

When accepted by clicking on the “accept” button below, these Terms of Use are a legally binding contract between your company and On-Line Data Exchange, LLC regarding your company’s access to and use of OLDE’s e-OSCAR System. Please ensure that the individual accepting on behalf of your company has the authority to agree to these Terms of Use .

e-OSCAR-web™ SYSTEM TERMS OF USE

~~(These Terms of Use are effective (i) December 31, 2006, for all Users of the e-OSCAR System with Registration Effective Dates after November 30, 2006, and (ii) February 1, 2007 for all Users with Registration Effective Dates before December 31, 2006. These Terms of Use contain revisions (as compared to the Terms of Use dated as of February 10, 2006) to Sections 1.1(a), 3.1(b), 3.7, 4.1(b) and 12.5(a), which revisions shall become effective on February 1, 2007 (or such later date as set forth in the applicable provision) for Users with Registration Effective Dates before December 31, 2006.)~~

The On-Line Data Exchange, LLC (“OLDE”) makes its On-line Solution for Complete and Accurate Reporting (the “e-OSCAR System”) available to Consumer Reporting Agencies, Mortgage Reporting Companies, and Data Furnishers to facilitate the resolution of disputes about the accuracy and completeness of Consumer Information. Each User submitting a registration application, and each User subsequently accessing the e-OSCAR System, agrees to the following Terms of Use governing the relationship between each User and OLDE, and each User’s use of the e-OSCAR System. Certain capitalized terms used in these Terms of Use are defined in Section 2 hereof. Other capitalized terms used in these Terms of Use are defined where they are used. Any reference in these Terms of Use to any statute, law, rule or regulation of any government or Government Agency is deemed to refer to such statute, law, rule or regulation as it may be modified, amended or supplemented from time to time.

1. Services provided by OLDE

1.1 (a) Limited grant of rights. Subject to these Terms of Use, OLDE agrees to make the e-OSCAR System, a computer-based electronic communications network, available to Users to facilitate the resolution of disputes between Consumers and Users about the accuracy of Consumer Information, and OLDE hereby grants the User a temporary, revocable, non-exclusive, non-transferable license to use the e-OSCAR System, and all other documentation and related materials made available to User pursuant to these Terms of Use, solely to (1) facilitate the resolution of disputes about the accuracy and completeness of Consumer Information, as required by Section 611(a)(5)(D) of the Fair Credit Reporting Act (“FCRA”), (2) facilitate the receipt of notifications as to the modification or deletion of information within a Consumer file as

required by Section 611(a)(5)(A) of the FCRA; (3) facilitate the delivery and receipt of notifications of requests by Consumers under Section 605B(a) of the FCRA to block information from a Consumer file as required by Section 605B(b) of the FCRA; and (4) otherwise comply with the FCRA. Additional information about accessing and using the e-OSCAR System is found on the e-OSCAR Website. Such information is not part of these Terms of Use and may be modified by OLDE, in its sole discretion, from time to time. In the case of any conflict between these Terms of Use and the information on the e-OSCAR Website, these Terms of Use ~~shall~~will control.

(b) Ownership. As between OLDE and User, and without prejudice to the rights of any third party, User acknowledges that all right, title and interest to the e-OSCAR System, including, without limitation, all documentation and other related materials made available to User pursuant to these Terms of Use is owned exclusively by OLDE. OLDE reserves all rights not expressly granted to User in these Terms of Use. User agrees not to attempt to directly or indirectly reverse engineer, decompile, or disassemble the e-OSCAR System or to use the e-OSCAR System except as expressly described in these Terms of Use.

(c) e-OSCAR System. For purposes of these Terms of Use, the e-OSCAR System includes, without limitation, all hardware and software, and all elements of the e-OSCAR Website, including the operation, architecture, implementation, and “look and feel” of the e-OSCAR Website, and documentation and related materials, used in the operation of the Web-based electronic communications network known as “e-OSCAR,” and through which authorized Consumer Reporting Agencies, Mortgage Reporting Companies, and Data Furnishers may facilitate the resolution of disputes about the accuracy and completeness of Consumer Information.

1.2 User interface. Users are responsible for obtaining, installing, and maintaining the hardware and software, and employing the personnel required, to access and use the e-OSCAR System.

1.3 (a) e-OSCAR System changes. OLDE reserves the right, upon reasonable prior notice to Users, to supplement or change (a) the hardware or software required to access and use the e-OSCAR System; (b) the access or security procedures, and rules of operation of the e-OSCAR System; including without limitation, the means and manner in which User accesses or interacts with the e-OSCAR System; or (c) the nature and scope of the e-OSCAR System; ~~or (d) these Terms of Use~~. No such change ~~shall~~will be a violation of these Terms of Use. Notice ~~shall~~will be deemed reasonable if it is posted on the e-OSCAR System website, and given electronically to the User’s System Administrator, both (except in the case of items (b) and (c) in the preceding sentence) ~~not less than sixty (60) days before the effective date of any change or, in the case of a change in hardware or software requirements, which will be effective upon notice~~ not less than ninety (90) days before the effective date of the change, or within such other time frames as may be expressly provided herein. The notice will direct Users’ attention to the particular changes ~~in the Terms of Use, or in any of the items described in paragraphs (a), (b), or (c)~~. User’s use of the e-OSCAR System on or after the effective date of any change described in this Section 1.3 ~~shall~~(a) will constitute its acceptance of the change.

(b) Changes to the Terms of Use. OLDE reserves the right, upon reasonable prior notice to Users, to supplement or change these Terms of Use. No such change will be a violation of these Terms of Use. Notice will be deemed reasonable if it is posted on the e-OSCAR System website, and given electronically to the User's System Administrator, both not less than sixty (60) days before the effective date of any change, or within such other time frames as may be expressly provided herein. The notice will direct Users' attention to the particular changes in the Terms of Use. User's use of the e-OSCAR System on or after the effective date of any change described in this Section 1.3(b) will constitute its acceptance of the change.

1.4 e-OSCAR System Design and Operation. OLDE represents that the e-OSCAR System is designed, and is expected to operate, in a commercially reasonable manner to transmit communications about Consumer Information contained in Consumer Reports.

1.5 Disaster Recovery. OLDE represents that the e-OSCAR System includes commercially reasonable disaster recovery, backup, and data storage capabilities. OLDE will send additional information about these capabilities to a User's System Administrator upon request and upon receipt of a signed copy of OLDE's User Nondisclosure Agreement and such additional information as may reasonably be required in order to authenticate the User's System Administrator.

1.6 Communication or Modification of Customer Information. OLDE represents that neither OLDE nor any officer, director, employee, contractor, or agent of OLDE (except when acting as or for a User) can originate messages containing Consumer Information on the e-OSCAR System or change Consumer Information communicated through the e-OSCAR System by User.

2. Definitions.

In these Terms of Use, the following definitions ~~shall~~will apply:

2.1 Fair Credit Reporting Act Definitions. Any capitalized term that is defined in §603 of the Fair Credit Reporting Act ~~shall~~will have the meaning given to it by that section, unless a different meaning is given to it in these Terms of Use.

2.2 "Consumer Information" means any information included in a Consumer Report, and any "nonpublic personal information," as defined in 15 U.S.C. §6809(4).

2.3 "Contractor" means each and every person with whom OLDE has contracted to obtain hardware, software or services in connection with the development and/or operation of the e-OSCAR System.

2.4 "Fair Credit Reporting Act" ("FCRA") means the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq., including, without limitation, all amendments thereto, and as in effect on any date relevant under the relevant provisions of these Terms of Use in which the term is used.

2.5 “User” means any person assigned a Registration Number by the e-OSCAR System that directly or indirectly transmits Consumer Information to, or receives Consumer Information from, the e-OSCAR System.

2.6 “User ID” means the unique alphanumeric code used by each person who has access to the e-OSCAR System.

2.7 “System Administrator” means the individual designated by the User on the records of the e-OSCAR System as its System Administrator.

2.8 “e-OSCAR Website” means the content located at <http://www.e-oscar.org> (or any successor URL where, upon notice to Users, OLDE maintains comparable information), and all pages related to the e-OSCAR System, controlled by OLDE, and accessible from that URL (“child pages”); but excluding content on any other person’s website that may be accessible through a link from that URL.

2.9 “Government Agency” means any federal, state or local government department, bureau, agency, authority, institution of higher learning, or other similar entity that is generally subject to statutory contracting rules enacted by Congress or the state legislature in its state.

2.10 “Federal Government Agency” means any Government Agency that is part of the United States Government.

2.11 “State or Local Government Agency” means any Government Agency that is part of a state or local government.

2.12 “Registration Effective Date” means the date the User first “clicked through” these Terms of Use on the e-OSCAR Website to signify its agreement with these Terms of Use.

2.13 “Registration Number” means the 7-digit identification code assigned to the User by the e-OSCAR System.

3. Access to and use of the e-OSCAR System.

3.1 Access to and Use of the e-OSCAR System.

(a) Each User agrees that it will, and will cause its authorized employees and agents ~~(a) will to:~~ (i) access and use the e-OSCAR System only in accordance with (A) applicable federal, state and local law, including but not limited to, the Fair Credit Reporting Act, and applicable privacy laws, (B) these Terms of Use, and (C) any protocols included in the E-Oscar Website; (b) will, security procedures and/or rules of operation posted on the e-OSCAR Website or otherwise provided to User by OLDE; (ii) submit, transmit, provision or enter information to or into the e-OSCAR System and utilize information obtained from the e-OSCAR System only in accordance with applicable federal, state and local law, including but not limited to, the Fair Credit Reporting Act and applicable privacy laws; (iii) not permit unauthorized persons to access or use the e-OSCAR System; and (eiv)-will not use the e-OSCAR System to re-

sell access to, or otherwise permit use of the e-OSCAR System ~~to~~ by third parties, ~~or;~~
and (v) not use the e-OSCAR System to export (including "deemed exports") or re-export
technical data in violation of any U.S. export control law or regulation.

(b) By accepting these Terms of Use, User agrees that the e-OSCAR System is the method by which User ~~shall~~will receive all Automated Consumer Dispute Verifications ("ACDVs"), Automated Universal Data transmissions ("AUDs") and notifications required under the FCRA, specifically by accessing and reviewing such ACDVs, AUDs and notifications posted on the e-OSCAR System. User agrees to timely review and act upon all such ACDVs, AUDs and notifications as required under the FCRA. During registration, User ~~shall~~will provide a working email address to which reminders of such ACDVs, AUDs and notifications may be sent to User, although OLDE's failure to send such reminders ~~shall~~will not in any way diminish the effectiveness of the delivery of the ACDVs, AUDs or notifications, as the case may be, or User's obligation to access and review and act upon the ACDVs, AUDs and notifications as posted on the e-OSCAR System.

3.2 Registration. In order to access or use the e-OSCAR System, each User must submit a completed registration form as directed on the e-OSCAR Website. Upon receipt and acceptance of User's registration, OLDE will assign a Registration Number to User. Thereafter, User's authorized employees or agents must provide User IDs and passwords to enable User's employees or agents to access and use the e-OSCAR System. User agrees to access and use the e-OSCAR System solely in accordance with these Terms of Use and applicable law. OLDE may refuse to accept a registration from any person owing any amount on account of its prior use of the e-OSCAR System.

3.3 Confidentiality. User agrees that it will, and will cause its employees and agents, ~~will to~~, hold and maintain the Registration Number assigned to it, ~~and the User IDs and passwords used by them and any Consumer Information or other information obtained by them from the e-OSCAR System,~~ in confidence, and will use reasonable procedures to safeguard such information, and otherwise prevent unauthorized use of the e-OSCAR System. Such reasonable procedures ~~shall~~will take into account User's obligations under these Terms of Use and the nature of the information to be protected and will include, but are not limited to, prohibiting the storage of User IDs and passwords on a workstation or in a web-browser's cache function. User will notify OLDE immediately after learning of any breach or loss of confidentiality of such information or use of the e-OSCAR System by unauthorized persons, and will cooperate with OLDE to minimize the likelihood that unauthorized persons may obtain access to the e-OSCAR System. Except as required by applicable law, User agrees that it will not inform any third party of any such breach or loss of confidentiality without OLDE's prior written consent. If such disclosure is required by law, User will work with OLDE regarding the content of the disclosure to minimize any potential adverse impact upon OLDE and other Users of the e-OSCAR System and will otherwise comply with the provisions of Section 10.6 in connection with such disclosure. Except to the extent that a Government Agency is prohibited or restricted by applicable law from indemnifying OLDE, the OLDE Indemnitees (as defined in Section 6.1) under these Terms of Use, User will indemnify the OLDE Indemnitees for any Losses (as defined in Section 6.1) incurred by the OLDE

Indemnitees or any third party as a result of any such breach or loss of confidentiality. If a Government Agency is prohibited or restricted by applicable law from indemnifying the OLDE Indemnitees under these Terms of Use, such Government Agency will be responsible to the OLDE Indemnitees or any third party for all Losses caused by its actions, to the extent permitted by applicable law.

3.4 Disablement. User agrees to disable access to the e-OSCAR System by any present or former employee or agent within twenty-four (24) hours after such person is no longer performing services for User that require him or her to have access to the e-OSCAR System. User will not reuse or permit reuse of any access or access credentials required to be disabled pursuant to this Section.

3.5 Confidentiality of User Information. OLDE and its Contractor will maintain in confidence all information about the number of transactions billable to each User and corporate contact information for each User, and will not disclose such information to any other person, except as required by law.

3.6 Confidentiality of Consumer Information. OLDE represents that it does not have access to Consumer Information transmitted on the e-OSCAR System, and that its Contractor has access to Consumer Information only to the extent reasonably required in order to ensure that the e-OSCAR System is operating in the manner designed, or to investigate and, if necessary, correct alleged failures in e-OSCAR System operations. OLDE's Contractor is contractually prohibited from disclosing any information contained in a Consumer Report.

3.7 Archiving of Records. OLDE represents that under normal operating circumstances, the e-OSCAR System archives transaction records for not less than one-hundred twenty (120) days after, in the case of an ACDV, the earlier of the date User responded to the ACDV or the "DNR" date and, in the case of an AUD, the date the AUD was received by the CRA. In the case of a notification provided to User under Section 605B or Section 611(a)(5)(A) of the FCRA, the e-OSCAR System archives such notification records for not less than one-hundred twenty (120) days after the date such notification was posted on the e-OSCAR System. User acknowledges and agrees that if it wishes to assure that transactions or records older than one-hundred twenty (120) days are archived, it must daily download its archive to its own computer network using the procedures documented in the e-OSCAR System.

3.8 AUD Work in Process. An AUD that remains in the e-OSCAR System's Work in Process queue is purged thirty (30) days after the date it is created.

4. Fees.

4.1 (a) Transaction Fees. User agrees to pay the following fees to OLDE for User's access to and use of the e-OSCAR System: ~~Twenty-Five~~Thirty Cents (~~\$0.25~~\$0.30) **per transaction, but not less than Twenty-One Dollars (\$21.00) per calendar quarter or part thereof.** For purposes of the preceding sentence, a "Transaction" is (a) each submission of an AUD form by a User to one or more Consumer Reporting Agencies ("CRA"); (b) only in the case of a CRA, the sending by a CRA of an Automated

Consumer Dispute Verification ("ACDV") to a User; and (c) the receipt by a User of an ACDV (other than an ACDV that is (1) incorrectly routed to the User and as to which the User responds accordingly, or (2) forwarded to another person acting as an employee or agent of the same User). Each User will be billed only for Transactions in which it is the sender or recipient, as the case may be. Users will not be responsible for any fees or expenses not expressly provided for in these Terms of Use, except to the extent that User agrees to pay separately for services not included in these Terms of Use.

(b) Transaction Fee Changes. Effective ~~July~~April 1, 2007~~9~~, the fee to OLDE for User's access to and use of the E-Oscar System will be Thirty Cents (\$.30) per transaction, but not less than ~~Twenty-One~~Thirty Dollars (~~\$21~~\$30.00) per calendar quarter or part thereof.

4.2 Taxes. In addition to the stated fees, User will pay OLDE all federal, state, municipal, and other governmental excise, sales, use, utility, or similar taxes, charges, fees, or other amounts that OLDE is required to collect and remit to any governmental authority. ~~In lieu of order for User to claim an exemption to~~ paying such taxes, User will provide OLDE with a tax-exemption certificate acceptable to the taxing authority. OLDE will not charge, and User is not required to pay to OLDE, any tax that is based on OLDE's net income, gross receipts, capital, franchise, net worth, business, occupation, or modified income.

4.3 (a) Due date. Except as stated in Sections 4.3(b) and 4.3(e), fees will be invoiced quarterly. User agrees to pay the undisputed fees and other amounts due under Section 4.1 without offset or reduction, in United States Dollars on or before the due date as stated on the invoice, which will be thirty (30) days from the invoice date as stated on the invoice. Amounts not timely paid will accrue interest (a) at the rate of one and one-half percent (1.5%) of the outstanding principal balance or in an amount equal to five dollars (\$5.00) whichever is greater, to be assessed monthly or (b) at the maximum lawful interest rate, as determined under applicable state law. If the invoice remains unpaid after ninety (90) days, OLDE may (reserving all other legal rights and remedies) terminate User's access to and use of the e-OSCAR System.

(b) Monthly billing. ~~Effective for calendar months beginning after December 31, 2005, fees may be invoiced~~OLDE may elect to invoice fees monthly to any User whose accrued fees for any preceding calendar quarter ~~(after September 30, 2005)~~ are three hundred dollars (\$300.00) or more. OLDE may waive monthly billing when a User's accrued quarterly fees are less than \$300 for two consecutive calendar quarters. OLDE will provide reasonable notice to User prior to initiating or suspending monthly billing pursuant to this Section 4.3(b). Notice will be deemed reasonable if it is given electronically to the User's System Administrator at least thirty (30) days in advance of the effective date of the billing change.

(c) Prompt payment laws. In the case of any Government Agency, the provisions of Section 4.3(a) ~~shall~~will be subject to the provisions of any applicable "prompt payment act" or other similar law, ordinance, regulation, or rule.

(d) Fees for Government Agencies. To the extent that any Government Agency User is required by federal, state or local law to limit its exposure to fees under these Terms of Use to a specified amount for any fiscal year or other period, User will provide written notice to OLDE pursuant to Section 12.8 of (i) the applicable period (the "Budget Period") and (ii) the amount of the fees authorized for the period (the "Fee Cap"). If any Government Agency User incurs fees in an amount equal to or greater than its Fee Cap during any Budget Period, OLDE will have the right to suspend such User's access to and use of the e-OSCAR System until such time that the User authorizes additional fees under these Terms of Use.

(e) Annual Payment Option. If User expects that its transactions for each quarter of the upcoming calendar year will be at or below the quotient of (i) the then-current quarterly e-OSCAR rate and (ii) the then-current e-OSCAR per transaction fee (the "Quarterly Transaction Threshold"), User will have the option to pre-pay the fees for the upcoming calendar year at an annualized rate of ninety dollars (\$90.00). User may select the annual payment option by giving OLDE notice of its selection anytime prior to the end of the first calendar quarter in the year in which the User desires to make the annual payment option effective. If User selects the annual payment option, the annual fee will be invoiced to User after the end of the first quarter of the applicable calendar year and User's payment will be due in accordance with the payment terms in Section 4.3(a). OLDE will provide notice to User if, during any calendar quarter, the User's total transactions exceed the Quarterly Transaction Threshold. User will be responsible for overage fees for the transactions that exceed the Quarterly Transaction Threshold in an amount equal to the product of (a) the number of transactions during the applicable calendar quarter in excess of the Quarterly Transaction Threshold and (b) the then-current e-OSCAR per transaction fee. OLDE will invoice any such overage fees to User on the first invoice in the calendar year following the calendar year in which such fees were incurred. If User terminates its access pursuant to Section 5.2 after having pre-paid the annual fee, User may request a refund of pre-paid fees for periods after the effective date of termination. The refund will be pro-rated for the number of full calendar quarters remaining in the calendar year after the effective date of User's termination.

4.4 Fee changes. OLDE reserves the right to unilaterally change the stated fees upon not less than ~~ninety~~thirty (930) days' notice in writing to User. Fees will not be increased more than once in any twelve (12) month period.

5. Termination of access.

5.1 Termination of Access by OLDE. OLDE may suspend or terminate access to the e-OSCAR System by User:

(a) in accordance with Section 4.3; or

(b) immediately and without advance notice to User if OLDE has a substantive and supportable reason to believe that User (or any person using a User ID associated with User) is using the e-OSCAR System in violation of these Terms of Use, or in violation of applicable federal, state, or local law, including, but not limited to, the

FCRA or the Gramm-Leach-Bliley Act. When access is terminated pursuant to this Section 5.1(b), OLDE will promptly attempt to notify User's System Administrator of the reason for the suspension. Upon request by User, OLDE will work with User to investigate any problems. User agrees to cooperate fully with OLDE in any such investigation. Restoration of service ~~shall~~will be subject to OLDE's determination, in its sole discretion, that User's access to and use of the e-OSCAR System (or the access and use of any person using a User Number/ID assigned to User) will be consistent with these Terms of Use and will not jeopardize the proper and secure operation and use of the e-OSCAR System, and any additional assurances that OLDE may reasonably require as a condition of restoring access; or

(c) in accordance with Section 8.3; or

(d) upon written notice to User if User becomes insolvent or is unable to pay its debts or enters into or files (or has filed or commenced against it) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or any similar laws of the United States or any state of the United States or any other jurisdiction or transfers all or substantially all of its assets to another person or entity.

5.2 Termination of Access by User.

(a) User may terminate its use of the e-OSCAR System upon thirty (30) days' notice in writing to OLDE.

(b) User may terminate its use of the e-OSCAR System pursuant to Section 8.2.

(c) If User is a Government Agency, User represents that (i) it has adequate funds to meet its payment obligations under these Terms of Use; (ii) it has no reason to believe that it will not have sufficient funds to enable it to make all payments due hereunder; and (iii) it will use its best efforts to obtain the appropriation of any necessary funds during the term of these Terms of Use. If a Government Agency User loses funding from any other Government Agency funding source, User will provide OLDE written notice of the loss of funding, and these Terms of Use will be terminated as of the date User's funding expires.

5.3 Payment Obligations Following Termination. Termination of User's access to or use of the e-OSCAR System under this Section 5 or any other provision of these Terms of Use ~~shall~~will not relieve User of any obligation to pay fees incurred before the effective date of termination.

6. Indemnification.

6.1 Indemnification by User. User agrees to indemnify and hold OLDE and its officers, directors, members, employees, contractors, and agents (the "OLDE Indemnitees") (but not in their capacity as Users) harmless from any liability, costs, expenses, fees, damages, or other amounts, including reasonable attorney's fees

(collectively, "Losses") that ~~they~~the OLDE Indemnitees may incur arising out of any claim or suit by any third party in connection with User's access to or use of the e-OSCAR System, excluding Losses to the extent such Losses arise from OLDE's breach of these Terms of Use. In particular, but without limitation, the foregoing indemnification ~~shall~~will apply to claims by Consumers or any other person about whom information is transmitted through the e-OSCAR System by User that such information is untrue or was transmitted without authority.

6.2 Indemnification by OLDE. OLDE agrees to indemnify and hold User harmless from any Losses (as defined in Section 6.1) that User may incur arising out of any claim or suit alleging that (1) User's access to or use of the e-OSCAR System infringes any United States patent or copyright owned by a third party; or (2) OLDE or any officer, director, employee, contractor, or agent of OLDE engaged in willful misconduct (except when acting as or for a User) that resulted in damage to User.

6.3 Indemnification Procedure. The indemnifying party may, at its option, conduct the defense in any such third party action arising as described herein with counsel reasonably acceptable to the indemnified party, and the parties ~~shall~~will reasonably cooperate with each other in such defense. The parties' rights and obligations under this section ~~shall~~will be continuing and ~~shall~~will survive the expiration or termination of these Terms of Use by either party for any reason. The parties ~~shall~~will promptly notify the other in writing of any claim, action, or proceeding for which these Terms of Use provide a right of indemnification. However, the failure to give such notice ~~shall~~will not relieve the indemnifying party of its obligations under this Agreement unless, and only to the extent that, the failure to give such notice actually prejudices the indemnifying party's rights or ability to defend the claim, action, or proceeding. The parties ~~shall~~will reasonably cooperate with one another, at the expense of the indemnifying party, in the defense of any such claim, action or proceeding. If the indemnifying party elects to conduct the defense of any such third party action, it ~~shall~~will not have the right to compromise or settle any such claim without the consent of the indemnified party, which consent will not be unreasonably withheld or delayed, unless such compromise or settlement includes a full release of the indemnified party from liability for the claim and involves only the payment of money. After notice by the indemnifying party to the indemnified party of the indemnifying party's election to assume full control of the defense of a claim, the indemnifying party ~~shall~~will not be liable to the indemnified party for any legal expenses incurred thereafter by such indemnified party in connection with the defense or settlement of the claim or for any settlement of the claim by the indemnified party which is entered into without the consent of the indemnifying party. If the indemnifying party does not assume control over the defense of a claim subject to indemnification pursuant to this Section 6 or Section 3.3 in a timely manner or refuses to defend such claim, the party seeking indemnification ~~shall~~will have the right to defend such claim in such manner as it deems appropriate, at the cost and expense of the indemnifying party.

6.4 Limitation of Liability for Indemnification Claims. The limitation of liability provisions of Section 9 ~~shall~~will not apply to any indemnification claimed under Section 3.3, Section 6.1 or Section 6.2.

6.5 Government Agencies. Sections 6.1, 6.2, 6.3, and 6.4 ~~shall~~will not apply to any claim by or against any Government Agency that is prohibited by applicable law from indemnifying OLDE. If a Government Agency is permitted to indemnify OLDE, but the extent of the indemnification is limited, then Sections 6.1, 6.2, 6.3, and 6.4 ~~shall~~will apply, but the amount payable by OLDE pursuant to Section 6.2 ~~shall~~will not exceed the amount that would be payable by the Government Agency pursuant to Section 6.1.

7. Intellectual property.

7.1 Intellectual Property Rights. The software and screen designs used in the e-OSCAR System are protected by copyright and/or other intellectual property laws, and any unauthorized use of such software or screen designs may violate such laws. Except as expressly provided in these Terms of Use, OLDE and its Contractors do not grant any right to Users under any copyright, trademark, or other applicable law with respect to such software or screen designs, including the right to reproduce any software or screen design in any form or by any means, without the prior written permission of OLDE.

7.2 Screen designs. User may view, download, and print screen designs and any accompanying Consumer Information to which it has access in the e-OSCAR System, provided that such screen designs and Consumer Information are used solely for purposes permissible under the Fair Credit Reporting Act, and any other applicable federal, state, or local law. When downloading or using any screen design or Consumer Information, User may not remove any copyright notice or other notices of proprietary rights contained in the information. The license granted ~~above~~in Section 1.1(a) does not transfer ownership of any copyright or other intellectual property to User. In addition, User may not sublicense these rights granted under these Terms of Use to any other person.

7.3 Trademarks. User acknowledges and agrees that ~~the~~all trademarks, trade names, service marks, and logos~~logos~~, logos, designs, Internet uniform resource locators ("URLs"), and other similar means of distinction, which are owned or controlled by OLDE (collectively, "the Trademarks") used on the e-OSCAR Website are registered and unregistered marks that are owned (as between User and OLDE) by OLDE, or by their other respective owners. User agrees that it will not use any Trademark of OLDE in any corporate, partnership, business name or URL. Each owner has exclusive rights to use and display its Trademarks, and any unauthorized use of the Trademarks is strictly prohibited.

8. Warranties.

8.1 Performance of e-OSCAR System. OLDE warrants that the e-OSCAR System, if used properly by User, will perform substantially in accordance with the ~~then~~ current published User documentation for the e-OSCAR System. This warranty will only apply to failures to meet the applicable warranty that are reported to OLDE in writing within thirty (30) days after the date of the failure.

8.2 Exclusive Remedy. OLDE's sole obligation for failure to meet this warranty in Section 8.1 will be to refund any charges paid by User for individual services which did not perform as warranted and OLDE will attempt to correct any failure to meet warranted performance which materially impairs the operation of the e-OSCAR System. If OLDE fails to restore warranted performance within a reasonable time, User may terminate its use of the e-OSCAR System immediately, subject to payment of any amounts incurred under Section 4.

8.3 (a) Rights to e-OSCAR System. OLDE warrants that it has sufficient right, title, and interest in and to the e-OSCAR System to enable Users to lawfully access and use the e-OSCAR System. If any claim of infringement of an intellectual property right occurs, or in OLDE's opinion is likely to occur, then OLDE may, at OLDE's sole option and expense: (1) procure for User the right to continue using the affected infringing portion thereof; or (2) replace or modify the affected infringing portion thereof, with a non-infringing substitute substantially complying with the infringing portion's specifications; or (3) replace or modify the affected infringing portion thereof, so that it becomes non-infringing and performs in a substantially similar manner to the original portion; or (4) if none of the foregoing options is, in OLDE's reasonable determination, practicable, terminate User's access to and use of the e-OSCAR System and refund to User any amounts prepaid by User for the remaining term during which User would otherwise have had access to the e-OSCAR System. In exchange for any action by OLDE under clause (2) or clause (3), User hereby relinquishes all further right to use any and all such infringing portion. The defense against any such proceedings or claims, and all matters pertaining to settlement of any such claims, ~~shall~~will be conducted and controlled (as between User and OLDE) by OLDE, at its own expense. User, at OLDE's expense, ~~shall~~will provide OLDE with all necessary assistance, information, and authority to perform the above. Moreover, User ~~shall~~will not agree to settle any such proceeding or claim without the written consent of OLDE.

(b) Limitation of Liability for Infringement. NOTWITHSTANDING ANY PROVISION OF ~~SECTION~~SECTIONS 6.2 OR 8.3(a), WITH RESPECT TO EACH INDIVIDUAL PROCEEDING OR CLAIM DESCRIBED THEREIN, OLDE ~~SHALL~~WILL NOT HAVE ANY LIABILITY UNDER THESE TERMS OF USE TO THE EXTENT SUCH PROCEEDING OR CLAIM ARISES FROM: (1) MODIFICATIONS OR ALTERATIONS MADE BY USER OR ANY OTHER PERSON (OTHER THAN OLDE OR A PARTY AUTHORIZED BY OLDE TO MAKE SUCH MODIFICATIONS AND/OR ALTERATIONS); (2) THE COMBINATION, OPERATION, OR USE OF ANY E-OSCAR MATERIAL WITH OTHER PRODUCTS OR SERVICES NOT PROVIDED BY OLDE; (3) USER-SUPPLIED MATERIALS OR ITEMS INCLUDING, BUT NOT LIMITED TO USER-OWNED PRE-EXISTING WORKS; OR (4) ANY UNAUTHORIZED USE OF THE E-OSCAR SYSTEM BUT FOR WHICH SUCH INFRINGEMENT CLAIM WOULD NOT HAVE OCCURRED. THE FOREGOING PROVISIONS AND SECTION 6.2 STATE THE ENTIRE LIABILITY OF OLDE AND THE SOLE AND EXCLUSIVE REMEDY OF USER WITH RESPECT TO ANY PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, DAMAGES, OR EXPENSES INCURRED BY USER RELATING TO THE INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

RESULTING FROM ANY USE OF THE E-OSCAR SYSTEM OR OTHERWISE ARISING UNDER THESE TERMS OF USE.

8.4 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 8.1, 8.2, AND 8.3, OLDE MAKES NO WARRANTIES OF ANY KIND, AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY WITH RESPECT TO THE DESIGN AND OPERATION OF THE E-OSCAR SYSTEM:

(a) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; OR

(b) THAT THE SERVICES AND ASSOCIATED DOCUMENTATION WILL BE ACCURATE OR COMPLETE, OR WILL MEET USER'S REQUIREMENTS; OR

(c) THAT THE OPERATION OF THE E-OSCAR SYSTEM WILL BE UNINTERRUPTED, ERROR-FREE, OR VIRUS-FREE; OR

(d) THAT USER'S DATA, HARDWARE, OR SOFTWARE WILL NOT BE LOST OR ~~UNCORRUPTED~~CORRUPTED; OR

(e) REGARDING E-OSCAR SYSTEM RESPONSE TIMES, ACCESS DELAYS OR INTERRUPTIONS, OR OTHER PERFORMANCE ISSUES.

User assumes the responsibility to take adequate precautions against damages to its operations that could be caused by defects, interruptions, or malfunctions in the e-OSCAR System.

9. Limitation of Liability.

As a material condition of accessing and using the e-OSCAR System at the prices specified in these Terms of Use, and with respect to any and all causes of action arising out of or relating to these Terms of Use or the operation of the e-OSCAR System, including, but not limited to, claims in tort, breach of contract or warranty, failure of a remedy to accomplish its essential purpose, or otherwise, each User agrees:

9.1 Damages Cap. Except with respect to claims set forth in Section 6.2, the liability of OLDE will not exceed, in the aggregate, the lesser of (a) the total amount paid by the User to OLDE for services in the three (3) months preceding the event which is the cause of liability or (b) five hundred dollars (\$500).

9.2 Limitation on Consequential Damages. Neither party will be liable to the other for special, incidental, punitive, or consequential damages (even if the party alleged to be liable has been notified of the possibility of such damages), including, but not limited to, lost profits or savings, loss of use of services, cost of capital, cost of substitute services or facilities, downtime costs, or damages and expenses arising out of third party claims.

9.3 Exclusive Remedy. The remedies specified in these Terms of Use are exclusive.

10. Information Security.

10.1 Background. OLDE understands that one or more Users are required to comply with the information security standards required by the Gramm-Leach-Bliley Act ("the Act") (15 U.S.C. §6801 et seq.) and the regulations under the Act (12 C.F.R. Part 30). Users may also be subject to other legally binding requirements, and have their own information security programs.

10.2 Information security program. OLDE agrees to maintain, and agrees to require its Contractor to maintain, an information security program ("the ISP") with respect to the e-OSCAR System reasonably sufficient to enable Users to comply with applicable statutory and regulatory requirements, including, without limitation the Act and 12 C.F.R. Part 30 and 16 C.F.R. Part 682. The ISP will be designed to (a) ensure the security and confidentiality of Consumer Information; (b) protect against any anticipated threats or hazards to the security or integrity of such information; (c) protect against unauthorized access to or use of such Consumer Information that could result in substantial harm to any customer of the User and (d) provide for the proper disposal of such information.

OLDE will send additional information about the ISP for the e-OSCAR System to a User's System Administrator upon request and upon receipt of a signed copy of OLDE's User Nondisclosure Agreement and such additional information as may reasonably be required in order to authenticate the User's System Administrator.

OLDE agrees that it will maintain the confidentiality of all Consumer Information, by exercising the same degree of care to avoid disclosure or unauthorized use of Consumer Information as OLDE exercises with respect to its own confidential and proprietary information, but in no event less than a standard of reasonable care. OLDE agrees not to use or disclose Consumer Information except as reasonably necessary to operate the e-OSCAR System in accordance with the Terms of Use (including, without limitation, ascertaining and correcting the cause or effect of any real or apparent failure of the e-OSCAR System to operate properly, and investigating questions or complaints made by Users about the operation of the e-OSCAR System).

10.3 Suspension or termination for security reasons. Notwithstanding any other provision of these Terms of Use, OLDE retains the right, unilaterally and without advance notice to User, to suspend or terminate operation of the e-OSCAR System or any part or function of it if OLDE reasonably believes that continued operation of the e-OSCAR System (or such part or function) at that time presents an unreasonable risk of (a) breach of the security or confidentiality of Consumer Information, (b) threat or hazard to the security or integrity of such information or of the e-OSCAR System (or any part or function of it), or (c) unauthorized access to or use of Consumer Information that could result in substantial harm to any Consumer. Upon such suspension or termination, OLDE shall notify User within a reasonable time, and may undertake commercially

reasonable efforts to assess, mitigate, and/or eliminate the risk(s) in question and any other risks subsequently identified.

~~10.4 — Security certifications. As of May 1, 2002, the E-Oscar System is certified as compliant with the standards maintained by TruSecure and METASes. OLDE will keep one or more such certifications (or other certifications that are based on substantially similar standards) in force while the E-Oscar System is operating.~~

10.4 e-OSCAR Security Audits and Certification. OLDE and/or its Contractor will conduct, or cause to be conducted, an annual audit, in accordance with Statement of Accounting Standards No. 70, Type II, as amended or superseded from time to time, of the controls, procedures, and systems of the Contractor relating to the e-OSCAR System. Such audit will be performed by an entity qualified under the Public Company Accounting Oversight Board to perform the audit. In addition, OLDE will cause its Contractor to provide an annual report from an independent auditor, certified by the American Institute of Certified Public Accountants ("AICPA") for the provision of opinions regarding compliance with the "SysTrust Principles and Criteria" as established by the AICPA or any successor criteria established by the AICPA (the "SysTrust Standards"), verifying that the Contractor's controls and systems relating to the e-OSCAR System comply with the SysTrust Standards.

10.5 Third-Party Audits. Upon reasonable notice, subject to approval by OLDE of the scope of the audit, and subject to the execution of OLDE's ~~confidentiality~~User Nondisclosure Agreement by User and the third party and User's and the third party's compliance with OLDE's and its Contractor's reasonable security requirements, User may arrange with OLDE or its Contractor for a third party, e.g., a government regulatory agency or financial auditor, to audit financial or transaction records of User's own use of the e-OSCAR System, or to undertake a security audit of the e-OSCAR System. In the case of a non-governmental auditor (i.e., an auditor that is not a Government Agency), OLDE ~~shall~~will have the right to approve the auditor, which approval ~~shall~~will not be unreasonably withheld. Any such audit ~~shall~~will be conducted during normal daytime business hours, and at the sole expense of the User, which expense ~~shall~~will include any reasonable expense or fee incurred or charged by OLDE or its Contractor in connection with the requested audit. As a condition of performing any such audit, User agrees to provide a copy of the audit report to OLDE, and to keep the audit report (or the portions of it that discuss the e-OSCAR System) confidential except (subject to Section 10.6) to the extent disclosure may be required by applicable law (including disclosure by a bank or other similar financial institution to a Government Agency that has regulatory authority over the bank or financial institution), and except for disclosures to the User's auditor or lawyer, provided that any such person is required to keep the report confidential.

10.6 Public disclosure laws. Any User that is subject to the Freedom of Information Act, 5 U.S.C. §552, or any similar federal, state, or local "freedom of information act" or public record disclosure law or ordinance agrees to:

(a) Notify OLDE promptly upon receipt of any request for information or documents (made pursuant to a law or ordinance described in this Section 10.6 or

otherwise by any person who does not need to know the information in order to properly perform services for the User) relating to the e-OSCAR System, including but not limited to, these Terms of Use, and information or documents relating to the System's design, architecture, configuration, Registration Numbers, User IDs, passwords, other security elements, or disaster recovery plans;

(b) Timely and properly claim and pursue any reasonably applicable exemption from disclosure, including but not limited to, as a trade secret, confidential information, computer security information, copyrighted material, or information protected from disclosure by applicable law;

(c) At its own expense, provide OLDE with reasonable assistance, e.g. including without limitation, copies of research, memoranda, or briefs, to enable OLDE (to the extent permitted by law) to effectively intervene to oppose disclosure;

(d) To the extent that disclosure of such documents or information is required and to the extent permitted by law, limit such disclosure by redacting information that would reasonably be likely to compromise the security or operation of the e-OSCAR System, or the security of any information transmitted or stored on the e-OSCAR System; or whose disclosure would violate any applicable Federal or state law or court order; and

(e) Undertake reasonable actions requested by OLDE, including but not limited to, assigning new User IDs, passwords, or other security-related elements, to mitigate any potential harm that may result from disclosure of information or documents pursuant to a request described in Section 10.6(a).

11. Force Majeure.

Notwithstanding any other provision of these Terms of Use, except for the failure by User to make payments when due, neither OLDE nor User will be liable to the other by reason of any failure in performance under these Terms of Use if the failure arises out of any cause beyond the reasonable control of the party failing to perform, including, without limitation, the unavailability of third party communication facilities or energy sources, acts of God, acts of the other party or any third party, acts of governmental authority, fires, floods, natural disasters, strikes, delays in transportation, riots, war, or terrorism.

12. General Provisions.

12.1 Third Party Beneficiaries. The provisions of these Terms of Use are for the sole benefit of the parties, and not for the benefit of any other person or legal entity; provided, however, that the third parties described in Section 3.3 and Section 6 will have the rights and benefits described in those Sections. The limited warranties and limitation of liability provisions set forth in this Agreement will also apply for the benefit of the OLDE Indemnitees.

12.2 No Agency. Neither OLDE nor any User ~~shall~~will be the agent of the other, or have the power to otherwise act on behalf of or bind the other.

12.3 Assignment. These Terms of Use ~~shall~~will be binding upon OLDE and the User, and their successors and assigns. However, neither party may assign these Terms of Use without the prior written consent of the other party, which consent will not be unreasonably withheld. Notwithstanding the preceding sentence, either party may assign these Terms of Use, without consent, to a successor in interest to substantially all of the business of the assigning party to which the subject matter of these Terms of Use relates.

12.4 Severability. If any of these Terms of Use are determined to be invalid by a court of competent jurisdiction, the remaining Terms of Use will continue to be valid and enforceable. Notwithstanding the preceding sentence, if the provisions of Section 9 are determined to be unenforceable by OLDE against any User for any reason, these Terms of Use ~~shall~~will be null and void as to that User, OLDE ~~shall~~will be entitled to recover from that User on the basis of quantum meruit, and OLDE ~~shall~~will be entitled to terminate service to that User immediately and without further notice to ~~theat~~that User.

12.5 (a) Governing Law and Settlement of Disputes Generally. Except when otherwise required with respect to a Government Agency:

(1) The interpretation of these Terms of Use will be governed by the law of the State of Delaware, excluding its conflict of laws rules; and

(2) Any controversy or claim arising out of or relating to these Terms of Use, or any breach thereof, ~~shall~~will be settled by arbitration before a single arbitrator conducted in Wilmington, Delaware administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) Governing Law and Settlement of Disputes for Federal Government Agencies. When required by law with respect to a User that is a Federal Government Agency, the interpretation of these Terms of Use ~~shall~~will be governed by ~~the~~ federal law, jury trial is not waived, and, subject to any procedures required before filing suit, any suit ~~shall~~will be filed in an appropriate federal court.

(c) Governing Law and Settlement of Disputes for State and Local Government Agencies. When required by law with respect to a User that is a State or Local Government Agency, the interpretation of these Terms of Use ~~shall~~will be governed by the law of the state in question, jury trial is not waived, and, subject to any procedures required before filing suit, any suit ~~shall~~will be filed in an appropriate court in the state in question.

12.6 Headings. The headings in these Terms of Use are for reference purposes only; they will not affect the meaning or construction of the provisions of these Terms of Use.

12.7 Claim Period. Except as otherwise required by law with respect to a User that is a Governmental Agency, any action of any kind by either party arising out of these Terms of Use must be commenced within two (2) years from the date the right, claim, demand, or cause of action accrued. Any such action not commenced by either party within the permitted two (2) year period, ~~shall~~will be deemed forever waived.

12.8 Notices. Any notice under these Terms of Use ~~shall~~will be given in writing by personal delivery, facsimile transmission, e-mail, or U.S. Mail, directed to OLDE at the address or fax number provided on the e-OSCAR Website, or directed to the User at the address or fax number submitted by the User with its registration. All notices ~~shall~~will be effective upon receipt. In the case of transmission by facsimile or e-mail, receipt ~~shall~~will be deemed to occur when the transmission is received by the recipient's facsimile machine or Internet service provider.

12.9 Entire Agreement, Amendment and Waiver. These Terms of Use contain the complete and exclusive agreement between each User and OLDE with respect to the access to and use of the e-OSCAR System. No waiver, alteration, or modification of any of these Terms of Use will be binding unless (1) it is in writing and signed by a duly authorized representative of the party to be bound, or (2) it is posted on the e-OSCAR Website, notice is given to the User's System Administrator in the manner required by Section 1.3, and User accesses the e-OSCAR System after the effective date of the waiver, alteration, or modification. Neither the course of conduct between the parties nor trade usage will act to modify or alter these Terms of Use. No failure or delay by either party in exercising any right hereunder ~~shall~~will operate as a waiver of such right. No waiver by either party of any default hereunder by the other party hereto ~~shall~~will operate as a waiver of any other default or of a similar default on a future occasion. No such waiver by either party ~~shall~~will be effective unless the same ~~shall~~will be in writing and signed by the waiving party. If User issues a purchase order or other similar document, unless otherwise expressly agreed to in writing by OLDE, it ~~shall~~will be for the User's internal purposes only, and it ~~shall~~will have no effect on these Terms of Use, or on any aspect of the relationship between the User and OLDE.

susan hoefs

From: Bonnie Farris
Sent: Friday, January 02, 2009 2:31 PM
To: Susan Hoefs
Subject: FW: 2009 TERMS OF USE UPDATE



ATT140715.txt
(339 B)

Sue,

This is an email Teresa sent me from E-Oscar. It's about the billing. I thought you might like to see it.

Thanks,
Bonnie

-----Original Message-----

From: Teresa Shea
Sent: Wednesday, December 31, 2008 2:35 PM
To: Bonnie Farris
Subject: FW: 2009 TERMS OF USE UPDATE

Bonnie,

Did you get this email from e-oscar?

Thank you,

Teresa

Teresa Shea
IT Department
Sussex County Federal Credit Union
1941 Bridgeville Hwy
Seaford, DE 19973
302-629-0100 ext 128
302-629-0966 Fax
tshea@sussexcofcu.com

-----Original Message-----

From: eOSCAR@e-oscar-web.net [mailto:eOSCAR@e-oscar-web.net]
Sent: Wednesday, December 31, 2008 11:54 AM
To: undisclosed-recipients:
Subject: [?? Probable Spam] 2009 TERMS OF USE UPDATE

To e-OSCAR System Administrators:

As of January 1, 2009 the e-OSCAR Terms of Use has been updated and contains revisions within the following areas:

Opening paragraph, Sections 1.1, 1.3, 3.1, 3.3, 3.4, 4.1, 4.2, 4.3, 4.4, 5.1, 5.2, 6.1, 6.3, 6.4, 7.3, 8.2, 8.3, 8.4, 10.2, 10.4, 10.5, 10.6, 12.1.

The Terms of Use revisions include a price change in the Quarterly Minimum Bill amount:
-- Effective April 1, 2009, the Quarterly Minimum Bill amount will change from \$21.00 per quarter to \$30.00 per quarter.

-- All other aspects of the fee structure -- including the 30 cents per transaction fee -- will remain the same.

-- For companies who maintain the minimum billing, the new pricing of \$30.00 per quarter includes 100 transactions per quarter - thirty more transactions per quarter than the previous terms.

The revisions shall become effective as of the dates set forth within the Terms of Use.

To view the "Updated 2009 Terms of Use", please visit www.e-oscar.org and select the e-OSCAR News link on the left.

If you have questions, please contact the e-OSCAR Help Desk at 866-696-7227.