



# EFS Program Participant Agreement

Section I: Participant Information					
Participant Full Legal Name:				Billing Contact:	
Participant Primary Address: City, State/Province, Zip/Postal Code:				Billing Contact Address: City, State/Province, Zip/Postal Code:	
Participant Phone Number:				Billing Contact Phone Number:	
Participant Fax Number:				Billing Contact Fax Number:	
Participant Primary Contact:				# of Active Vehicles:	
Primary Contact Phone No.:				# of Active Drivers/Cardholders:	
Section II: Participant Management Profile (*A minimum of two officers are required unless sole proprietorship.)					
Full Legal Name:				Full Legal Name:	
Title:				Title:	
Office Telephone:		Email:		Office Telephone:	
Home Address:				Home Address:	
Date of Birth:				Date of Birth:	
Section III: Account Details					
Detail		USD	CAD	Description	<input type="checkbox"/> USD <input type="checkbox"/> CAD <input type="checkbox"/> Dual* *Instruments may be issued in either currency
Number of cards:				Requested # of cards	
Number of checks:				Requested # of checks	
Section IV: Miscellaneous					
Program Operator: <b>SevenOaks Capital Associates, LLC</b>				EFS Sales Representative:	

## AUTHORIZATION

Participant hereby represents and warrants that (i) the signatory below ("Authorized Representative") is either a duly elected corporate officer or representative or the owner/proprietor of the company listed above ("Participant") and is duly authorized to execute this EFS Program Participant Agreement on behalf of Participant. Participant hereby agrees (i) to be bound by all terms and conditions contained in this EFS Program Participant Agreement and any corresponding attachments, exhibits or schedules, as amended from time to time, each of which is hereby incorporated herein (collectively, the "Agreement"). By signing below, Participant acknowledges that it has read, understands, and agrees to this Agreement for the duration of the applicable Term (defined below). Electronic Funds Source LLC conducts business under other trade names, including, for example, EFS, T-Chek Systems, Les Systèmes T-Chek, T-Chek and TCH. References herein and in any exhibit hereto to "EFS" are understood to be to Electronic Funds Source LLC, a Utah limited liability company, by whatever such name it may be conducting business.

**IN WITNESS WHEREOF**, EFS and Participant executed this Agreement.

### Participant

Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Authorized Signature: \_\_\_\_\_  
 Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

### Electronic Funds Source LLC

Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Authorized Signature: \_\_\_\_\_  
 Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

## Master Terms and Conditions

### 1. Services.

1.1 Services. EFS will provide EFS Fuel Cards ("Cards"), EFS Checks ("Checks"), and EFS electronic money codes ("Money Codes", and collectively, the "Services") to Participant for use by Participant in accordance with and subject to the these Master Terms and Conditions, and, in the case of Checks, in accordance with the instructions set forth on the Check Authorization Record and blank/draft Check forms that EFS may provide to Participant from time to time (collectively the "Terms"). Cards, Checks and Money Codes are referred to herein as "Instruments".

1.2 Authorized Use. Instruments may be used by Participant and its Authorized Users (defined below) at EFS-authorized locations ("Service Centers") to purchase fuel, products, services. "Authorized User(s)" refers to Participant's employees, contractors, agents and owner/operators to whom Participant issues Instruments. Participant accepts responsibility for designating Authorized Users, setting Authorized User limits (in accordance with available funds), and monitoring the use of Services by its Authorized Users.

1.3 Financial Accommodation. Participant acknowledges and agrees that this Agreement provides for financial accommodation services within the meaning of 11 USC §365. Furthermore, all Instruments issued hereunder and all extensions of credit in connection herewith will be deemed made, executed, delivered and consummated in Tennessee.

1.4 Business Purpose. Participant represents and warrants to EFS that (i) it is a governmental, non-profit, or commercial business enterprise; (ii) the Services provided to Participant will be used by Participant and its Authorized Users for valid and lawful business purposes only; and (iii) any Services will not be used for personal, family or household purposes.

1.5 Merchants. EFS does not guarantee any merchant's timely application of payment when Participant uses any of the Services at such merchant's facilities, and EFS will not be liable for any late payment fees assessed or any disrupted services between such merchant and

Participant resulting from the untimely application of payment by such merchant.

1.6 Restrictions on Use of Checks. Participant will not, under any circumstances, deposit Checks into any account of Participant or other corporate officer, principal, partner or owner of Participant, nor shall any Check be made out to or endorsed over to, any such person. EFS may cancel, revoke, repossess or restrict the use of and withhold validation of Checks at any time, in its sole discretion, in the event Participant fails to comply with this Section 1.6.

### 2. Term and Termination.

2.1 Term. This Agreement commences on the date of EFS' signature on the first page of this Agreement ("Effective Date") and will continue until terminated by either party (the "Term").

2.2 Termination. Participant may terminate this Agreement upon thirty (30) days prior written notice to EFS, for any reason or no reason. EFS may terminate this Agreement, suspend all or a portion of its Services, including without limitation immediately ceasing Instrument transaction authorizations in respect thereof, and/or apply to Participant's repayment obligations the fuel discounts processed by EFS on behalf of Participant if any, upon written notice to Participant, for any reason or no reason.

2.3 Termination will not affect Participant's responsibility to pay, or EFS' right to recover, any amounts for which Participant or any guarantor is liable or obligated in connection with this Agreement, and upon termination, Participant shall immediately pay all such amounts owing in connection with this Agreement, without set-off or deduction. EFS will be entitled to recover all costs of collection, including without limitation attorneys' fees, in the event such amounts are not paid immediately.

### 3. Fees, Invoicing and Payment.

3.1 Fees. Participant will pay EFS for all expenditures, fees, additional service fees and special fees, costs and charges (collectively, "Fees") if any, incurred for the Services provided by EFS, together, if applicable,

with any and all charges on Participant's account for goods or services purchased by Participant or anyone authorized to use Participant's account. The Fees for the Services are set forth in an agreement between or other documents provided to Participant by the applicable Program Operator identified in Section IV above. Participant acknowledges that Program Operator is not an affiliate of EFS, and that EFS does not control the Program fees, which fees are exclusively set by Program Operator. Participant represents and warrants to EFS that it has been informed of the Program fees by Program Operator, is in agreement with paying such fees in connection with its receipt of Services hereunder, and releases EFS from any claims relating thereto.

**3.2 Taxes.** Except for EFS' income tax, Participant will pay, or reimburse EFS for, any and all applicable sales, use, excise, franchise or other taxes, whether federal, state or local, however designated, which are levied or imposed with respect to Participant's use of the Services.

**3.3 Currency Exchange.** Participant agrees that all indebtedness incurred through use of the Services in the U.S. or Canada to purchase goods or services or to otherwise obtain funds in a currency other than the currency in which Participant's Instrument is issued will be converted to the currency in which Participant's Instrument is issued. The currency conversion rate used by EFS to determine the transaction amount is generally the daily noon exchange rate for conversion of Canadian dollars to U.S. dollars, or U.S. dollars to Canadian dollars, as applicable, as posted by the Bank of Canada each business day, plus two currency basis points. EFS may use either a government-mandated rate or a wholesale rate determined by EFS for the processing cycle in which the transaction is processed. The currency conversion rate EFS uses on the processing date may differ from the rate that would have been used on the purchase date or Participant's statement posting date.

**3.4 Finance Charges.** Participant acknowledges that, to the extent permitted by applicable law, Money Codes dormant for a period of six (6) months will be assessed a minimum monthly maintenance fee of \$10.00 or 4% of the original Money Code balance, whichever is greater, per Money Code number, not to exceed the unused balance on each such Money Code. Application of such maintenance fee may vary from jurisdiction to jurisdiction, and the parties intend that such provision will apply only to the extent permitted by applicable law.

**3.5 Policies.** EFS policies governing the calculation of finance charges, account balances, statements, errors and questions, grace periods, use of Instruments by Authorized Users as well as unauthorized users, Participant audits and other general information governing how EFS will administer Participant's account (the "Policies") are available on the EFS Website and may be updated by EFS from time to time. Participant will use Instruments only in accordance and compliance with the Terms and the Policies.

**4. Compliance with Law.** Participant and EFS will comply with, and will not use or provide the Services in violation of, any United States or Canadian federal, state, provincial or local laws, regulations, judicial or administrative decisions, executive orders, rules or interpretations ("Legal Requirements"), and each party will be solely liable for any violation by such party of applicable Legal Requirements. Each party is responsible for (i) monitoring and interpreting Legal Requirements applicable to such party; and (ii) determining the particular actions, disclosures, formulas, calculations, or procedures required for compliance with such party's Legal Requirements (whether to be performed by EFS or by Participant). Neither party shall be responsible for any violation by the other party of the other party's Legal Requirements.

**5. Disclaimer of Warranties.** EFS disclaims all warranties, express or implied, including without limitation, warranties of merchantability or fitness for a particular purpose, which relate to the Services provided under this Agreement. Further, EFS does not warrant that Participant's use of the Services will be uninterrupted or error-free. This Agreement is a service agreement, and any equipment provided to Participant under this Agreement is incidental to the Services provided and remains the property of EFS.

## **6 Fraud.**

**6.1 Fraud Prosecution.** Participant and EFS agree to cooperate with each other in preventing and prosecuting any fraudulent activity by employees of any party hereto or any third party with respect to Services anticipated by this Agreement, the use of and receipt of Services, or otherwise arising in connection with any other relationship between the parties anticipated by or set forth in this Agreement. EFS reserves the right to interrupt, suspend, or terminate Services without notice to Participant if EFS, in its sole discretion, suspects fraudulent, illegal or abusive activity. Participant agrees to provide, at no cost to EFS, any and all documentation and information as EFS may request, including but not limited to affidavits and police reports. Failure to provide reasonable cooperation will result in Participant's liability for all fraudulent usage.

**6.2 Lost or Stolen Instruments.** Participant must notify EFS immediately upon learning of the loss, theft or possible unauthorized use of

an Instrument by calling EFS at 888-824-7378. Participant agrees to immediately inactivate any of its Instruments that are lost, stolen, or that may be or have been used without proper authority. Participant may do so at the EFS Website or by calling the number above.

**6.3 Liability for Unauthorized Use.** Subject to the Terms, if fewer than ten (10) Cards are issued on Participant's account, Participant may be liable for the unauthorized use of its Instruments up to a maximum of \$50.00 once EFS has been notified of the lost or stolen Instrument(s) and confirms that such transactions were, in fact, unauthorized. If Participant requests and EFS issues ten (10) or more authorized Cards on Participant's account Participant agrees it shall be responsible to pay EFS for all purchases with all Instruments issued to Participant and its Authorized Users whether the purchase(s) made are by persons authorized by Participant to utilize the Instruments or not. Notwithstanding the foregoing, Participant shall not be required to pay for any purchases made with Instruments more than three (3) hours after Participant notifies EFS that (i) such Instruments have been lost or stolen, (ii) Participant has withdrawn authorization of an Authorized User to use the Instrument, (iii) Participant desires to cancel the applicable Instrument, or (iv) Participant desires to terminate this Agreement. Unauthorized use does not include use by a person to whom Participant has given an Instrument, a person to whom an Authorized User has given authority to use the Instrument or any other person with authority to use the Instrument, and Participant will be liable for all use by such a user.

## **7. Limitation of Liability.**

**7.1** EFS' cumulative liability for any loss or damage, from any cause whatsoever, will be limited to the lesser of (i) One Hundred Thousand Dollars (\$100,000); or (ii) the amount of the Fees paid to EFS by Participant in the preceding twelve (12) month period.

**7.2** NEITHER PARTY SHALL BE LIABLE UNDER ANY THEORY FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), EXEMPLARY OR PUNITIVE DAMAGES; REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR SUCH PARTY WAS ADVISED OF THE POSSIBILITY THEREOF.

**7.3** Neither party may bring an action (regardless of form) for breach of this Agreement more than two (2) years after such party first knew or should have known of such breach; provided, however, this limitation will not apply to breaches of the confidentiality requirements herein.

**8. Indemnification.** Participant will indemnify, defend and hold harmless EFS, its directors, officers, employees, affiliates and agents against any claims, losses, costs, fines, penalties or damages (including court costs and reasonable attorneys' fees) (collectively, "Claims") arising out of or connected with Participant's (and Participant's users', affiliates', employees', agents' or representatives') (i) negligence or willful misconduct; (ii) breach of this Agreement; (iii) use or misuse of any Service or the EFS Website; (iv) infringement of any patent, copyright, trademark, service mark, trade secret or other proprietary right of a third party; or (v) negligence or willful misconduct resulting in a Security Incident (defined below) affecting EFS' systems.

## **9. Confidential Information; Information Security.**

**9.1 Confidential Information.** "Confidential Information" means all data or information that is competitively sensitive material and/or not generally known to the public; including, but not limited to, information which is marked confidential or proprietary, customer lists (but excluding payment data), technology, inventions, systems, operations, facilities, products, services, discoveries, ideas, concepts, research, development, processes, operating procedures, marketing, business and development plans, pricing, policies and financial information. Confidential Information does not include information which: (i) is or becomes part of the public domain through no fault of the receiving party; (ii) was already known to the receiving party prior to its disclosure; (iii) is lawfully obtained from a third party without obligations of confidentiality; or (iv) is independently developed by the receiving party without reference to any Confidential Information of the other party.

**9.2 Use Restrictions.** Neither party will disclose, reproduce, transfer or use the other party's Confidential Information; provided, however, that (i) EFS' employees, affiliates, agents, advisors or subcontractors may access and use Participant's Confidential Information or Personal Information (defined below) in connection with providing the Services provided such persons will comply with the confidentiality provisions of this Agreement and (ii) either party may disclose Confidential Information to the extent it must be communicated in response to a valid law, regulation or court order, provided the disclosing party uses reasonable efforts to notify the other party prior to disclosure (unless such notification is prohibited by law, regulation or court order) so such party may seek a protective order or otherwise prevent or limit such disclosure. Notwithstanding the foregoing, Participant consents to EFS providing to Program Operator information regarding Participant's EFS account and use of the Services, including without limitation, account transaction details and account balances.

9.3 **Information Security.** Each party is responsible for: (a) the security of non-public or personally identifiable information ("Personal Information") on the systems under its control; and (b) data security issues arising from its systems, or directly resulting from its use of third party vendors or subcontractors (if any) in connection with the Services. Personal Information will also include any nonpublic personal information of a consumer, each as defined by Section 6809 of the Gramm-Leach-Bliley Act. Each party will maintain information security practices designed to prevent unauthorized or unlawful access to, use, disclosure or alteration of Personal Information (collectively, a "Security Incident"). In the event of a Security Incident, the affected party will comply with applicable law and in the event Personal Information was compromised and it is reasonably suspected that misuse will result, notify the other party of the Security Incident, subject to any request by law enforcement or other government agency to withhold such notice pending the completion of an investigation. EFS is not responsible for and does not control third party telecommunication lines used to provide the Services; and will not be responsible for the security of transmissions using these lines.

9.4 **Equitable Relief.** The parties agree that a breach of this Section 9 will cause irreparable harm such that the non-breaching party will not have an adequate remedy at law; and, therefore, notwithstanding Section 15.2 below, the non-breaching party will be entitled to seek injunctive relief (without posting a bond or other security) against the breaching party, in any court of competent jurisdiction, in addition to any other rights or remedies available at law or in equity.

10. **Participant Data; Data Analytics.** Participant Data and Analytics. Participant shall be responsible for ensuring the validity, accuracy and completeness of all information, data and instructions (including Personal Information as defined above) provided to EFS (collectively "Participant Data"). EFS shall be entitled to rely upon the Participant Data in providing the Services. EFS shall not be required to act on instructions provided by Participant if EFS reasonably doubts an instruction's contents or Participant's compliance with this Agreement or any Legal Requirements. Subject to the provisions of Section 9 herein, EFS and/or its affiliates may extract information from the Participant Data provided to EFS by Participant and use this information with any other data in connection with research and development or creation of data and analytics tools and products in accordance with applicable law. Participant represents that it has sufficient rights (and has made sufficient disclosure to its users) in the information provided hereunder to authorize such use. EFS or its affiliates will own all right, title or interest in or to any information, products, services or intellectual property arising from such data and analytics research and development. EFS and its affiliates' access to and use of information, including use in commercial products developed as a result of or in connection with such research and development, will not be a violation of this Agreement.

11. **Intellectual Property.** Except as expressly provided herein, this Agreement does not grant either party any right, title, interest, or license (express or implied) to any patent, trademark, service mark, copyright, trade secret or proprietary right associated with, on the part of EFS, the Services, or, on the part of either EFS or Participant, applications or business methods of the other party (or those of such party's affiliates) required or provided in connection with the Services (whether owned or licensed by such party or its affiliates or a third party); or arising from EFS or its affiliates' research and development activities.

12. **Verification.** Participant represents and warrants to EFS that the information provided by it herein is complete and accurate. Participant acknowledges that EFS' acceptance of this Agreement is contingent upon the accuracy of such information. Participant grants to EFS, as well as to trade references, Dun and Bradstreet, and banks, consumer credit services, consumer reporting agencies and to state and federal government representatives without regard to whether they are listed herein, permission and authorization to verify, receive, retain, exchange and obtain business and/or personal credit and other information, including without limitation, financial statements, accounts receivable information, criminal background checks, as part of EFS' ongoing evaluation of Participant and as necessary to comply with applicable Legal Requirements and EFS' record retention policies and practices.

13. **EFS Website.** Participant may have access to the website operated by EFS in connection with the Services ("EFS Website"). Participant and its employees authorized by Participant to use the EFS Website will comply with the Terms of Use posted on the EFS Website.

14. **Consent to Electronic Communications and Notices.** Participant hereby consents to electronic delivery of those documents that may be published from time to time on the EFS Website and/or delivered electronically to Participant.

15. **General.**

15.1 **Governing Law.** Tennessee law will govern the interpretation, validity and enforcement of this Agreement, without regard to principles of

conflicts of law. Any claim or demand relating to goods and/or services purchased using the Participant's card shall be resolved between the Participant and the merchant providing the goods and/or services. Subject to the foregoing, the parties hereby consent to the exclusive jurisdiction of the state courts located in Davidson County, Tennessee for resolving any dispute arising out of or relating to this Agreement, unless Participant is domiciled outside the United States, in which case any such dispute will be resolved by binding arbitration in Davidson County, Tennessee under the then-current Commercial Arbitration Rules of the American Arbitration Association. The prevailing party shall be entitled to recover its reasonable attorneys' fees and court or arbitration costs, as applicable.

15.2 **Severability.** Any provision of this Agreement that is determined by a court of competent jurisdiction or arbitrator to be illegal, invalid or unenforceable will be deemed void; and the remainder of this Agreement will continue in full force and effect. To the extent any provision is deemed void pursuant to the foregoing, the court or arbitrator will substitute a valid provision approximating the intent of the parties.

15.3 **Headings.** The headings in this Agreement are for reference only.

15.4 **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Participant and EFS, and supersedes all prior agreements, written or oral, related to the Services. Any amendment to this Agreement must be in writing and signed by EFS and Participant.

15.5 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original, and all of which together constitute one and the same instrument. Facsimile, electronic or other copies of the executed Agreement are deemed valid and effective.

15.6 **Assignment.** This Agreement may not be assigned, voluntarily or by operation of law, by Participant without prior written consent from EFS.

15.7 **Subcontractors.** EFS may subcontract all or any portion of the Services using vendors both within and outside the United States.

15.8 **Notices.** All notices or other communications under this Agreement will be deemed effective (i) three (3) days after mailing by first class registered or certified mail, postage prepaid, return receipt requested; or (ii) one (1) day after mailing by nationally recognized courier service. Any notice or other communication sent in any other manner will be effective upon receipt. Any notice to (a) EFS shall be directed to the attention of General Counsel, Electronic Funds Source LLC, 3100 West End Avenue, Suite 1150, Nashville, Tennessee 37203, and (b) Participant shall be directed to the person and address listed above; or such other address as such party may designate in writing.

15.9 **Survival of Obligations.** Accrued payment obligations, Sections 1.3, 1.4, 1.5, 2.3, 3.4, 4 through 11 and 15, and all representations and warranties of Participant herein, will survive termination of this Agreement.

15.10 **Independent Contractors.** EFS and Participant are independent contractors. Nothing in this Agreement will be deemed to create a joint venture, partnership, employment or similar relationship between the parties. EFS will not be liable for any obligation incurred by the Participant.

15.11 **Waiver.** No delay or single, partial, failure, abandonment or discontinuance of either party to exercise any right, power or privilege hereunder will affect such right, power or privilege. The parties' rights and remedies under this Agreement, at law and in equity, are cumulative and not exclusive. Any waiver, consent or approval of any failure to comply, breach or default under this Agreement must be in writing, will be effective only to the extent set forth therein, and will not apply to separate failures to comply, breaches or defaults.

15.12 **Force Majeure.** Neither party will be in default under this Agreement, and such party will be excused from performing its obligations, if its performance is prevented, restricted, delayed or interfered with due to any event that is beyond such party's reasonable control, including without limitation: (i) labor disputes, riot or other civil unrest; (ii) natural disaster or acts of God; (iii) utility failures, electronic transmission failures or other electronic or communication failures or delays; (iv) terrorism, embargo, revolution or other acts of war; or (v) any change in Legal Requirements. Notwithstanding anything to the contrary in this Agreement, the duty of Participant to remit payment to EFS is absolute and shall not be diminished, excused or discharged by any such event.

15.13 **Office of Foreign Asset Control. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity who or which opens an account. What this means for Participant: When Participant opens an account, EFS will ask for Participant's name, address, and other information to identify Participant. EFS may also ask for information about Participant's management and their identifying documents.

15.14 **Language.** The parties have requested that this Agreement be drafted in English. Les parties aux présentes ont exigé que le présent contrat soit rédigé en langue anglaise.