)), requires the committee’s action: (i) a Strategic Operating Committee (the “Strategic Operating Committee”), (ii) a Program Integration Committee (the “Integration Committee”) and (iii) a Marketing Committee (the “Marketing Committee”). After the integration is completed, as determined by the Strategic Operating Committee, the Strategic Operating Committee shall take action to dissolve the Integration Committee.
Composition of Committees. The Strategic Operating Committee shall consist of eight (8) members, of whom four (4) members shall be nominated by the Company and four (4) members shall be nominated by the Bank. The Integration Committee shall consist of eight (8) members, of whom four (4) members shall be nominated by the Company and four (4) members shall be nominated by the Bank. The Marketing Committee shall consist of six (6) members, of whom three (3) members shall be nominated by the Company and three (3) members shall be nominated by the Bank. One (1) of each Party’s designees to the Marketing Committee shall be the Program Manager. Any member nominated to any such committee by the Company is herein referred to as a “Company Designee,” and any member nominated to any such committee by the Bank is herein referred to as a “Bank Designee.” The initial Company Designees and Bank Designees to the Strategic Operating Committee, the Integration Committee and the Marketing Committee will be the Persons specified in Schedule 3.2(b). Each Party shall at all times have as one of its designees on the Strategic Operating Committee the Person with overall responsibility for the performance of the Program within his or her respective corporate organization, which in the case of the Bank, shall be the Chief Client Officer of the Credit Card business of the Bank. The Bank and the Company may each substitute its designees to the Strategic Operating Committee, the Integration Committee or the Marketing Committee from time to time so long as its designees continue to satisfy the above requirements, provided that, each Party shall provide the other Party with as much prior notice of any such substitution as is reasonably practicable under the circumstances.

Certain Functions of the Managers and Committees.

(i) The Managers shall:

(A) review collection strategies and collection metrics, change to which shall be made only in accordance with Section 4.6(g);

(B) review customer service, collections and other servicing performance and reporting aspects of the Program against SLAs and other requirements of this Agreement;

(C) review compliance with Applicable Law, the Risk Management Policies, the Collections Policies, Operating Procedures and other Program operations and procedures

(D) subject to Section 4.5(a) and Section 7.2(e), review and approve the design, form and content of Credit Card Documentation and Solicitation Materials, and any changes thereto, with the design form and non-customizable content of such Credit Card Documentation and Solicitation Materials subject to the Specifications Book;

(E) manage the day-to-day operation of the Program; and

(F) carry out such other tasks as are assigned to it by this Agreement or jointly by the Parties.

The items referred to in clauses (A) through (F) above are collectively referred to herein as “Manager Matters.”
The Strategic Operating Committee shall:

(A) evaluate and approve (or fail or decline to approve) any changes to the Operating Procedures that would result (***) ; provided , however , that the Bank may institute temporary changes to the Operating Procedures (other than chargebacks) to mitigate exigent fraud perpetration without such evaluation and approval by the Strategic Operating Committee upon notification to the Strategic Operating Committee of such temporary changes with any such temporary changes being reversed immediately after the threat of such fraud perpetration has been contained, unless the Strategic Operating Committee approves such changes for implementation on a permanent basis;

(B) evaluate and approve (or fail or decline to approve) changes to the Account terms set forth on Schedule 4.7(a), and the terms of Approved Ancillary Products; and review changes to any other Account terms;

(C) review changes to the Collections Policies to the extent provided in Section 4.6(g) and review and approve changes to the Risk Management Policies. Notwithstanding the foregoing, the Bank may institute temporary changes to the Risk Management Policies to mitigate exigent fraud perpetration without such evaluation and approval by the Strategic Operating Committee upon notification to the Company’s Manager and the Strategic Operating Committee of such temporary changes, with any such temporary changes being reversed immediately after the threat of such fraud perpetration has been contained, unless the Strategic Operating Committee approves such changes for implementation on a permanent basis;

(D) evaluate and approve (or fail or decline to approve) new Credit Cards or Approved Ancillary Products (including the terms and conditions and pricing of such products or services), and the policies (and any changes thereto) governing the type of Company Credit Card to be issued to Persons applying for Company Credit Cards, or other payment products, as part of the Program;

(E) review changes to the Program Privacy Policy, provided , that , the Program Privacy Policy shall comply with the requirements of Section 6.2(g);

(F) evaluate and approve (or fail or decline to approve) ongoing new product and Value Proposition development;

(G) review actual and projected Program performance;

(H) evaluate and approve (or fail or decline to approve) changes to the SLAs applicable to the Program;

(I) monitor activities of competitive programs and identify implications of market trends;

(J) approve the use of any third Person(***); provided that , if the Company does not approve the use of any such third party, (***) and provided further that , under no circumstances will the Company (***)
(K) evaluate and approve any changes to the chargeback provisions set forth on Schedule 8.5;

(L) approve the use of any offshore location (****); and

(M) carry out such other tasks as are assigned to it by this Agreement or jointly by the Parties.

The items referred to in clauses (A) through (M) above are collectively referred to herein as “SOC Matters.”

(iii) The Marketing Committee shall:

(A) develop, approve and implement the initial Marketing Plan and review, approve and implement any subsequent Marketing Plans;

(B) coordinate and review the marketing activities (including review of the design and operation of Program Websites) and marketing performance for the Program through oversight of the implementation of Marketing Plans;

(C) evaluate ongoing new product and Value Proposition development for recommendation to the Strategic Operating Committee;

(D) monitor performance of marketing initiatives;

(E) establish and approve (or fail or decline to approve) additional marketing initiatives and terms for employees of the Company and its Affiliates;

(F) direct ongoing research and in-market testing in order to maximize relevance, appeal and productivity of Account acquisition and usage development programs; and

(G) carry out such other tasks as are assigned to it by this Agreement or jointly by the Parties.

The items referred to in clauses (A) through (H) above are collectively referred to herein as “Marketing Committee Matters.”

(iv) The Integration Committee shall be responsible for:

(A) periodically reviewing the status of technical and operational integration of the Program and progress toward Conversion in accordance with the Integration Plan;

(B) overseeing implementation of the Integration Plan;

(C) reviewing changes made in the integration process of the Program and ensuring such changes are consistent with the Integration Plan or otherwise mutually agreed by the parties; and
all other matters that the parties agree should be reviewed by the Integration Committee.

The items referred to in clauses (A) through (D) above are collectively referred to herein as “Integration Matters”. Notwithstanding the foregoing, all decisions of the Integration Committee shall be limited to ministerial aspects of the integration process and implementation of Integration Matters set forth in the Integration Plan or otherwise mutually agreed by the parties, and any material integration-related issues shall not be considered Integration Matters and shall instead be referred by the Integration Committee to the Managers or the Strategic Operating Committee for decision.

(d) Proceedings of Committees.

(i) Meetings and Procedural Matters. The Strategic Operating Committee shall meet (in person, telephonically or by video conference) not less frequently than monthly, provided that, unless otherwise agreed by all Strategic Operating Committee members, not less than fifty percent (50%) of the meetings per year shall be in person at the Company’s facilities, and the Strategic Operating Committee shall meet not less than four (4) times per year. In addition, any member of the Strategic Operating Committee may call a special meeting by delivery of at least five (5) Business Days’ prior notice to all of the other members of the Strategic Operating Committee, which notice shall specify the purpose for such meeting and contain all materials which are the subject of such meeting. Except to the extent expressly provided in this Agreement, the Strategic Operating Committee shall determine the frequency, place (in the case of meetings in person) and agenda for its meetings, the manner in which meetings shall be called and all procedural matters relating to the conduct of meetings and the approval or disapproval of matters thereat. The Integration Committee shall meet (in person or telephonically) on a regular basis at such frequency as the parties shall agree. In addition, any member of the Integration Committee may call a special meeting by delivery of at least five (5) Business Days’ prior notice to all of the other members of the Integration Committee, which notice shall specify the purpose for such meeting and contain all materials which are the subject of such meeting. Except to the extent expressly provided in this Agreement, the Integration Committee shall determine the frequency, place (in the case of meetings in person) and agenda for its meetings, the manner in which meetings shall be called and all procedural matters relating to the conduct of meetings and the approval or disapproval of matters thereat. The Marketing Committee shall meet (in person, telephonically, or by video conference) not less frequently than monthly; provided that, unless otherwise agreed by all Marketing Committee members, not less than fifty percent (50%) of the meetings per year shall be in person at the Company’s facilities, and the Marketing Committee shall meet not less than three (3) times per year. In addition, any member of the Marketing Committee may call a special meeting by delivery of at least five (5) Business Days’ prior notice to all of the other members of the Marketing Committee, which notice shall specify the purpose for such meeting and contain all materials which are the subject of such meeting. Except to the extent expressly provided in this Agreement, the Marketing Committee shall determine the frequency, place (in the case of meetings and in person) and agenda for its meetings, the manner in which meetings shall be called and all procedural matters relating to the conduct of meetings and the approval or disapproval of matters thereat. In the case of any regularly scheduled meeting of the Marketing Committee or Strategic Operating Committee, any materials which are the subject of such meeting shall be distributed to all members of the Marketing Committee no later than forty-eight hours prior to the time of such meeting, to all members of the Strategic Operating Committee no later than five (5) Business Days prior to date of such meeting and to all members of the Integration Committee no later than forty-eight (48) hours prior to the time of such meeting. The Managers shall operate in accordance with Section 3.3(a).
(ii) Actions.

(A) As it relates to Program Decision Matters, except as provided otherwise below with respect to Company Matters and Bank Matters, all decisions of the Relevant Decision Maker shall be unanimous decisions, with each Party having one vote (which may be allocated to any designee of such Party on such committee (and which designee may be changed with respect to any matter under consideration without prior notice to the other Party so long as only one designee of each Party shall vote on each matter), in the case of SOC Matters, Integration Matters or Marketing Committee Matters, or by unanimous approval of the Managers in the case of Manager Matters. A quorum, consisting of at least one (1) member (or permitted substitute or delegate) from each of the Bank and the Company, must be present to transact business at any meeting of any committee.

(B) If the Relevant Decision Maker fails to approve any Program Decision Matter by the required unanimous approval of each Party’s voting committee member, or the Managers, as the case may be (an “Unapproved Matter”) within ten (10) Business Days after the relevant initial vote, or in the case of the Managers, the date of disagreement concerning a Manager Matter, then, in the case of an Unapproved Matter which is a Manager Matter, an Integration Matter or a Marketing Committee Matter, the Strategic Operating Committee shall in good faith attempt to resolve such matter. Any such resolution by the Strategic Operating Committee shall be deemed to be the action and approval of the Relevant Decision Maker for purposes of this Agreement. If after ten (10) Business Days, the Unapproved Matter remains unresolved by the Strategic Operating Committee, or in the case of an Unapproved Matter which is a SOC Matter, the failure to obtain the unanimous approval of the Strategic Operating Committee shall constitute a deadlock. In the event of a deadlock, the final decision shall rest with the Company in the case of Company Matters and with the Bank in the case of Bank Matters. If a deadlock should occur with respect to an Unapproved Matter that is neither a Company Matter nor a Bank Matter, such Program Decision Matter shall remain open and the then-current practice shall continue until the Parties mutually agree otherwise.

(C) Notwithstanding anything to the contrary contained herein, the Bank shall not override any vote of the Company Designees of any Relevant Decision Maker in a way that would result in any aspect of the Program being more onerous or less beneficial to the Cardholders or the Company than Comparable Partner Programs unless (i) the Bank’s position on the issue is required by Applicable Law and (ii) the Bank adopts and certifies to the Company that it has adopted, the same position with respect to each of its and its Affiliates’ other Credit Card programs and portfolios that are similarly impacted by such Applicable Law or to which such Applicable Law could similarly be applied.
(D) Any disagreement, controversy, dispute or claim arising out of or relating to this Agreement regarding any matter other than a Program Decision Matter, including any dispute regarding the interpretation of any provision of this Agreement with respect to the performance by either party hereunder (any such disagreement, controversy, dispute or claim, a “Dispute”), shall not be subject to the provisions of Section 3.2(d)(ii)(B), but shall be instead subject to the provisions of this Section 3.2(d)(ii)(D). Any Dispute among the Parties (including any dispute regarding any amount payable hereunder) shall be submitted to the Strategic Operating Committee. The Strategic Operating Committee shall in good faith attempt to resolve such matter. If the Strategic Operating Committee fails to resolve the Dispute by unanimous agreement of each Party’s voting Strategic Operating Committee member within thirty (30) Business Days after such Dispute is submitted, then the Parties shall be free to exercise all legal and equitable rights in respect of such Dispute. Upon resolution of a Dispute by the Strategic Operating Committee relating to a payment to be made pursuant to this Agreement, the Party responsible for such payment shall make such payment (in such amount as determined by the Strategic Operating Committee) no later than five (5) Business Days following such resolution plus interest at the Prime Rate on any amount due computed from and including the date such amount should have been paid pursuant to this Agreement through and excluding the date of payment. This provision shall not limit either Party’s right to obtain any provisional remedy, including, without limitation, specific performance or injunctive relief from any court of competent jurisdiction, as may be necessary, in the aggrieved Party’s sole discretion, to protect its rights under this Agreement or to institute formal proceedings prior to the expiration of the dispute resolution period referred to in this Section 3.2(d)(ii)(D) to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors.

(e) Company Matters. In accordance with and subject to this Section 3.2(e), the Company shall have the ultimate decision making authority with respect to any Unapproved Matters in respect of the following matters (the “Company Matters”):

(i) the look, feel, marketing content and design, and changes thereto, of Company Credit Cards, Credit Card Documentation, the Program Website, any Program related social media pages or “apps,” Solicitation Materials or other communications to Cardholders, Bank Program Materials, Company Program Materials, and Account Documentation (except for other content thereof, form and content or the content of any Value Proposition materials that is required to comply with Applicable Law and the use therein of Bank Licensed Marks) and collateral aesthetics of any of the foregoing, subject in each case to the requirements imposed by the Specifications Book and format requirements imposed by Bank System limitations applicable uniformly to the Bank’s Comparable Partner Programs;
the Marketing Plan, the marketing and promotion of the Program, and the usage of the Marketing Fund subject to Sections 5.2(b), 5.2(e) and 5.6(d);

(iii) except as otherwise provided with respect to the Company’s commitments in (***)

(iv) the approval of any (****) and, in each case, the approval of any (****) in respect thereof, proposed by the Bank ( provided that , (****) are acceptable to both Parties);

(v) the administration (****), including the implementation of (****) or any other (****) in accordance with Section 4.6(a), determination of (****) and on the (****) ;

(vi) approval of the provision of any (****) ;

(vii) the addition of any (****) ;

(viii) any changes to previously approved uses of (****) ;

(ix) (****) (other than as required to comply with Applicable Law or to service the Accounts);

(x) any changes to the Company’s (****) ; and

(xi) the terms and provisions of any (****) except as set forth (****) or as otherwise required to comply with Applicable Law.

(f) **Bank Matters.** In accordance with and subject to this Section 3.2(f), the Bank shall have the ultimate decision making authority with respect to any Unapproved Matters in respect of the following matters (the “Bank Matters ”):

(i) changes to (****) ;

(ii) changes in (****) ;

(iii) changes to (****) ;

(iv) subject to (****) ;

(v) the (****) ;

(vi) any changes to (****) ;

(vii) except as otherwise provided (****) ;
with respect to (****); 

the content of (****); and 

the terms and conditions of (****).

3.3 Program Relationship Managers; Program Team.

(a) The Company and the Bank shall each appoint one full-time employee as Program relationship manager (each, a “Manager.”). The Managers shall exercise day-to-day operational oversight of the Program, including the review, execution and/or approval (or disapproval) of all Manager Matters, and coordinate the partnership efforts between the Company and the Bank, shall report to the designees on the Marketing Committee and Strategic Operating Committee of the Party appointing such Manager and shall conduct their Program responsibilities in accordance with the actions and decisions of the Strategic Operating Committee made in compliance with the provisions of this Agreement. Managers will collaborate to determine regular meeting dates, reporting requirements, management processes, and critical business issues that should be brought to the Strategic Operating Committee in accordance with Section 3.2(d) (ii)(B). The Managers shall evidence approval of any Manager Matter by a writing signed by each Manager. The Managers shall also execute the annual business plan for the Program. The Company and the Bank shall endeavor to provide stability and continuity in the Manager positions and each Party’s other Program personnel.

(b) The initial Manager of the Company is set forth in Schedule 3.3.

(c) The initial Manager of the Bank is set forth in Schedule 3.3. The Bank’s Manager’s (****) compensation shall (****). With respect to future Bank Manager candidates, the Bank shall seek to propose candidates with substantial Program relevant experience, including experience with the retail businesses, private label credit card programs, ecommerce initiatives, comparable customer demographics and loyalty programs. (****) The Bank shall regularly consult with the Company regarding the performance of the Bank’s Manager and shall consider in good faith any issues of concern raised by the Company with respect to the Bank’s Manager.

(d) The Bank shall maintain a Program team having Competitive expertise and experience and meeting the requirements and specifications set forth in Schedule 3.3. No member of the Bank’s Program team shall be reassigned to any program operated by the Bank or any of its Affiliates pursuant to any agreement or arrangement with any Comparable Partner Program, including those listed in Schedule 1.1(c), without the approval of the Company, until one (1) year following the expiration or termination of this Agreement. For purposes of this Section 3.3(d), the program pursuant to the Zale Program Agreement shall not be considered a Comparable Partner Program.

(e) The Bank shall make available to the Program the resources identified on Schedule 3.3(e) (collectively, the “Key Program Management Resources.”). The Bank shall endeavor to provide stability and continuity in its Key Program Management Resources. The Bank shall notify the Company promptly in the event any of its Key Program Management Resources shall cease to act as such. The Bank shall regularly consult with the Company regarding the performance of its Key Program Management Resources and shall consider in good faith any issues of concern raised by the Company with respect to its Key Program Management Resources.
The parties shall work in good faith to establish by mutual agreement appropriate protocols not inconsistent with the terms of this Agreement to the extent reasonably necessary to facilitate the management of the Program.

3.4 Firewalls.

(a) Except as otherwise approved by the Company in writing, the Bank’s Key Program Management Resources shall (****) (****).

(b) The Bank shall not use any Confidential Information of the Company for the benefit of any other product or program owned or operated by the Bank or any of its Affiliates except as expressly permitted in this Agreement.

ARTICLE IV

PROGRAM OPERATIONS

4.1 Operation of the Program. (a) The initial Operating Procedures applicable to various aspects of the operation of the Program shall be the operating procedures attached hereto as Schedule 4.1. Changes to such Operating Procedures shall be made as provided in Section 3.2(c)(ii)(A) provided that, with respect to any changes to Operating Procedures implemented pursuant to that Section, the Company shall be afforded sufficient time to implement any such change in a commercially reasonable manner.

(b) Each of the Parties hereto shall perform its obligations under this Agreement (i) in compliance with the terms and conditions of this Agreement, the Operating Procedures and other policies, procedures and practices, adopted pursuant to this Agreement, (ii) in good faith, (iii) in accordance with Applicable Law and (iv) in a manner consistent with the Program Objectives.

4.2 Certain Responsibilities of the Company. In addition to its other obligations set forth elsewhere in this Agreement, the Company agrees that during the Term and continuing until the end of the Termination Period it shall either itself, through Affiliates, or through Service Providers approved, where applicable, in accordance with this Agreement:

(a) in accordance with the Marketing Plan, solicit new Accounts through display in Company Channels of Solicitation Materials and of Applications provided by the Bank, and, to the extent set forth herein, provide a link to the Program Website and otherwise administer all marketing initiatives in the Company Channels in accordance with such Marketing Plan;

(b) develop, implement and administer the Marketing Plan in accordance with this Agreement;
(c) in accordance with Section 4.6(a), utilize Instant Credit and, to the extent approved by the Strategic Operating Committee, Real-Time Prescreen procedures in Company Channels in which the Bank makes such Instant Credit available, and provide Prequalification Requests wherever Instant Credit is available;

(d) implement in a timely manner the aspects of the Integration Plan for which the Company is responsible;

(e) receive In-Store Payments, subject to reimbursement from the Bank for the processing of such payments as provided in this Agreement;

(f) process authorized Transactions in accordance with this Agreement and the Operating Procedures;

(g) maintain adequate Systems and other equipment and facilities necessary for carrying out the Company’s obligations under this Agreement;

(h) train the Company’s and its Affiliates’ sales and other personnel regarding the Program, using training materials developed by the Company and approved by the Bank;

(i) share with the Bank seasonal marketing plans, or such portions thereof as are reasonably necessary for the purpose of allowing the Bank to comply with its obligations hereunder (including for clarity, its obligations in Schedule 7.3);

(j) ensure the compliance of all Retail Merchants, other than the Company, with the obligations of the Company under the provisions hereof.

4.3 Certain Responsibilities of the Bank. The Bank shall provide (***) either itself, through Affiliates, or through Service Providers approved, where applicable, in accordance with this Agreement, the services, materials and personnel necessary to operate the Program and to maintain, administer, service and collect on the Company Credit Cards issued pursuant hereto, in accordance with this Agreement and the Operating Procedures and any Marketing Plan in effect from time to time. In furtherance of the foregoing, in addition to its other obligations set forth elsewhere in this Agreement, the Bank agrees that during the Term and continuing until the end of the Termination Period it shall:

(a) cooperate in the development and administration of the Marketing Plan, implement its obligations under the Marketing Plan in Bank channels, solicit new Accounts in all channels (without limiting the Company’s obligations in Section 4.2(a)), including all solicitation provided for in the Marketing Plan;

(b) review and process Prequalification Requests and Applications in accordance herewith and in accordance with the Risk Management Policies and the Operating Procedures;

(c) prepare, process and deliver an adequate supply of Bank Program Materials in accordance with the terms of this Agreement;
(d) comply (and cause its applicable Affiliates to comply) with the terms of the Credit Card Agreements, the Program Privacy Policy and all Cardholder opt-ins and opt-outs;

(e) implement pre-screened Application programs in accordance with the Marketing Plans;

(f) maintain call centers and call center personnel necessary and adequate to respond to inquiries from Cardholders, including in accordance with Section 4.11(a) and Section and Schedule 7.3, and with operating hours for the call centers related to the program as set forth in Schedule 7.3; address billing related claims and adjustments (including by making finance charge and late fee reversals), establish new Accounts, authorize transactions, and assign, increase and decrease credit lines, all in accordance with the terms of this Agreement, the Risk Management Policies and the Operating Procedures;

(g) authorize or deny requests for authorization of transactions initiated with Company Credit Cards in accordance with this Agreement and the Risk Management Policies, including through real-time, immediate Application decisioning and extension of credit to qualifying Persons for real-time purchases by such Persons;

(h) extend credit on newly originated and existing Accounts and fund Cardholder Indebtedness in accordance with this Agreement and the Risk Management Policies;

(i) undertake required credit bureau reporting;

(j) implement in a timely manner the aspects of the Integration Plan for which the Bank is responsible;

(k) process authorized Transactions, remittances from Cardholders and credit balance refunds in accordance with the Operating Procedures and Applicable Law;

(l) maintain adequate Systems, and other equipment and facilities necessary or appropriate for carrying out the Bank’s obligations under the Program, including satisfaction of the online and POS response time requirements, System uptime requirements and System maintenance procedures (and limitation thereon) specified in this Agreement;

(m) provide training of personnel of the Company and its Affiliates regarding the Program, including by (A) promptly review and provide feedback on training materials prepared by the Company and approved by the Bank’s Manager; and (B) conducting direct training sessions for Company management and sales training personnel on an annual basis or more frequently as requested by the Company;

(n) ensure that the Bank Program Materials, the Solicitation Materials and any other documentation used in connection with the Program, including, in each case, the design thereof, comply with the requirements of Applicable Law except with respect to any aspect thereof that has been determined at the direction of the Strategic Operating Committee based on the Company’s exercise of its right to break a deadlock with respect to an Unapproved Matter based on the status of that Unapproved Matter as a Company Matter;
(o) provide all necessary support services to ensure the Program is fully operational in accordance with Applicable Law and the requirements of this Agreement;

(p) provide field support, including activities (including associate training) related to Launch, new store, and special events and sharing best practices on in-store execution;

(q) handle collection and recovery efforts in respect of Accounts and the servicing of Accounts in accordance with the Bank’s policies and practices applicable to the Program from time to time, the terms of this Agreement, including the Program Objectives, and Applicable Law;

(r) provide personnel dedicated exclusively to the Program to the extent set forth in Section 3.3 and provide other customer-facing personnel to the extent set forth in Section 7.2(d); and

(s) actively participate in the Company’s peak and holiday sales planning, monitoring and support meetings.

4.4 Ownership of Accounts; Account Documentation.

(a) Except to the extent of the Company’s ownership of the Company Licensed Marks and its option to purchase the Program Assets under Section 17.2 hereof, and without limiting the Company’s right to review and approve the form and content of the Credit Cards and Bank Program Materials pursuant to Section 4.5 hereof, the Bank shall be the sole and exclusive owner of all Accounts and Account Documentation and shall have all rights, powers, and privileges with respect thereto as such owner; provided that, the Bank shall exercise such rights consistent with the provisions of this Agreement and Applicable Law. All purchases of goods and services in connection with the Accounts and Cardholder Indebtedness shall create the relationship of debtor and creditor between the relevant Cardholder and the Bank, respectively. The Company acknowledges and agrees that (i) it has no right, title or interest (except for its right, title and interest in the Company Licensed Marks and the option to purchase the Program Assets under Section 17.2) in or to, any of the Accounts or Account Documentation or any proceeds of the foregoing, and (ii) the Bank extends credit directly to Cardholders. As between the Company and the Bank, subject to the Bank’s chargeback rights in Sections 8.5 and 8.6, all credit losses, including fraud, credit, deceased, bankruptcy, or unauthorized transactions on Accounts, other than losses from Employee Fraud of the Company’s employees, shall be borne solely by the Bank without recourse to the Company.

(b) Except as expressly provided herein, the Bank shall be entitled to (i) receive all payments made by Cardholders on Accounts, (ii) retain for its account all Cardholder Indebtedness and all other fees and income authorized by the Credit Card Agreements and collected by the Bank with respect to the Accounts and Cardholder Indebtedness, and (iii) retain for its account all income from selling Approved Ancillary Products as shall have been authorized by Section 5.5(b) or approved by the Strategic Operating Committee in connection with the approval of the offering of such Approved Ancillary Products. For the avoidance of doubt, the Company shall retain all revenues it receives from all Inserts (other than any Inserts promoting the Company Credit Cards or Approved Ancillary Products that the Company may permit to be produced and distributed in accordance with the Marketing Plan).
(c) The Bank shall fund all Cardholder Indebtedness on the Accounts.

(d) The Bank shall have the exclusive right to effect collection of Cardholder Indebtedness and shall notify Cardholders to make payment directly to it in accordance with its instructions. The Company grants to the Bank a limited power of attorney (coupled with an interest) to sign and endorse the Company’s name upon any form of payment that may have been issued in the Company’s name in respect of any Account. The Bank shall, and shall ensure that any third party collectors, minimize the usage of the Company Licensed Marks or other names or marks of the Company in any collections efforts.

(e) Notwithstanding the foregoing, the Company shall, on behalf of the Bank, accept payments made with respect to an Account in a physical store as provided in Section 8.3.

4.5 Branding of Accounts/Company Credit Cards/Credit Card Documentation/Solicitation Materials

(a) Bank Program Materials.

(i) The Bank shall be responsible for designing (subject to the Company’s design requirements to the extent not inconsistent with requirements imposed by the Specifications Book and format requirements imposed by Bank System limitations applicable uniformly to the Bank’s and its Affiliates’ partnership credit card portfolios), developing, preparing, producing and delivering, (***) all Credit Card Documentation, the Program Privacy Policy, all servicing communications and all required legal disclosures used in connection with the Program (collectively, the “Bank Program Materials”). Subject to Applicable Law, (1) the Company shall have final approval rights over (***) and as between the parties, shall own all rights in same.

(ii) The Bank shall replace any lost, stolen or mutilated Credit Cards at the Cardholder’s request.

(iii) At the Company’s request the Bank shall, to the extent permitted by Applicable Law and consistent with the Bank’s card issuance policies and the Specifications Book, each applied consistently to the Bank’s and its Affiliates’ private label card programs, reissue a Company Credit Card to each Cardholder meeting criteria specified in the Marketing Plan or determined by the Strategic Operating Committee (which may include shopping behavior, customer profiles or geographic location), in each case in replacement of such Cardholder’s then-existing Credit Card. Notwithstanding the provisions of Section (***)

(iv) In the event the Parties launch a Co-Branded Credit Card, the Bank shall, at the Company’s request, provide Co-Branded Credit Cards that are in compliance with the specifications developed by EMVCo for the secure acceptance and processing of Credit Cards; provided that, if the specifications developed by EMVCo become prevalent features in Comparable Partner Programs in the aggregate, the Bank shall incorporate such specifications at the request of the Company in the Company Credit Cards even in absence of launch of a Co-Branded Credit Card; and provided, further, that the Company shall (***)

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Subject to Section 4.5(d) and, after the Effective Date, Section 7.2(e), the Bank shall (A) provide the Company’s Manager an opportunity to review the design, format, marketing content and other content specific to the Program and the look and feel of all Bank Program Materials and (***) provided, further, that following the Effective Date, with respect to Bank Program Materials other than those of a type referred to in Schedule 4.5(a)(v), the Bank’s obligation to permit review of Bank Program Materials other than those of a type referred to in Schedule 4.5(a)(v) shall be limited to (***) provided, however, that with respect to Bank Program Materials proposed to be used commencing on the Effective Date, the Bank shall use commercially reasonable efforts to provide proposed copies thereof within(***) provided, further, however, that with respect to servicing communications, the Bank shall use its reasonable best efforts to provide the (***) Any disagreements with respect to format, design or content of the Bank Program Materials subject to the Company’s approval shall be resolved in accordance with Section 3.2.

(b) Company Program Materials.

(i) Except as otherwise provided in the Marketing Plan, the Company shall be responsible for designing, developing, preparing and producing (subject to the Bank’s rights with respect thereto pursuant to Section 3.2(f), and subject to the requirements imposed by the Specifications Book and format requirements imposed by Bank System limitations applicable uniformly to the Bank’s Comparable Partner Programs), and for the systemic transmission of data to support the delivery to the Bank of, all Company Inserts, Solicitation Materials and advertising copy and scripts (collectively the “Company Program Materials”); provided that, the Bank shall be responsible for ensuring that all Company Program Materials comply with Applicable Law except with respect to any aspect thereof that has been determined at the direction of the Strategic Operating Committee based on Company’s exercise of its right to break a deadlock with respect to an Unapproved Matter based on the status of that Unapproved Matter as a Company Matter.

(ii) Subject to Section 4.5(d), the Company shall provide the Bank’s Manager an opportunity to review (and, to the extent provided in clause (i) above, approve) all Company Program Materials, including for compliance with Applicable Law, and the Bank’s Manager shall review such Company Program Materials in a timely manner (but in no event later than five (5) Business Days from receipt by the Bank) and taking into account the Company’s production calendar; provided, however, that the Bank’s Manager shall have not less than thirty (30) Business Days to review Company Program Materials to be used on the Effective Date. Any disagreements with respect to the format, design or content of the Company Program Materials shall be resolved in accordance with Section 3.2.
In the event that pursuant to the review process for Bank Program Materials and Company Program Materials, as applicable, the Bank’s Manager or the Company’s Manager identifies any changes to the Bank Program Materials or Company Program Materials, the other Manager shall either cause such changes to be made to such Bank Program Materials or Company Program Materials, as applicable, or, if the Managers are unable to resolve any dispute with regard to such Bank Program Materials or Company Program Materials, either Manager may refer any disagreement regarding such proposed changes to the dispute resolution processes of Section 3.2.

Prior to the Effective Date, the Company’s Manager and the Bank’s Manager shall mutually approve an advertising guide with respect to certain frequently used Bank Program Materials or Company Program Materials (including customer service communications templates) agreed to by the Managers (as amended from time to time by mutual agreement of the Managers, the “Advertising Guide”). The Company and the Bank agree that all Bank Program Materials or Company Program Materials addressed in the Advertising Guide and produced by the Company or the Bank, as applicable, shall conform with the requirements of the Advertising Guide, except as otherwise approved by the Bank or the Company. The Advertising Guide will establish the parameters of when such designated Company Program Materials or Bank Program Materials can be utilized. Once the Bank approves uses of Company Program Materials or Bank Program Materials, including as set forth in the Advertising Guide, through the end of the Term, they may be re-used by the Company for (****) provided that the Company does not change the Company Program Materials or Bank Program Materials in any way, including the purpose for which the Company Program Materials or Bank Program Materials are used, and subject to changes in Applicable Law that, in the Bank’s sole discretion, would necessitate additional review and approval by the Bank, it being understood that the Bank shall notify the Company of any changes in Applicable Law that would necessitate such additional review and approvals. In accordance with the Advertising Guide and the preceding sentence, the Company or the Bank shall be entitled to disseminate Company Program Materials or Bank Program Materials that are addressed in and comply with the Advertising Guide (****). The Advertising Guide will be (****) and Company Program Materials or Bank Program Materials shall be modified to conform with any changes thereto.

4.6 Underwriting and Risk Management

(a) The Bank shall accept or reject any Application based solely upon application of the credit criteria contained in the then-current Risk Management Policies and in accordance with Applicable Law and the definition of “Program Eligible Applicants”. Upon satisfaction by an Applicant of the applicable credit criteria set forth in the Risk Management Policies, Applicable Law and the definition of “Program Eligible Applicant”, the Bank shall promptly establish an Account for such Applicant. (****).

(b) The Bank shall operate the Program in compliance with the Risk Management Policies and Collections Policies, as such Risk Management Policies and Collections Policies may be amended from time to time in accordance with the provisions of this Agreement. The material elements of the Risk Management Policies to be in effect as of the Effective Date are attached hereto as Schedule 4.6(b). (****) In connection with any proposed change to the Risk Management Policies, unless otherwise agreed by the Company, the Bank shall deliver to the Company all of the following information relating to each such proposed change (****):

(****)
(c) The Bank shall not implement or require the Company to implement any significant change to the Risk Management Policies (****); provided, however, that the Bank may in any event implement a change required by Applicable Law at any time such Applicable Law becomes effective (or in the case of any Applicable Law already in effect, at any time such Applicable Law is determined to be required to be applied to the Bank or the Program). The Bank shall notify the Company in writing at least (****) to a change to the Risk Management Policies required by Applicable Law, unless the Bank is required by Applicable Law to implement such change in less than (****) the date on which the Bank first becomes aware that such a change will likely be required, in which case the Bank shall provide the Company with notice as soon as practicable following the date the Bank becomes aware such change will likely be so required.

(d) (****) the Bank shall comply with the requirements of (****) with respect to the (****) referred to in such Schedule(****).

(e) The Bank shall perform all commercially reasonable functions in accordance with the Risk Management Policies to minimize fraud in the Program due to lost, stolen or counterfeit cards and fraudulent applications. (****)

(f) The Bank shall consider and propose from time to time (****) (****).

(g) The Bank shall handle all stages of collections of Accounts in accordance with the Collections Policies. (****):

(h) (****)

4.7 Cardholder Terms.

(a) The terms and conditions of the Accounts set forth on Schedule 4.7(a) originated after the Effective Date shall be, and such terms and conditions of the Purchased Accounts shall be amended by the Bank effective as of the Systems Conversion Date (or as soon thereafter as is practicable in accordance with Applicable Law) to be, the terms and conditions set forth on Schedule 4.7(a).

(b) (****)
(c) **Payment Plans.** Commencing on the Effective Date and, subject to changes thereto as may be approved by the Relevant Decision Maker pursuant to Article III, throughout the Term and Termination Period, the Bank shall, at its own expense, offer the “Payment Plans” as provided in Schedule 4.7(c) (except for any merchant discount to be funded by the Company pursuant to this section and without limiting Company’s obligations in respect of costs of Solicitation Materials produced by the Company). The Bank shall notify the Company in writing at least thirty (30) days prior to a notification to Cardholders of any change to features, terms or conditions required by Applicable Law, unless the Bank is required by Applicable Law to implement such change in less than thirty (30) days from the date on which the Bank first becomes aware that such a change will likely be required, in which case the Bank shall provide the Company with notice as soon as practicable following the date the Bank becomes aware such change will likely be so required. The Company and the Bank may each propose that one or more new Payment Plans not listed in Schedule 4.7(c) shall be incorporated into the Program, which proposals shall be subject to the approval of the Strategic Operating Committee.

4.8 **Program Website; Mobile Apps.**

(a) **Development of Program Website.** The Bank shall develop and maintain (and upgrade and enhance, to include any new technology or features that are used among Comparable Partner Programs), at the Bank’s expense, a Competitive Company-branded website, which shall include a mobile-optimized website for access through mobile (including smartphone and tablet) devices (and mobile applications), providing internet services for Cardholders and potential Cardholders with the look and feel consistent with the Company’s website subject to the Specifications Book, which shall be operational commencing with the Effective Date (the foregoing, the “**Program Website**”). All written marketing content of the Program Website (other than content thereon constituting copies of or links to Bank Program Materials) shall be deemed Solicitation Materials subject to review and approval of the Marketing Committee in accordance with the provisions of Section 4.5. After the Effective Date, the Bank shall cause the Program Website to be accessed primarily by means of links from the Company’s website or links displayed by Internet search engines, as described in the immediately following sentence, to be inaccessible from Bank-branded websites, and to contain or otherwise be associated with only such material and links as shall be approved by the Marketing Committee from time to time. For clarity, Bank communications with Cardholders regarding billing, payment or servicing matters may include links to the Program Website in furtherance of such matters. The Company’s website will provide links to the Program Website on: (i) its home page, (ii) its check-out page, and (iii) such other pages of its website as the Marketing Committee shall determine from time to time. The Program Website shall also include links back to the Company’s website on the Program Website home page and such other pages as the Marketing Committee shall determine from time to time. The Program Website shall include the following functions, any other features and functionality as are made available by the Bank or its Affiliates’ on the program websites of any other private label or private label and co-branded credit card programs (but with respect to private label and co-branded credit card programs, only those features and functionality relevant to the private label component thereof) for which the Bank is issuer or servicer (which features and functionality shall be provided to the Company as soon as reasonably practicable after becoming available to such other programs, unless otherwise elected by the Company), and such other functions as may be approved by the Marketing Committee from time to time (the Program Website and such functionality, collectively, the “**Internet Services**”):
Applications. The Program Website shall permit prospective Applicants to access and submit a Prequalification Request, to access an Application upon valid determination in accordance with the terms hereof of the prospective Applicant’s status as a Program Eligible Applicant, to complete and submit the Application online and receive real-time approvals of such Application in accordance with the Risk Management Policies and Operating Procedures and shall operate such that once an Application is approved online, the related Account shall be immediately available for use online and in all Company Channels. Prequalification Requests submitted online that are submitted by prospective Applicants that the Bank validly determines in accordance with the terms hereof do not meet the criteria of Program Eligible Applicants shall be made available in real time to the Company for submission to a Secondary Program provider. In the case the Bank validly determines in accordance with the terms hereof that a Prequalification Request submitted online was submitted by a Disqualified Shopper, then the Bank will not deliver a real-time decline but shall instead notify such Disqualified Shopper that there are no prequalified offers available and the Bank shall subsequently issue an adverse action letter to such Shopper. Applications submitted online (A) that are declined in accordance with the Risk Management Policies and Operating Procedures shall be made available in real-time to the Company and, subject to Section 2.2(b), any Second-Look Program providers, and (B) that are otherwise not approved in accordance with the Risk Management Policies will not receive real-time declines but shall instead be notified that their Application requires further review. The Program Website shall only make proactive offers of credit to potential Cardholders if such potential Cardholders are Program Eligible Applicants that have already been pre-approved in accordance with the Risk Management Policies through a pre-screening process; provided that, the Program Website shall only make proactive offers of credit at such times and in such manner and through use of such Solicitation Materials as the Company has previously approved in writing.

Cardholder Customer Service. From and after the Effective Date, the Program Website shall provide to Cardholders at least the functionality described in Schedule 4.8(a)(ii)(A). The Bank shall use commercially reasonable efforts to ensure the Program Website provides functionality that is not listed on Schedule 4.8(a)(ii)(A) to the extent such functionality was provided through websites of the Company and its Affiliates prior to the date hereof; provided, that the Company notifies the Bank of any such additional functionality and provides the Bank with reasonable time after such notice to make such functionality available on the Program Website; and provided, further, that Launch shall not be delayed on the basis of the lack of functionality not listed on Schedule 4.8(a)(ii)(A). Within a commercially reasonable time and no later than one year after the Company’s request, the Program Website shall provide to Cardholders the enhanced functionality described on Schedule 4.8(a)(ii)(B).

Performance Standards. The Bank shall provide the Internet Services free, in all material respects, from programming errors and defects in workmanship and materials that impact functionality, accuracy or security of the Internet Services or the ability of Cardholders to use the Internet Services and in accordance with Industry Standards. The Bank shall conform the Program Website to the performance capabilities, characteristics, functions and other standards generally applicable to leading private label Credit Card program websites in addition to those expressly required under this Agreement, and the Internet Services shall be consistent with the Comparable Partner Programs.
Customer Privacy. The Bank shall ensure that a hyperlink to the Program Privacy Policy is clearly and prominently posted on the top or bottom of every page of the Program Website.

Server Condition. The Bank shall host the Program Website on a server located in the United States that is in the sole control of the Bank and/or its Affiliates and shall cause the Program Website to (i) be in good operating condition, (ii) contain sufficient operating capability to allow access to the Program Website in compliance with Schedule 7.3, and (iii) operate within the servicing standards set forth in Schedule 7.3.

Program Website Maintenance. During the Term of this Agreement and continuing until the end of the Termination Period, the Bank shall:

(i) ensure that the Program Website is at all times solely under the control of the Bank and/or its Affiliates (subject to the Company’s rights under this Agreement) and is hosted solely on a server described in Section 4.8(d) and shall notify the Company in advance in writing if it intends to change the server hosting the Program Website; and

(ii) ensure that the Bank or its Affiliates at all times owns all Systems used in connection with the Internet Services, or has the right to same; and ensure that the Internet Services and such Systems and Bank-owned content and the operation thereof do not infringe or violate any Intellectual Property or other rights of any third party.

Mobile Access to Program Website. The Bank shall use commercially reasonable efforts to cause the Program Website and all Internet Services to be fully accessible from all industry-standard internet browsers accessed on mobile devices, smartphones and tablets (including those run on iOS or Android software) and to (i) be in good operating condition, (ii) contain sufficient operating capability to allow access to such Program Website as required by Schedule 7.3.

Sales Taxes. The Company will pay when due any sales or similar taxes due and payable by it relating to the sale of Goods or Services financed on Accounts. The Parties agree that recoveries of sales or similar taxes that were imposed on the sale of Goods or Services attributable to any Account that the Bank determines to be non-collectable during the Term of this Agreement (***)

Value Propositions; Loyalty Programs.

General. Subject to the terms and conditions hereof, the Company shall have sole discretion as to whether to offer a Value Proposition to Cardholders. The Company shall develop the design, format, and terms and conditions of the Value Proposition in consultation with the Bank’s Manager and as approved by the Strategic Operating Committee; provided that, without limitation of the foregoing, the Bank’s Manager shall have a minimum of thirty (30) days to review and comment on all such elements of the Value Proposition. The Company shall have ultimate decision-making authority with respect to the Value Proposition and may make any modifications thereto as the Company may determine from time to time. For the avoidance of doubt, the Bank may not make any changes to any element of a Value Proposition without the Company’s approval; provided that, the Company shall be responsible for ensuring, at its own cost, that the Value Proposition complies with Applicable Law. Subject to Article XVIII, the Bank shall bear no liabilities arising under the Value Proposition.
(b) **Value Proposition Support.** The Bank shall be responsible for accounting and servicing of all rewards under other Value Propositions associated with the Program, as well as value proposition testing (and reporting the results of such testing to the Company) as may be reasonably requested by the Company from time to time; and in the event that the Company makes modifications to the Value Propositions, the Bank shall also provide, at its sole cost and expense, functionality to support such modifications; provided, however, that such accounting servicing and other such modifications shall require functionality that is compatible with the Bank’s then existing capabilities available to other clients of the Bank.

(c) **Other Programs.** For the avoidance of doubt, the Company and its Affiliates shall be free to offer, establish, maintain, modify or participate in any loyalty or rewards program of any type, whether or not related to or integrated with Company Credit Cards.

(****)

4.11 **Program Competitiveness.**

(a) **Customer Experience.** The Bank shall ensure that the Program’s features and functionality shall be Competitive. In furtherance of the foregoing, the Bank shall use commercially reasonable efforts to ensure that the Bank and its Affiliates perform their obligations hereunder at all times in such a way as to ensure a level of customer service to Cardholders and a consumer experience to Applicants and Cardholders that is consistent with the Company’s brand. The Bank represents that the SLAs set forth on Schedule 7.3 are, as of the date of this Agreement, competitive in the aggregate with the customer service level standards provided to the Comparable Partner Programs as of such date. Without limiting the foregoing, the Bank shall perform its obligations hereunder (x) with no less than a reasonable degree of care and diligence, and (y) with no less care and diligence than that degree of care and diligence employed by the Bank and its Affiliates with respect to its obligations relating to the Comparable Partner Programs. The Bank and its Affiliates and Service Providers shall perform their respective service obligations hereunder at all times in a way as to not disparage or embarrass the Company or its name or brands.

(b) **Marketplace Developments.** Not less than (****) and at such other times as the Company may request, the (****). If the Company reasonably believes that a feature or capability so available in the marketplace would enhance Program functionality or the Cardholder experience, (****).
ARTICLE V
MARKETING

5.1 Promotion of Program. In accordance with the Marketing Plan, the Company and the Bank shall cooperate with each other and actively support and promote the Program to both existing and potential Cardholders.

5.2 Marketing Commitment.

(a) (***) (***) (***), the Bank shall credit into a marketing fund maintained by the Bank an amount equal(***).

(b) The Marketing Fund shall be used, in accordance with the Marketing Plan, by the Company and its Affiliates, and to the extent approved by the Marketing Committee, the Bank, and its Affiliates, to cover the cost (****) of such marketing of the Program as the Company and its Affiliates shall elect from time to time, which marketing may include the following:

(***)

(c) The Company shall deliver to the Bank from time to time, an invoice reflecting amounts expended by the Company and eligible for reimbursement through the Marketing Fund. The Bank shall reimburse the Company for such invoiced expenses subject to the limits set forth in Section 5.2(d).

(d) (***)

(e) For the avoidance of doubt, the Marketing Commitment shall not be used to fund the following activities, which shall be funded by the Bank or the Company, as stated below.

(***)

5.3 Communications with Cardholders.

(a) Company Inserts. The Company and its Affiliates shall have the exclusive right to communicate with Cardholders, except for the Bank’s servicing messages and any message required by Applicable Law, through use of inserts, onserts, fillers and bangtails (which shall be included on all billing envelopes) (collectively, “Inserts”), including Inserts selectively targeted for particular segments of Cardholders, in any and all Billing Statements (including electronic Billing Statements) and envelopes, subject to production requirements contained in the Operating Procedures, the Bank’s System limitations, the Specifications Book, and Applicable Law. (***) The Bank shall provide the Company with as much advance notice as is reasonably practicable regarding the Bank’s intent to use Inserts for any of such messages by the Bank. If the insertion of Inserts in particular Billing Statements would increase the postage costs for such Billing Statements, the Company agrees to either pay for the incremental postage cost (provided in proportion to the weight of such Inserts relative to the weight of all inserts in such Billing Statements) or prioritize the use of Inserts to avoid postage cost over-runs. The Bank’s Manager shall provide the Company with as much advance notice as reasonably practicable regarding the inclusion of a particular Insert in particular Billing Statements. The Company shall be entitled to deliver Insert materials to the Bank no later than fourteen (14) Business Days prior to the Bank’s mailing date for inclusion in a mailing. The Company shall retain all revenues it receives from all Inserts (other than any Inserts promoting the Company Credit Cards or Approved Ancillary Products that the Company may permit to be produced and distributed in accordance with the Marketing Plan). For the avoidance of doubt, other than with respect to Inserts required by the Bank for servicing or otherwise by Bank policies or Applicable Law, the Bank shall have no right to communicate with Cardholders via Inserts without the prior approval of the Company.
Billing Statement Messages. Except for the Bank’s servicing messages and as otherwise required by Applicable Law, the Company and its Affiliates shall have the exclusive right to use Billing Statement (including electronic Billing Statement) messages and Billing Statement envelope and return envelope (or electronic mail) messages in each Billing Cycle to communicate with Cardholders, subject to production requirements contained in the Operating Procedures, the Bank’s System limitations, the Specifications Book, and Applicable Law; (****). Notwithstanding the foregoing, any Billing Statement messages required by Applicable Law and any servicing messages to be included as Billing Statement messages shall take precedence over the Company’s and its Affiliates’ messages. The Bank shall provide the Company with as much advance notice as reasonably practicable regarding the Bank’s intent to use the Billing Statement for any of such messages by the Bank. The Company shall be entitled to deliver Billing Statement materials to the Bank no later than five (5) Business Days prior to the Bank’s mailing date for inclusion in a mailing. The Bank shall, at no cost to the Company, provide the ability to deliver customized Billing Statement messages (in paper and electronic Billing Statements) to Cardholders, including differentiated messages to Cardholders in the Billing Statements delivered in any single Billing Cycle on the basis of criteria such as shopping behavior, customer profiles or geographic location.

5.4 Additional Marketing Support.

(a) Upon the request of the Company from time to time, the Bank shall perform the following marketing functions (****) the Company shall be responsible for all out-of-pocket expenses in connection with the following:

(****)

(b) Following the Effective Date, the Bank shall, (****).
5.5 Approved Ancillary Products.

(a) Except for the Approved Ancillary Products and the Company Credit Cards, the Bank and its Affiliates shall not offer (except as directed by the Company) any goods or services to Cardholders or through the Program. From time to time, the Bank may propose to solicit Cardholders for products or services other than the foregoing. If the Company agrees to permit such solicitation, such solicitation shall only be permitted on the terms (including terms relating to the compensation of the Company with respect thereto) agreed by the Company.

(b) From and after the Effective Date, the Bank shall be permitted to offer its proprietary debt cancellation feature to Cardholders as an Approved Ancillary Product. The Bank acknowledges and agrees that the issuer of the Secondary Program or any Second-Look Program may offer its own debt cancellation product solely to its own customers and that such product may be similar or identical to the Bank’s product in its terms, features, positioning and appearance.

5.6 Marketing Plan.

(a) Promptly following the date hereof, the Company shall develop, in consultation with Bank’s Manager, a proposed Marketing Plan for the period from the Effective Date through the end of the first Fiscal Year of the Program. Such proposed Marketing Plan, with any modifications thereto approved by the Parties, shall be submitted for approval by the Marketing Committee in accordance with Article III prior to the Effective Date, and the proposed Marketing Plan so submitted, with any modifications thereto approved by the Marketing Committee pursuant to Article III, shall be the “Marketing Plan” for the first Fiscal Year of the Program. For each Fiscal Year thereafter, the Bank shall develop, in consultation with the Company’s Manager (and such other individuals designated by the Company), a proposed Marketing Plan, which (together with any modifications thereto approved by the Parties) shall be submitted for approval by the Marketing Committee on or before the ninetieth (90th) day prior to the end of the Fiscal Year prior to the Fiscal Year covered by the Marketing Plan, and such proposed Marketing Plan so submitted, with any modifications thereto approved by the Marketing Committee pursuant to Article III, shall be the “Marketing Plan” for the Fiscal Year covered thereby.

(b) Each Marketing Plan shall outline, for each Company Channel, all programs, and shall include at least the following information for each program:

  (****)

(c) (****)

(d) (****)

(e) Changes to the Marketing Plan may be proposed by either Party and considered for approval or disapproval by the Marketing Committee pursuant to the provisions of Article III.

(f) (****)
ARTICLE VI

CARDHOLDER INFORMATION

6.1 Customer Information.

(a) All sharing, use and disclosure of Cardholder Data and Shopper Data under this Agreement shall be subject to Applicable Law, the Program Privacy Policy, and the provisions of this Article VI. The Parties acknowledge that the same or similar information may be contained in the Cardholder Data and the Shopper Data, and a Party’s right to use or disclose Cardholder Data or Shopper Data shall be without regard to any additional restrictions in the other definitions. By way of example and not limitation, if a Cardholder makes a purchase of Goods and Services with a Company Credit Card, the Company may use and disclose the Shopper Data relating to that purchase for all purposes permitted with respect to Shopper Data hereunder, notwithstanding that such information may also constitute Cardholder Data, and absent such classification as Shopper Data, would be subject to restrictions governing Cardholder Data or Account Documentation. Notwithstanding anything to the contrary in this Agreement, the fact that any information constituting Shopper Data is the same as information constituting Cardholder Data shall not limit any of the Company’s rights in and to, or impose any obligations in respect of, the Shopper Data as set forth in Section 6.3.

(b) Each Party agrees that any unauthorized use or disclosure of Cardholder Data by either Party or Shopper Data by the Bank or Shopper Data that is identical to Cardholder Data and that was provided by Applicants or Cardholders in connection with the Program ("Program Generated Shopper Data") would cause immediate and irreparable harm for which money damages would not constitute an adequate remedy. In that event, the Parties agree that injunctive relief shall be warranted in addition to any other remedies a party may have.

(c) The Company and the Bank shall each establish and maintain appropriate administrative, technical and physical safeguards to protect the security, confidentiality and integrity of the Cardholder Data, the Bank to the extent it possesses Shopper Data, and the Company to the extent it possesses Program Generated Shopper Data, in each case, designed to meet all requirements of Applicable Law, including, at a minimum, maintenance of an information security program that is designed to: (i) ensure the security and confidentiality of the Cardholder Data, and, with respect to the Bank to the extent it possesses Shopper Data, and the Company to the extent it possesses Program Generated Shopper Data and, with respect to the Bank to the extent it possesses Shopper Data, and the Company to the extent it possesses Program Generated Shopper Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the Cardholder Data and, with respect to the Bank to the extent it possesses Program Generated Shopper Data; (iii) protect against unauthorized access to or modification, destruction, disclosure or use of the Cardholder Data and, with respect to the Bank to the extent it possesses Shopper Data, and the Company to the extent it possesses Program Generated Shopper Data, and, with respect to the Bank to the extent it possesses Shopper Data, and the Company to the extent it possesses Program Generated Shopper Data. Additionally, such security measures shall meet current Industry Standards and shall be at least as protective as those used by each Party to protect its other confidential customer information but in no event less than a reasonable standard of care. The Parties will ensure that any third party to whom it transfers or discloses Cardholder Data or, with respect to the Bank to the extent it possesses Shopper Data, or the Company to the extent it possesses Program Generated Shopper Data, signs a written contract with the party transferring or disclosing such data to the third party in which such third party agrees to substantively the same privacy and security provisions as those in this Agreement and agrees that the owner of such data is a third-party beneficiary thereof for the purposes of protecting such data. Information transferred by one Party on behalf or at the direction of the other will be considered information transferred by the Party requesting or directing the transfer. The Bank shall treat Shopper Data and the Company shall treat Program Generated Shopper Data as if it were its own “customer information” or “personally identifiable information” collected by the Bank for purposes of Applicable Law or Industry Standards, and any administrative, technical and physical safeguards, and the provisions of this Section 6.1, applicable to the Cardholder Data shall be similarly applied by the Bank to the Shopper Data and the Company to Program Generated Shopper Data.
Each Party shall, subject to Applicable Law, promptly provide to the other Party a complete list of any Persons who have requested to be on the respective Party’s “do not call” and/or “do not mail” lists (or other similar lists). Upon receipt of such lists, the Bank shall promptly comply with such requests with respect to its solicitation of Company Credit Cards and Approved Ancillary Products, and the Company shall promptly comply with such requests with respect to its telemarketing and other solicitations with respect to the Program.

6.2 Cardholder Data.

(a) As among the Parties hereto, the Cardholder Data shall be the property of and exclusively owned by the Bank. The Company acknowledges and agrees that, subject to its rights pursuant to Section 17.2, it has no proprietary interest in the Cardholder Data.

(b) The Program Privacy Policy applicable to the Cardholder Data is attached as Schedule 6.2(b) hereto. Any modifications to the Program Privacy Policy shall be approved by the Strategic Operating Committee, provided that, the Program Privacy Policy shall comply with Applicable Law at all times and shall not provide for any reduction in the access to, or disclosure or use of Cardholder Data by the Company and its Affiliates as compared with the Program Privacy Policy in effect on the Effective Date.

(c) The Bank may use the Cardholder Data in compliance with Applicable Law and the Program Privacy Policy (****).

(d) The Bank shall not, directly or indirectly, sell, transfer, or rent (or permit others to do same), the Cardholder Data, and shall not, directly or indirectly, disclose the Cardholder Data, except for disclosure in compliance with Applicable Law and the Program Privacy Policy solely:

(****)

(e) From and after the Effective Date, subject to Applicable Law and the Program Privacy Policy, the Bank shall provide the Company with unlimited access, through the Bank’s data analysts, to all Cardholder Data obtained by the Bank in connection with the Program, which includes at least the items listed below as set forth in greater detail on Schedule 6.2(e). In addition, subject to Applicable Law, and as reasonably requested by the Company, the Bank shall provide the Company with an updated copy of the master file or such elements thereof as may be requested by the Company. (****)
The Company may disclose the Cardholder Data in compliance with Applicable Law and the Program Privacy Policy solely:

(i) to its Service Providers authorized in accordance with this Agreement solely on a “need to know” basis in connection with a permitted use of the Cardholder Data pursuant to Section 6.2(g)(****)

(ii) to its Affiliates (including, for this purpose, the Zale Group) and its and their Representatives on a “need to know” basis in connection with a permitted use of the Cardholder Data pursuant to Section 6.2(g)(****)

(iii) to any Governmental Authority with authority over the Company or its Affiliates, or their respective Service Providers (****)

(iv) as otherwise permitted by Applicable Law and the Program Privacy Policy; (***)

With respect to the sharing, use and disclosure of the Cardholder Data following the termination of this Agreement:

(i) the rights and obligations of the Parties under this Section 6.2 shall continue through any Termination Period and, if applicable, any interim servicing period pursuant to Section 17.2(h);

(ii) if the Company exercises its purchase rights under Section 17.2, the Bank shall transfer its right, title and interest in the Cardholder Data to the Company or its Nominated Purchaser as part of such transaction, and the Bank’s right to use and disclose the Cardholder Data shall terminate upon the termination of the Termination Period and, promptly following such termination of the Termination Period, the Bank shall return or destroy all Cardholder Data and shall certify such return or destruction to the Company upon request; provided, however, that, if the Bank is obligated to retain any Cardholder Data pursuant to requirements of Applicable Law or the Bank’s disaster recovery plan, or internal retention policies, the Bank shall maintain the strict confidentiality and security of such Cardholder Data and shall not use such Cardholder Data for any other purpose; provided further, that if the Bank is performing interim servicing for the Nominated Purchaser pursuant to Section 17.2(h), the Bank may continue to use Cardholder Data to the extent necessary to perform such servicing; and
if the Company provides notice that it shall not exercise its purchase rights under Section 17.2, or otherwise fails to exercise its option within the time period specified in Section 17.2, the Company’s right to use and disclose the Cardholder Data shall terminate, and the restrictions hereunder on the Bank’s use and disclosure of Cardholder Data shall terminate, except that in no event may the Bank or any of its Affiliates disclose Cardholder Data to any retailer or use Cardholder Data in any way for the benefit of any retailer or retail credit card program or in any manner inconsistent with the limitations on the Bank’s rights to dispose of the Program Assets pursuant to Section 17.4. The foregoing provisions shall in no way be construed as to extend the Bank’s rights to use the Company Licensed Marks, the Company’s name or any Intellectual Property of the Company, all of which rights shall be expressly limited as set forth in Article X and shall terminate as set forth in Section 17.4(c).

6.3 **Shopper Data; Qualified Signet Customer List.**

(a) The Bank acknowledges that the Company and its Affiliates gather information about actual and prospective purchasers of Goods and Services and that the Company and its Affiliates have rights to use and disclose such Shopper Data independent of the Program, and the Company and its Affiliates shall not be subject to any limitations (including any limitations set forth in this Article VI or otherwise set forth in this Agreement) in respect of their right to use and disclose such Shopper Data notwithstanding that such Shopper Data may also include Cardholder Data or information contained in or derived therefrom. As between the Company and the Bank, all the Shopper Data shall be owned exclusively by the Company. The Bank acknowledges and agrees that it has no proprietary interest in the Shopper Data. To the extent the Bank is the direct recipient of such data, it shall provide such data to the Company in such format and at such times as shall be specified in accordance with this Agreement. The Bank shall cooperate in the maintenance of the Shopper Data and other data, including by incorporating in the Application and Credit Card Agreement provisions mutually agreed to by the Parties pursuant to which Applicants and Cardholders shall agree that they are providing their identifying information and all updates thereto and all transaction data from Company Channels to both the Bank and the Company and its Affiliates. For the avoidance of doubt, and without limiting any other Shopper Data that may from time to time exist, the following information shall be deemed Shopper Data:

(i) for any customer who has applied for a Company Credit Card, regardless of the channel through which such Application was completed or submitted (1) the customer’s name, address, email address, telephone number, social security number and all other commercially reasonable information supplied on the Application or prescreened response submitted by the customer (including any such information with respect to any authorized user or joint obligor in the case of a joint account); and (2) an indication of whether or not the customer has been approved for a Company Credit Card;

(ii) for any Cardholder, (1) the Cardholder’s name, address, email address, telephone number, social security number and Account number; (2) any reported change to any of the foregoing information; and (3) Cardholder transaction and experience data in the Company Channels at a detailed, line-item level that provides all detail provided to the Company and its Affiliates prior to the Effective Date; provided that, such additional details referred to in clause (3) continue to be received through the Company Channels; and
In the event that any change in Applicable Law would result in the compliance by the Bank of any of its obligations pursuant to this Section 6.3(a) being deemed a “consumer reporting agency” for purposes of the Fair Credit Reporting Act, the Bank shall not be required to take such actions affected by such change in Applicable Law that would so result in Bank being deemed a “consumer reporting agency.” In such an event, the Bank shall take all actions reasonably requested by the Company and permitted by Applicable Law in order to permit the delivery of the information referred to in this Section 6.3(a) in a manner that would not cause the Bank to be considered a consumer reporting agency.

(b) Subject to compliance with Applicable Law, the Company’s privacy policies, the Marketing Plan and such criteria (including format) as may be mutually agreed to from time to time, the Company may from time to time make available to the Bank, free of charge, a Qualified Signet Customer List. As between the Company and the Bank, any Qualified Signet Customer List shall be owned exclusively by the Company. The Bank acknowledges and agrees that it has no proprietary interest in any Qualified Signet Customer List.

(c) The Bank shall not use, or permit to be used, directly or indirectly, the Shopper Data, other than to transfer such data to the Company to the extent received by the Bank. Notwithstanding the foregoing, the Bank may use any Qualified Signet Customer List in compliance with Applicable Law solely for purposes of soliciting customers listed in such Qualified Signet Customer List for Accounts or as required by Applicable Law.

(d) The Bank shall not, directly or indirectly, sell, transfer, or rent (or permit others to do same) the Shopper Data, and shall not, directly or indirectly, disclose the Shopper Data, except for disclosure in compliance with Applicable Law solely:

   (i) to its Service Providers authorized in accordance with the Agreement solely on a “need to know” basis in connection with a permitted use of the Shopper Data or Qualified Signet Customer List pursuant to Section 6.3(c), provided that, each such Service Provider agrees in a written agreement reasonably satisfactory to the Company to (a) maintain all such Shopper Data or Qualified Signet Customer List as strictly confidential and not to use or disclose such information to any Person other than the Bank or the Company, except as required by Applicable Law or any Governmental Authority with authority over such Service Provider (after giving the Bank and the Company prior notice and an opportunity to defend against such disclosure); (b) maintain an information security program that is designed to meet all requirements of Applicable Law, including, at a minimum, all requirements set forth in Section 6.1(c); and (c) notify promptly the Bank and the Company of any unauthorized disclosure, use, or disposal of, or access to, such Shopper Data or Qualified Signet Customer List and to cooperate with the Bank and the Company in any investigation thereof and remedial action with respect thereto; and provided, further, that the Bank shall be responsible for the compliance of each such Service Provider with the terms of this Section 6.3;
to its Affiliates and its and their Representatives on a “need to know” basis in connection with a permitted use of the Shopper Data or Qualified Signet Customer List pursuant to Section 6.3(c); provided that, the Bank communicates the confidential nature of the Shopper Data and Qualified Signet Customer List, such Persons are bound (by agreement or their professional responsibilities) to maintain the confidentiality of the Shopper Data and Qualified Signet Customer List in accordance with the provisions of this Agreement, and the Bank shall be responsible for the compliance by each such Person with the terms of this Section 6.3; or

(iii) to any Governmental Authority with authority over the Bank or its Affiliates or their respective Service Providers in connection with the Program (A) in connection with an examination of the Bank; or (B) pursuant to a specific requirement to provide the Shopper Data or Qualified Signet Customer List by such Governmental Authority or pursuant to compulsory legal process; provided that, the Bank seeks the full protection of confidential treatment for any disclosed Shopper Data or Qualified Signet Customer List, as the case may be, to the extent available under Applicable Law governing such disclosure, and with respect to clause (B), to the extent permitted by Applicable Law, the Bank (1) provides at least ten (10) Business Days’ prior notice of such proposed disclosure to the Company if reasonably possible under the circumstances, and (2) seeks to redact the Shopper Data or Qualified Signet Customer List to the fullest extent possible under Applicable Law governing such disclosure.

(e) (***)

ARTICLE VII
OPERATING STANDARDS

7.1 Reports.

(a) Within ten (10) Business Days following the end of each Fiscal Month, or such other time as may be specified in Schedule 7.1(a) or such other time as agreed by the Parties with respect to particular reports, the Bank shall provide to the Relevant Decision Maker and the Company the reports specified in Schedule 7.1(a) (which reports shall be reported on a Fiscal Month, calendar month or cycles-basis, as may be specified in Schedule 7.1(a) or such other time as agreed upon by the Parties).

(b) No later than 3:00 pm Eastern Time on the sixth (6th) day following the end of each calendar month (which, for the avoidance of doubt, shall be the first Friday following the end of each calendar month); provided that, to the extent such sixth (6th) day is not a Business Day, then the following Business Day, the Bank shall deliver to the Company an estimate of the Company’s compensation as set forth on Schedule 9.1 and by the fifteenth (15th) day of each calendar month the Bank shall deliver to the Company a statement in the form set forth on Schedule 7.1(b), including supporting documentation, setting forth all information required to determine the payments to be made by the Parties pursuant to this Agreement in respect of such Fiscal Month. Each such statement shall be known as a “Monthly Settlement Sheet.” The amount due to the Company as reflected on the Monthly Settlement Sheet shall be funded simultaneously with the delivery of same.
The Bank shall report to the Company new Account authorization and approval rates, referral rates, credit sales, Payment Plan sales, credit limit assignments and such other information as set forth on Schedule 7.1(c), in each case in accordance with Schedule 7.1(c), on a daily basis.

In addition to the reports required pursuant to Sections 7.1(a), (b) and (c), the Bank will fulfill the Company’s other reasonable ad hoc reporting requests as soon as practicable following such request.

To the extent set forth on Schedule 7.1(a), certain reports to be provided pursuant to this Section 7.1 (other than to the extent the parties agree otherwise with respect to information delivered pursuant to Section 7.1(d)) shall be provided through secure e-mail.

To the fullest extent permitted by Applicable Law, as requested from time to time by the Company, the Bank agrees that during the Term and continuing until the end of the Termination Period it shall develop and communicate quarterly Net Credit Revenue forecasts to the Strategic Operating Committee and update such forecasts on a monthly basis.

## 7.2 Servicing

### (a) The Bank shall be solely responsible for customer service and for the administration of the Program at the Bank’s expense in accordance with the terms of the Credit Card Documentation and this Agreement (including Section 4.11(a)), Schedule 7.2, and the SLAs set forth in Schedule 7.3 (as such standards may be amended from time to time by the Strategic Operating Committee), including the following servicing and administrative functions: Prequalification Request processing, Application processing, customer service to Cardholders, statement, payment processing, transaction authorization and processing and collections. To the extent not otherwise provided in this Agreement or the Operating Procedures, including the SLAs described on Schedule 7.3, the Bank shall service the Accounts under the Program in a manner in which, and in any event no worse than, the Bank, in the aggregate, services its other Comparable Partner Programs.

The Bank shall dedicate such trained personnel as are necessary or appropriate for servicing the Accounts in accordance with Schedule 7.3, including a management-level individual reasonably acceptable to the Company within the Bank’s customer-service operation who (under the direction of the Bank’s Manager) will act as a liaison between the Parties and respond to the Company’s questions or concerns. The Bank shall maintain adequate computer and communications Systems and other equipment and facilities necessary or as appropriate for servicing the Accounts in accordance therewith, and, without limiting any other provisions of this Agreement with respect to Systems changes, without the Company’s approval, the Bank shall not make any changes to such Systems, equipment and facilities, or to any servicing processes or procedures that will negatively impact Cardholders or the Company’s processes, procedures or Systems, in each case during any Peak Sales Period. The Bank shall maintain a disaster recovery plan that complies with Applicable Law and Industry Standards and have in place sufficient back-up Systems, equipment, facilities and trained personnel to implement such disaster recovery plan so as to perform its obligations to Cardholders pursuant to the Credit Card Documentation and service the Accounts continuously through a disaster in a manner consistent with such plan. The Bank shall provide the Company with a summary of such plan upon request and with written guidance regarding how the Company can facilitate implementation of the Bank’s disaster recovery plan with respect to the Company. The Bank will test its disaster recovery plan no less frequently than annually, make the results of such test available upon request by the Company and will promptly initiate such plan upon the occurrence of a disaster or business interruption. The Bank shall give the Program no less priority in its recovery efforts than is given to any other of the Bank’s or its Affiliates’ other credit card programs or portfolios.
(c) As of the Effective Date and throughout the remainder of the Term and continuing throughout the Termination Period, the Bank shall maintain a separate toll-free customer service telephone number for the Program and all other telephone numbers as provided in the Operating Procedures (such telephone numbers, collectively the “Program Toll-Free Numbers”), in each case at the Bank’s expense, which numbers shall be part of the Program Assets. As of the Effective Date and throughout the remainder of the Term and continuing throughout the Termination Period, the Bank shall provide live telephonic customer service, in English and Spanish, upon the scheduled dates and times set forth in Schedule 7.2.

(d) Except as otherwise approved by the Strategic Operating Committee, the Bank shall ensure that, in the ordinary course of business, not less than eighty percent (80%) of Cardholder calls received for the Program are answered by a designated group of customer care agents (whose regular call volume shall consist of at least seventy percent (70%) Program related calls, and which group shall not service other Comparable Partner Programs). Customer service shall be provided by such designated group with overflow calls going to the Bank’s a designated backup unit. If the overflow calls for any three (3) consecutive months exceed twenty percent (20%) of total calls for such months in the aggregate, the Bank shall increase the number of customer care representatives of the designated group. The foregoing notwithstanding, to the extent such group is not fully utilized for activities related to the Program, the Bank may utilize the designated group in connection with other activities for its customers that are not Retail Jewelers for up to thirty percent (30%) of average monthly customer service calls handled by the designated group. For purposes of this Section 7.2(d), Zale Jeweler shall not be considered a Comparable Partner Program or Retail Jeweler.

(e) After the Effective Date, at the Company’s request from time to time, the Bank shall use commercially reasonable efforts to provide copies of customer service policies, scripts and form correspondence relating to the Program, and the Bank shall use commercially reasonable efforts to incorporate comments made by the Company (subject to Bank System limitations applicable uniformly to the Bank’s Comparable Partner Programs and the Specifications Book, and, notwithstanding any other provision hereof, provided that the Bank shall have no obligation to alter disclosures that are uniform among Comparable Partner Programs for purposes of legal or regulatory consistency).
Subject to Section 4.4(d), customer service shall be Company branded to the extent practicable; provided, however, that the Bank shall have the right to take whatever steps and make such disclosures necessary to ensure that the Bank is understood by the Cardholders to be the creditor on the Accounts.

The Bank shall permit the Company and its Representatives to visit its servicing facilities related to the Program, during normal business hours with reasonable advance notice, for the purpose of informing the Company regarding the Bank’s performance of its servicing obligations hereunder, and the Bank shall use commercially reasonable efforts to facilitate the Company’s review of the Bank’s servicing activities, and shall make personnel of the Bank reasonably available to assist the Company and its Representatives as reasonably requested. In conducting such visits, the Company shall comply with security and privacy policies established by the Bank and shall seek to minimize interference with the Bank’s normal business operations.

Notwithstanding any arrangement whereby the Bank provides services set forth herein through an Affiliate or Service Provider, the Bank shall remain obligated and liable to the Company for the provision of such services without diminution of such obligation or liability by virtue of such arrangement. Schedule 7.2(h) sets forth (i) a true and complete list of Service Providers of the Bank as of the date hereof that may perform customer service center obligations of the Bank hereunder and (ii) the initial program servicing locations anticipated to be utilized by or on behalf of the Bank for such obligations.

If the Bank receives a Cardholder complaint regarding the quality or delivery of Goods and Services, the Bank shall refer such complaint to the Company in accordance with the Operating Procedures, and in the case of complaints or inquiries made by telephone to the Bank’s customer service centers, the Bank shall attempt to make such referrals via a “warm transfer” to the Company’s customer service unit; provided, however, that if no Company customer service agent is available to answer the call within twenty (20) seconds, the Bank may release the call into the Company IVR. The Company will ensure its IVR systems provide the Bank’s customer service agents with a prompt when the twenty (20) seconds have elapsed.

Subject to the following sentence and Section 7.2(g), the Company and the Bank will jointly observe and score inbound/outbound telephone customer contacts that the Bank has with Cardholders. A Bank representative shall accompany the Company’s representative during the observations. For clarity, customer contacts for collections are excluded from this Section 7.2(j).

The Bank will allow the Company to monitor customer service telephone calls including collections calls remotely (which may be through access to recordings, if all such calls are recorded) in each case in a manner compliant with the Bank’s security policies.

Subject to Section 7.2(g), in the case of on-site servicing observations, customer service (including collections) observations may be conducted by the Company on any day and at any time during normal business hours and in accordance with the Bank’s security policies, provided that such observations shall not unreasonably interfere with the Bank’s normal business operations.
7.3 **Service Level Standards.**

(a) The Bank shall report to the Company monthly, in a mutually agreed upon format, the Bank’s performance under each of the SLAs set forth on Schedule 7.3. Concurrent with such reporting, if the Bank fails to meet any SLA, without limiting the consequences for SLA failures set forth on Schedule 7.3, the Bank shall (i) report to the Company the reasons for the SLA failure(s), (ii) identify the actions required to address the SLA failure(s) and share such actions with the Company. The Bank shall promptly take any action reasonably necessary to correct and prevent recurrence of such failure(s).

(b) The provisions of Schedule 7.3 shall apply in the event of a failure to meet any SLAs as set forth in Schedule 7.3.

7.4 **Credit Systems.**

(a) The Bank and the Company shall work together (including through the Integration Committee) to develop a mutually agreeable Systems conversion plan designed to convert the master file of the Accounts and all other Cardholder Data (including related account history and customer notes) to Bank Systems (the “Conversion”). Subject to the satisfaction of each of the requirements set forth in Section 7.4(b), such conversion shall be implemented on a date determined by the Integration Committee (****) (the date of any such conversion the “Systems Conversion Date.”). The Bank (****). Until the Systems Conversion Date, the Company shall maintain its Systems in a manner consistent with the Company’s historical practice and shall not make changes to its Systems that will impede the Conversion or the Bank’s ability to maintain the Accounts in accordance with this Agreement following the Conversion.

(b) The Parties acknowledge and agree that no Conversion shall occur pursuant to Section 7.4(a) in absence of satisfaction of each of the following requirements:

(i) The Bank shall ensure that all features and functionality available on the Company Systems as in effect prior to the Effective Date and set forth in Schedule 7.4(b)(i), or comparable features and functionality specifically agreed to by the Parties are available to the Program through the Bank Systems as of the Systems Conversion Date and thereafter. As of the Effective Date, the Bank shall ensure that the Bank Systems are compatible with those Company Systems that interface with the Bank Systems, including the POS Systems of the Company and its Affiliates; **provided that**, the Company shall not be required to make changes to POS other than those that (i) are consistent with the Zale POS system with respect to its capability of authorizing and settling Credit Card transactions (provided that the Company POS system is substantially similar to the Zale POS system) or (ii) are necessary to enable a functionality that is a part of the Program but not a part of the Zale card program (e.g., Prequalification Requests);
The Bank shall ensure that all features and functionality set forth (x) in Schedule 7.4(b)(i) are available on the Bank Systems as of the Systems Conversion Date and (y) in Schedule 7.4(b)(ii) are available on the Bank Systems by the dates provided therein;

The credit data feeds to be used by the Company or any of its Affiliates in connection with the Credit Card business set forth in Schedule 7.4(b)(iii) shall be available prior to the Effective Date;

The Bank shall provide and the Bank Systems shall support the Internet Services described in Schedules 4.8(a)(ii)(A) and 4.8(a)(ii) (B);

Without limiting the foregoing, the Bank Systems shall interface with the Company Systems that are not converted to Bank Systems in a manner reasonably acceptable to the Company;

Each of the Bank and the Company shall have a disaster recovery and business continuity plan applicable to the Bank Systems and the Company Systems, respectively, that complies with Applicable Law and Industry Standards and each Party shall be prepared to and have the ability to implement such plan if necessary;

The Bank shall have identified all hardware and other Systems changes necessary to ensure that the Bank Systems meet the requirements set forth on Schedules 7.4(b)(i), 7.4(b)(ii) and 7.4(b)(iii) and shall have implemented such hardware and Systems changes by the Effective Date; and

The Bank shall provide training to all Company training personnel who are responsible for training personnel in the use of the Bank Systems.

Prior to the Systems Conversion Date, each Party shall have the right to perform testing to assure that the other Party’s systems have the applicable features and functionality described in clauses (b)(i)-(viii) and any other features and functionality promised by the Bank.

Neither Party shall make any change to any of its Systems that would render them incompatible in any material respect with the other Party’s or its Affiliates’ Systems following the Systems Conversion Date or require the other Party or its Affiliates to make any change to any of their Systems (including any POS terminals) or reduce or restrict interfacing or System feeds, in any such case without the prior approval of the Strategic Operating Committee. Subject to the preceding sentence, and subject to such future modifications and upgrades as the Company or the Bank may make from time to time and which do not introduce interfaces or protocols other than those already in use in Company Channels, the Bank will not make any material change to its Systems with respect to the Program without the prior review of the Strategic Operating Committee. Unless otherwise approved by the Strategic Operating Committee with the approval of the Company’s representatives thereon, any change by the Bank shall be consistent with Systems changes made with respect to its Comparable Partner Programs, and no such change shall be implemented in a manner that imposes out-of-pocket costs on the Company that the Company determines in good faith are not commercially reasonable in relation to the benefit to be obtained by the Company in connection with the System change without the Company’s consent, unless such costs are fully reimbursed by the Bank. The Bank shall ensure that the Company is afforded sufficient time to implement any such change in a commercially reasonable manner.
7.5 Systems Interface; Technical Support.

(a) Required Interfaces.

(i) The Company and the Bank shall identify, prior to the Effective Date, the Systems interfaces required to be sustained among the Company and the Bank (i) in order for the Program to operate in accordance with this Agreement following the Effective Date and (ii) in order for the Program to continue to operate in accordance with this Agreement following the Systems Conversion Date (which interfaces shall include all customary interfaces to support existing credit data feeds and in any event including all credit data feeds of the type currently in place between the Bank and the Zale Group in connection with the Credit Card program of the Zale Group). The Company and the Bank shall maintain such interfaces and cooperate in good faith with each other in connection with any modifications to such interfaces as may be requested by either Party from time to time. The Bank shall use commercially reasonable efforts to include interfaces to support additional existing credit data feeds, provided that the Company notifies the Bank of any such additional credit data feeds and provides the Bank with reasonable time after such notice to implement interfaces to support such additional credit data feeds, and provided, further that neither the Launch, nor the Systems Conversion Date, as applicable shall be delayed on the basis of the lack of such additional interfaces to support credit data feeds.

(ii) Each of the Company and the Bank agrees to maintain at its own expense its respective Systems interfaces so that the operation of the Systems as a whole at all times provides the Company and Cardholders with System features and functionality (including reporting, analysis, modeling and account management features and functionality) that are (1) at least equivalent to Systems features and functionality available to the Bank’s retail partners and cardholders with respect to the Comparable Partner Programs), (2) no less functional than is customary and in any event including all functionality of the type currently in place between the Bank and the Zale Group in connection with the Credit Card program of the Zale Group and (3) permit the acceptance of all Company Credit Cards in all Company Channels as to which such acceptance is required by the Company in accordance with this Agreement. The Bank shall use commercially reasonable efforts to provide additional Systems features and functionality that were available on the Company’s Systems prior to the Effective Date (and not otherwise required pursuant to this subsection), provided that the Company notifies the Bank of any such additional features or functionality and provides the Bank with reasonable time after such notice to make such features or functionality available, and provided, further that Launch shall not be delayed on the basis of the lack of availability of such additional features or functionality. The Bank agrees to provide sufficient personnel to support the Systems interfaces required to be sustained among the Company and the Bank.
All requests for new interfaces, modifications to existing interfaces and terminations of existing interfaces shall be presented to the Managers for approval. Upon approval, the Parties shall work in good faith to establish the requested interfaces or modify or terminate the existing interfaces, as applicable, on a timely basis. Except as otherwise provided herein (including in Section 7.4), all costs and expenses with respect to any new interface or interface modification or termination shall be borne by the requesting Party unless otherwise determined by the Managers.

The Parties shall use secure protocols for the transmission of data from the Bank and its Affiliates, on the one hand, to the Company and its Affiliates, on the other hand, and vice versa.

ARTICLE VIII

MERCHANT SERVICES

8.1 Transmittal and Authorization of Charge Transaction Data. The Bank shall authorize or decline Transactions on a real time basis as provided in the Operating Procedures, including transactions involving split-tender or down-payments, including on Goods and Services for later delivery. If any Retail Merchant is unable to obtain authorizations for Transactions for any reason, such Retail Merchant may complete such Transactions without receipt of further authorization as provided in the Operating Procedures. As set forth in the Operating Procedures, the Company shall collect Charge Transaction Data and shall prepare and deliver a Settlement File to the Bank on each Retail Day.

8.2 POS Terminals. The Retail Merchants shall maintain POS terminals capable of processing Company Credit Card and Account transactions as handled as of the Effective Date, and prior to the Effective Date shall make such changes to such POS terminals as required under the Integration Plan; provided that, the Company shall not be required to make changes to POS other than those that (i) are consistent with the Zale POS system with respect to its capability of authorizing and settling Credit Card transactions (provided that the Company POS system is substantially similar to the Zale POS system) or (ii) are necessary to enable a functionality that is a part of the Program but not a part of the Zale card program (e.g., Prequalification Requests). To the extent that the Retail Merchants are required to make changes to any POS terminal (including hardware and software), Internet or mobile apps in order to support Prequalification Requests, process Applications, process Transactions and transmit Charge Transaction Data under this Agreement as a result of any change or modification to any Bank System or as a result of any requirement of Applicable Law applicable to the Bank, (****).

8.3 In-Store Payments. The physical store Company Channels shall be permitted to accept In-Store Payments from Cardholders on their Accounts in accordance with the Operating Procedures, the Risk Management Policies and any procedures required under Applicable Law. The Bank hereby grants to each of the Company and any Retail Merchant who can accept In-Store Payments a limited power of attorney (coupled with an interest) to sign and endorse the Bank’s name upon any form of payment that may have been issued in the Bank’s name in respect of any Account. The Operating Procedures shall set forth the manner in which such In-Store Payments shall be processed (it being understood that such procedures shall provide for credit toward the applicable open-to-buy limits of the respective Account in accordance with Schedule 7.2). The Company shall notify the Bank upon receipt of In-Store Payments and the Company shall include the Charge Transaction Data related to such In-Store Payments in the Settlement File in respect of the day immediately following such receipt on the same basis as other Charge Transaction Data. The Company shall issue receipts for such payments in compliance with Applicable Law.
8.4 Settlement Procedures. On (****) the Company will submit the Settlement File to the Bank no later than (****) The Bank will remit to the Company by wire transfer of immediately available funds to the Company’s designated settlement account by (****) an amount equal to (****) If any (****) the Bank will process the Settlement File for payment (****). The Company shall be responsible for allocating such remittance amount to all Company Channels as appropriate (****) (it being agreed that the Bank has no obligation to accept Charge Transaction Data directly from, or make remittances to, any Person other than the Company). If for any reason the Bank is unable to make an exact payment to the Company when due pursuant to this Section 8.4, including because (****) as stated above, the Bank shall (****), and as soon as practicable (but in no event more than (****) thereafter the Parties shall (****). The Parties acknowledge and agree that the payment referred to in the immediately preceding sentence is intended to be (****).

8.5 The Bank’s Right to Charge Back.

The Bank shall have the right to charge back to the Company the amount of the Charge Transaction Data paid by the Bank pursuant to Section 8.4 pursuant to the provisions set forth on Schedule 8.5.

8.6 Exercise of Chargeback. If the Bank exercises its right of chargeback as set forth in Section 8.5, the Bank shall set off all amounts charged back against any sums due to the Company under this Agreement (first from the amount due to the Company pursuant to Section 8.4). If any such amount is not covered by the amount due to the Company pursuant to Section 8.4, only then may the Bank demand payment from the Company for the amount of such chargeback, solely to the extent not covered by the amount due to the Company pursuant to Section 8.4. In any event, the Bank shall not be permitted to recover a charge back in excess of the relevant Charge Transaction Data paid by the Bank pursuant to Section 8.4. In the event of a chargeback pursuant to this Article VIII, upon payment in full of the related amount by the Company, the Bank shall immediately assign to the Company, without any representation, warranty or recourse, (i) all right to payments of amounts charged back in connection with such Cardholder charge, and (ii) any security interest granted by the Company under Section 19.1. The Bank shall cooperate fully in any effort by the Company to collect the chargeback amount, including by executing and delivering any document necessary or useful to such collection efforts.

8.7 No Merchant Discount. Except as expressly provided otherwise in Section 4.7(c) and Schedule 4.7(c), none of the Company, its Affiliates or the Retail Merchants shall (****).
ARTICLE IX

PROGRAM ECONOMICS

9.1 Company Compensation.

(a) Payments. The Bank shall pay the Company on a monthly basis the compensation set forth in Schedule 9.1 at such times as specified in such schedule. Such amounts shall be paid to the Company regardless of whether any amounts are disputed by the Bank or the Company. The Bank or the Company may invoke the dispute resolution procedures set forth herein following payment of the amounts set forth in the applicable settlement sheet.

(b) Other Payments. The Bank will make the other payments to the Company in the amounts set forth in Schedule 9.1 at such times as specified in such schedule.

(c) Form of Payment. All payments pursuant to this Section 9.1 shall be made by wire transfer of immediately available funds to an account designated in writing by the Company unless otherwise agreed upon by the Parties in writing.

9.2 The Bank’s Responsibility for Program Operation. Except as otherwise expressly specified in this Agreement, the Bank shall be responsible for all costs of operating the Program; provided, however, each Party shall bear its own costs and expenses in connection with fulfilling its obligations and exercising its rights hereunder unless otherwise provided herein.

ARTICLE X

INTELLECTUAL PROPERTY

10.1 Licensed Marks.

(a) Grant of License to Use the Company Licensed Marks. Subject to the terms and conditions of this Agreement, the Company hereby grants to the Bank a non-exclusive, royalty-free, non-transferable, non-sublicensable (except as set forth herein) right and license to use the Company Licensed Marks solely in connection with the creation, establishment, marketing and administration of, and the provision of services related to, the Program. All uses of the Company Licensed Marks shall require the prior written approval of the Company and shall be in accordance with this Agreement and any Trademark Style Guide or other rules as may be delivered by the Company to the Bank from time to time. To the extent the Bank delegates any of its rights or obligations hereunder to any authorized Affiliate and/or authorized Service Provider in accordance with the terms and conditions of this Agreement, the Bank may sublicense its rights in the Company Licensed Marks hereunder to such authorized Persons solely for purposes of facilitating such delegation; provided that, such Person shall agree to comply with all of the terms and conditions of the use of the Company Licensed Marks hereunder (and shall designate the Company as a third party beneficiary of such agreement) and the Bank shall remain liable for such Person’s failure to so comply. Except as expressly set forth in this Section 10.1, the rights granted pursuant to this Section 10.1 are solely for use of the Bank and may not be sublicensed without the prior written approval of the Company.
Grant of License to Use the Bank Licensed Marks. Subject to the terms and conditions of this Agreement, the Bank hereby grants to the Company a non-exclusive, royalty-free, non-transferable, non-sublicensable (except as set forth herein) right and license to use the Bank Licensed Marks solely in connection with the creation, establishment, marketing and administration of, and the provision of services related to, the Program. All uses of the Bank Licensed Marks shall require the prior written approval of the Bank and shall be in accordance with this Agreement and any Trademark Style Guide or other rules as may be delivered by the Bank to the Company from time to time. To the extent the Company delegates any of its rights or obligations hereunder to any authorized Affiliate and/or authorized third party, in accordance with the terms and conditions of this Agreement, the Company may sublicense its rights in the Bank Licensed Marks hereunder to such authorized Persons solely for purposes of facilitating such delegation; provided that, such Person shall agree to comply with all of the terms and conditions of the use of the Bank Licensed Marks hereunder (and shall designate the Bank as a third party beneficiary of such agreement) and the Company shall remain liable for such Person’s failure to so comply. Except as expressly set forth in this Section 10.1, the rights granted pursuant to this Section 10.1 are solely for use of the Company and may not be sublicensed without the prior written approval of the Bank.

New Marks. If the Company or any of its controlled Affiliates of Parent determines (whether or not such determination is publicly announced) to adopt a Trademark (other than the acquisition of any Trademark acquired in connection with any acquisition or business combination governed by Article XIV, which shall not be subject to this Section 10.1(c)) other than a Company Licensed Trademark and the Company determines to issue in the United States a Credit Card bearing such Trademark (a “New Mark”), the Company shall promptly offer the Bank the exclusive right to issue in the United States a Credit Card bearing such New Mark, either as part of the Program or subject to such material legal and financial terms and conditions as may be proposed by the Bank reasonably and in good faith and set forth in a term sheet proposal. The Bank shall have not less than thirty (30) days from its receipt of such offer to consider the offer and give notice to the Company that the Bank wishes to negotiate a definitive agreement therefor (“Opt-in Notice”). If the Bank delivers an Opt-in Notice to the Company, then the Parties will negotiate in good faith for a period of up to sixty (60) days, and either amend this Agreement to incorporate the New Mark-branded Credit Cards or document and execute a new definitive agreement for such Credit Cards. If the Bank does not timely deliver an Opt-in Notice, or notifies the Company of its intention not to do so, or if the negotiations do not result in such an amendment or new definitive agreement, then the Company or any of its Affiliates may request proposals from Credit Card issuers other than the Bank or its Affiliates to offer or issue in the United States a Credit Card bearing the New Mark, but the Company may enter into an agreement for the offer or issuance of such a Credit Card only on terms that are, in the aggregate with respect to economics, servicing and risk management no more favorable aggregate set of terms to such other issuer than the most favorable terms offered by the Bank to the Company.

10.2 Termination; Ownership; and Infringement.
(a) **Termination of Licenses.** The licenses granted in Section 10.1 shall terminate at the end of the Termination Period provided that (i) if the purchase option under Section 17.2 is exercised (and the Company or its Nominated Purchaser thus owns the Program Assets) then such licenses shall continue for a six (6) month period following the Termination Period to the extent necessary for winding down the operation of the Program in a manner consistent with the terms of this Agreement and with past practice and (ii) if the purchase option is not exercised (and the Bank thus continues to own the Program Assets) then Section 17.4(c) shall govern the Bank’s use of the Company Licensed Marks. Upon the termination of the licenses granted in Section 10.1, all rights in the Company Licensed Marks and Bank Licensed Marks granted thereunder shall revert to the Company and the Bank, respectively, and each Party shall: (i) discontinue immediately all use of the Company Licensed Marks and Bank Licensed Marks (as applicable); and (ii) destroy all unused Company Credit Cards, Applications, Account Documentation, Solicitation Materials, periodic statements, materials, displays, advertising and sales literature and any other items or program collateral, in each case, bearing any of the Company Licensed Marks and Bank Licensed Marks. Notwithstanding anything herein, each Party shall have the right at all times after the Termination Period to use the other Party’s Trademarks (i) in a non商标 or “fair use” manner (provided that, such use does not convey or suggest or is not reasonably likely to suggest that the Parties are still participating in the Program) or as required by Applicable Law; or (ii) on any archival legal documents, business correspondence and similar items that are not consumer-facing.

(b) **Ownership of the Licensed Marks.** The Parties acknowledge that each Party shall retain exclusive ownership of its Trademarks. Neither Party shall contest nor take any other action which would adversely affect the other Party’s exclusive ownership of its trademarks or the value, validity, reputation or goodwill associated therewith, and any and all goodwill arising from use of the Company Licensed Marks by the Bank or the Bank Licensed Marks by the Company shall inure to the benefit of the Company or the Bank, respectively. Nothing herein shall give the Parties any proprietary interest in or to the other Party’s Trademarks.

(c) **Infringement by Third Parties.** Each Party shall use reasonable efforts to notify the other Party in writing, promptly upon acquiring Knowledge of any infringing or unauthorized use of the other Party’s Trademarks that are being licensed under this Article X by any third party in the United States. If any of the trademarks licensed under this Article X is infringed, the owner of such Trademark has the sole right (but not the obligation) to prosecute same, and the other Party shall reasonably cooperate with and assist in such prosecution.

10.3 **Intellectual Property.**

(a) Each Party shall solely own all of its Intellectual Property (i) that existed as of the Effective Date and (ii) that it develops or creates independently of the other Party during the Term. Unless the Parties agree otherwise in writing, the Company shall solely own all Intellectual Property rights in any creation of or improvement to the look, feel, content, design and collateral aesthetics of the Company Credit Cards, Credit Card Documentation, the Program Website, Solicitation Materials and any other communications to Cardholders created by either Party, except for Bank Licensed Marks that appear on any of the foregoing. Unless the Parties agree otherwise in writing, each Party shall solely own all Intellectual Property relating to any software or other technology developed by it or its Affiliates or developed for it or its Affiliates at its direction or expense, to facilitate the Program and/or to fulfill its obligations, including all Intellectual Property relating to software and software modifications developed with the other Party’s assistance, in response to the other Party’s request, or to accommodate the other Party’s special requirements. Subject to the terms and conditions of this Agreement, each Party grants and agrees to grant to the other Party a non-exclusive, royalty-free, non-transferable, non-sublicensable (except as set forth herein) license to and under all other Intellectual Property (other than Trademarks, which are governed by Section 10.1) owned by such Party that is used in connection with the Program solely in connection with the creation, establishment, marketing and administration of, and the provision of services related to, the Program. To the extent the Parties delegate any of their rights or obligations hereunder to any authorized Affiliate and/or authorized third party or to the extent the services of an authorized third party are required in connection with the Parties’ participation in the Program, in accordance with the terms and conditions of this Agreement, the Parties may sublicense their rights to and under the other Party’s Intellectual Property to such authorized Person; provided that, such Person shall agree to comply with all of the terms and conditions of this Section 10.3 (with the owner of the Intellectual Property a third party beneficiary of such agreement) and provided that, the sublicensing Party shall remain liable for such Person’s failure to so comply. The licenses granted under this Section 10.3(a) shall terminate at end of the Termination Period.
(b) **Joint Intellectual Property.** The Parties shall not develop or create any Intellectual Property that shall be deemed to be jointly owned unless they mutually agree in writing in advance that such Intellectual Property shall be jointly owned.

**ARTICLE XI**

**REPRESENTATIONS, WARRANTIES AND COVENANTS**

11.1 **General Representations and Warranties of the Company.** Except as Previously Disclosed, the Company makes the following representations and warranties to the Bank as of the date hereof and as of the Effective Date (other than the representations and warranties set forth in Section 11.1(d), which shall be made only as of the date hereof):

(a) **Corporate Existence.** The Company (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation; (ii) is duly licensed or qualified to do business and is in good standing as a foreign corporation in all jurisdictions in which the conduct of its business or the activities in which it is engaged makes such licensing or qualification necessary, except to the extent that its non-compliance would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; and (iii) has all necessary licenses, permits, consents or approvals from or by, and has made all necessary filings and registrations with, all Governmental Authorities having jurisdiction, to the extent required for the ownership, lease or conduct and operation of its business, except to the extent that the failure to obtain such licenses, permits, consents or approvals or to make such filings or registrations would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) **Authorization; Validity.** The Company has all necessary corporate power and authority to (i) execute and enter into this Agreement, and (ii) perform the obligations required of the Company hereunder and the other documents, instruments and agreements relating to the Program and this Agreement executed by the Company pursuant hereto. The execution and delivery by the Company of this Agreement and all documents, instruments and agreements executed and delivered by the Company pursuant hereto, and the consummation by the Company of the transactions specified herein, have been duly and validly authorized and approved by all necessary corporate actions of the Company. This Agreement (i) has been duly executed and delivered by the Company, (ii) constitutes the valid and legally binding obligation of the Company, and (iii) is enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, receivership or other laws affecting the rights of creditors generally and by general equity principles including those respecting the availability of specific performance).
Conflicts; Defaults; Etc. The execution, delivery and performance of this Agreement by the Company, its compliance with the terms hereof, and consummation of the transactions specified herein will not (i) conflict with, violate, result in the breach of, constitute an event which would, or with the lapse of time or action by a third party or both would, result in a default under, or accelerate the performance required by, the terms of any contract, instrument or agreement to which the Company or any of its Subsidiaries is a party or by which they are bound, or to which any of the assets of the Company or any of its Subsidiaries are subject; (ii) conflict with or violate the articles of incorporation or by-laws, or any other equivalent organizational document(s), of the Company or any of its Subsidiaries; (iii) breach or violate any Applicable Law or Applicable Order, in each case, applicable to the Company or any of its Subsidiaries; (iv) require the consent or approval of any other party to any contract, instrument or commitment to which the Company or any of its Subsidiaries is a Party or by which it is bound; or (v) require any filing with, notice to, consent or approval of, or any other action to be taken with respect to, any Governmental Authority, except, in the cases of clauses (i) and (iii)-(v), for such conflicts, breaches, defaults, violations or failures to obtain such consents or approvals or make or obtain such filings, notices, consents and approvals as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

No Litigation. No action, claim, litigation, proceeding, arbitration or investigation is pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries, at law, in equity or otherwise, by or before any Governmental Authority, which would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Compliance with Laws. Except to the extent that any of the following would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company is in compliance with all requirements of Applicable Law relating to the Program Assets and neither the Company nor any of Subsidiaries is subject to any order, directive or restriction of any kind issued by any Governmental Authority that restricts in any respect the Company’s ability to perform its obligations under the Program.

The Company Licensed Marks. The Company has the right, power and authority to grant the rights to use the Company Licensed Marks expressly granted herein.

General Representations and Warranties of the Bank. Except as Previously Disclosed, the Bank hereby makes the following representations and warranties to the Company as of the date hereof and as of the Effective Date (other than the representations and warranties set forth in Section 11.2(d), which shall be made only as of the date hereof):
(a) **Corporate Existence.** The Bank (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (ii) is duly licensed or qualified to do business and is in good standing as a foreign entity in all jurisdictions in which the conduct of the its business or the activities in which it is engaged, or proposes to engage pursuant to this Agreement, makes such licensing or qualification necessary, except to the extent that its non-compliance would not reasonably be expected to have, individually or in the aggregate, a Bank Material Adverse Effect. The Bank has all necessary licenses, permits, consents or approvals from or by, and has made all necessary filings and registrations with, all Governmental Authorities having jurisdiction, to the extent required for the ownership, lease or conduct and operation of its business and the Program pursuant to this Agreement, except to the extent that the failure to obtain such licenses, permits, consents or approvals or to make such filings or registrations would not reasonably be expected to have, individually or in the aggregate, a Bank Material Adverse Effect upon the Bank, the Program, the Accounts, Cardholder Indebtedness or the Bank’s ability to perform its obligations under this Agreement.

(b) **Authorization; Validity.** The Bank has all necessary corporate or similar power and authority to (i) execute and enter into this Agreement, and (ii) perform the obligations required of the Bank hereunder and the other documents, instruments and agreements relating to the Program and this Agreement executed by the Bank pursuant hereto. The execution and delivery by the Bank of this Agreement and all documents, instruments and agreements executed and delivered by the Bank pursuant hereto, and the consummation by the Bank of the transactions specified herein, have been duly and validly authorized and approved by all necessary corporate or similar actions of the Bank. This Agreement (i) has been duly executed and delivered by the Bank, (ii) constitutes the valid and legally binding obligation of the Bank, and (iii) is enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, receivership or other laws affecting the rights of creditors generally and by general equity principles including those respecting the availability of specific performance).

(c) **Conflicts; Defaults; Etc.** The execution, delivery and performance of this Agreement by the Bank, its compliance with the terms hereof, and the consummation of the transactions specified herein will not (i) conflict with, violate, result in the breach of, constitute an event which would, or with the lapse of time or action by a third party or both would, result in a default under, or accelerate the performance required by, the terms of any contract, instrument or agreement to which the Bank or any of its Subsidiaries is a party or by which they are bound, or to which any of the assets of the Bank or any of its Subsidiaries are subject; (ii) conflict with or violate the articles of incorporation or by-laws, or any other equivalent organizational document(s), of the Bank or any of its Subsidiaries; (iii) breach or violate any Applicable Law or Applicable Order, in each case, applicable to the Bank or any of its Subsidiaries; (iv) require the consent or approval of any other party to any contract, instrument or commitment to which the Bank or any of its Subsidiaries is a Party or by which it is bound; or (v) require any filing with, notice to, consent or approval of, or any other action to be taken with respect to, any Governmental Authority, except, in the cases of clauses (i) and (iii)-(v), for such conflicts, breaches, defaults, violations or failures to obtain such consents or approvals or make or obtain such filings, notices, consents and approvals as would not reasonably be expected to have, individually or in the aggregate, a Bank Material Adverse Effect.
(d) No Litigation. No action, claim, litigation, proceeding, arbitration or investigation is pending or, to the Knowledge of the Bank, threatened against the Bank or any of its Subsidiaries, at law, in equity or otherwise, by or before any Governmental Authority, which would reasonably be expected to have, individually or in the aggregate, a Bank Material Adverse Effect.

(e) Compliance with Laws.

(i) Except to the extent that any of the following would not reasonably be expected to have, individually or in the aggregate, a Bank Material Adverse Effect,

(A) the Bank and its Subsidiaries are in compliance with all requirements of Applicable Law relating to its Credit Card business; and

(B) neither the Bank nor any of its Subsidiaries is subject to any capital plan or supervisory agreement, cease-and-desist or similar order or directive or memorandum of understanding between it and any Governmental Authority with authority over the Bank or issued by any such Governmental Authority, nor has any of them adopted any board resolutions at the request of any such Governmental Authority.

(ii) Neither the Bank nor any of its Subsidiaries is subject to any order, directive or restriction of any kind issued by any Governmental Authority that restricts in any respect its operation of its Credit Card business; and the Bank is not aware of any fact or circumstance that would in any way delay or impede its ability to perform all of its obligations under the Program.

(f) Servicing Qualifications. The Bank is licensed and qualified in all jurisdictions necessary to service the Accounts in accordance with all Applicable Laws, except where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Bank Material Adverse Effect.

(g) Bank Licensed Marks. The Bank has the right, power and authority to grant the rights to use the Bank Licensed Marks expressly granted herein.

(h) FDIC Insurance. The Bank’s deposit accounts are insured by the FDIC to the fullest extent permitted by Applicable Law, and to the Knowledge of the Bank, no proceeding is contemplated to revoke such insurance.

11.3 No other Representations or Warranties. Except as expressly set forth in Sections 11.1 and 11.2, neither the Bank nor the Company has made or makes any other express or implied representations, or any express or implied warranty.

11.4 General Covenants of the Company.

(a) Litigation. The Company shall notify the Bank in writing if it receives written notice of any litigation, investigation or other claim pending or, to the Knowledge of the Company, threatened before any Governmental Authority to which the Company or any of its Subsidiaries is party that, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.
(b) **Reports and Notices.** The Company shall provide the Bank with a notice specifying the nature of any Company Event of Default, or any event which, with the giving of notice or passage of time or both, would constitute a Company Event of Default, or any development or other information with respect to the Company or its Subsidiaries which is likely to have a Company Material Adverse Effect. Notices pursuant to this Section 11.4(b) relating to Company Events of Default shall be provided within two (2) Business Days after the Company has Knowledge of the existence of such default. Notices relating to all other events or developments described in this Section 11.4(b) shall be provided promptly after the Company has Knowledge of the existence of such event or development. A failure to provide any required notice pursuant to this Section 11.4(b) shall not be considered a separate or independent Company Event of Default.

(c) **Applicable Law/Operating Procedures.** The Company shall at all times during the Term and continuing until the end of the Termination Period (A) comply in all material respects with Applicable Law affecting its rights and obligations under this Agreement and be responsible for compliance with Applicable Law of any aspect of the Program that was imposed by the Company on the Bank in accordance with the Company’s breaking of a deadlock with respect to any element of operations because such element of operations was an Unapproved Matter that was a Company Matter, and (B) comply in all material respects with its obligations pursuant to the Operating Procedures. Except as otherwise provided herein, the Company shall retain any applicable liability for compliance with law pertaining to its business as a retailer (including laws with respect to the sale of illegal Goods and Services and state laws designed to prevent unlawful gambling). Notwithstanding the foregoing, the Company shall have no liability hereunder for a failure to comply with requirements of Applicable Law related to the Credit Cards or Accounts or their solicitation, associated documentation or servicing or maintenance if the Bank is required to, but has not notified the Company of such requirement of Applicable Law.

(d) **Disputes with Cardholders.** The Company shall reasonably cooperate with the Bank in a timely manner (but in no event less promptly than required by Applicable Law) to attempt to resolve all disputes with Cardholders. If the Company receives a Cardholder complaint regarding the Cardholder’s Account or Company Credit Card, the payment for any Goods and Services or Ancillary Products purchased with a Company Credit Card or otherwise financed on an Account, any of the Payment Plans, or the Value Proposition, the Company shall refer such complaint to the Bank in accordance with the Operating Procedures.

11.5 **General Covenants of the Bank.**

(a) **Litigation.** The Bank shall notify the Company in writing if it receives written notice of any (i) litigation, investigation or other claim pending or, to the Knowledge of the Bank, threatened before any Governmental Authority to which the Bank or any of its Subsidiaries is party that, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Bank Material Adverse Effect or (ii) any action, order or directive by or agreement with a Governmental Authority that the Bank is permitted to disclose under Applicable Law and that has had or would reasonably be expected to have a Bank Material Adverse Effect. The Bank shall use commercially reasonable efforts to obtain permission to make any such disclosure.
(b) Reports and Notices. The Bank shall provide the Company with a written notice specifying the nature of any Bank Event of Default, or any event which, with the giving of notice or passage of time or both, would constitute a Bank Event of Default, or any development or other information which is likely to have a Bank Material Adverse Effect. Notice pursuant to this Section 11.5(b) relating to Bank Events of Default shall be provided within two (2) Business Days after the Bank has Knowledge of the existence of such default. Notices relating to all other events or developments described in this Section 11.5(b) shall be provided promptly after the Bank obtains Knowledge of the existence of such event or development.

(c) Applicable Law/Operating Procedures.

(i) The Bank shall at all times during the Term and continuing until the end of the Termination Period (A) comply in all material respects with Applicable Law affecting its rights and obligations under this Agreement, (B) comply in all material respects with the Risk Management Policies, Collections Policies and Operating Procedures and (C) ensure that the operation of the Program does not contravene or conflict with Applicable Law or the rights of third parties; provided that, the Bank shall have no responsibility for the compliance of the Program with Applicable Law with respect to, and no liability for, any element of such operations that was imposed by the Company on the Bank in accordance with the Company’s breaking of a deadlock with respect to such element of operations because such element of operations was an Unapproved Matter that was a Company Matter.

(ii) The Bank shall provide the Company with reasonable advance notice of any changes in Applicable Law that would apply to the Company as a result of its participation in the Program (or if advance notice is not practicable, the Bank shall give such notice as soon as practicable, and in such event the Company shall not be responsible for complying with such changes unless and until a reasonable time after receipt of such notice so as to permit the Company to achieve such compliance); provided, however, that in no event shall the Company be relieved of its indemnification obligations set forth in subsection (i) of Section 18.1(g).

(d) Books and Records. The Bank shall keep adequate records and books of account with respect to the Accounts and Cardholder Indebtedness in which proper entries, reflecting all of the Bank’s financial transactions relating to the Program, are made in accordance with GAAP and the requirements of this Agreement. The Bank shall keep adequate records and books of account with respect to its activities, in which proper entries reflecting all of the Bank’s financial transactions are made in accordance with GAAP. All of the Bank’s records, files and books of account shall be in all material respects complete and correct and shall be maintained in accordance with good business practice and Applicable Law.

(e) Servicing Qualifications. The Bank shall at all times during the Term and continuing until the end of the Termination Period remain licensed and qualified in all jurisdictions necessary to service the Accounts in accordance with all Applicable Laws, except where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Bank Material Adverse Effect.
(f) **Conflicts of Interest.** The Bank shall establish and maintain appropriate business standards, procedures and controls designed to ensure that the Bank shall perform and conduct its operations in a manner consistent with the Program Objectives and in such a way as not to disparage or embarrass or otherwise adversely affect the Company and its Affiliates.

(g) **Charter and FDIC Insurance.** The Bank shall at all times maintain its state banking charter; provided that, in the event that the Bank converts or changes its charter to a federal banking charter or to another state banking charter, the Bank shall be responsible for all of the costs of changing any credit card collateral relating to such conversion or change. The Bank shall ensure that its deposit accounts, if any, are insured by the FDIC to the fullest extent permitted under law.

(h) **Disputes with Cardholders.** The Bank shall cooperate with the Company in a timely manner (but in no event less promptly than required by Applicable Law) to resolve all disputes with Cardholders. If the Bank receives a Cardholder complaint regarding Goods and Services (and not relating to the use of the Cardholder’s Account or Company Credit Card to purchase such Goods and Services), or the Value Proposition, the Bank shall refer such complaint to the Company in accordance with the Operating Procedures and Section 7.2(i).

(i) **Special Conditions.** In the event that any Special Condition applicable to the Bank or any of its Affiliates results in the Company being required to incur out-of-pocket costs or expenses to ensure that the Program remains in compliance with Applicable Law, the same shall be reimbursed by the Bank and shall not be deemed to be Program expenses or otherwise reduce Net Credit Revenue.

**ARTICLE XII**

**ACCESS AND AUDIT**

12.1 **Access to Facilities, Books and Records.** Each party shall permit the other party to visit its facilities related to the Program during normal business hours with reasonable advance notice. Each Party shall also permit the other Party and its Representatives to review copies of the books and records relating to the Program for reasonable purposes relating to the Program; provided that, neither Party shall be required to provide access to records to the extent that (a) such access is prohibited by Applicable Law, (b) such records are legally privileged, or (c) such records relate to (***)). For the avoidance of doubt, the Company authorizes the Bank to (***) shall be reviewed with the Strategic Operating Committee.

12.2 **Audit Rights.** (***) such Party, (***) may conduct (***) an audit to determine whether such other Party is in compliance with all of its obligations pursuant to this Agreement. Such audit shall be conducted during (***) in accordance with generally accepted auditing standards and the auditing Party shall employ such reasonable procedures and methods as necessary and appropriate in the circumstances, minimizing interference to the extent practicable with the audited Party’s normal business operations. The audited Party shall (***) facilitate the auditing Party’s review, including (***) to assist the auditing Party and its Representatives as (***)). The audited Party shall deliver any document or instrument necessary for the auditing Party to obtain such records from any Person maintaining records for the audited Party and shall maintain records pursuant to its regular record retention policies. For purposes of this provision, the audited Party also shall (***) Notwithstanding the generality of the foregoing, the audited Party shall not be required to provide access to records to the extent that (a) such access is prohibited by Applicable Law, (b) such records are legally privileged, (c) such records are (***)).
12.3 Relevant Laws Compliance. The Parties acknowledge that: (a) each of Signet Jewelers Limited’s (“Parent”) management and the Bank’s management is now and/or in the future may be required under the Sarbanes-Oxley Act of 2002 and related regulations and (solely with respect to the Bank) the Federal Deposit Insurance Corporation Improvement Act of 1991 and related regulations (collectively, the “Relevant Laws”) to, among other things, assess the effectiveness of its respective internal controls over financial reporting and state in its report whether such internal controls are effective; (b) the independent auditors of Parent and the Bank are now and/or in the future may be required to evaluate the process used by management to make such assessment to determine whether that process provides an appropriate basis for management’s conclusions; and (c) because the Parties have entered into a significant transaction with each other as described in this Agreement, the controls used by the Parties (including, without limitation, controls that restrict unauthorized access to systems, data and programs) are relevant to Parent’s and the Bank’s evaluation of its internal controls. Having acknowledged the foregoing, and subject to the terms of this Section, each Party agrees to cooperate with Parent and the Bank, and their respective independent auditors as reasonably necessary to facilitate Parent’s and the Bank’s ability to comply with its obligations under the Relevant Laws including, without limiting the generality of the foregoing, by complying with the further terms of this Section 12.3.

12.4 Governmental Authority Supervision. Each Party agrees to allow any Governmental Authority asserting supervisory authority over the other Party or such Party’s Affiliates to inspect, audit, and examine its facilities, systems, records and personnel relating to the Program and to use commercially reasonable efforts to allow any Governmental Authority asserting supervisory over such Party’s Service Providers to inspect, audit, and examine the facilities, systems, records and personnel relating to the Program. Each Party shall, to the extent possible and as permitted by Applicable Law or the applicable Governmental Authority, provide the other Party with reasonable advance notice of any such inspection, audit or examination. Each Party acknowledges that Governmental Authorities (or their respective representatives) have the right to (a) exercise directly the audit rights granted to the other Party under this Agreement; (b) accompany the other Party (or its representatives) when it exercises its inspection rights under this Agreement; (c) access and make copies of all internal audit reports (and associated working papers and recommendations) prepared by or for the Party or the Program; and (d) access any findings in the external audit of the Party (and associated working papers and recommendations) prepared by or for the Party that relate to the Program, subject to the consent of its external auditor.
ARTICLE XIII
CONFIDENTIALITY

13.1 General Confidentiality.

(a) For purposes of this Agreement, “Confidential Information” means any of the following: (i) nonpublic information that is provided by or on behalf of either the Company or the Bank to the other Party or its Representatives or Service Providers in connection with the Program (including information provided prior to the date hereof or the Effective Date); (ii) nonpublic information about the Company or the Bank or their Affiliates, or their respective businesses or employees, that is otherwise obtained by or on behalf of the other Party in connection with the Program, in each case including: (A) information concerning marketing plans, objectives and financial results, business systems, methods, processes, know-how, financing data, programs and products and Value Proposition terms and features and tests thereof; (B) information regarding any products offered or proposed to be offered under the Program or the manner of offering of any such products; (C) information unrelated to the Program obtained by the Company or the Bank in connection with this Agreement, including by accessing or being present at the business location of the other Party; and (D) non-public Intellectual Property such as proprietary technical information and source code developed in connection with the Program; (iii) the terms and conditions of this Agreement; and (iv) the Marketing Plan. The provisions of this Article XIII governing Confidential Information shall not govern Cardholder Data or Shopper Data, which shall be governed by the provisions of Article VI.

(b) The restrictions on disclosure of Confidential Information under this Article XIII shall not apply to information received or obtained by the Company or the Bank, as the case may be, that: (i) is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement or any other confidentiality obligations; (ii) is lawfully received on a non-confidential basis from a third party authorized to disclose such information without restriction and without breach of this Agreement; (iii) is required to be publicly disclosed by Applicable Law or applicable stock exchange rules; provided that, the Party subject to such Applicable Law or applicable stock exchange rules shall consult with the other Party with respect to such filing or disclosure; and provided, further, that such information shall be disclosed only to the extent required by such Applicable Law and shall otherwise remain Confidential Information; or (iv) is developed by the Company or the Bank, as the case may be, without the use or knowledge of any proprietary, non-public information provided by the other Party under, or otherwise made available to such Party as a result of, this Agreement. Nothing herein shall be construed to permit the Receiving Party (as defined below) to disclose to any third party any Confidential Information that the Receiving Party is required to keep confidential under Applicable Law.

(c) The terms and conditions of this Agreement and the Marketing Plan and all of the items referred to in clauses (A) through (B) of Section 13.1(a) shall each be the Confidential Information of the Company and the Bank and each of the Parties to this Agreement shall be deemed to be a Receiving Party of each of them.
If the Company, on the one hand, or the Bank, on the other hand, receives Confidential Information of the other Party (“Receiving Party”), the Receiving Party shall do the following with respect to the Confidential Information of the other Party (“Disclosing Party”): (i) keep the Confidential Information of the Disclosing Party confidential in accordance with the nondisclosure requirements of this Agreement; (ii) treat all Confidential Information of the Disclosing Party with the same degree of care as it accords its own Confidential Information, but in no event less than a reasonable degree of care; and (iii) implement and maintain commercially reasonable physical, electronic, administrative and procedural security measures, including commercially reasonable authentication, access controls, virus protection and intrusion detection practices and procedures, to protect such Confidential Information.

13.2 Use and Disclosure of Confidential Information

(a) Each Receiving Party shall use and disclose the Confidential Information of the Disclosing Party only for the purpose of performing its obligations or enforcing its rights with respect to the Program or as otherwise expressly permitted by this Agreement, and shall not accumulate in any way or make use of such Confidential Information for any other purpose; provided that, subject to Section 17.2(e), notwithstanding any other provision hereof, the Parties may not disclose the terms of this Agreement in the exercise of their rights under Section 2.2(a), Section 2.2(b), other than the terms relating to the processing of Prequalification Requests, or in connection with the exercise of their rights under Article XIV or XVII.

(b) Each Receiving Party shall: (i) limit access to the Disclosing Party’s Confidential Information to those Representatives, service providers or vendors, prospective purchasers (and their respective Representatives) who have a reasonable need to access such Confidential Information, in connection with the Program, a potential sale of Program Assets or any assets of the Company and its Affiliates, a potential merger, consolidation, acquisition or other transaction or financing arrangement involving the Company and its Affiliates, or pursuant to the Company’s exercise of its purchase option hereunder, in each case in accordance with the terms of this Agreement, (ii) ensure that any Person with access to the Disclosing Party’s Confidential Information agrees to be bound by a confidentiality agreement consistent with the restrictions set forth in this Article XIII and (iii) be liable to the Disclosing Party for any unauthorized use of or access to its Confidential Information by any of the above persons.

(c) The Bank shall not share or allow access to information about Program marketing strategy, acquisition strategy, Company Credit Card usage, and use of Systems that is unique to the Program and that does not include general expertise or know-how with Bank employees who are dedicated to, or spend a majority of their time in respect of, any Relevant Retail Program.

13.3 Unauthorized Use or Disclosure of Confidential Information. Each Receiving Party agrees that any unauthorized use or disclosure of Confidential Information of the Disclosing Party will cause immediate and irreparable harm to the Disclosing Party for which money damages will not constitute an adequate remedy. In that event, the Receiving Party agrees that equitable or injunctive relief (including specific performance) may be warranted in addition to any other remedies the Disclosing Party may have. In addition, the Receiving Party agrees promptly to advise the Disclosing Party by telephone and in writing of any unauthorized disclosure or use of the Confidential Information of the Disclosing Party by the Receiving Party or any Person to whom the Receiving Party shall have disclosed such information which may come to the Receiving Party’s attention, and to take all steps at the Receiving Party’s expense reasonably requested by the Disclosing Party to remedy same.
13.4 Return or Destruction of Confidential Information. Following the end of the Termination Period (or the interim servicing period pursuant to Section 17.2(h) to the extent sharing of Confidential Information continues during the Termination Period in accordance with this Agreement), the Receiving Party shall cease using and promptly, at Receiving Party’s option, return to Disclosing Party or arrange for the destruction of any and all the Disclosing Party’s Confidential Information in any media (including any electronic or paper copies, reproductions, extracts or summaries thereof); provided, however, the Receiving Party in possession of tangible property containing the Disclosing Party’s Confidential Information may retain, subject to the terms of this Agreement, (a) Confidential Information (i) that a Receiving Party, its Service Providers or their respective Representatives are required to retain by Applicable Law or documented, internal retention policies, or (ii) that are automatically retained as part of a computer back-up, recovery or similar archival or disaster recovery system or form; provided, such copies are not intentionally accessed except where required or requested by Applicable Law or where disclosure is otherwise permitted under this Agreement, or (b) that a Receiving Party’s or its Service Providers’ Representatives that are accounting firms retain in accordance with policies and procedures implemented by such persons in order to comply with Applicable Law or professional rules or standards. Such return or destruction shall be certified in writing, including a statement that no copies of Confidential Information have been kept, except as provided herein.

ARTICLE XIV

RETAIL PORTFOLIO ACQUISITIONS AND DISPOSITIONS

14.1 Retailer that Operates a Credit Card Business. If the Company or any of its Subsidiaries acquires, is acquired by, or otherwise combines with (including by merger, consolidation or other business combination) a retailer that directly or through an Affiliate or unaffiliated Person issues a Credit Card in the United States and following such acquisition such Credit Card will bear a Company Licensed Mark (such Credit Card accounts, the “New Portfolio”), then without limiting any termination rights the Company may have in connection with such transaction, the Company shall comply with this Article XIV in connection therewith. The Company shall notify the Bank of such transaction as soon as practicable, which may, in the Company’s sole discretion, be prior to or after the Company’s purchase of such retailer, and the following shall apply:

(a) Retailer that Operates a New Portfolio. If the acquired retailer owns and operates the New Portfolio itself or through an Affiliate, the Company may, in its discretion, continue to operate the New Portfolio. If the Company determines, in its discretion, to use a third-party issuer to serve as the issuer for the New Portfolio, the Company shall (***).

(b) Retailer that has a New Portfolio with another Issuer. If the New Portfolio is issued through an unaffiliated Person (other than the Bank or any of its Affiliates) (such unaffiliated Person the “Acquired Portfolio Issuer”), the following shall apply:
If the Acquired Portfolio Program Agreement is terminable in accordance with its terms, then the following shall apply:

(c) Retailer that has a New Portfolio with the Bank. If the Company or any of its Subsidiaries acquires a New Portfolio issued by the Bank, (**).  

(d) Nothing in this Section 14.1 shall require the Company to breach, or cause a breach of, the terms of any existing agreement relating to such acquired retailer, program or New Portfolio.  

(e) If the Company does not sell such New Portfolio to the (**).  

14.2 Conversion of Purchased Accounts.  

(a) If the Bank acquires any Credit Card portfolio pursuant to Section 14.1(a) or Section 14.1(b) or if the Company elects to integrate any such acquired portfolio pursuant to Section 14.1(c), (**).  

(b) Each Party shall (****) unless the Parties otherwise agree to modify such terms and conditions.  

(c) (****).  

14.3 No Other Company Obligations. Except as set forth in this Article XIV, the Company shall have no obligation to include in the Program any Credit Card portfolios acquired in connection with any merger, consolidation, acquisition or other transaction or otherwise cause them to be transferred to the Bank. Except to the extent included in the Program in accordance with this Article XIV, an acquired portfolio may be operated free of the exclusivity restrictions set forth in this Agreement, including, for the avoidance of doubt, if the Company acquires, whether by purchase or otherwise, another retailer with a consumer Credit Card program that the Company does not seek to re-brand with a Company Licensed Mark.  

14.4 Retail Portfolio Dispositions. Nothing in this Agreement shall be deemed to require the Company to maintain any Company Channel, in whole or in part, or prevent the Company from ceasing to operate any Company Channel, in whole or in part. In the event that the Company arranges for the disposition of any group of retail establishments that are separately identifiable (e.g., retail establishment representing a particular geographical location, branding strategy, product type or other separately identifiable feature) or any Company Channel other than its physical store channel, the Company may (****) (**), or (ii) in the event that such purchaser does not (****) (****) For purposes of this Section 14.4, the Company may deem an Account to be related to a disposition and to be a Program Asset if (****), as the case may be, that are subject to such disposition. For the Company to offer (****).
ARTICLE XV
EVENTS OF DEFAULT; RIGHTS AND REMEDIES

15.1 Events of Default. The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an Event of Default by a Party hereunder:

(a) Such Party shall fail to make a payment of any amount due and payable pursuant to this Agreement (other than the settlement of amounts due in respect of Charge Transaction Data addressed in Section 15.2(a) below) and such failure shall remain unremedied for a period of three (3) Business Days after the non-defaulting Party shall have given written notice thereof.

(b) Except with respect to noncompliance with Sections 4.6(d), and 7.3 (which are addressed in Sections 16.2(c) and 15.2(e), respectively), such Party shall fail to perform, satisfy or comply with any material obligation, condition, covenant or other provision contained in this Agreement, and such failure shall remain unremedied for a period of thirty (30) days after the dispute resolution process in Section 3.2(d)(ii)(D) is exhausted without resolution, provided that, if such failure cannot be cured in a commercially reasonable manner within such time, such failure shall not constitute an Event of Default if the defaulting Party shall have initiated and diligently pursued a cure within such time and such cure is completed within ninety (90) days from the date the dispute resolution process in Section 3.2(d)(ii)(D) is exhausted without resolution.

(c) Any representation or warranty by such Party contained in this Agreement shall not be true and correct in any respect as of the date when made, and the Party making such representation or warranty shall fail to cure the event giving rise to such breach within thirty (30) days after the other Party shall have given written notice thereof specifying the nature of such breach in reasonable detail, provided that, if such failure cannot be cured in a commercially reasonable manner within such time, such breach shall not constitute an Event of Default if the defaulting Party shall have initiated a cure within such time and such cure is completed within ninety (90) days from the date of written notice regarding such breach.

15.2 Defaults by the Bank. The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an event of default by the Bank hereunder:

(a) The Bank fails to settle Charge Transaction Data and make payment in full therefor within two (2) Business Days of the time that such settlement payment is due pursuant to Section 8.4.

(b) The Bank shall no longer be solvent or shall fail generally to pay its debts as they become due.

(c) Any regulatory authority having jurisdiction over the Bank shall order the appointment of a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) of the Bank or of any substantial part of its properties, or order the winding-up or liquidation of the affairs of the Bank.
Either (i) the Bank shall (A) consent to the institution of proceedings specified in paragraph (c) above or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) of such entity or of any substantial part of its properties, or (B) take corporate or similar action in furtherance of any such action; or (ii) a decree or order by a court having jurisdiction (1) for relief in respect of the Bank pursuant to the Bankruptcy Code or any other applicable bankruptcy or other similar law, (2) for appointment of a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) of the Bank or of any substantial part of its properties, or (3) ordering the winding-up or liquidation of the affairs of the Bank shall, in any such case, be entered, and shall not be vacated, discharged, stayed or bonded within sixty (60) days from the date of entry thereof.

The Bank shall fail to meet one or more SLAs expressly giving rise to the right to terminate hereunder pursuant to Schedule 7.3.

The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an event of default by the Company hereunder:

(a) The Company shall no longer be solvent or shall fail generally to pay its debts as they become due.

(b) A petition under the Bankruptcy Code or similar law shall be filed against the Company and not be dismissed within sixty (60) days.

(c) A decree or order by a court having jurisdiction (i) for relief in respect of the Company pursuant to the Bankruptcy Code or any other applicable bankruptcy or other similar law, (ii) for appointment of a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) of the Company or of any substantial part of its properties, or (iii) ordering the winding-up or liquidation of the affairs of the Company shall, in any such case be entered, and shall not be vacated, discharged, stayed or bonded within sixty (60) days from the date of entry thereof.

(d) The Company shall (i) file a petition seeking relief pursuant to the Bankruptcy Code or any other applicable bankruptcy or other similar law, (ii) consent to the institution of proceedings pursuant thereto or to the filing of any such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) of the Company or any substantial part of its properties, or (iii) take corporate or similar action in furtherance of any such action.

In addition to any other rights or remedies available to the Parties at law or in equity, upon the occurrence of a Company Event of Default or a Bank Event of Default, the non-defaulting Party shall be entitled, in addition to its termination rights under Article XVI, to collect from the defaulting Party any amount indisputably in default plus interest based on the Prime Rate.
ARTICLE XVI

TERM/TERMINATION

16.1 Term. This Agreement shall continue in full force and effect for seven (7) years from the Effective Date (the “Initial Term”) unless earlier terminated as provided herein. Following the Initial Term this Agreement shall renew automatically without further action of the Parties for successive two (2) year terms (each, a “Renewal Term”) unless (a) the Bank provides written notice of non-renewal at least (****) or (b) the Company provides written notice of non-renewal at least (****) in each case, prior to the expiration of the Initial Term or current Renewal Term, as the case may be.

16.2 Termination by the Company Prior to the End of the Initial Term or a Renewal Term. In addition to the other termination rights expressly provided for pursuant to other Sections of this Agreement, the Company may terminate this Agreement upon written notice prior to the end of the Initial Term or any Renewal Term:

(a) upon written notice upon the occurrence of a Bank Event of Default;

(b) (****)

(c) in accordance with (****);

(d) (****)

(e) (****)

(f) upon notice if the Bank shall fail to perform, satisfy or comply with any obligation, condition, covenant or other provision contained in this Agreement for a period of not less than thirty (30) days due to a Force Majeure Event and such failure shall either have a Bank Material Adverse Effect or materially diminish the benefits of the Program to the Company; or

(g) if the Purchase Agreement is terminated without the occurrence of the Closing Date.

16.3 Termination by the Bank Prior to the End of the Initial Term or a Renewal Term. The Bank may terminate this Agreement upon written notice prior to the end of the Initial Term or any Renewal Term (i) after the occurrence of a Company Event of Default, (ii) if the Company shall fail to perform, satisfy or comply with any obligation, condition, covenant or other provision contained in this Agreement for a period of not less than thirty (30) days due to a Force Majeure Event and such failure shall either have a Company Material Adverse Effect or materially diminish the benefits of the Program to the Bank or (iii) if the Purchase Agreement is terminated without the occurrence of the Closing Date.
ARTICLE XVII
EFFECTS OF TERMINATION

17.1  General Effects.

(a) In the event of a notice of termination or non-renewal of this Agreement (***) , all obligations of the Parties, including (i) operating and servicing the Accounts in the ordinary course of business, (ii) compensation as set forth in Article IX, (iii) originating and extending credit on Accounts and funding Cardholder Indebtedness, (iv) at the Company’s option, solicitations, marketing and advertising of the Program, and (v) at the Company’s option, funding of the Marketing Commitment, and (vi) acceptance of the Company Credit Cards in Company Channels, shall continue in accordance with and subject to the terms of this Agreement (***) provided that the obligations of the Company and its Affiliates in Section 2.2 shall cease to be of any further force and effect if at any time following notice of termination or non-renewal of this Agreement by either Party, the Bank ceases to accept Credit Card Applications or extend credit under the Credit Cards or comply with Section 4.6 in connection with the Accounts. (***) .

(b) (***) all obligations of the Parties under this Agreement shall cease, except that the provisions specified in Section 19.22 shall survive.

17.2  The Company’s Option to Purchase the Program Assets.

(a) If this Agreement expires or is terminated by either Party for whatever reason, the Company, directly or through an Affiliate, has the option to purchase, or arrange the purchase by a third party nominated by the Company (a “Nominated Purchaser”), of the Program Assets from the Bank on customary terms and conditions (unless the Company is the purchaser, in which case the terms shall be no more onerous or less favorable to the Company than those applicable to the Bank in the Purchase Agreement); provided, however, that in all cases, purchase price of the Program Assets will be determined in accordance with Section 17.3.

(b) The purchase option is exercisable by the Company serving notice (the “Purchase Notice”) by the later of: (***) .

(c) If such purchase option is exercised, the Company or the Nominated Purchaser must use commercially reasonable efforts to complete the purchase of the Program Assets within (***) provided, however, that such time period shall be extended as necessary for required regulatory approvals. The date of such completion shall be the “Program Purchase Date.”

(d) If this Agreement is terminated by either Party, the purchase price for the Program Assets purchased, payable on the Program Purchase Date, shall be equal to the Fair Market Value of the Accounts and Cardholder Indebtedness determined in accordance with Section 17.3; provided that if this Agreement is terminated by the Company pursuant to Section 16.2(b), then the purchase price so payable shall be the greater of the Fair Market Value and the par value of the Accounts and Cardholder Indebtedness to be purchased on the Program Purchase Date.
The Parties will use commercially reasonable efforts to minimize transition costs. Following the provision by either Party of notice of termination or non-renewal of this Agreement or the occurrence of an event that gives rise to a right of termination, or at any time during (**), the Bank shall provide (i) the Company and its prospective or actual Nominated Purchasers with Program-related data of the type that (**), (ii) the Company and its prospective or actual Nominated Purchasers access to information relating to the Program Assets and the performance of the Program, including (**).

Each Party shall be responsible for (**).

After the Program Purchase Date, the Bank shall have no further rights in or to any Cardholder Data. If the purchase option is not exercised, following the end of the Termination Period, subject to the Bank’s rights in Section 17.4, in no event shall the Bank solicit any Cardholder for any loan, product or service on the basis of such Person’s status as a Cardholder or any other information obtained in connection with the Program without the Company’s prior consent.

If the Company exercises its right to purchase, or to select a Nominated Purchaser to purchase, the Program Assets, (**).

Existing Receivables.

Except as provided in this Section, the Existing Receivables may not be purchased by the Company or the Nominated Purchaser.

The Company or the Nominated Purchaser may elect to exercise the Clean Up Call Option with the exercise of the right to purchase the other Program Assets. If the Company or the Nominated Purchaser elects to exercise the Clean Up Call Option pursuant to this Section, then the purchase price thereof shall be the same as for the other Program Assets, as set forth in Section 17.2(d).
17.3 **Fair Market Value.** Upon receipt of the Purchase Notice, if applicable, the Parties shall enter into good faith negotiations to determine the Fair Market Value of the Accounts and Cardholder Indebtedness for a period of thirty (30) days based on (i) the assumption that the Company (or its successor) will continue to be a going concern as a retailer and (ii) the additional assumptions set forth in Schedule 17.3. In the event that the Parties do not reach agreement on the Fair Market Value of the Accounts and Cardholder Indebtedness during such period, the Bank and the Company (or its Nominated Purchaser, if applicable) shall each retain, at their own cost, an Independent Appraiser who together shall select a third Independent Appraiser. The Bank and the Company (or its Nominated Purchaser, if applicable) shall each pay fifty percent (50%) of the costs associated with the third Independent Appraiser. The Parties shall provide such information to the Independent Appraisers as is necessary to permit each of the Independent Appraisers to provide a valuation of the Accounts and Cardholder Indebtedness; provided, however, that the information provided to all Independent Appraisers shall be identical and there shall be no *ex parte* communication between a Party and an Independent Appraiser. Such appraisals shall be performed on the basis of the assumptions set forth in Schedule 17.3. The Fair Market Value shall be the average of the two (2) closest valuations received from the Independent Appraisers; provided, however, if the median valuation is within plus or minus twenty (20) percent of the mean of the three valuations, the Fair Market Value shall be the mean. The Fair Market Value determined in accordance with this Section 17.3 shall be final and binding on the Parties and enforceable in any court having jurisdiction pursuant to this Agreement. None of the Independent Appraisers can be compensated based on the outcome of their appraisal or the outcome of the Fair Market Value process.

17.4 **Rights of the Bank if Purchase Option Not Exercised.**

(a) If this Agreement expires or is terminated and the Company gives written notice that the Company shall not exercise its option referred to in Section 17.2 or otherwise fails to exercise its option within the time period specified in Section 17.2, the Company shall have no further rights whatsoever in the Program Assets. In such event, the Bank shall have the right on or after the expiration or termination of this Agreement to:

(i) (***)

(ii) subject to Applicable Law, notify Cardholders that the Bank shall cease providing credit under the Accounts and require repayment of all amounts outstanding on all Accounts until all associated receivables have been repaid and, solely for identification purposes, use the Company’s name (but not stylized mark) in connection with liquidating the remaining Accounts until the last Account is liquidated; provided that, the foregoing use is subject to the terms and conditions of this Agreement;

(iii) (***)

(iv) any combination of (i), (ii), and (iii).

(b) (***)

(c) The Company hereby grants and agrees to grant to the Bank a non-exclusive, royalty-free, non-transferable, non-sublicensable license to use the Company Licensed Marks (i) for up to one hundred and eighty (180) days after the Company gives written notice that the Company shall not exercise its option referred to in Section 17.2 or after the time period for the Company to exercise such option shall have expired solely to the extent necessary to exercise its rights under this Section 17.4 and (ii) for up to one hundred eighty (180) days after such written notice or expiration solely to the extent necessary to identify the Accounts in connection with the billing and collection thereof and as otherwise required by Applicable Law, after which time the Bank shall no longer use any of the Company Licensed Marks (or any other trademarks or source indicators confusingly similar thereto).
ARTICLE XVIII

INDEMNIFICATION

18.1 Company Indemnification of the Bank. From and after the Effective Date, the Company shall indemnify and hold harmless the Bank, its Affiliates, and their respective officers, directors and employees from and against and in respect of any and all losses, liabilities, damages, costs and expenses of whatever nature, including reasonable attorneys’ fees and expenses (collectively, “Losses”), which are caused or incurred by, result from, arise out of or relate to the following:

(a) the Company’s, its Affiliates’ or any of its or their employees’ or Service Providers’ negligence, recklessness or willful misconduct (including acts and omissions) relating to the Program;

(b) any breach by the Company, any of its Affiliates, or any of its or their Service Providers of any of the terms, covenants, representations, warranties or other provisions contained in this Agreement;

(c) any actions or omissions by the Bank taken or not taken (i) at the Company’s written request or written direction pursuant to this Agreement, except where the Bank would have been otherwise required to take such action (or refrain from acting) absent such request or direction of the Company (it being understood that neither this exception nor any request or direction of the Company shall in any way relieve the Bank of, or in any way alter, the Bank’s express obligations under this Agreement or (ii) at the direction of the Strategic Operating Committee based on the Company’s exercise of its right to break a deadlock with respect to an Unapproved Matter based on the status of that Unapproved Matter as a Company Matter;

(d) fraudulent acts by the Company, or any of its Affiliates, or its or their employees or Service Providers, in connection with the Program (except to the extent charged back pursuant to Section 8.5);

(e) any failure by the Company or its Affiliates to satisfy any of their obligations to third parties with respect to the sale by them to such third parties of Goods and Services;

(f) any element of any Company Credit Cards, Credit Card Documentation, the Program Website, any Program related social media pages or “apps,” Solicitation Materials or other communications to Cardholders, Bank Program Materials, Company Program Materials, or Account Documentation that was (i) modified by the Company in contravention of this Agreement or (ii) included therein at the direction of the Strategic Operating Committee at the express direction of the Company pursuant to its right to break a deadlock based on the fact that the inclusion of such element was an Unapproved Matter that was approved as a Company Matter;
the failure of the Company to comply with Applicable Law in connection with the Program or the Operating Procedures, unless such failure was the result of (i) any action taken or not taken by the Company at the request or direction of the Bank or in accordance with the Operating Procedures or (ii) was the result of a violation of any Applicable Law as to which the Bank shall have failed to advise the Company as required pursuant to Section 11.5(c)(ii) hereof;

(h) the Company’s Inserts or Billing Statement messages (other than any such Inserts or Billing Statement messages governed by clause (f) above);

(i) allegations by a third party that the use or publication of the Company Licensed Marks as permitted herein or any materials or documents provided by the Company (other than Account Documentation or Solicitation Materials, which are governed by clause (f) above) constitutes: (i) libel, slander, and/or defamation; (ii) invasion of rights of privacy or rights of publicity; (iii) breach of contract or tortious interference; (iv) trademark infringement or dilution or (v) unfair competition;

(j) (****);

(k) any loyalty or reward program offered by the Company, and the offering and administration of any Value Proposition by the Company, except to the extent of the Bank’s administrative obligations under Section 4.10 or to the extent that the element of the loyalty or reward program resulting in the Loss was approved by the Strategic Operating Committee at the direction of the Bank pursuant to its right to break a deadlock because such element was an Unapproved Matter that is a Bank Matter; and

(l) the operation of the Secondary Program and any Second-Look Program.

18.2 Bank Indemnification of the Company. From and after the Effective Date, the Bank shall indemnify and hold harmless the Company, its Affiliates and their respective officers, directors and employees from and against and in respect of any and all Losses which are caused or incurred by, result from, arise out of or relate to the following:

(a) the Bank’s, its Affiliates’ or any of its or their employees’ or Service Providers’ negligence, recklessness or willful misconduct (including acts and omissions) relating to the Program;

(b) any breach by the Bank, any of its Affiliates, or any of its or their Service Providers of any of the terms, covenants, representations, warranties or other provisions contained in this Agreement or any Credit Card Agreement;

(c) any actions or omissions by the Company taken or not taken at the Bank’s written request or direction pursuant to this Agreement, except where the Company would have been otherwise required to take such action (or refrain from acting) absent such request or direction of the Bank (it being understood that neither this exception nor any request or direction of the Bank shall in any way relieve the Company of, or in any way alter, the Company’s express obligations under this Agreement);
(d) fraudulent acts by the Bank, or any of its Affiliates, or its or their agents or employees or Service Providers, in connection with the Program;

(e) any failure by the Bank to satisfy any of its obligations to (i) Cardholders or other third parties with respect to the Program or the Accounts, whether pursuant to the Credit Card Agreements or otherwise or (ii) any other third parties in connection with its provision of other products and services to such third parties;

(f) any element of any Company Credit Cards, Credit Card Documentation, the Program Website, any Program related social media pages or “apps,” Solicitation Materials or other communications to Cardholders, Bank Program Materials, Company Program Materials, or Account Documentation, including that the same fail to comply with Applicable Law, except to the extent the Losses with respect thereto are indemnifiable by the Company pursuant to Section 18.1(f);

(g) (i) the failure of the Program to comply with Applicable Law, except if such failure was the result of an action imposed by the Strategic Operating Committee at the direction of the Company pursuant to its right to break a deadlock because such action was an Unapproved Matter that was a Company Matter or (ii) the failure of the Bank to comply with Applicable Law in connection with the Program or the Risk Management Policies, Collections Policies or Operating Procedures;

(h) the Bank’s Inserts or Billing Statement messages;

(i) allegations by a third party that the use or publication of the Bank Licensed Marks as permitted herein or any materials or documents provided by the Bank constitutes: (i) libel, slander, and/or defamation; (ii) invasion of rights of privacy or rights of publicity; (iii) breach of contract or tortious interference; (iv) trademark infringement or dilution or (v) unfair competition;

(j) (****); and

(k) any Approved Ancillary Products offered to Cardholders by the Bank under the Program.

18.3 Procedures.

(a) In case any claim is made, or any suit or action is commenced, against a Party (the “Indemnified Party”) in respect of which indemnification may be sought by it under this Article XVIII, the Indemnified Party shall promptly give the other Party (the “Indemnifying Party”) notice thereof and the Indemnifying Party shall have the right to assume control of and defend, in the name of the Indemnified Party, any claim of which it has received such notice, by giving written notice to the Indemnified Party given not later than twenty (20) days after the delivery of the applicable notice from the Indemnified Party, to assume, at the Indemnifying Party’s expense, the defense thereof, with counsel reasonably satisfactory to such Indemnified Party. After notice from the Indemnifying Party to such Indemnified Party of its election so to assume the defense thereof, the Indemnifying Party shall not be liable to such Indemnified Party under this Section 18.3 for any attorneys’ fees or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof, except to the extent set forth in Section 18.3(b).
(b) The Indemnified Party shall have the right to employ its own counsel if the Indemnifying Party elects to assume such defense, but the fees and expenses of such counsel shall be at the Indemnified Party’s expense, unless (i) the employment of such counsel at the Indemnifying Party’s expense has been authorized in writing by the Indemnifying Party, (ii) the Indemnifying Party has not employed counsel to take charge of the defense within twenty (20) days after delivery of the applicable notice or, having elected to assume such defense, thereafter ceases its defense of such action, or (iii) the Indemnified Party has reasonably concluded that there may be defenses available to it which are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of the Indemnified Party), in any of which events the attorneys’ fees and expenses of counsel to the Indemnified Party shall be borne by the Indemnifying Party.

(c) The Indemnified Party or Indemnifying Party may at any time notify the other of its intention to settle or compromise any claim, suit or action against the Indemnified Party in respect of which payments may be sought by the Indemnified Party hereunder, and (i) the Indemnifying Party may settle or compromise any such claim, suit or action solely for the payment of money damages for which the Indemnified Party will be released and fully indemnified hereunder, but shall not agree to any other settlement or compromise without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld (it being agreed that any failure of an Indemnified Party to consent to any settlement or compromise involving relief other than monetary damages shall not be deemed to be unreasonably withheld), and (ii) the Indemnified Party may not settle or compromise any such claim, suit or action without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld and the Indemnifying party will have no obligation to pay the monetary amount of any such settlement or compromise entered into by the Indemnified Party without the Indemnifying Party’s prior written consent.

(d) The Indemnifying Party shall promptly notify the Indemnified Party if the Indemnifying Party desires not to assume, or participate in the defense of, any third party claim, suit or action.

18.4 Notice and Additional Rights and Limitations.

(a) If an Indemnified Party fails to give prompt notice of any claim being made or any suit or action being commenced in respect of which indemnification under this Article XVIII may be sought, such failure shall not limit the liability of the Indemnifying Party except to the extent the Indemnifying Party’s ability to defend the matter was actually prejudiced by such failure to give prompt notice.

(b) This Article XVIII shall govern the obligations of the Parties with respect to the subject matter hereof but shall not be deemed to limit the rights that either Party might otherwise have at law or in equity.
LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR (***) (1) WITH RESPECT TO A PARTY’S (***) (2) (**).

ARTICLE XIX
MISCELLANEOUS

19.1 Precautionary Security Interest. The Company and the Bank agree that this Agreement contemplates the extension of credit by the Bank to Cardholders and that the Company’s submission of Charge Transaction Data to the Bank shall constitute assignment by the Company of any and all right, title and interest in such Charge Transaction Data and the Cardholder Indebtedness reflected therein. However, as a precaution in the event that any Person asserts that Article 9 of the UCC applies or may apply to the transactions contemplated hereby, the Company hereby grants to the Bank a first priority present and continuing security interest in and to the Acquired Assets (as defined in the Purchase Agreement), whether now existing or hereafter created or acquired. In addition, the Company agrees to take any reasonable action requested by the Bank, at the Bank’s expense, to establish the first lien and perfected status of such security interest. Upon the termination or expiration of this Agreement, the Bank shall execute such releases and file such notices as the Company may request to evidence the termination of the security interest provided for in this Section 19.1.

19.2 Securitization.
(a) The Bank shall have the right to securitize the Cardholder Indebtedness or any part thereof by itself or as part of a larger offering at any time. Such securitization shall not affect the Company’s rights or the Bank’s obligations hereunder. The Bank shall not securitize the Cardholder Indebtedness in any manner that may encumber the Company’s rights hereunder to purchase Program Assets free and clear of any lien or other interest created pursuant to such securitization. All uses of the Company Licensed Marks in any securitization document shall be made in accordance with Section 10.1 and with the prior written approval of the Company, which approval may not be unreasonably withheld.

(b) In the event the Company elects to purchase the Program Assets pursuant to Section 17.2 and the Bank has securitized or participated any of the Cardholder Indebtedness included therein that is included in the Program Assets, the Bank shall take such actions as are necessary to remove such Program Assets from such securitization or otherwise terminate all interests and liens created in the Program Assets pursuant to such securitization and to transfer such Program Assets free and clear of all such interests and liens to the Company or its Nominated Purchaser.

19.3 Assignment. None of the Company, on the one hand, or the Bank, on the other hand, shall assign this Agreement or any of its rights hereunder without the prior written consent of the other Party.

19.4 Sale or Transfer of Accounts. Except as pursuant to Section 17.2 to the Company or its designee, or solely with respect to Cardholder Indebtedness Section 19.2, the Bank shall not sell or transfer in whole or in part any Accounts other than in the ordinary course for written-off Accounts that have been written-off by the Bank in accordance with the then-current Risk Management Policies to purchasers who agree to abide by Bank’s standard policies for debt purchasers generally.
19.5 **Subcontracting.** Except as otherwise provided in this Agreement, it is understood and agreed that, in fulfilling its obligations under this Agreement, either Party may, following the below procedures, utilize its Affiliates or other Persons to perform functions in fulfilling its obligations under this Agreement, and such Affiliates or Persons shall comply with the terms of this Agreement. The applicable Party shall be responsible and liable for functions performed by such Affiliates or other Persons to the same extent the Party would be responsible and liable if it performed such functions itself. (****).

19.6 **Amendment.** Except as provided herein, this Agreement may not be amended, supplemented or otherwise modified except by a written instrument signed by the Bank and the Company.

19.7 **Non-Waiver.** No delay by a Party hereto in exercising any of its rights hereunder, or partial or single exercise of such rights, shall operate as a waiver of that or any other right. The exercise of one or more of a Party’s rights hereunder shall not be a waiver of, or preclude the exercise of, any rights or remedies available to such Party under this Agreement or in law or at equity. Any waiver by a Party shall only be made in writing and executed by a duly authorized officer of such Party.

19.8 **Severability.** In case any one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, and this Agreement shall be reformed, construed and enforced as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein and there had been contained herein instead such valid, legal and enforceable provisions as would most nearly accomplish the intent and purpose of such invalid, illegal or unenforceable provision.

19.9 **Venue.** Each Party hereby irrevocably submits to the jurisdiction of the United States District Court for the Southern District of New York or, if such federal jurisdiction is unavailable, in the state courts of the State of New York located in the borough of Manhattan over any action arising out of this Agreement, and each Party hereby irrevocably waives any objection which such Party may now or hereafter have to the laying of improper venue or forum non conveniens. Each Party agrees that a judgment in any such action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any manner provided by law. Any and all service of process and any other notice in any such suit, action or proceeding with respect to this Agreement shall be effective against a Party if given as provided herein.

19.10 **Governing Law.** This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made to be performed within such State and applicable federal law.
Specific Performance. The Parties agree that money damages would not be a sufficient remedy for any breach of Article VI, X or XIII or the failure of a Party to perform any of its material obligations hereunder, and that, in addition to all other remedies, each Party will be entitled to seek specific performance and to seek injunctive or other equitable relief as a remedy for any such breach or failure to perform its material obligations hereunder. Each Party waives any requirements for the securing or posting of any bond in connection with such remedy.

Notices. Any notice, approval, acceptance or consent required or permitted by a Party under this Agreement shall be in writing to the other Party and shall be deemed to have been duly given when delivered in person, when received via overnight courier, when sent by facsimile (with written confirmation of transmission), or when posted by United States registered or certified mail, with postage prepaid, addressed as follows:

If to the Company: Sterling Jewelers, Inc.
375 Ghent Road
Akron, OH 44333
Attention: Laurel Krueger, SVP Legal
Email: Laurel.Krueger@signetjewelers.com

With a copy to: Sterling Jewelers Inc.
375 Ghent Road
Akron, OH 44333
Attention: Michele Santana, Chief Financial Officer
Email: Michele.santana@signetjewelers.com

With a copy to: Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Maripat Alpuche, Esq.
Facsimile: (212) 455-2502
Email: malpuche@stblaw.com

If to the Bank: Comenity Bank
One Righter Parkway, Suite 100
Wilmington, DE 19803
Attn: President

With a copy to: Attn: Law Department
3100 Easton Square Place
Columbus, Ohio 43219
19.13 Further Assurances. The Company and the Bank agree to produce or execute such other documents or agreements as may be necessary or desirable for the execution and implementation of this Agreement and the consummation of the transactions specified herein and to take all such further action as the other Party may reasonably request in order to give evidence to the consummation of the transactions specified herein.

19.14 No Joint Venture. For all purposes, including federal and state tax purposes, nothing contained in this Agreement shall be deemed or construed by the Parties or any third party to create the relationship of principal and agent, or a partnership, joint venture or any association between the Company and the Bank, and no act of either Party shall be deemed to create any such relationship. The Company and the Bank each agree to such further actions as the other may request to evidence and affirm the non-existence of any such relationship.

19.15 Press Releases. The Company, on the one hand, and the Bank, on the other hand, each shall obtain the prior written approval of the other Party with regard to the content, timing and distribution of (i) any press releases announcing the execution of this Agreement or the transactions specified herein and (ii) any subsequent press releases concerning this Agreement or the transactions specified herein. The foregoing notwithstanding, it is understood that neither Party shall be required to obtain any prior consent, but shall consult with each other to the extent practicable, with regard to public disclosures required by Applicable Law or the applicable rules and regulations of any stock exchange.

19.16 (****)

19.17 Third Parties. Except for the Indemnified Parties with respect to indemnity claims pursuant to Article XVIII, the Parties do not intend: (i) the benefits of this Agreement to inure to any third party; or (ii) any rights, claims or causes of action against a Party to be created in favor of any Person or entity other than the other Party.

19.18 Force Majeure. If performance of any service or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of labor disputes, strikes, acts of God, floods, lightning, severe weather, shortages of materials, rationing, utility or communication failures, earthquakes, war, revolution, civil commotion, acts of public enemies, blockade or embargo or any other act, which are beyond the reasonable control and foreseeability of a Party (each, a “Force Majeure Event” (it being understood that a change in Applicable Law shall not be deemed a Force Majeure Event), then such Party shall be excused from such performance to the extent of and during the period of such Force Majeure Event. A Party excused from performance pursuant to this Section 19.18 shall give the other Party prompt written notice of the occurrence of such Force Majeure Event and shall exercise all reasonable efforts to continue to perform its obligations hereunder, including by implementing its disaster recovery and business continuity plan as provided in Section 7.2(b), and shall thereafter continue with reasonable due diligence and good faith to remedy its inability to so perform except that nothing herein shall obligate either Party to settle a strike or other labor dispute when it does not wish to do so. To the extent that either party is unable to maintain continuity of the services through such Force Majeure Event, it will make commercially reasonable efforts to procure an alternate source of the services in order to fulfill its obligations hereunder at its own cost.
19.19 Entire Agreement. This Agreement, the Purchase Agreement, the Employee Transfer Agreement (as defined in the Purchase Agreement), the Lease Agreement (as defined in the Purchase Agreement) and the Confidentiality Agreement, dated as of July 18, 2016, between Comenity LLC on behalf of its subsidiaries and other affiliates, and the Company, together with the Exhibits, Schedules and Annexes hereto and thereto, supersede any other agreement, whether written or oral, that may have been made or entered into by the Company and the Bank (or by any officer or employee of any such Parties) relating to the matters specified herein and therein, and constitute the entire agreement by the Parties related to the matters specified herein or therein.

19.20 Binding Effect.

(a) This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

(b) From the date hereof until the Effective Date, all information regarding the Company’s consumer Credit Card Program, including information regarding cardholders thereunder, shall be considered Confidential Information of the Company and only the following provisions of this Agreement shall be effective: Article I, such provisions of Sections 2.1(b), 2.2(a), 3.1, 3.2, 4.5, 4.8, 5.6, 10.1(c), 7.4 as expressly require actions prior to the Effective Date, Sections 3.1 and 3.2 solely with respect to decisions that will be effective only after the Effective Date), Articles XIII, XIV, XV and XVI, Article XVIII and Article XIX. All of the other provisions of this Agreement shall become effective as of the Effective Date.

19.21 Counterparts/Facsimiles. This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same instrument, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Any facsimile or PDF emailed version of an executed counterpart shall be deemed an original.

19.22 Survival. Upon the expiration or termination of this Agreement, the Parties shall have the rights and remedies described herein. Upon such expiration or termination, all obligations of the Parties under this Agreement shall cease, except that the obligations of the Parties pursuant to Article VI (Cardholder Information), Section 8.5 (The Bank’s Right to Charge Back), Article X (Intellectual Property), Article XII (Access and Audit), Article XIII (Confidentiality), Article XVII (Effects of Termination), Article XVIII (Indemnification), Section 19.1 (Precautionary Security Interest), Section 19.9 (Venue) and 19.10 (Governing Law) shall survive the expiration or termination of this Agreement.
IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed as of the date first above written.

COMENITY BANK

By: /s/ Michele Santana
    Name: Michele Santana
    Title: Chief Financial Officer

STERLING JEWELERS INC.

By: /s/ John Marion
    Name: John Marion
    Title: President

[Signature Page to Program Agreement]
## List of Schedules

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<td>7.4(b)(iii)</td>
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<td>8.5</td>
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<td>9.1</td>
<td>Company Compensation</td>
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<tr>
<td>17.2(e)-2</td>
<td>Program Asset Purchase Available Data (Phase 2)</td>
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</tr>
<tr>
<td>C-2</td>
<td>Bank Individuals with Knowledge</td>
</tr>
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</table>
Schedule 1.1(a)

Bank Licensed Marks

Comenity Capital Bank
Comenity
Alliance Data
Comenity Servicing
Account Assure
### Schedule 1.1(b)

#### Company Licensed Marks

<table>
<thead>
<tr>
<th>MARK</th>
<th>REGISTRATION NUMBER (if applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 YEARS OF KISSES</td>
<td>App. No. 87008609 common law</td>
</tr>
<tr>
<td>BELDEN</td>
<td>Reg. No. 1505455 and 1546874</td>
</tr>
<tr>
<td>EVERY KISS BEGINS WITH KAY</td>
<td>Reg. No. 2602439 common law</td>
</tr>
<tr>
<td>GOODMAN JEWELERS</td>
<td>common law</td>
</tr>
<tr>
<td>JARED</td>
<td>Reg. No. 3150413 and 3052726</td>
</tr>
<tr>
<td>JARED THE GALLERIA OF JEWELRY</td>
<td>Reg. No. 1872975 common law</td>
</tr>
<tr>
<td>JARED VAULT</td>
<td>Reg. No. 4964482 common law</td>
</tr>
<tr>
<td>JARED JEWELRY BOUTIQUE</td>
<td>Reg. No. 4963495 common law</td>
</tr>
<tr>
<td>J.B. ROBINSON</td>
<td>Reg. No. 1781330 and 1776882</td>
</tr>
<tr>
<td>KAY JEWELERS</td>
<td>Reg. No. 0748204 common law</td>
</tr>
<tr>
<td>KAY JEWELERS OUTLET</td>
<td>Reg. No. 2222703 common law</td>
</tr>
<tr>
<td>KAY</td>
<td>common law</td>
</tr>
<tr>
<td>KAY JEWELERS OUTLET</td>
<td>Reg. No. 3327324 common law</td>
</tr>
<tr>
<td>Marks</td>
<td>Registration Details</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>LEROY’S JEWELERS</td>
<td>common law</td>
</tr>
<tr>
<td>MARKS &amp; MORGAN</td>
<td>Reg. No. 2065696</td>
</tr>
<tr>
<td>OSTERMAN JEWELERS</td>
<td>common law</td>
</tr>
<tr>
<td>ROGERS JEWELERS</td>
<td>common law</td>
</tr>
<tr>
<td>SHAW’S JEWELERS</td>
<td>common law</td>
</tr>
<tr>
<td>WEISFIELD</td>
<td>Reg. No. 0977026</td>
</tr>
<tr>
<td>WEISFIELD JEWELERS</td>
<td>Reg. No. 1465012</td>
</tr>
<tr>
<td>: weisfield’s</td>
<td>Reg. No. 1156307</td>
</tr>
</tbody>
</table>

Company Licensed Marks shall also include Trademarks of the Company’s regional brands that, prior to the date hereof, have been converted to any of the Company Licensed Marks listed in the table above.
Schedule 1.1(c)

Comparable Partner Programs

(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
Schedule 1.1(d)

Relevant Retail Programs

(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
(****)(****)
Schedule 1.1(e)

Integration Plan

The Bank shall develop an Integration Plan to specify the tasks, timelines, responsibilities, dependencies, major milestones and deliverables to perform the functions and services necessary for the transition of the ownership, management and servicing of the Accounts from the Company to the Bank. The Bank shall consult with the Company in developing the Integration Plan, including by providing interim drafts thereof to the Integration Committee on a frequent periodic basis and by incorporating the reasonable comments of the Company’s representatives on such Committee on such Integration Plan and by submitting any disputes with respect to such comments to the Dispute resolution process set forth in Section 3.2(d)(ii)(D) of the Agreement; however primary responsibility for drafting the Integration Plan shall be borne by the Bank. The Bank shall present the proposed final version of the Integration Plan to the Company within 30 days of the execution of this Agreement. The final Integration Plan shall be subject to approval by the Company (which approval shall not be unreasonably withheld). The Company and the Bank each agree to use good faith efforts to meet the timelines set forth below, and the Bank agrees that it shall not incorporate any provisions into the Integration Plan that shall impair the Parties’ respective abilities to meet such timelines.

Key Milestones:
- Subject to satisfaction of the Launch Requirements (as hereinafter defined), the Effective Date will occur as described in the definition of Effective Date, and the Systems Conversion Date will occur on (****).
- Completion of store rollouts by (****) pursuant to a staged rollout plan set forth in the Integration Plan
- All transferred employees transitioned to Bank in accordance with the Employee Transfer Agreement
- Re-issue new Credit Cards in conjunction with Peak Sales period promotional mailings as coordinated with the Company (****)

The Integration Plan will take into consideration and set forth each Party’s responsibility for implementing all necessary components of the transition required for (i) the achievement of the Effective Date and Systems Conversion Date in compliance with the requirements of the Agreement and (ii) operation of the Program following the Effective Date and the Systems Conversion Date in accordance with the requirements of the Agreement. Without limiting the foregoing, the Integration Plan shall address all of the following elements, and such other elements not inconsistent therewith as the Integration Committee shall approve, in each case in a manner satisfying the requirements set forth in the table below.

<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Integration Team &amp; Responsibilities</td>
<td>The Integration Committee shall jointly develop and approve a project management protocol including a communication plan specific to meetings (which shall occur not less frequently than weekly), status reports, sponsor updates, meetings (technical and otherwise), etc.</td>
</tr>
<tr>
<td>Milestones/Priorities</td>
<td>The Integration Plan shall identify the major milestones, priorities and successful testing that must be accomplished in order to effect the Effective Date, the Systems Conversion Date and certain post-Conversion Date activities including (<strong><strong>) It is the Parties’ mutual intent that each of the milestones listed below this table and identified as a Launch Requirement shall have been satisfied prior to the Effective Date. (</strong></strong>)</td>
</tr>
<tr>
<td>Component</td>
<td>Description</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Timing</strong></td>
<td>The Integration Plan shall denote key dates for each major milestone of the Integration Plan considering the timetable referred to above, the Marketing Plan, seasonality of Company’s business, Systems freeze periods, etc.; provided that, any Systems freeze periods set forth in the Integration Plan shall be subject to modification by mutual agreement of the Parties.</td>
</tr>
<tr>
<td><strong>Human Resources</strong></td>
<td>The Parties shall jointly formulate and implement a communication plan associated with any human resources aspects of the Integration Plan including the Bank’s obligations to employ the Company employees assigned to the Program consistent with the Purchase Agreement</td>
</tr>
<tr>
<td><strong>Transition Risk Mitigation</strong></td>
<td>The Parties shall jointly identify and develop a mitigation plan for major risks associated with the Integration Plan (systems, data feeds, training, testing periods, etc.)</td>
</tr>
</tbody>
</table>
| **Customer Impact Analysis and Communication Plan** | The Parties shall jointly identify major implications for Cardholders and how the Integration Plan will mitigate risk to customers and Cardholders (e.g., any POS impact, etc.)  
  The Parties shall jointly develop a comprehensive Cardholder communication plan (notifications, documentation, etc.)  
  The Bank shall have prepared, and the Parties shall have approved in accordance with the Program Agreement, all Account Documentation and Cardholder communications to be used commencing on the Effective Date. |
| **Store Impact Analysis and Communication Plan** | The Parties shall jointly identify major implications for Company stores and how the Integration Plan will mitigate risk to the stores (e.g., any POS impact, etc.)  
  The Parties shall jointly develop a comprehensive communication plan for store associates (documentation, training, etc.) |
<p>| <strong>Physical Premises</strong>            | The Bank and Company respectively shall, subject to and consistent with the terms of the Sublease, complete site improvements, and technology updates to transition the Leased Premises into a Bank customer service center site |</p>
<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
</tr>
</thead>
</table>
| Key Program Systems (Prequalification, Instant Credit Originations, Sale Authorization, Daily Settlement, System Conversion) | ▪ Each Party shall have implemented and/or modified such of its Systems as are necessary to permit the origination, authorization and settlement of Company Credit Card transactions in compliance with the Agreement; (****).  
▪ (****)  
▪ Each Party shall have taken the actions required of it and necessary for completion of the Systems Conversion in compliance with the requirements of Section 7.4 of the Agreement such that the other Party shall be reasonably confident that the Systems Conversion shall be capable of being implemented in accordance with such Section (****), in each case without undue disruption to the Parties’ operations.  
▪ Each Party shall have given the other Party the opportunity to conduct such testing of the granting Party’s systems and procedures in relation to the Program as such other Party shall have reasonably requested.  
▪ (****)  
▪ The Parties shall have developed secure data protocols and a disaster recovery plan. |
| Information | ▪ The Bank shall have taken such actions as shall have enabled it to commence delivery of information required to be delivered to the Company pursuant to Articles VI and VII of the Agreement in compliance with the terms thereof. |

**Launch Requirements:**
The Parties agree that if the following features and functionalities have been tested by the Company and certified by the Bank as fully operational (such testing and certification of each feature or functionality the “Launch Requirements”), then each Party will deem the Program to be ready for Launch:

(****)
Schedule 1.1(f)

Company Credit Cards

1. Jared The Galleria of Jewelry
2. Kay Jewelers
3. Belden Jewelers
4. Goodman Jewelers
5. J.B. Robinson
6. Leroy's Jewelers
7. Marks & Morgan
8. Osterman Jewelers
9. Rogers Jewelers
10. Shaw's Jewelers
11. Weisfield Jewelers
Schedule 2.1(a)

Prequalification Process

The Bank shall:

1. Enable its Systems to accept and process Prequalification Requests through (****).
2. Provide for (****) will remain accessible through all Company Channels where Applications are accepted.

As a condition to submitting the Prequalification Request, prior to processing any Prequalification Request or Application, (****). The Company will (****).

Data gathered from the Shopper in connection with a Prequalification Request shall (****) or as otherwise required (****). The Bank acknowledges that the data gathered in connection with a Prequalification Request (****). If as a result of (****).

Prior to the Bank’s processing of a Prequalification Request, the Bank will (****) issued under the Secondary Program. If the Company determines that (****) Accounts and accounts under the Secondary Program which are (****). The Prequalification Request of all other Shoppers will be processed in accordance with the Agreement and the process described in this Schedule.

The information requested from the applicable Credit Reporting Agency will be used by the Bank solely to determine (i) the (****) and (ii) whether or not the (****). A Shopper shall be deemed a (****) if any of the following conditions exist based on the information provided by the Shopper or in the credit report obtained by the Bank from the Credit Reporting Agency in connection with the processing of the Prequalification Request:

   a. Presence of an (****)
   b. Information in Prequalification Request or obtained from Credit Reporting Agency that (****)
   c. Information in Prequalification Request or obtained from Credit Reporting Agency indicating that (****)
   d. The information provided by the Shopper, (****) is (****)

Upon processing of the Prequalification Request, (****) will receive an invitation to apply to obtain (i) a Company Credit Card, (****) or (ii) a Credit Card pursuant to the Secondary Program in the case of Shoppers that (****). The Shopper will also be provided with such information as is required by this Agreement or the Secondary Program agreement, as applicable, in connection with the submission of such application.

No adverse action notice will be provided by the Bank to any such Shopper that (****). The Bank shall deliver an adverse action notice as required by Applicable Law (****).

In the event that a Shopper is offered an invitation to apply for a Credit Card pursuant to the Secondary Program, but instead wishes to apply for a Company Credit Card, that Shopper shall (****) That application shall be (****).

In the event that an Application is declined by the Bank, the Bank shall (****).
An illustration of the process for submitting and processing Prequalification Requests and Applications is summarized in the table below.

<table>
<thead>
<tr>
<th>Pre-Qualification response</th>
<th>Action</th>
<th>Shopper agrees to move on to application phase</th>
<th>Action</th>
<th>Application Approved by the Bank</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>(****)</td>
<td>(****)</td>
<td>(****)</td>
<td>(****)</td>
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<td>(***)</td>
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<td>(***)</td>
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<tr>
<td>(***)</td>
<td>(****)</td>
<td>(****)</td>
<td>(****)</td>
<td>(****)</td>
<td>(****)</td>
</tr>
</tbody>
</table>
Schedule 3.2(b)

Composition of the Strategic Operating Committee, Integration Committee and Marketing Committee

Strategic Operating Committee

Company Designees

To be identified following the date of the Agreement.

Bank Designees

- Chief Client Officer
- VP, Client Partnerships
- Director, Client Partnerships
- VP/Director, Finance

Integration Committee

Company Designees

- SVP, Finance Administration & Financial Services
- Senior Vice President of In-House Credit Operations and Customer Care
- VP, Payments
- VP, Transformation Leadership Team

Bank Designees

- Senior Sales Executive
- Enterprise Delivery Advisor
- Director, Project Management
- Director, Client Partnerships

Marketing Committee

Company Designees

To be identified following the date of the Agreement.

Bank Designees

- VP, Client Partnerships
- Director Client Partnerships
- Director Partnership Marketing

The Bank and the Company may each include subject matter experts in committee discussions as needed to assist with a particular issue.
Schedule 3.2(c)(ii)(I)

Initial Customer-Facing Third Party Service Providers

(****) Agencies:

(****)

Providers with Respect to (****)

(****)

Translation

(****)
Schedule 3.2(c)(ii)(L)

Initial Customer-Facing Offshore Locations

(****)
Company Manager
To be identified following the date of the Agreement.

Bank Manager
(****)
### Schedule 3.3(e)

**Key Program Management Resources**

<table>
<thead>
<tr>
<th>Function</th>
<th>Approximate Headcount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client partnership and marketing</td>
<td>(****)</td>
</tr>
<tr>
<td>Field marketing</td>
<td>(****)</td>
</tr>
<tr>
<td>Field compliance</td>
<td>(****)</td>
</tr>
<tr>
<td>CRM and analytics</td>
<td>(****)</td>
</tr>
<tr>
<td>Risk</td>
<td>(****)</td>
</tr>
<tr>
<td>Compliance</td>
<td>(****)</td>
</tr>
</tbody>
</table>
In addition to the Bank Operating Procedures, the following procedures shall apply:

1. **Bank Systems Downtime, Pre-Qualification and Authorized Buyers**. (***)

2. **Telephone Consumer Protection Act**. Without limiting the Company’s right (***) and the Company shall (***). More specific procedures shall be mutually developed by the Parties and provided to the Company pursuant to the integration process and guidelines.

3. **Special Order Reserve**. Bank shall provide operational support for special orders (orders which have a delivery date in the future) whereby (***) (***). The Company will ensure that Company Systems provide (***) Special order transactions will (***). Notwithstanding the foregoing, the Company may (***) if the customer uses a form of tender other than a Company Credit Card. (***) The Company may complete the sale through (***) as agreed upon by the parties.
Schedule 4.5(a)(v)

Certain Bank Program Materials

Credit Card plastics
Credit Card carrier and envelope
Welcome kit
Billing statement
Billing envelope
Application
Credit Card Agreement
Real-Time Prescreen letterhead

All other Bank Program Materials that are customizable as set forth in the Specifications Book.
Creditworthiness Review Policies

- The Bank shall not close or take adverse action with respect to the credit line of any non-delinquent Purchased Account in connection with the purchase or conversion thereof for (****) provided that, (****).
Schedule 4.6(b)
Risk Management Policies

Except as otherwise set forth in the Agreement, the initial Risk Management Policies shall be (***)**, provided that, notwithstanding anything to the contrary in such Bank risk management policies, (***) shall include the policies set forth below under “Account Origination”, “Account Management” and “Additional Purchases/Ongoing Account Management” and (***) set forth below under (***)).

**Account Origination**

- a. Minimum new credit limit assignment (***)
- b. Ability to pay threshold (***)
- c. (***)
- d. (***)

**Account Management**

- a. Accounts shall be reviewed (***)
- b. Accounts receiving a (***)
- c. Adverse action (***)
- d. No Accounts will be denied access (***)
- e. (***)
- f. Cardholders whose (***)
- g. (***) on at least an annual basis
Schedule 4.6(d)

(****) and (****) for Risk Management Policies

(a) Definitions applicable to this Schedule 4.6(d).

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“Change in (****) Notice” has the meaning set forth in clause (e) below.

“(****) Grace Period” means the period commencing on the date the Change in (****) Notice delivered and ending (****) (****) (as such end date may be extended by mutual agreement of the Parties).

(****)

“(****)” shall mean (****), as applicable.

(****)

(****)

(****)

(****)

“Retail Segment” shall mean each of (i) Jared The Galleria of Jewelry Stores (other than its online Company Channel), (ii) Kay Jewelers, regional stores, outlet stores and Kay off-mall stores in the aggregate (other than their online Company Channels) and (iii) online Company Channels for all brands operating under all Company Licensed Marks.

(****)

(****)

“Valid Application” shall mean a (****) Application submitted to the Bank after a determination by the Bank in accordance with Section 2.1(a) that the Applicant with respect thereto is a Program Eligible Applicant, excluding (i) (****) or (ii) any (****). For clarity, any (****)
(b) 

(i) 

(A) 

(ii) 

(iii) 

(iv) 

(B) 

(C) 

(****)
(c) (****)

(i) Upon the occurrence of any (****) with respect to a particular (****) the Bank shall (****) for such calendar month.

(ii) Upon the occurrence of any (****), the Bank shall (****) to the Company from each such (****) for such calendar month.

(iii) The (****) shall be (****). In the event that, (****) the Bank issues any Company Credit Cards with (****), the Bank (****).

(d) (****). In the event there is announced or implemented a (****), other than a (****), that will (****), as the case may be, the Bank shall (****) the Parties shall agree upon such amendments to only those (****) set forth in such of (****). In the event that the Parties shall (****). Notwithstanding anything to the contrary set forth in clause (e), (****) (i) each Party shall (****) of this clause (d), (****), together with (****) as may be permitted or required pursuant to the provisions of (****); (ii) the (****), without any amendments thereto; and (iii) the (****) in connection with such (****). In the event that the (****) shall be applied retroactively from the date of (****), and the Bank shall (****); provided, however, that no (****) has occurred.

(e) (****) pursuant to clause (d) shall (****) in accordance with the provisions of (****). Within (****), each Party shall (****).
The Collections Policies for the Program will be (***)

- (***)

(***) Prior to the Effective Date, (***)

(***)
Schedule 4.6(h)

Additional Purchases / Ongoing Account Management

The Bank shall maintain credit lines on open accounts originated by Bank so as to ensure that any Cardholder wishing to make additional purchases on such an Account during (****) will have a (****), provided that at no time during (****) did the Account (****).
### Schedule 4.7(a)

#### Cardholder Terms

<table>
<thead>
<tr>
<th>Element</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>APR</td>
<td>(****)</td>
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<tr>
<td>Grace period</td>
<td>(****)</td>
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<tr>
<td>Late fee</td>
<td>(****)</td>
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<tr>
<td>Minimum finance charge</td>
<td>(****)</td>
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<tr>
<td>Returned Payment fee</td>
<td>(****)</td>
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<tr>
<td>Pay by Phone Fee</td>
<td>(****)</td>
</tr>
<tr>
<td>Late Fee Grace</td>
<td>(****)</td>
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<tr>
<td>Minimum Payment</td>
<td>(****)</td>
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<td></td>
<td>(****)</td>
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<tr>
<td>Billing Method</td>
<td>(****)</td>
</tr>
</tbody>
</table>

**“xx” will be set to result in (****).**

** (****).
The Bank, at its expense, shall offer the following types of Account terms, collectively known as “Payment Plans” in accordance with the Agreement, except as described under merchant discount adjustments below:

<table>
<thead>
<tr>
<th>All Payment Plans</th>
<th>(****)</th>
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</tbody>
</table>

Subject to the minimum purchase for the (****) the Bank agrees that (****). The Parties agree that (****), provided that any such (****) adjustments

At no time will the result of these calculations (****).

For purposes of this Schedule 4.7(c):
“Payment Plan Purchase” shall mean purchases which are subject to a Payment Plan; provided that, no purchase made under the “Regular Plan” shall be considered a “Payment Plan Purchase.”

EXAMPLE #1

(****)

EXAMPLE #2

(****)
Schedule 4.8(a)(ii)(A)

Functionality of the Program Website

**Registration**
- Set Security Credentials
- Paperless Enrollment
- Mobile Digital Card Enrollment (access account/card from mobile phone)*
- Secure 24 hour access on any device

**Account Summary**
- Make a payment
- View scheduled payments

**Account Activity**
- View and Search Transactions
- Electronic Statements (PDF)
- View, Print and Download Statements
- Email reminders

**Rewards**
- Brands have the ability to provide online access to special offers, rewards and coupons*

**Profile**
- Manage Profile/Personal Information
- Manage Security Settings (user name and password)
- Manage Checking Accounts for payments
- Manage marketing emails*

**Marketing/Offer**
- Statement Offers*
- Purchases Bonuses (targeted 3rd party offers)*
- Marketing Banners and Tiles*

**Secure Message Center**
- Compose New Message
- Submit Cardholder Service Requests
- Two-way email with Cardholder Service Reps

**Ecommerce Integration**
- Shopping cart integration (account number placed in cart for newly approved applications)*
- Access Account Center from Brand Site*

* Dependent upon Company completing development and integration work on Company Systems that meet the Bank’s specifications
Enhanced Functionality of the Program Website

1. The following enhanced functionality of the Program Website shall be implemented by the Bank (**):

**Acquisition**
- Batch Prescreen Credit Offer Acceptance (pre-approved customers)
- Referral bounty (track application referrals)
- Auto Renewal Membership (club or membership fees)*

**Registration**
- Remember Device
- Dual log-in authentication (device recognition & password)

**Account Summary**
- Edit or delete payments

**Account Activity**
- Download Transactions (Excel)
- Year-End Statements

**Rewards**
- Rewards Summary (view current points and rewards)**
- View/Search Rewards transactions**
- Rewards catalog (redeem points via online catalog)**

**Profile**
- Manage Authorized Buyers
- Request Credit Limit Increase
- Manage Mobile Preferences (enroll or unenroll in mobile digital card)*
- Manage Bank’s debt cancellation feature

**Secure Message Center**
- Order replacement cards
- Send Attachments

**Ecommerce Integration**
- Credit Application*
- Cross Shopping (ability to shop at any brand with your account)*

**Other**
- Update income
- Request a credit line increase
- Add an authorized user/manage authorized buyer
2. The following functionality of the Program Website shall be implemented by the Bank as soon as commercially practicable following request thereof by the Company provided that such functionality has been made available in any of the Comparable Partner Programs:

**Profile**
- Manage autopayment capabilities

* Dependent upon Company completing development and integration work on Company Systems that meet Bank’s specifications

**Only available if Company uses Bank’s rewards platform
Schedule 5.2(b)

Marketing Commitment

The “Marketing Commitment” shall be (****) and (ii) thereafter an amount equal to (****) (****).
Schedule 5.6(d)

Additional Uses of Marketing Fund Prohibited to Company

Without limiting any other restrictions set forth in the Agreement on the Company’s right to use Marketing Fund or Marketing Commitment, the Company shall be prohibited from using the Marketing Fund or Marketing Commitment for the following purposes:

(****)
Schedule 6.1(d)

Security Incident Costs and Expenses

1. Cost of (****).

2. Cost of other (****).

3. Cost of (****).

4. Costs and expenses of (****).

(****) will not have to (****) unless the (****) after consulting with counsel and in light of customary industry practices (****), that such actions are warranted in light of the (****).
### FACTS

**WHAT DOES COMENITY DO WITH YOUR PERSONAL INFORMATION?**

**Why?**
Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

**What?**
The types of personal information we collect and share depend on the product or service you have with us. This information can include:
- social security number and income
- account balances and payment history
- credit history and credit scores

**How?**
All financial companies need to share customers’ personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers’ personal information; the reasons Comenity chooses to share; and whether you can limit this sharing.

<table>
<thead>
<tr>
<th>Reasons we can share your personal information</th>
<th>Does Comenity share?</th>
<th>Can you limit this sharing?</th>
</tr>
</thead>
<tbody>
<tr>
<td>For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For our marketing purposes— to offer our products and services to you</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For joint marketing with other financial companies</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For our affiliates’ everyday business purposes— information about your transactions and experiences</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For our affiliates’ everyday business purposes— information about your creditworthiness</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>For our affiliates to market to you</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>For nonaffiliates to market to you</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
</tbody>
</table>
To limit our sharing

Call toll-free at [NUMBER]—our menu will prompt you through your choice(s).

Please note:
If you are a new customer, we can begin sharing your information 30 days from the date we sent this notice. When you are no longer our customer, we continue to share your information as described in this notice.

However, you can contact us at any time to limit our sharing.

Questions?
Go to [WEBSITE] or call [NUMBER]

| Who we are |  
| Who is providing this notice? | This privacy notice is provided by the Comenity family of companies, including Comenity Bank and Comenity Capital Bank. |
| What we do |  
| How does Comenity protect my personal information? | To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. |
| How does Comenity collect my personal information? | We collect your personal information, for example, when you:
- open an account or provide account information
- give us your income information
- use your credit or show your driver’s license
We also collect your personal information from others, such as credit bureaus, affiliates, or other companies. |
| Why can’t I limit all sharing? | Federal law gives you the right to limit only:
- sharing for affiliates’ everyday business purposes—information about your creditworthiness
- affiliates from using your information to market to you
- sharing for nonaffiliates to market to you
State laws and individual companies may give you additional rights to limit sharing. See below for more on your rights under state law. |
| What happens when I limit sharing for an account I hold jointly with someone else? | Your choices will apply to everyone on your account. |
**Definitions**

| **Affiliates** | Companies related by common ownership or control. They can be financial and nonfinancial companies.  
|                | · Our affiliates include companies with a Comenity name; financial companies such as Comenity Capital Bank and Comenity Bank, other Comenity entities; nonfinancial companies such as Epsilon, Alliance Data, and LoyaltyOne. |
| **Non-affiliates** | Companies not related by common ownership or control. They can be financial and nonfinancial companies.  
|                  | · Nonaffiliates we share with can include financial service providers, retailers, direct marketers, publishers and nonprofit organizations. |
| **Joint marketing** | A formal agreement between nonaffiliated financial companies that together market financial products or services to you.  
|                   | · Our joint marketing partners include lenders and insurance companies |

**Other important information**

We also will comply with more restrictive state laws to the extent that they apply. For example, if your billing address is in Vermont or California, we will automatically opt you out of sharing your information with nonaffiliates for marketing purposes.

We will contact you regarding your account via text message or telephone, including the use of pre-recorded or auto-dialed calls on any cell, landline or text number you provide or use to contact us. Standard mobile, message, or data rates may apply.
The following represent a high level summary of master file elements:

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40
Periodic Reports

All reporting shall commence as of the Effective Date, unless otherwise indicated herein.

<table>
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<tr>
<th>Frequency</th>
<th>Name</th>
<th>Category</th>
<th>Description</th>
<th>Fiscal vs Calendar</th>
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</table>

42
(****) reports shall be delivered within (****) of such period

(****)
Schedule 7.1(b)
Form of Monthly Settlement Sheet

Alliance Data Systems
Comenity Bank
Monthly Settlement Sheet

<table>
<thead>
<tr>
<th>(****)</th>
<th>(****)</th>
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</thead>
<tbody>
<tr>
<td>Statement to be delivered by (****)</td>
<td>(****)</td>
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<tr>
<td>Supporting Detail Documentation will be included with (****)</td>
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<tr>
<td>(<strong><strong>) the Bank will provide (</strong></strong>)</td>
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44
In accordance with Section 7.1(c) of the Agreement, following the Effective Date, the Bank shall report to Company:

<table>
<thead>
<tr>
<th>Field #</th>
<th>Description</th>
<th>Length</th>
<th>Format</th>
<th>Alliance Provided Data</th>
<th>Definition</th>
<th>Length</th>
<th>Population Rules</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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</tbody>
</table>
### Schedule 7.2

#### Non-SLA Servicing Standards

<table>
<thead>
<tr>
<th>Cardholder Service</th>
<th>Provide live telephone support for Cardholders from store or home from (****). Call center will be open to support jewelry consultants on all holidays on which retail stores are open (currently 4th of July, Memorial Day, Labor Day, Thanksgiving and Easter Sunday)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Call Center Hours of Operation</td>
<td>Provide live telephone support for jewelry consultants (****). Such services to be made available during such hours shall include the following to be made available telephonically (including all periods during which any Company System downtime or integration problems between Company Systems and Bank Systems prevent normal systemic processing): obtaining sale authorization codes and Account lookup. For clarity, the Prequalification Request process will not be supported by live telephone support; however, the Bank’s Instant Credit process will be supported by live telephone support.</td>
</tr>
<tr>
<td><strong>Notwithstanding the above,</strong> the Company may provide the Bank with at least 30 days prior notice in order to offer extended hours periods from time to time; provided that any holiday schedules must be received by the Bank no later than October 31 st.**</td>
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<td><strong>(****)</strong></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Call Blockage</th>
<th>No calls will be denied access to the switch due to inbound trunk capacity.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spanish-Speaking Agents</td>
<td>Provide Spanish speaking Cardholder service agents at all times when live telephone service is available, and with the same service levels as afforded non-Spanish Speaking Agents</td>
</tr>
<tr>
<td>Disaster Recovery</td>
<td>Use commercially reasonable efforts to resume answering incoming calls promptly</td>
</tr>
<tr>
<td>Interactive Voice</td>
<td>Provide functionality set forth in Schedule 7.2(i).</td>
</tr>
<tr>
<td>Cardholder Surveys</td>
<td>Conduct ongoing post-call surveys to track overall satisfaction using a randomized selection of Cardholders</td>
</tr>
<tr>
<td>Payment Processing</td>
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<td>(****)</td>
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<td>(****)</td>
</tr>
<tr>
<td>Dispute Resolution</td>
<td>Provide Cardholder dispute verification in accordance with Applicable Law</td>
</tr>
</tbody>
</table>

48
<table>
<thead>
<tr>
<th>Address Changes</th>
<th>Address changes submitted by Cardholder call to call center shall be made in real-time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large Purchase Authorization; Advance Authorization for Special Events</td>
<td>(<em><strong>) (</strong></em>)</td>
</tr>
<tr>
<td>Fee Waivers</td>
<td>(***)</td>
</tr>
<tr>
<td>Escalation Procedures</td>
<td>(***)</td>
</tr>
</tbody>
</table>
Schedule 7.2(h)

Initial Customer Service Centers

(****)

(****)

(****)

(****)

50
Schedule 7.2(i)

IVR Functionality

Cardholder Care IVR
(English – Natural Language Understanding (NLU) and Directed Dialogue speech recognition)
(Spanish – touchtone only)

- Obtain general account information
  - Balance (current as of today and previous statement balance)
  - Available Credit
  - Credit Limit
  - Previous Statement Balance

- Payment information
  - Due date
  - Amount Due
    - Minimum due
    - Total due
  - Last payment received
    - Received date
    - Payment amount
  - Make a payment and provide confirmation number

- Recent Activity
  - Last 10 transactions
  - Activity since previous billing statement

- Report card lost or stolen

- Request additional card

- Request a refund (paper check or ACH)

- FAQs
  - Web help
  - Payment address
  - Written inquiry address

- Make Account Changes (only available in NLU speech application)
  - Change mailing address
  - Change last name
  - Change or add phone number
  - Add authorized buyer
  - Obtain Cardholder income

- Request a credit limit increase (will process and if applicable approve the requested limit)

- Request Fax
  - Zero balance letter
  - Closed account confirmation letter

- Account Center information sent via email or SMS text (only available in NLU speech application)
  - Send token ID for password resets
  - Send URL to Account Center login page

- Close Account
- Exit IVR (ability to get a live agent)
- Route to Company, Secondary Program partner based on customer selection
- Route to Secondary Program partner based on entry of account number*

**Store Services IVR (Touchtone only)**
- Account Lookup
- Obtain Sale Authorization
- Process a voided sale
- Phone for approval
- Call center / decline POS message
- Request additional card
- Report card lost/stolen
- Obtain Account summary information
- Process Applications

**Card Activation IVR (Touchtone only)**
- Activate a new card
- Capture mobile phone number & consent

* (****)
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<thead>
<tr>
<th>SERVICE</th>
<th>SERVICES STANDARD MEASUREMENT AND REQUIREMENT</th>
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<td>Cardholder and store Service</td>
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<td>General Credit Cardholder Service</td>
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<td>Abandoned Rate</td>
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<td>Mailing</td>
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<td>On-Line Availability</td>
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<td>Prequalification Requests</td>
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<td>Prequalification Requests**</td>
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</table>
** The Bank will (****), and shall not (****). If the Bank (****) in each of (****). If the Bank is (****).

Rules for Interpreting SLAs

- Response time for Application related inquiries relates to those Applicants which Bank has approved or declined. Applications which (****) in the measurement of the SLAs.
- Response times for authorization requests relate to those requests processed solely by Bank’s host. Authorization requests (****) in the measurement of the SLAs.
- (****)
- No SLA will be deemed (****) during such period.
- Availability and uptime calculations shall exclude (****). In addition, the Bank shall (****) and/or the Program.
- No SLA will (****) in compliance with the express provisions of this Agreement, the Risk Management Policies, the Collections Policies or the Operating Procedures or any (****).
- In the event of a change in Applicable Law that would reasonably be expected to (****) the Parties shall agree (****) as to which such (****) prior to such change in Applicable Law.

Consequences for (****)

(****)
1. With respect to any (***) , the following provisions shall apply:

   (a) If the Bank (***) , the Bank shall (***)

   (b) If the Bank experiences (***) , the Bank shall (***)

   (c) Upon the occurrence of (***) during the (***)

   (d) Upon the occurrence of (***) , the Company shall, (***)

2. In the event the Bank (***) the consequence referred to in (***) . In the event the Bank (***) the consequence referred to in (***)

3. With respect to all other SLAs on this Schedule 7.3 (***) , in the event (***) shall apply mutatis mutandis ; provided, that (***) . For clarity, clause (d) shall not apply.
The Bank shall be obligated to make available the following features and functionality.

**Accounts Receivable System**
1. Billing
2. Color Billing Statements production and distribution
3. Inserts distribution
4. Payments
5. Settlement and Balancing
6. Cardholder Service
7. Address Maintenance
8. Account Management
9. Statement Mailer Sales and Returns, Debt Cancellation (billing)
10. Credit Cards (plastic)
11. Compliance, Credit Bureau reporting
12. Disaster Recovery

**New Accounts System**
1. Facilitate new Account applications
2. Credit bureau interfaces
3. Extract data from credit bureaus
4. Provide immediate, timely response to all instant credit applications at POS*
5. Assign new Account Numbers
6. Immediate access to new accounts for Purchases across all Company channels*

**Sale Authorization / Adaptive Control Risk**
1. Authorizations (including real time updates (including sales returns and payments) to open-to-buy)*
2. Behavioral Scoring

**Cardholder Marketing Database:**
1. Transmit agreed upon Cardholder Data*
2. Transmit other agreed upon information*

**Telecommunications, Cardholder Service through Telephone IVR (Interactive Voice Response):**
1. See description of IVR functionality in Schedule 7.2(i)

**Testing:**
1. (****)
2. (****)
3. (****)
Other Technology / Digital:

1. Integration between the Company and Bank’s websites, mobile applications*
2. Support In-Store Payments*
3. On-line access to Applications and the capabilities to permit persons to complete and submit such Applications and receive application decisions in real-time on-line*
4. Account number lookup, add a plan, and credit line increase requests by Cardholders (including by sales associates on behalf of a Cardholder in connection with a particular proposed Transaction)*
5. On-line real-time Credit Card activation*
6. Cardholder Access to Cardholder Account information, Billing Statements and unbilled Account activity
7. On-line payments (at no additional cost or expense to the Cardholder or the Company) on the Accounts
8. Email response to inquiries submitted via email by Cardholder to a designated Bank Program website email address(es) will indicate Secure Message Center in Bank Account Center as of the date of signing
9. Support of joint signatories (Purchased Accounts only) and authorized users of Accounts

* Dependent upon Company completing development and integration work on Company Systems that meet Bank’s specifications; provided that, the Company shall not be required to make changes to POS other than those that (i) are consistent with the Zale POS system with respect to its capability of authorizing and settling Credit Card transactions (provided that the Company POS system is substantially similar to the Zale POS system) or (ii) are necessary to enable a functionality that is a part of the Program but not a part of the Zale card program (e.g., Prequalification Requests).
Schedule 7.4(b)(ii)

Upgrades to Features and Functionality of Bank Systems

The following functionality shall be implemented (****) to the extent requested (****) so long as such functionality has been made available (****).

(****)
The Bank shall support the following credit data feeds.

(****)
Schedule 8.5

Chargeback Policies

The Bank shall have the right to charge back to the Company the amount of the Charge Transaction Data paid by the Bank pursuant to Section 8.4 if with respect to the related Transaction the Cardholder refuses to pay the charge based on:

(****)
Schedule 9.1

Company Compensation

Payments to Company and Other Program Funding

<table>
<thead>
<tr>
<th>Element</th>
<th>Value</th>
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<td>Compensation established pursuant to this Schedule 9.1 (other than the special payments set forth above) shall be based on (****)</td>
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For purposes of this Schedule 9.1, the following terms have the following meanings.

(****)

“Finance Charges,” means, for any period, (****) less (****).

“Fees,” means, for any period (****) less any (****).

“Gross Charge Offs,” means total (****) including (****).

(****)

“Net Charge Offs,” means the remainder of Gross Charge Offs on Accounts less (****).

(****)

(****)

“Recoveries,” means (****)

“Sales Tax Recoveries,” means all sales taxes actually recovered in accordance with Section 4.9 of the Agreement.
Monthly Statement to Bank

I. 

II. 

III. 

IV. 

V. 

VI. 

(a) 

(b) 

VII. 

VIII. 

IX. 

****

****

****

****

****

****

****

****

****

****
Schedule 17.2(e)-1

Program Asset Purchase Available Data (Phase 1)

A. Program Data Logistics

- The Bank will provide Program data including (****).
- The Bank will provide the Program data in an excel file (or customary data table format) when requested by the Company pursuant to the Agreement.
- The Bank will provide detailed descriptions of (****) in relevant calculations (****).
- In addition to the data outlined in this Schedule 17.2(e)-1, the Bank will provide the Company with (****).

B. First Round RFP Data

At a minimum, the Bank shall provide the following categories of data consistent with the timeframe laid out above. The Bank will provide the requested data below in electronic format in excel or other widely used data format. The data shall be (****) The data shall be provided in (****).

i. Portfolio P&L data
   (****)

ii. Portfolio data
    (****)

iii. (****) statistics: (****)

iv. Current period balances by (****)
v. Current period balances by (****)

vi. (****) statistics by (****)

vii. (****) statistics (****)

viii. Summary portfolio data from (****)

    (****)
A. Program Data Logistics

- The Bank will provide Program data including (**).  
- The Bank will provide the Program data in an excel file (or customary data table format) when requested by the Company pursuant to the Agreement.  
- The Bank will provide detailed descriptions of (**).  
- In addition to the data outlined in this Schedule 17.2(e)-2, the Bank will provide the Company with (**).  

B. Second Round RFP Data

At a minimum, the Bank shall provide the following categories of data consistent with the timeframe laid out above. The Bank shall also provide such additional information reasonably requested by the Company and that is generally provided by other credit card issuers in RFPs of this nature. The Bank will provide the requested data below in electronic format. The data shall be (**).

i. Distribution of total (**)(**):
   - (**)

ii. Change in Terms history for (**);

iii. Data to show performance of accounts by (**);

iv. Breakdown of accounts/balances in (**);

v. (**);

vi. Number of applications by channel; and

vii. Approval rates by channel.

C. Master File Data:

At the Company’s request, the Bank shall provide a master file (****) The Bank will provide the prospective Nominated Purchaser(s) with the master file information with the Account level data and fields as requested by the Company with a copy of such data provided at the same time to the Company. The Bank shall (****) The data will be provided in electronic format, and the data shall be monthly and (****). The master file will include, but not be limited to, the following types of information:

- General Account information (****)
- Cardholder Behavior (****)
- Account (****)
  (****)
- (****) information including:
  (****)

In addition to the above, the Bank shall provide aggregated data for the portfolio by (****) and shall use commercially reasonable efforts to (****), for each Account:

(****)

Provided, that in any case, (****) will (****)
Schedule 17.3

Assumptions for the Determination of Fair Market Value

The appraiser shall be instructed to assume (****) and shall take into consideration, among other things, (****). Each appraiser shall be given the following instructions for preparing their valuations:

(****)
Schedule C-1

Company Individuals with Knowledge

Chief Financial Officer
Senior Vice President Credit Operations
Schedule C-2

Bank Individuals with Knowledge

Bank President
Chief Client Officer

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Signet Jewelers Announces First Phase of Strategic Outsourcing of Credit Portfolio

Sale of $1.0 Billion of Prime-Only Credit Quality Receivables and Seven-Year Strategic Partnership with Alliance Data in Accretive, Value-Enhancing Transaction

Substantially De-Risks Balance Sheet; Plans to Deploy $1.0 Billion in Anticipated Proceeds to Reduce Debt and Repurchase Shares

Preliminary Agreement with Genesis for Five-Year Strategic Partnership to Service Secondary Credit Program

Introduction of Lease-Purchase Program in Partnership with Progressive Leasing

HAMILTON, Bermuda, May 25, 2017 – Signet Jewelers Limited (“Signet”) (NYSE:SIG), the world’s largest retailer of diamond jewelry, announced today the first phase of the strategic outsourcing of its in-house credit program and outlined steps to achieve a fully-outsourced program structure.

The first phase, which is designed to substantially maintain the full spectrum of Signet’s retail financing options and net sales, is expected to be fully implemented by October 2017 as outlined below:

- **Alliance Data Primary Program**: Signet will sell $1.0 billion of its prime-only credit quality accounts receivable to Alliance Data Systems Corporation (“Alliance Data”) (NYSE: ADS) at par value. Additionally, under a seven-year agreement, Alliance Data will become the primary provider of credit funding, servicing and associated program functions to Signet’s Kay, Jared and Regional brands’ customers.

- **Genesis Secondary Program**: Signet will retain the existing non-prime accounts receivable on its balance sheet and continue to originate new accounts, while outsourcing the credit servicing functions of those accounts to Genesis Financial Solutions (“Genesis”) with an initial term of five years.

- **Progressive Leasing Lease-Purchase Program**: Signet will form a seven-year partnership with Progressive Leasing (“Progressive”), a subsidiary of Aaron’s, Inc. (NYSE: AAN), to provide a lease-purchase payment program to Signet customers who do not qualify for Signet’s credit programs, or do not wish to pursue a credit option to access Signet’s merchandise.

Following the successful implementation of the first phase, which is expected to occur by October 2017, Signet will have completed the sale of approximately 55% of its credit portfolio to Alliance Data, and established long-term third party relationships to service its full credit programs.

As part of the second phase, Signet intends to fully outsource its secondary credit programs, including the sale of the remaining receivables on its balance sheet, as well as funding for new non-prime account originations. The Company plans on engaging in discussions with capital providers to finalize the fully-outsourced structure.
Todd Stitzer, Chairman of Signet’s Board of Directors, said: “Today’s announcement is a significant milestone on our journey toward becoming the world’s premier jeweler. Our Board is extremely pleased with the progress our management team has made in structuring a strategic, phased outsourcing of our credit program. By rolling out tailored outsourcing solutions for various tiers of our in-house credit program, we believe we will be able to substantially meet the strategic priorities we initially set for Signet: eliminating material credit risk from our balance sheet, maintaining net sales and streamlining our business model, while minimizing the potential impact on our operations and creating value for our shareholders.”

Mark Light, Chief Executive Officer of Signet, said: “We believe today’s announcement regarding the first phase of the strategic outsourcing of our credit portfolio will unlock significant value as it drives EPS accretion and increases our capital efficiency, while enabling us to maintain the full spectrum of our competitive retail credit offering and net sales. Additionally, we will continue to pursue a fully-outsourced model that removes the remaining credit risk from our balance sheet through capital providers.”

Mr. Light added: “Further demonstrating our commitment to create shareholder value, we plan to direct the net proceeds from this transaction to reduce our outstanding debt and return capital in the form of share repurchases. We remain focused on enhancing customer experience and driving the growth of our OmniChannel retail platforms.”

**Alliance Data Primary Program Partnership:**

Signet and Alliance Data reached an agreement where Alliance Data will acquire $1.0 billion prime-only credit quality portion of Signet’s existing credit portfolio at par value at the time of closing, which is expected in October 2017.

In addition, the two companies have entered into a seven-year program agreement under which Alliance Data will become the primary provider of private-label credit card services and associated card marketing and servicing functions to Signet USA’s brands. Signet will receive future payments related to the performance of the credit program after the sale is completed under an economic-sharing agreement. As part of this partnership, Signet will have access to Alliance Data’s full suite of innovative mobile marketing solutions and personalized marketing services, in addition to the data services provided by Alliance Data’s Epsilon® business.

Alliance Data is a leading global provider of data-driven marketing and loyalty solutions, and its Columbus, Ohio-based card services business is a premier provider of branded private label, co-brand and commercial credit programs. Alliance Data will also retain a portion of Signet’s existing customer care operations in Akron, OH, including facilities and approximately 250 employees as part of the transaction.

**Genesis Secondary Program Partnership:**

Signet and Genesis Financial Solutions entered into a preliminary agreement where Genesis will service Signet’s non-prime accounts receivable, including operational interface and customer servicing, with an initial term of five years. In the first phase, Signet will retain the existing non-prime receivables on its balance sheet and continue to fund new non-prime account originations to ensure continued access to the full spectrum of its credit programs. The receivables serviced through Genesis will convert to contractual aging methodology.
Genesis Financial Solutions is a leading provider of private label credit programs for non-prime consumers. As part of the agreement, Genesis will retain a portion of Signet’s existing credit and customer care operations in Akron, OH, including facilities and approximately 650 employees. The outsourcing of credit servicing and operational interface to Genesis will eliminate associated selling, general and administrative (“SGA”) expenses of Signet. The secondary program partnership is expected to launch in October 2017.

**Progressive Lease-Purchase Program Partnership:**

In addition, Signet announced today a seven-year partnership with Progressive Leasing, to provide a lease-purchase payment option to customers who do not wish to pursue a credit option to access Signet’s merchandise, or may not be eligible for credit programs. This includes customers who will no longer be extended credit through Signet’s credit programs, as well as those who previously did not have a payment option to access Signet’s merchandise. We expect this program to generate incremental revenue for Signet by capturing customers who did not wish to pursue, or previously did not have access to a credit program.

The program is expected to become available starting in July 2017 at Signet’s U.S. stores and fully implemented by the end of August 2017.

Under the new offering, Progressive Leasing will purchase merchandise from Signet for leasing to customers who qualify for the program upon acceptance of terms and completion of the purchase. As a result, Progressive Leasing will assume any financial risk from leasing of the merchandise. Progressive Leasing was selected for its industry-leading technology, ability to scale with Signet’s portfolio and exceptional customer experience.

**Path to Completion:**

The Alliance Data transaction is expected to close in October 2017, subject to regulatory approval and customary closing conditions, and the servicing agreement with Genesis is expected to commence at the same time.

The transition process, including systems integration activities, will be led by the management teams of Signet Jewelers, Alliance Data and Genesis. Project planning for the transition has already commenced. Signet expects a successful and seamless conversion of the relevant portions of its credit operations to Alliance Data and Genesis.

**Financial Impact:**

The first phase of the outsourced partnership structure is designed to substantially maintain Signet’s net sales. The transaction is expected to be accretive to earnings per share in the first full year of operations based on current stock prices and an October 2017 close. The Company expects an improved cash flow profile and capital efficiency with a slight decline in operating income from the sale of its primary credit program.

After closing, Signet will no longer offer credit insurance as a part of its credit offering, which has been included in the anticipated financial impact of the transaction. This will further simplify the in-store selling process.

The conversion to contractual aging methodology for the non-prime accounts receivable that will remain on Signet’s balance sheet is not expected to have a material impact on Signet’s financial statements.
Signet expects to realize a non-cash pretax gain due to a reclassification of receivables that will be purchased by Alliance Data from “assets held for investment” to “assets held for sale” in the second quarter of fiscal 2018. This excludes estimated transaction costs of $35 million to $45 million in fiscal 2018.

The Company will provide any updates to its financial statements and projections, if necessary, to reflect the impact of the transaction at a future date.

**Capital Allocation:**

Signet intends to use the proceeds from the sale of its prime receivables to Alliance Data to repay its $600 million securitization facility and repurchase shares over time depending on market conditions. The Company maintains the flexibility to repurchase shares in advance of the close of the transaction.

The Company provided the following update to its capital allocation:

- Adjusted leverage ratio goal between 3.0x to 3.5x based on the revised leverage ratio calculation that reflects pro forma capital structure.
- Distribution of 70%-80% of free cash flow in the form of share repurchases and dividends, excluding the proceeds from the credit portfolio sale.

The Company is committed to maintaining an investment grade profile with a strong balance sheet that provides flexibility to fund its business strategy.

**Advisors:**

Goldman, Sachs & Co. is serving as financial advisor and Simpson Thacher & Bartlett LLP is serving as legal advisor to Signet Jewelers.

**Conference Call:**

A conference call is scheduled today at 8:30 a.m. ET and a simultaneous audio webcast and slide presentation are available at www.signetjewelers.com. The slides are available to be downloaded from the website. The call details are:

Dial-in: +1 647 788 4901

Confirmation Code: 6183926

A replay and transcript of the call will be posted on Signet's website as soon as they are available and will be accessible for one year.

**About Signet and Safe Harbor Statement:**

This release contains statements which are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements, based upon management’s beliefs and expectations as well as on assumptions made by and data currently available to management, appear in a number of places throughout this document and include statements regarding, among other things, Signet’s results of operation, financial condition, liquidity, prospects, growth, strategies and the industry in which Signet operates. The use of the words “expects,” “intends,” “anticipates,” “estimates,” “predicts,” “believes,” “should,” “potential,” “may,” “forecast,” “objective,” “plan,” or “target,” and other similar expressions are intended to identify forward-looking statements. These forward-looking statements are not guarantees of future performance and are subject to a number of risks and uncertainties, including but not limited to Signet’s expectations, including timing, regarding the anticipated closings of the various credit portfolio transactions, the entry into the servicing agreement as contemplated by the preliminary agreement, the success of discussions with capital providers to achieve full outsourcing, statements about the benefits of the credit portfolio sales including future financial and operating results, Signet’s or the other parties’ ability to satisfy the requirements for consummation of the agreements relating to the credit portfolio transactions, including due to regulatory or legal impediments, the outcome of Signet’s conversion of its accounting methodology, the effect of regulatory conditions on the credit purchase agreements and credit program agreements, regulatory changes following the United Kingdom’s announcement to exit from the European Union, a decline in consumer spending, the merchandising, pricing and inventory policies followed by Signet, the reputation of Signet and its brands, the level of competition in the jewelry sector, the cost and availability of diamonds, gold and other precious metals, regulations relating to customer credit, seasonality of Signet’s business, financial market risks, deterioration in customers’ financial condition, exchange rate fluctuations, changes in Signet’s credit rating, changes in consumer attitudes regarding jewelry, management of social, ethical and environmental risks, security breaches and other disruptions to Signet’s information technology infrastructure and databases, inadequacy in and disruptions to internal controls and systems, changes in assumptions used in making accounting estimates relating to items such as extended service plans and pensions, risks related to Signet being a Bermuda corporation, the impact of the acquisition of Zale Corporation on relationships, including with employees, suppliers, customers and competitors, and our ability to successfully integrate Zale Corporation’s operations and to realize synergies from the transaction.

For a discussion of these and other risks and uncertainties which could cause actual results to differ materially from those expressed in any forward-looking statement, see the “Risk Factors” section of Signet's Fiscal 2017 Annual Report on Form 10-K filed with the SEC on March 16, 2017. Signet undertakes no obligation to update or revise any forward-looking statements to reflect subsequent events or circumstances, except as required by law.

Investors:
James Grant, 1-330-668-5412
VP Investor Relations

or

Media:
David Bouffard, 1-330-668-5369
VP Corporate Affairs

# # #