January 22, 2019

Via e-mail: regulations@dbo.ca.gov
cc: charles.carriere@dbo.ca.gov

Department of Business Oversight, Legal Division
Attn: Mark Dyer, Regulations Coordinator
1515 K Street, Suite 200
Sacramento, California 95814-4052
Department of Business Oversight

Re: **PRO 01-18 - Square Capital, LLC - Comments on Proposed Rulemaking SB 1235**

Dear Mr. Dyer,

Square Capital, LLC ("Square Capital") received from the California DBO ("DBO") the letter dated December 4, 2018, requesting comments on Proposed Rulemaking SB 1235. Attached please find our response to the DBO's request.

Recent remarks from regulators, including the DBO, indicates to us you are not only aware of how technology has revolutionized the way lending is done, but you are embracing it as you look toward the future of lending. More products are now accessible to more people, particularly those previously underserved by the traditional financial system.

We believe that now is an ideal time to put a regulatory framework around this innovation to ensure that new channels are being opened and expanded in a safe way. Square Capital has used technology and data to open up access to capital at amounts far lower than what has been available to small businesses from traditional lenders. We see that the openness around regulators engaging has created a more active conversation about what options are available and we look forward to working with your office.

Please contact Daniel Swislow at swislow@squareup.com or by phone at (415) 763-7717 with any questions.

SQUARE CAPITAL, LLC

By: Jacqueline D. Reses
Manager

Enclosures

Comments to SB 1235

Introduction

On December 4, 2018, Jan Owen, the Commissioner of Business Oversight, invited stakeholders to provide input in developing regulations to implement SB 1235. Comments are welcome on any area under which the Commissioner has rule-making authority, but the Commissioner developed a series of questions addressing specific areas where rulemaking may be appropriate, desirable, or necessary.

Square Capital appreciates having the opportunity to respond to the Commissioner's questions and raises two additional issues for the Commissioner's consideration. Note that the Commissioner's questions have been reordered in this response.

Square Capital Overview

Square Capital, LLC has expanded access to small business financing through the development of simple, flexible and transparent financial products. As a wholly owned subsidiary of Square, Inc., Square Capital shares Square's mission to design and build technology tools that enhance a purpose of economic empowerment for the small business community. Since inception, Square has strived to give its sellers[1] accessible, affordable tools to grow their businesses and participate in the economy. Square Capital is a key component of Square's cohesive and seller-focused commerce ecosystem.

Square Capital's primary business financing product is the "Flex Loan," which is designed to simplify access to commercial credit and streamline loan repayment so sellers can focus on the critical task of running their businesses. Flex Loans have multiple features that set them apart from other loan products:

- Square sellers that meet certain eligibility criteria are invited to apply for Flex Loans. Eligibility is based on various seller attributes, including card processing history and activity through Square. These attributes are regularly analyzed under a proprietary risk model that creates a picture of a seller's credit risk and renders eligibility decisions. This data-driven process generates appropriately-sized offers and leads to high approval rates and fast funding, with sellers receiving loan proceeds in as little as one business day after application approval.

[1] "Sellers" is Square's term for merchants who accept card payments through Square.

- Flex Loans are generally priced to reflect underlying risk as determined by the risk model. A single upfront fee is assessed at the time of loan origination and added to the Flex Loan balance. No other fees or interest are charged, and no penalties are assessed. Sellers with a Flex Loan know the exact dollar cost of capital before borrowing.

- A key feature of the Flex Loan product is its contingent repayment schedule. A fixed percentage of daily card transactions processed through Square is applied to the Flex Loan balance. After the fixed repayment rate is netted from each day's transactions, the remainder of the card sales (less card processing fees) is remitted to the seller.

- Because Flex Loan repayments are based on processing activity, faster processing results in faster repayment and slower processing results in slower repayment. This structure creates flexibility for sellers to pay based on their business health and helps sellers match their repayments with their cash flows. This structure also creates an alignment of interests between Square Capital and sellers.

- The convenience of the revenue-based repayment schedule is often one of the highest seller-rated features of the product. Repayment aligns with sales volumes and requires no action by sellers other than running the business as usual (subject to certain minimum payment requirements described below). Sellers can see exactly how much is paid toward the loan balance each day through their online Square Dashboard,[2] and they receive payment summaries by email each day they process payments.

- Each Flex Loan has a targeted payback period reflective of the seller's risk profile as assessed by the risk model. These targets are generated at the offer stage and are a key risk management tool for the Square Capital program. The actual repayment period for each Flex Loan depends on the size and velocity of the seller's post-origination card sales but is typically aligned with the targeted term length.

- A minimum payment of 1/18th of the initial Flex Loan balance is due every 60 days, but only to the extent payments resulting from card sales processed through Square have not equalled or exceeded the minimum payment amount. Flex Loans also carry a final maturity date of 18 months from the date of origination. Typically, daily card sales cover minimum payments and fully repay the loan well before the 18-month contractual maturity date.

The Flex Loan product has provided much-needed capital to an underserved community of sellers for whom access to commercial credit is difficult or impossible. Since inception, Square Capital has facilitated the financing of more than 500,000 plans to more than 200,000 unique sellers, totaling more than $3.5 billion in financing.[3] Based on an internal survey, 56% of

[2] Square Dashboard is the interface (available on mobile and desktop devices) that gives sellers access to Square tools to manage their daily business operations. Through the Dashboard, sellers can access advanced reporting tools, send invoices, manage time cards and employees, and create marketing campaigns. Loan offers through Square Capital are made available to eligible sellers in the Square Capital tab of the Square Dashboard.
[3] Includes MCAs and loans through Square Capital between May 2014 and September 2018.

loans through Square Capital went to women-owned businesses and 36% went to minority-owned businesses.[4] Over 80% of loans originated through the Square Capital program are made outside major metropolitan areas where small business loans are most needed.[5]

Square Capital has leveraged technology and data to open up access to capital at amounts far lower than what has been available to small businesses from traditional lenders. With loan sizes starting at $500 and averaging approximately $6,000, Flex Loans have given sellers the extra capital they need to make critical investments in their business, such as purchasing inventory or equipment, hiring more employees, expanding stores or opening new locations. This access is particularly important for smaller small businesses, the so-called "micro" small businesses (which are generally defined as small businesses with less than $100,000 in annual revenues), which have traditionally lacked access to sufficient financing.[6] Square Capital is committed to serving these traditionally underserved businesses.

* * *

The attached Appendix contains materials currently used for the Flex Loan product: a copy of the Flex Loan agreement (Exhibit A), an image of the current Flex Loan offer page with accompanying interactive tooltips (Exhibit B) and the Flex Loan application flow (Exhibit C). These materials are periodically revisited, revised and refreshed based on various drivers, such as seller feedback and product updates, but the current versions are attached to offer context for these comments.

Types of Commercial Financing

The Commissioner invites stakeholders to provide examples of commercial financing transactions subject to SB 1235 other than fixed-rate, fixed-payment financing. Examples of such transactions may include those with variable interest rates, multiple, flexible or contingent repayment options, merchant cash advances, open-end credit plans, and recourse and nonrecourse factoring. What obstacles do stakeholders anticipate in complying with SB 1235 with respect to such transactions, and how can the Commissioner's rules address those obstacles?

Square Capital Response

Example Financing Product

[4] Based on an April 2018 survey of 6,397 respondents who have accepted a loan through Square Capital.

[5] *See* "Goodbye, George Bailey," The Wall Street Journal (Dec. 25, 2017) ("The financial fabric of rural America is fraying. Even as lending revives around cities, it is drying up in small communities.").

[6] *See* Mills and McCarthy, "The State of Small Business Lending: Innovation and Technology and the Implications for Regulation," p. 6, Harvard Business School Working Paper 17-042, (2016).

Flex Loans are an example of a commercial financing product that is subject to SB 1235 and does not have a fixed payment schedule, other than the minimum payment requirements described above.

Anticipated Obstacles

Square Capital is a trusted partner to small businesses and brings simplicity, accessibility, flexibility, and transparency to financial products to help them grow. Consistent with that ethos, Square Capital already discloses the fixed items required by SB 1235 to sellers who are eligible for a Flex Loan offer, *i.e.*, the total amount of funds provided, the total dollar cost of financing, the method and frequency of payments and a description of prepayment policies. (*See*, *e.g.*, Exhibits A and B.)

However, due to the contingent repayment feature of the Flex Loan product, certain attributes of the Flex Loan are variable and cannot be determined with certainty at the time of loan origination:

- The actual number of Flex Loan payments a seller will make
- The dollar amount of each payment a seller will make
- The actual date on which a Flex Loan will be repaid in full
- The actual annualized rate of a Flex Loan

Disclosing these variable items at the time of loan origination is the primary challenge to Square Capital's compliance with SB 1235 as applied to the Flex Loan product. The obstacles Square Capital anticipates are discussed in detail below, together with suggestions regarding how the Commissioner's regulations can address these obstacles.

Disclosure of Method, Frequency, and Amount of Payments for Commercial Financing with Flexible or Contingent Repayment Obligations

Some types of commercial financing offer flexible or contingent repayment obligations. The Commissioner suggests that stakeholders provide examples of these types of commercial financing. How should providers disclose to the method, frequency, and amount of payments required under such contracts?

Square Capital Response

Flex Loans are an example of commercial financing with contingent repayment obligations, where the frequency, number and dollar amount of loan payments are determined by the frequency, regularity and dollar amount of card sales processed through Square.

For products like the Flex Loan, providers should disclose any contingent aspect of a borrower's repayment obligation as a narrative or description. This approach is particularly important for compliance with Section 22802(4), which mandates disclosure of the "amount of payments" required for a commercial financing product. The phrase "amount of payments" may be interpreted as either the number of payments required under the financing contract or the dollar amount of each payment, both of which present significant disclosure obstacles for products like the Flex Loan. To illustrate:

- The number of payments required to repay a Flex Loan will depend on the dollar amount of card sales processed each day after loan origination. A seller processing low-dollar sales that only does business on weekdays may make more daily loan payments than a seller processing high-dollar sales that only does business on weekends. The exact number of payments required to repay any particular Flex Loan is dependent on future revenues, which are unknown at the time of loan origination.

- Similarly, the dollar amount of each Flex Loan payment will depend on the dollar amount of daily card sales processed after loan origination. A seller processing low-dollar sales may make smaller daily loan payments than a seller processing high-dollar sales. The specific dollar amount of each daily payment is contingent on daily sales and cannot be known at the time of Flex Loan origination.

To account for uncertainties inherent in revenue-based payment structures, providers should disclose any contingent repayment features of a commercial financing product using a narrative or description.

Commercial Financing Requiring Estimated Term Disclosures

SB 1235 requires a provider to disclose the "term or estimated term" of the contract. What commercial financing contracts may require an estimated term disclosure, and why? The Commissioner suggests that stakeholders provide sample contracts that may require an estimated term disclosure.

Square Capital Response

Providers offering commercial financing products with flexible or contingent repayment obligations should disclose an estimated term.

Flex Loan borrowers, for example, repay their loans using a fixed percentage of their daily card sales, which results in variability in the amount of time needed to repay the loan. An estimated term is the most accurate disclosure that can be provided in this instance and is the most transparent information available for sellers to make an informed financing decision.

For reference, the current Flex Loan agreement is attached to the Appendix as Exhibit A.

Types of Financing Requiring Estimated Annualized Rates

SB 1235 requires the Commissioner to determine when a provider can disclose an estimated annualized rate and how providers must calculate the estimated annualized rate. What types of commercial financing will require estimated annualized rates, and why?

Square Capital Response

Providers should disclose an estimated annualized rate for financing products, such as the Flex Loan, that (a) impose any flat fee and (b) have flexible or contingent repayment obligations. An estimate is appropriate because the amount and timing of payments are required factors in calculating annualized rates, and those factors are designed to vary for such products.

Flex Loan borrowers, for example, pay a single flat fee at loan origination and repay the loan (and fee) through card sales. Converting the flat fee into an actual annualized rate would require Square Capital to know the timing and amount of payments, which cannot be determined at loan origination given the revenue-based repayment structure.

Annualized Rate Disclosure

The version of SB 1235 that was introduced on February 25, 2018 required an annualized rate disclosure as an Annual Percentage Rate (APR) calculated according to provisions of the federal Truth in Lending Act and Regulation Z. A later version required a calculation called Annualized Cost of Capital (ACC). The proposed ACC disclosure would have been calculated as follows:

(Total Dollar Cost of Financing ÷ Total Amount of Funds Provided) × 365 ÷ (Term or Estimated Term) × 100

SB 1235, as enacted, requires the Commissioner to select the appropriate method to express the annualized rate disclosure. Should the Commissioner's rules require APR, ACC, or some other annualized rate disclosure? What are the benefits and drawbacks of each annualized rate disclosure? If disclosing an annualized rate may confuse financing applicants, what measures could the Commissioner require to reduce potential confusion for that disclosure?

Square Capital Response

The regulations should require the annualized rate to be calculated using the APR calculation set forth in Regulation Z. Using the APR formula rather an alternative calculation has several notable benefits:

- APR is a recognized standard of calculating the annualized rate disclosure.
- Other states may not recognize an alternative calculation, which may create obstacles and risks for national financing programs.
- Using an alternative calculation may require an additional disclosure that explains the difference between the alternative calculation and the APR calculation, which may create or deepen borrower confusion.
- An alternative calculation may not provide long-term confidence with a meaningful and clear disclosure. Such confidence comes with testing and application over time.
- In the context of national programs that provide both consumer and commercial products, using a single calculation method would be optimal.

Regardless of the equation used, disclosing an annualized rate may confuse some financing applicants. A recent study conducted by economics professors from MIT, Princeton University, and UC Berkeley with assistance from Square Capital revealed that business owners surveyed make more mistakes when loan costs are quoted in terms of APR than when borrowing costs are more plainly cited as dollars and cents.[7] The study further uncovered that a lack of understanding around the definition of APR, such as which fees are included in the calculation, can lead to confusion and mistakes when borrowing.[8] Disclosing an estimated annualized rate may create even more confusion given the uncertainty inherent in any estimate. Suggested measures to reduce potential confusion are discussed below under "Explanatory and Qualifying Language in Connection with Estimated Terms and Estimated Annualized Rates."

Fees and Charges Included in an Annualized Rate Calculation

What type of fees and charges should be included in an annualized rate calculation? The Commissioner requests comments relating to fees and charges for commercial financing types other than fixed-rate, fixed-payment financing.

Square Capital Response

The annualized rate calculation should include fees and charges payable by the commercial borrower to the provider or lender that cannot be avoided by the borrower. Lenders often charge business-financing borrowers interest and various fees, such as origination fees, application fees, servicing fees, referral fees, wire-transfer fees, pay-by-check fees,

[7] Bachas, Sraer and Thesmar, *Understanding Borrower Demand for Revenue-Based Loans Evidence from a Survey of Small Businesses*, September 27, 2018.
[8] *Id*.

documentation fees and invoice factoring fees. To the extent borrowers are required to pay such fees to the lender or provider, the fees should be included in the APR calculation along with any applicable interest charges. However, fees that are contingent or avoidable, such as late fees or returned-payment fees, should not be included in the APR calculation.

The only fee charged to merchants for Flex Loans is a one-time fixed fee assessed at the time of loan origination. That fee should be included in the annualized rate calculation. If Square Capital chooses to add a late fee requirement to the Flex Loan agreement in the future, that late fee should not be included in the calculation because it would not be incurred if the seller performs as required under the loan agreement.

Calculating Estimated Terms and Estimated Annualized Rates

How should providers calculate estimated terms and estimated annualized rates for the various commercial financing transactions subject to SB 1235? For example, in a commercial financing transaction with payments set as a percentage of a business's gross receipts, what calculation methodology for estimated term and estimated annualized rate would provide the most helpful disclosure for a business with a recent history of rising gross receipts?

Square Capital Response

Estimated Terms

In calculating estimated terms, providers facilitating products with flexible or contingent repayment obligations should have leeway to use any formula or methodology that the provider believes will generate a good faith estimate.

Having such flexibility would allow providers like Square Capital to leverage evolving technology and apply new learnings and developments to the challenging process of estimating term lengths. Projecting future revenues for small and micro businesses is particularly difficult given seasonality and other factors, but Square Capital strives to develop and refine data-driven predictive capabilities in order to serve this underserved population. Requiring a static formula or methodology that cannot be adjusted or adapted may result in estimated term disclosures that are not as accurate as they could be. For both greater accuracy in disclosure and innovation, providers like Square Capital should be given flexibility to determine the methodology that would best serve the needs of customers and promote fair disclosure.

Estimated Annualized Rate

An annualized rate using an estimated term should be calculated according to the APR formula under Regulation Z, as suggested above under "Annualized Rate Disclosure." The resulting annualized rate will be an estimate given the estimated term used in the equation.

Reliance Upon Internal Underwriting Criteria to Calculate Estimated Terms and Estimated Annualized Rates

For certain products where disclosure of an estimated term and estimated annualized rate may be appropriate, should the calculation methodology established by the Commissioner require that provider to rely upon internal assumptions or calculations the provider used to underwrite the transaction? For example, in a commercial financing transaction with payments set as a percentage of a business's gross receipts, should the estimated term incorporate the provider's internal calculation of the business's future gross receipts that the provider relied upon in underwriting the transaction? Why or why not?

Square Capital Response

As noted above, providers should have discretion to calculate the estimated term (and with that, the estimated annualized rate) using formulas or methodologies that the provider believes will generate a good faith estimate. Providers should not be required to rely upon their internal assumptions and underwriting calculations analytics if they do not (in the provider's view) assist in generating a good faith estimate.

Explanatory and Qualifying Language in Connection with Estimated Terms and Estimated Annualized Rates

What explanatory and qualifying language should providers include when disclosing estimated terms or estimated annualized rates? How can such language minimize potential confusion for the financing applicant and assist the applicant in understanding how the provider calculated the estimate?

Square Capital Response

Providers disclosing estimated terms and estimated annualized rates should clearly and conspicuously communicate that such numbers are estimates and explain what factors would cause the actual realized term lengths and annualized rates to differ from the estimates.

To mitigate merchant confusion and protect proprietary and confidential information, the disclosures should not include detailed information about the formulas or models used to derive the estimates. Rather, for a product like the Flex Loan, the disclosures should ensure that borrowers understand the estimates are based on forecasts and explain how the performance of the business impacts repayment speed, amount and timing.

Given the uncertainties inherent in the variables used to calculate an estimated term, explanatory language may not completely eliminate the potential confusion associated with disclosing estimated term lengths and estimated annualized rates. Therefore, providers should strive to explain estimated terms and annualized rates that avoid misleading, deceptive or otherwise unhelpful language.

Tolerances

SB 1235 requires the Commissioner's rules to "specify the accuracy requirements and tolerance allowances" for estimated annualized rate calculations. What accuracy requirements and tolerance allowances should the Commissioner establish, and why?

Square Capital Response

Accuracy Requirements

As discussed, the estimated annualized rate calculation for Flex Loans requires forecasting the future, and as such, the accuracy requirements should focus on the mathematical correctness of the calculation rather than the accuracy of the forecast of the borrower's future behavior.

The determination of estimated term should only be subject to the good faith standard discussed under the heading "Estimated Term" above. Once the determination of estimated term is made in good faith, it can serve as the basis for calculating the estimated annualized rate. The accuracy requirements applicable to the estimated annualized rate disclosures should only apply to the mathematical calculation of the annualized rate based on the estimated term, not how the estimated term itself is calculated. For traditional lending products where all required payments are known in advance, the only source of potential inaccuracy is the mathematical calculation.

Accuracy Tolerances

Moreover, the accuracy requirements under SB 1235 should be no more onerous than those set forth in Regulation Z. Regulation Z sets accuracy tolerances for annualized percentage rates based on transaction type: "regular transactions" are allowed not more than 1/8 of 1 percentage point from the actual annual percentage rate, and "irregular transactions" are allowed not more than 1/4 of 1 percentage point from the actual annual percentage rate. 12 CFR § 1026.22(a)(2), (a)(3). Regulation Z also relieves a creditor of liability for an error in calculating the APR if the error was caused by a calculation tool used in good faith by the creditor and the creditor takes certain steps after discovery of the error. 12 CFR § 1026.22(a)(1).

Disclosure Formatting

SB 1235 authorizes the Commissioner to establish rules concerning the formatting of disclosures provided to financing applicants. What, if any, of the information that SB 1235 requires to be disclosed should the disclosure form(s) highlight or prioritize? Should certain disclosures appear at the top of the form(s) in larger or bold font, etc.?

Square Capital Response

Specific formatting requirements for the disclosures (i.e. highlighting, location, font and/or formatting) should not be prescribed in the regulations.

Commercial financing providers are subject to the FTC Act and UDAP principles, which guide and inform how providers conduct business with their applicants and borrowers. Square Capital takes pride in designing user experiences that are simple, straightforward, transparent and consistent with UDAP standards. Design-focused products like the Flex Loan offer a level of clarity that can achieve the disclosure goals of SB 1235 while allowing for flexibility and innovation in communicating with sellers. Applying a fixed set of formatting requirements to all commercial financing products may introduce unintended obstacles in communicating unique product-specific features and SB 1235 disclosures with clarity and simplicity. Accordingly, the DBO should review providers' compliance with SB 1235 on a product-level basis through a UDAP lens rather than requiring providers to adhere to specific formatting requirements applicable to all financing products.

In particular, the regulations should not require more prominent disclosure of the annualized rate, as required for certain consumer transactions under Regulation Z. *See, e.g.*, 12 CFR 1026.17(a)(2). For products like the Flex Loan with revenue-based payment structures and fixed borrowing fees, emphasizing estimated annualized rates in a disclosure could distract from key disclosures that are not estimates, such as the total borrowing cost of the loan. Flex Loan sellers value knowing the exact dollar cost of capital before borrowing, and presenting an estimated annualized rate more prominently than the dollar cost of financing could lead to confusion.

Prepayment Policies

What types of prepayment policies and charges are common for different commercial financing transactions subject to SB 1235? How are these policies and charges characterized to customers today?

Square Capital Response

Square Capital does not charge any fees for prepaying a loan originated through the Square Capital program. This policy is disclosed throughout Square Capital's customer-facing materials and appears on the Flex Loan offer page within the description of the estimated term: "Prepay anytime at no additional cost." (*See* Exhibit A.)

Disclosures for Factoring and Asset-Based Lending Transactions with Master Financing Agreements

SB 1235 allows providers of factoring and asset-based lending to provide disclosures based upon an example transaction when the providers use agreements that describe the general terms and conditions of the commercial financing transactions that will occur under the agreements. What rules, if any, should the Commissioner establish to clarify when disclosures based upon example transactions are permitted? What rules, if any, should the Commissioner establish governing what example (i.e., financing amount) the provider may use when drafting disclosures?

Square Capital Response

Square Capital does not provide a response to this question as Square Capital is not currently a provider of factoring or asset-based lending products.

Definitions

SB 1235 defines terms relating to the commercial financing products that are subject to SB 1235's disclosures and entities that are exempt from making the disclosures. Are additional definitions needed? For the terms already defined, are any definitions unclear; and if so, why? Can the definitions be read to encompass transactions, individuals, or entities not intended to be regulated by the disclosure requirements? Does any definition result in ambiguity regarding whether a transaction, individual, or entity is subject to the disclosure requirements?

Square Capital Response

Square Capital has highlighted in these comments various provisions in SB 1235 that may prompt additional definition or clarification for purposes of drafting implementing regulations. Square Capital looks forward to partnering with the DBO on identifying additional areas where further clarification could benefit providers and merchants as the implementing regulations take form.

Additional Considerations Not Raised By The Commissioner's Questions

Timing of Disclosures

Section 22802(a) of the bill indicates that disclosures shall be given to a recipient "at the time of extending a specific commercial financing offer to that recipient." Section 22804(a)(2), however, directs the Commissioner to adopt regulations "concerning the time" for each disclosure item set forth in Section 22802(b).

Providers should be permitted to fulfill their disclosure requirements by presenting the required disclosures at the time the financing agreement is offered for signature. This would promote clarity and transparency of all terms applicable to the financing offer by providing potential borrowers with a single place and time where all details, including those in the financing agreement, can be reviewed and signed prior to submission of an application.

Signature Requirement

Section 22802(a) requires providers to "obtain the recipient's signature on [the] disclosure before consummating the commercial transaction." The regulations could enhance this requirement by specifying that the disclosures (a) may be provided to the recipient in electronic form (regardless of whether the recipient has consented to the E-Sign Act) and (b) signed electronically by the recipient.

SQUARE CAPITAL, LLC

EXHIBIT A

Summary Box

Legal Business Name: **Doing Business As:** **Business Address:** **Location ID:** **Applicant:** **Loan Acceptance Date:** **Origination Date:** **Repayment Start Date:** **Loan Maturity Date:**	**Prior Loan Balance:** **Net Deposit Amount:** **Loan Amount:** **Total Borrowing Cost:** **Loan Balance:** **Repayment Rate:** **Minimum Payment Amount: $XX.XX** **Minimum Payment Due: On [first min due date] and every 60th day thereafter**

LOAN AGREEMENT

This Loan Agreement ("**Agreement**") is a contract between Merchant, Celtic Bank Corporation, Square Capital, LLC, and Square, Inc. and is entered into on the Loan Acceptance Date set forth above.

1. **Definitions.**
    a. "**Accepted Cards**" means all US-issued or widely accepted non-US issued credit, debit, prepaid, or gift cards with a card network logo, or such other payment method deemed acceptable to Square, Inc.
    b. "**Applicant**" means the individual executing this Agreement who has the legal capacity and all necessary authority to bind Merchant to this Agreement.
    c. "**Bank**" means Celtic Bank Corporation, including its agents and assignees, as the originator and issuer of Your loan.
    d. "**Governmental Authority**" means any federal, state, local, foreign or other court, governmental department, commission, board, bureau, agency or instrumentality.
    e. "**Linked Bank Account(s)**" means any valid U.S. bank, debit card, or other transaction account used for business purpose You have linked to Your Square Account.
    f. "**Loan Acceptance Date**" means the date You enter into this Agreement, and is set forth in the summary box above.
    g. "**Loan Amount**" is the dollar amount of funds extended to You by Bank, in the amount specified in the summary box above.
    h. "**Loan Balance**" is the total amount that You are obligated to repay and is equal to the sum of the Loan Amount and the Total Borrowing Cost specified in the summary box above.
    i. "**Loan Maturity Date**" means the date, as specified in the summary box above,

on which the outstanding Loan Balance is due and payable in full.

j. "**Location ID**" means a unique identifier established with Square, Inc.

k. "**Merchant**", "You" or "Your" means the business identified by the Legal Business Name, which may be further identified by the "Doing Business As" name above, as related to a specific location and/or Square Account, as applicable.

l. "**Minimum Payment Amount**" means the amount specified in the summary box above and is payable by the end of each sixty (60) day period beginning on the Origination Date.

m. **"Net Deposit Amount"** means the net amount available and deposited to the Linked Bank Account after deductions of the Prior Loan Balance (if applicable) from your Loan Amount and is specified in the summary box above.

n. "**Origination Date**" means the date the Net Deposit Amount specified in the summary box above is approved to be disbursed to your Linked Bank Account.

o. "**Parties**" means, collectively, Merchant, Bank, Square Capital, and Square, Inc.

p. "**Prior Loan Balance**" means the amount in the summary box above deducted from the Loan Amount to satisfy an existing prior loan or other amount due, with respect to the Square Account associated with this Agreement, through the Square Capital Program.

q. "**Receivables**" means the total amounts owed to the Merchant resulting from the sales of goods and/or services through Accepted Cards in the ordinary course of Merchant's business.

r. "**Repayment Rate**" means the percentage of Receivables generated by Merchant, as set forth in the summary box above that will be debited from Your gross payment card processing amount each day You process payments pursuant to the Seller Agreement and will continue to be applied to Your Loan Balance until such Loan Balance is paid in full.

s. "**Repayment Start Date**" means the date Your repayment obligations begin and is specified in the summary box above.

t. "**Square Account**" means, collectively, all Merchant accounts with Square, Inc. that are identified with or used by Merchant in connection with the Location ID set forth in the summary box above, including any other accounts added or linked from time to time. Merchant may have multiple Square Accounts and such accounts may have separate loans through the Square Capital program.

u. "**Square Capital**" means Square Capital, LLC, a subsidiary of Square, Inc., and the servicer of Your loan, as agent on behalf of Bank and otherwise as agent of Bank.

v. "**Square, Inc.**" means the processor of Your payment card transactions as described in the Square General Terms of Service and any applicable Additional Terms, as may be amended from time to time (the "**Seller Agreement**").

w. "**Total Borrowing Cost**" means the one time flat fee assessed by Bank for entering into this Agreement, in the amount specified in the summary box above.

2. **Information About Your Loan.**

a. **Extension of Credit.** Bank is extending to You the Loan Amount and, in exchange, You agree as follows:

   i. **Business Purpose. You acknowledge and agree that funds received under this Agreement are for business purposes only and will not be used for personal, family or household purposes. You understand that You are not receiving a consumer loan, and that statutory and regulatory protections for consumers will not apply to Your loan.** You also understand that Bank may not confirm whether the use of any funds provided conforms to this section. You agree that a breach of this section will not affect Bank's right to (a) enforce Your promise to pay all amounts owed under this Agreement, regardless of the purpose for which the funds are in fact obtained, or (b) use any remedy legally available to Bank, even if that remedy would not have been available had the funds been provided for consumer purposes.

   ii. **Obligation to Repay.** You agree (a) to repay the Minimum Payment Amount on each Minimum Payment Due date and (b) to repay the Loan Balance in full by the Loan Maturity Date. While You have an outstanding Loan Balance, You direct Bank to direct Square Capital to direct Square, Inc. to withhold the Repayment Rate from Your Receivables during each day You process payments pursuant to the Seller Agreement and Square, Inc. agrees to remit such funds to Square Capital. Your repayments begin on the Repayment Start Date.

   iii. **Application of Repayments.** Your repayments will generally be applied first to the past due Loan Balance (if any), then to reduce the amount of the remaining Loan Balance until the Loan Balance is paid in full.

   iv. **Minimum Payment Obligation**. If at any time, You do not pay the Minimum Payment Amount by the applicable Minimum Payment Due date, the Bank through Square Capital reserves the right to debit Your Linked Bank Account or increase Your Repayment Rate.

   v. **Satisfaction of Prior Loan Balance.** In order to receive funds under this Agreement, Bank will first apply the Loan Amount to repay any Prior Loan Balance outstanding as of the Origination Date. The remaining Loan Amount will be deposited to Your Linked Bank Account in accordance with your ACH authorization (as described below).

   vi. **Early Repayment.** You may repay Your outstanding Loan Balance in full or in part at any time without penalty by making additional payments in Your Square Dashboard, or contacting the Square Capital Support Center to arrange for repayment. Such early repayment will be deducted from Your Square Account balance first, and any remaining amount will be debited from Your Linked Bank Account.

   You may also repay Your outstanding Loan Balance in full or in part at

any time without penalty by sending a check (with Your email address associated with Your Square Account in the "Memo" field) to:

Square Capital Program
Attn: Capital Servicing
29053 Network Place
Chicago, IL 60673-1290

vii. **ACH Authorization.** You authorize Bank to credit Your Linked Bank Account with Your Loan Amount (less any Prior Loan Balance) or where otherwise required for servicing. If You decide to prepay Your Loan Balance, or need to make payment to satisfy Your Minimum Payment Amount or other amounts due under this Agreement, You authorize Square Capital, as the Bank's agent to debit any Linked Bank Account. If any debit attempt to Your Linked Bank Account fails, You grant Square Capital at each instance a new, original authorization to make new debit attempts in an amount less than the amount then currently due or an amount reduced from the previous debit from Your Linked Bank Account.You acknowledge and agree to be bound by NACHA's rules for business-related ACH debits and credits.

viii. **Cancellation Period.** You may cancel this Agreement any time prior to the Repayment Start Date. If You cancel, Bank will debit the Loan Amount from Your Linked Bank Account. Your loan will not be deemed cancelled if the debit to Your Linked Bank Account is unsuccessful. If You owe a Prior Loan Balance and You cancel this Agreement, You agree that any Prior Loan Balance remains due and payable, and Your prior loan agreement for the Prior Loan Balance will be reinstated immediately.

ix. **Security Interest.**

1. **For all Loan Amounts in excess of $75,000** as of the Loan Acceptance Date, Merchant agrees that as security for (i) Merchant's obligation to pay the Loan Balance and (ii) Merchant's obligation to pay all other obligations and liabilities owed to Bank by Merchant from time to time under this Agreement (collectively, the "Secured Obligations"), Merchant grants, assigns and pledges to Square Capital, as collateral agent on behalf of Bank a continuing and unconditional lien on and security interest in and to the following, whether now owned or hereafter acquired or arising and wherever located (collectively, the "Account Collateral"): (a) Merchant's Square Account, the Receivables, all balances in such Square Accounts; (b) all general intangibles (as that term is defined in Article 9 of the Uniform Commercial Code as in effect in the State of Utah), all payment intangibles, all rights to payment,

and all other rights (whether arising under common law, statutes, regulations, or otherwise), of the Merchant; (c) all money, cash equivalents, and other assets of the Merchant; and (d) all of the proceeds (as such term is defined in the applicable UCC) and products, whether tangible or intangible, of any of the foregoing. In furtherance of the intentions of the Parties hereto, this Agreement will constitute written notice to all interested parties of Square Capital's (as collateral agent on behalf of Bank) security interest in the Account Collateral. Merchant acknowledges and agrees that so long as any of the Secured Obligations remain outstanding, the Merchant's Square Account will be under the sole dominion and control of Square Capital. Neither Merchant nor any other person or entity, acting by, through or under the Merchant, will have any control over the use of, or any right to withdraw any amount from such Square Accounts without the consent of Square Capital, provided that Square Capital will be deemed to have granted such consent until such time as the occurrence of a default under this Agreement. In addition, Square Capital will have the exclusive rights (i) to require that any bank or securities intermediary at which any Account Collateral may be located acknowledge Bank's security interest in and control of the Account Collateral for purposes of perfecting Square Capital's security interest in the Account Collateral, and (ii) to direct and provide instructions to such bank or securities intermediary as to the disposition of the Account Collateral to fulfill Merchant's Secured Obligations. The security interest created by this Agreement secures the payment and performance of all of the present and future Secured Obligations of the Merchant under this Agreement (including, without limitation, reasonable attorney's fees and expenses and any interest, fees, or expenses that accrue after the filing of a bankruptcy or other insolvency proceeding, regardless of whether allowed or allowable in whole or in part as a claim in such bankruptcy or other insolvency proceeding) so long as any of the Secured Obligations remain outstanding.

3. **Termination and Default.**
   a. **Termination of Agreement.** Except as otherwise stated in this Agreement, this Agreement will remain in full force and effect until the entire Loan Balance has been repaid in full.
   b. **Events of Default.** You will be in default of this Agreement if You:
      i. Misrepresent a fact in Your loan application;
      ii. Fail to comply with terms of the Agreement, including specifically but without limitation, Your representations, warranties, and covenants at

paragraph 6 below, as well as all other representations, warranties, and covenants in this Agreement;

iii. Divert Your payment card processing from Your Square Account in violation of this Agreement;

iv. File or become the subject of a bankruptcy or insolvency proceeding; or

v. Do not repay Your Loan Balance or any Minimum Payment Amounts when due.

c. **Rights upon Default.** If You default, Square Capital may, upon written notice to You, (i) demand immediate repayment of the Loan Balance, which will be paid by You within five (5) business days of receipt of such demand, unless a longer period is specified; (ii) debit any past due amounts from Your Linked Bank Account; and/or (iii) temporarily or permanently increase Your Repayment Rate. Bank may enforce the repayment of Your Loan Balance pursuant to the terms of this Agreement, and in the instance of nonpayment of Your Loan Balance will enforce those rights solely against Merchant's business assets, including but not limited to the property and interests described in Section 2(a)(ix) above. This does not limit Your repayment obligations in this Agreement and Bank's enforcement rights.

d. **Indemnification.** Merchant will indemnify and hold harmless Bank and Square Capital (and their respective employees, directors, agents, affiliates and representatives) from and against any cost, loss or liability including interest, penalties, reasonable attorneys' fees and expenses resulting from Your misrepresentation or breach of warranty, default or breach of any covenant in this Agreement.

e. **Costs to Enforce Payable by Merchant.** Merchant will pay all reasonable costs associated with a breach by Merchant of any of its obligations, covenants or any of the representations and warranties of Merchant under this Agreement and the enforcement thereof. These "reasonable costs" include the costs, including attorneys' fees, associated with defending, protecting, or enforcing the rights under this Agreement including in any bankruptcy proceeding.

4. **Relationship of the Parties**

a. **Unaffiliated Parties**. Square Capital and Bank are not affiliated.

b. **Obligation to Provide Transactional Information.** Merchant agrees to provide to Bank and Square Capital, upon request, transaction files maintained by Merchant, and any other information related to past payment processing volumes or the transactions contemplated by this Agreement.

c. **Further Inquiries.** If Bank or Square Capital requires additional information You will respond to those requests in the time frame requested.

d. **Your Square Account.**

i. **Maintain Your Square Account in Good Standing**. While You have an outstanding Loan Balance, Merchant will comply with the Seller Agreement and maintain Merchant's Square Account in good standing.

ii. **Effect of Multiple Square Accounts.** Any attempt to receive Your payment card processing proceeds through multiple Square Accounts (irrespective of whether such Square Accounts are associated with the Location ID set forth in the summary box above) will entitle Square Capital to consider any such Square Accounts as part of Your Square Account for purposes of this Agreement. Square Capital may, at its option, (i) provide You with notice that such additional Square Accounts are now considered part of Your Square Account under this Agreement and apply the Repayment Rate to such consolidated Square Account or (ii) exercise its other remedies under this Agreement.

iii. **Effect of Square Ceasing to Withhold Loan Payments**. Under contractual obligations that Square Capital has and may have with various third parties, Square Capital may be prevented from withholding the Repayment Rate from Your Receivables as described in Section 2(a)(ii) while You have an outstanding Loan Balance under this Loan Agreement. Such an event may result in the assignment or transfer of the servicing of this Agreement and Square Capital's rights and remedies under this Agreement without prior notice to You. If servicing is transferred, You agree (i) to make equal weekly payments via debit to a bank account or other means (which amount equals the remaining Loan Balance divided by the number of weeks through the Loan Maturity Date) to the designated service provider if loan repayments are no longer withheld, (ii) to comply with alternative payment timing, instructions and methods as provided by the new service provider and to execute any necessary authorization in order for such payments to be made, and (iii) that any new service provider is authorized to make any such debit to Your bank account. If alternative payment timing, instructions and methods are required, You will be provided with reasonable notification of those requirements, including a statement reflecting Your outstanding Loan Balance and weekly payment amount, to be delivered within a reasonable time.

5. **Consent for Electronic Signatures; Additional Communications.**

a. **Electronic Signature.** In order to receive the Loan Amount, Bank must provide You certain disclosures required by law. By submitting Your application and agreeing to the terms of this Agreement, which You collectively adopt as Your electronic signature, You consent and agree that:

i. Bank can provide all disclosures required by law and other information about Your legal rights and duties to You electronically, including by e-mail, a Website portal or mobile phone application.

ii. Your electronic signature on agreements and documents has the same effect as if You signed them in ink and is evidence of Your intention to be bound by this Agreement.

iii. Electronic disclosures have the same meaning and effect as if You were

provided paper disclosures.

iv. Disclosures are considered received by You within 24 hours of the time posted to Bank's website, or within 24 hours of the time emailed to You unless Bank receives notice that the email was not delivered.

v. Bank reserves the right to cancel this electronic disclosure service, change the terms of use of this service or send disclosures in paper form at any time.

vi. Bank is responsible for sending notice of the disclosures to You electronically, but Bank is not responsible for any delay or failure in Your receipt or review of the email notices.

b. **Access to Disclosures.** You understand that in order to access and retain the electronic disclosures You will need the following:

i. A computer or mobile device with Internet or mobile connectivity.

ii. For desktop website-based Communications:

1. Latest web browser that includes 256-bit encryption.
2. The browser must have cookies enabled. Use of browser extensions may impair full website functionality.
3. Minimum recommended browser standards are Mozilla Firefox latest version (see http://www.mozilla.com for latest version), Apple Safari latest version (see http://www.apple.com/safari for latest version), or Chrome latest version (see http://www.google.com/chrome for latest version).

iii. For mobile-based Communications:

1. A latest device operating system that supports text messaging, downloading, and applications from the Apple App Store or Google Play store; and
2. The latest version of Safari or Chrome on iOS or the latest version of Chrome for Android.

iv. Access to the email address used to create your Square Account.

v. Sufficient storage space to save Communications and/or a printer to print them.

vi. Use of spam filters may block or re-route emails from senders not listed in your email address book.

c. **Confirmation.** You agree and confirm that You have access to the necessary equipment to receive, access and print any disclosures that may be provided in electronic form.

d. **Withdrawal**. You will not seek to withdraw Your consent for electronic signature and disclosures while You have an outstanding Loan Balance.

e. **Additional Communications**. You consent to accept and receive communications from Bank and Square Capital, including e-mail, text messages, calls, and push notifications to the cellular telephone number You provide. These non-telemarketing communications may be generated by automatic telephone dialing systems which will deliver pre-recorded messages, including for the

purposes of secondary authentication, receipts, reminders and other notifications. Standard message and data rates applied by Your cell phone carrier may apply to the text messages Bank or Square Capital sends You. You may only opt-out of receiving text message communications by replying STOP to text messages.

6. **Merchant Covenants.** Merchant irrevocably agrees that while there is an outstanding Loan Balance, Merchant will:
    a. **Card Acceptance.** Not take any action to discourage use of Accepted Cards as payment for Merchant transactions or permit any event to occur that could have an adverse effect on the acceptance, authorization or use of Accepted Cards by purchasers of Merchant's products and/or services, with the exception that Merchant may impose any charge on credit card transactions permitted by the applicable card associations' rules and regulations;
    b. **Conduct of Business.** Maintain Merchant's business, including using Square, Inc. services to process payment card transactions, in substantially the same manner as it exists as of the Loan Acceptance Date. Merchant will conduct its business under the same name and in a manner consistent with past practice unless Merchant provides prior written notification to Square Capital and will prevent the diversion of Your Receivables to any other processor. Merchant will not cause, either by direct action or inaction, the dollar amount of Receivables processed through its Square Account to be diverted to another processor. In any thirty (30) day period Merchant will process Receivables with Square, Inc. at no less than fifty percent (50%) of the monthly minimum dollar amount of Receivables in the twelve (12) months immediately prior to such period.
    c. **Control of Business.** Not allow another person or company, including without limitation a franchisor company (if Merchant is a franchisee), to assume or take over the operation and/or control of Merchant's business or business location, whether physical or virtual;
    d. **Sale of Business.** Not sell, dispose, convey or otherwise transfer any of Merchant's business or assets (other than in the ordinary course of business); and
    e. **Cooperation.** Cooperate fully with Square Capital to take all necessary actions to effectuate each of Merchant's obligations in this Agreement, including but not limited to signing any and all documents Bank or Square Capital deems necessary and furnishing Bank or Square Capital with such information (including updated financial statements) as Bank or Square Capital may reasonably request from time to time.
7. **Merchant Representations and Warranties.** Merchant represents and warrants that as of the Loan Acceptance Date and until full repayment of Loan Balance:
    a. **Capacity.** The Applicant executing this Agreement is authorized on behalf of Merchant to do so, is at least eighteen (18) years of age and has the legal capacity and all necessary authority to bind Merchant to this Agreement;
    b. **Third Party Interest in Receivables.** Merchant's Receivables (i) have not and will not be sold as of the Loan Acceptance Date and until full repayment of Loan

Balance, and (ii) are not subject to any claims, charges, liens, restrictions or security interests where the third party holding a security interest in Merchant's Receivables is currently exercising its remedies;

c. **Approvals and Taxes.** Merchant possesses and is in compliance with all permits, licenses, approvals, consents and any other authorizations necessary to conduct its business. Merchant is in compliance with, and the execution of this Agreement and consummation of the transaction contemplated in this Agreement will not conflict with (i) any and all applicable federal, state and local laws and regulations, (ii) any agreements to which Merchant is a party, and (iii) Merchant's articles or certificate of incorporation, bylaws, or other organizational documents. Merchant possesses all requisite permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged. All federal, state, local and foreign tax returns and tax reports, and all taxes due and payable that are required to be filed by Merchant have been or will be filed and paid, on a timely basis (including any extensions). All such returns and reports are and will be true, correct and complete. Merchant has no material liabilities and, to the best of its knowledge, knows of no material contingent liabilities, except current liabilities incurred in the ordinary course of business;

d. **Conflicts With Other Agreements.** Merchant will comply with the provisions of this Agreement and its performance under this Agreement does not and will not conflict with other agreements to which Merchant is a party or beneficiary, or result in any of the following: (1) violation or default of other agreements; (2) entitlement of any person or entity to receipt of notice or right of consent; (3) a right of termination, cancellation, guaranteed rights or acceleration of any obligation or to loss of a benefit; or (4) creation of any claim on the properties or assets of Merchant;

e. **Authorization.** Merchant has the power and authority to enter into and perform Merchant's duties and obligations under this Agreement and any documents required to facilitate the transactions contemplated by this Agreement. Merchant is not a party to any contract or aware of any existing situation that would prevent Merchant from entering into or performing its obligations under this Agreement. Merchant has taken all necessary action to authorize their respective execution and delivery of, and performance under, this Agreement;

f. **Other Proceedings and Bankruptcy.** There is no action, suit, claim, investigation or legal, administrative, or arbitration proceeding pending or currently threatened whether at law or in equity or before any Governmental Authority against Merchant. Merchant has not declared bankruptcy within the past seven years and is not currently contemplating the filing of a bankruptcy proceeding or closing or materially modifying Merchant's business. Merchant is solvent and financially capable of fulfilling its obligations under this Agreement;

g. **Good Standing.** Merchant is validly existing and in good standing under any applicable laws of its state of organization. Merchant has all requisite power and

authority to own, lease, pledge and operate its properties and assets and to carry on its business as presently conducted;

h. **Compliance With Laws.** Merchant is in compliance with all statutes, rules, regulations, orders or restrictions of all applicable Governmental Authorities. All federal, state, local and foreign tax returns and tax reports, and all taxes due and payable arising therefrom required to be filed by Merchant have been or will be filed and paid, on a timely basis (including any extensions). All such returns and reports are and will be true, correct and complete. Merchant has no material liabilities and, to the best of its knowledge, knows of no material contingent liabilities, except current liabilities incurred in the ordinary course of business; and

i. **Loan Purpose.** Merchant is applying for credit solely for business purposes and not for personal, family or household use. Any credit extended under this Agreement, including the Loan Amount, is solely for business purposes and not for personal, family or household use.

8. **Disputes.**

a. **Binding Individual Arbitration.** You, Bank, Square Capital and Square, Inc. agree to arbitrate all disputes arising under or in connection with this Agreement by a neutral arbitrator who has the power to award the same damages and relief that a court can. **ANY ARBITRATION UNDER THIS AGREEMENT WILL ONLY BE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS, CLASS ACTIONS, REPRESENTATIVE ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED. YOU WAIVE ANY RIGHT TO HAVE YOUR CASE DECIDED BY A JURY AND YOU WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS ACTION AGAINST BANK, SQUARE CAPITAL, OR SQUARE, INC**. OR ANY OF THEIR RESPECTIVE ASSIGNEES OR AGENTS If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed, and the remaining arbitration terms will be enforced (but in no case will there be a class arbitration). All disputes will be resolved finally and exclusively by binding individual arbitration with a single arbitrator administered by the American Arbitration Association (www.adr.org) according to this Section and the applicable arbitration rules for that forum. The arbitrator will be responsible for determining all threshold arbitrability issues, including issues relating to whether this Agreement is unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, fully applies. Any arbitration hearing will occur in San Francisco, California or other mutually agreeable location. The arbitrator's award will be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. For any dispute against Bank, Bank will pay all the arbitration fees. For any dispute against Square Capital or Square, Inc., Square Capital or Square, Inc. will pay all the arbitration fees. If You prevail on any claim for which You are legally entitled to attorney's fees, You may seek to recover those fees in the arbitration. For any claim where You are seeking

relief, Bank and Square Capital will not seek to have You pay Bank, Square Capital, or Square, Inc.'s attorney's fees, even if fees might otherwise be awarded, unless the arbitrator determines that Your claim was frivolous. For purposes of this arbitration provision, references to You, Bank, Square Capital, and Square, Inc. also include respective subsidiaries, affiliates, agents , employees, predecessors, successors and assigns as well as authorized users or beneficiaries of the Square Capital Program. Subject to and without waiver of the arbitration provisions above, You agree that any judicial proceedings will be brought in and You consent to the exclusive jurisdiction and venue in the state courts in the City and County of San Francisco, California, or federal court for the Northern District of California.

b. **Governing Law.** This Agreement is governed by Utah law and/or applicable federal law (including the Federal Arbitration Act) as applied to agreements entered into and to be performed entirely within Utah, without regard to its choice of law or conflicts of law principles that would require application of law of a different jurisdiction.

c. **Limitation on Time to Initiate a Dispute**. Unless otherwise required by law, an action or proceeding by Merchant relating to any dispute arising under this Agreement must commence within one year after the cause of action occurs or becomes enforceable.

9. **Miscellaneous.**

a. **Modifications; Amendments**. Any changes to these terms will be in writing agreed by the party to be affected.

b. **Waiver.** No Party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.

c. **Notices**. Except as otherwise stated, notices to Bank or Square Capital must be sent by postal mail to: Square Capital Program, 1455 Market Street, Suite 600, MSC 715, San Francisco, California 94103.

d. **Assignment.** You may not assign or transfer Your rights or obligations under this Agreement, but rights of Bank and/or Square Capital may be assigned by Square Capital and/or Bank without restriction.

e. **Severability**. If any provision of this Agreement is deemed invalid or unenforceable under any law, rule, or regulation, the remainder of the Agreement will remain in effect.

f. **Complete Agreement.** This Agreement constitutes the entire Agreement between the Parties related to this subject matter and supersedes any prior agreements or understandings between the Parties.

g. **Survival**. The obligations in Sections 3(d) (Indemnification), 3(e) (Costs to Enforce Payable by Merchant), 8 (Disputes) and this Section 9 (Miscellaneous) will survive any expiration or termination of this Agreement.

h. **Register.** You agree that Square Capital, on Your behalf, will maintain a register in order to, record the amount of Your Loan Balance and the current or future owner of Your loan (including any assignee, participant or transferee, if any, who becomes the subsequent owner of any portion of Your Loan Balance) (the

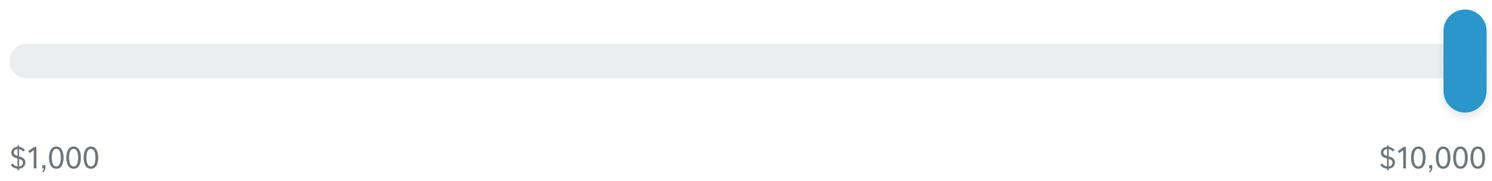
"**Register**"). The Parties agree that the entity whose name is recorded in the Register as the current owner of Your Loan Balance is treated as the owner of Your Loan Balance. The Register must be updated for any transfer of ownership of Your Loan Balance to occur.

SQUARE CAPITAL, LLC

EXHIBIT B

Select your loan offer amount.

$10,000



14% of Daily Card Sales

Percentage of your card sales used to repay your loan on days when you process payments through Square. Minimum of **$633** must be repaid every 60 days.

Estimated Payback Within 1 Year

Full balance must be repaid within **18 months**. Estimate is based on your Square sales history. Prepay anytime at no additional cost.

$10,000 Deposited

Amount that is deposited into your Square-linked bank account upon approval.

$1,400 Flat Fee

Total amount to be repaid is **$11,400**.

Select $10,000

Questions? Read the FAQ.

Frequently Asked Questions

- How do I repay this loan? +
- Can I request a different loan amount? +
- How do you determine my business's loan offer? +
- Can I prepay the loan? +
- What happens if I miss a payment? +
- Are there late fees? +
- Does applying for a loan impact my personal credit? +
- Read the full FAQ +

Square Capital, LLC is a wholly owned subsidiary of Square, Inc., d/b/a Square Capital of California, LLC in FL, GA, MT, and NY. All loans are issued by Celtic Bank, a Utah-Chartered Industrial Bank. Member FDIC, located in Salt Lake City, UT. The individual authorized to act on behalf of the business must be a U.S. citizen or permanent resident and at least 18 years old. Valid U.S. bank account and Social Security number or Individual Taxpayer Identification Number are required. Actual fee depends upon payment card processing history, loan amount and other eligibility factors. A minimum payment of 1/18th of the initial loan balance is required every 60 days and full loan repayment is required within 18 months. Loan eligibility is not guaranteed. All loans are subject to credit approval. This is an advertisement communication. FM1118

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 who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Select your loan offer amount.

$10,000

The fixed percentage of your daily card sales will be automatically deducted until your loan is fully repaid. A minimum of 1/18 of the initial balance must be repaid every 60 days.

The estimate is based on your business's Square sales history. You can calculate your own estimated repayment length based on your current and projected sales.

14% of Daily Card Sales

Percentage of your card sales used to repay your loan on days when you process

Upon approval, you'll receive the full amount shown as soon as the next business day.

Estimated Payback Within 1 Year

Full balance must be repaid within **18**

You never pay more than $1,400. There are no application, origination, closing, or prepayment costs. No kidding.

$10,000 Deposited

Amount that is deposited into your Square-linked bank account upon approval.

$1,400 Flat Fee

Total amount to be repaid is **$11,400**.

Select $10,000

Questions? Read the FAQ.

Frequently Asked Questions

- How do I repay this loan? +
- Can I request a different loan amount? +
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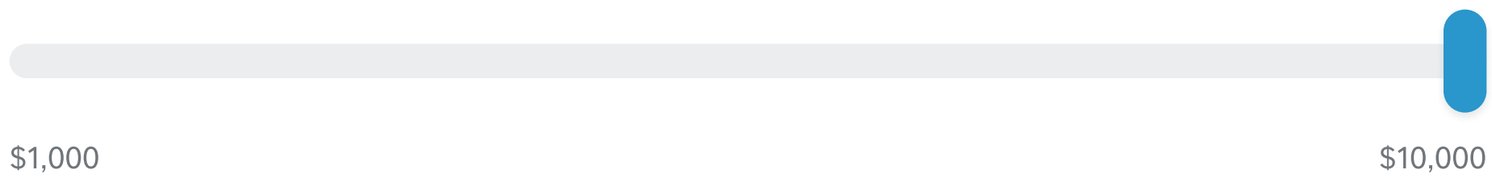
SQUARE CAPITAL, LLC

EXHIBIT C

Select your loan offer amount.

$10,000



14% of Daily Card Sales

Percentage of your card sales used to repay your loan on days when you process payments through Square. Minimum of **$633** must be repaid every 60 days.

Estimated Payback Within 1 Year

Full balance must be repaid within **18 months**. Estimate is based on your Square sales history. Prepay anytime at no additional cost.

$10,000 Deposited

Amount that is deposited into your Square-linked bank account upon approval.

$1,400 Flat Fee

Total amount to be repaid is **$11,400**.

Select $10,000

Questions? Read the FAQ.

Frequently Asked Questions

- How do I repay this loan? +
- Can I request a different loan amount? +
- How do you determine my business's loan offer? +
- Can I prepay the loan? +
- What happens if I miss a payment? +
- Are there late fees? +
- Does applying for a loan impact my personal credit? +
- Read the full FAQ +

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STEP 2 OF 3

Personal and Business Information

Please tell us about yourself and your business. Personal information should be completed by the individual authorized to apply for this loan on behalf of the business.

Personal Information

First Name

Kaitlyn

Last Name

Spindel

Home Address

Address

Apt / Suite

City

State

ZIP

Date of Birth

Month

DD

YYYY

Full SSN

000-00-0000

Mobile Number

000-000-0000

I allow Square Capital and Celtic Bank to contact me about my loan via automated calls and text messages.

Business Information

Business Entity Type

Sole Proprietorship

Doing Business As

Name (Optional)

My Business Address is the same as my Home Address.

Business Address

1455 Market Street

Apt / Suite

San Francisco

CA

94103

Questions? Visit our FAQ or contact us.

By clicking the “Continue” button, I certify, to the best of my knowledge, that the above information is accurate and that I have read the Square Privacy Policy and Celtic Bank Privacy Policy.

Continue

© 2019 Square Capital, LLC
1455 Market Street, Suite 600, MSC 715, San Francisco, CA 94103

Review Terms

Please carefully review the loan and legal terms below.

Loan Terms

$10,000.00

Total Deposit

Upon approval, I will receive a deposit of **$10,000.00.**

$11,400.00

Total Owed

I will owe $10,000.00 for the loan plus a $1,400.00 fee for a total of **$11,400.00.**

14%

Repaid Daily

I understand that **14%** of my daily card sales will be used to repay my loan.

Legal Terms

Authorized Individual

I am authorized to enter into this loan agreement on behalf of **Arden Home LLC**.

Location ID

The Location ID associated with this application is P4KRYTMJTHF2V.

Your Finances

I confirm that neither I nor my business have a history of: 1) bankruptcy within the past 12 months, 2) financial crimes such as forgery or embezzlement, or 3) liens or judgements that may impair my ability to repay the loan. This Information may be subject to verification.

I authorize Square Capital to make **recurring debits** from my linked bank account in accordance to the terms of the loan agreement.

Credit History and Public Records

I, **Kaitlyn Spindel**, give Square Capital and Celtic Bank permission to access my consumer credit report and public records for purposes of this business loan application and evaluating my business for any future loan offers. Your credit score will not be affected by this loan application.

Lender

I understand that I have applied for a loan through Square Capital which is issued by Celtic Bank, a Utah-Chartered Industrial Bank, Member FDIC, located in Salt Lake City, Utah.

By clicking the “I Accept” button, I confirm that I have read and agree to the terms above and to the Square Capital loan agreement. Last updated 04/19/18.

Continue

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