

## 1. Merchant's Acceptance of Cards.

**1.1 Exclusivity.** You will tender to us Sales Data generated from all your Card transactions via electronic data transmission according to our formats and procedures. You will not use the services of any bank, corporation, entity, or person other than Paymenttech for authorization or processing of Visa or MasterCard transactions throughout the term of this Agreement.

**1.2 Certain Card Acceptance Policies.** Each sale you make involving a Card must be evidenced by a single Sales Data record completed with (i) the transaction date; (ii) a brief description of the goods or services sold, returned, or cancelled; (iii) the price of the goods or services, including applicable taxes, or amount of any credit or adjustment; (iv) the Cardholder name; (v) your name in a manner recognizable to Cardholders; (vi) your address; (vii) a customer service telephone number; (viii) any applicable terms and conditions of the sale; (ix) the exact date any free trials end; and (x) any other information that the applicable Association may require. You shall not impose any surcharge or finance charge on the Card transaction or otherwise require the Cardholder to pay any fees payable by you under this Agreement. You shall not set a dollar amount above or below which you refuse to honor otherwise valid Cards. With respect to any transaction for which a Card is not physically presented, such as in any on-line, mail, telephone, or pre-authorized transaction, you must (i) have notified us on your application or otherwise in writing of your intention to conduct such transactions and secured our agreement to accept them and (ii) have reasonable procedures in place to ensure that each Card sale is made to a purchaser who actually is the Cardholder or the authorized user of the Card. Notwithstanding the foregoing, you acknowledge that under the Association Rules, you cannot rebut a Chargeback where the Cardholder disputes making the purchase without an electronic record (for example, "swiping" or "tapping" a Card) or physical imprint of the Card.

**1.3 Operating Guide; Association Rules.** You agree to comply with the operating guide attached to this Agreement, as amended from time to time ("Operating Guide"), all Association Rules, and with such other procedures as we may from time to time prescribe for the creation or transmission of Sales Data. We may modify and supplement the Operating Guide in order to comply with requirements imposed by the Association Rules. You acknowledge that you have received a copy of the Operating Guide at or prior to your execution of this Agreement, and that you can also view the Operating Guide on-line at the Chase Paymenttech Solutions Internet website.

**1.4 Requirements for Sales Data.** As to each Sales Data you tender to us for processing, you represent and warrant that:

- (1) The Sales Data represents payment or refund of payment for the bona fide sale or lease of the goods, services, or both, that you have provided in the ordinary course of your business, and the Sales Data is not submitted on behalf of a third party.
- (2) The Card transaction represents an obligation of the Cardholder for the amount of the Card transaction.
- (3) The Sales Data does not involve any element of credit for payment of a previously dishonored check or for any other purpose except payment for a current transaction and, except in the case of approved installment or pre-payment plans, the goods have been shipped or services actually rendered to the Cardholder.
- (4) The Sales Data is free from any alteration not authorized by the Cardholder.
- (5) The amount charged for the Card transaction is not subject to any dispute, setoff, or counterclaim.
- (6) Neither you nor your employee has advanced any cash to the Cardholder (except as authorized by the Rules) or to yourself or to any of your representatives, agents, or employees in connection with the Card transaction, nor have you accepted payment for effecting credits to a Cardholder's account.
- (7) The goods described in each Sales Data submission are your sole property and you are free to sell them.
- (8) You have made no representations or agreements for the issuance of refunds except as it states in your return/cancellation policy, which has been previously submitted to us in writing as provided in Section 3.
- (9) Any credit transaction submitted to us represents a refund or adjustment to a Card transaction previously submitted.
- (10) You have no knowledge or notice of information that would lead you to believe that the enforceability or collectibility of the subject Sales Data is in any manner impaired. The transaction is in compliance with all applicable laws, ordinances, and regulations. You have originated the Sales Data in compliance with this Agreement and the Association Rules.
- (11) For a Card sale where the Cardholder pays in installments or on a deferred payment plan, a Sales Data record has been prepared separately for each installment transaction or deferred payment on the date(s) the Cardholder agreed to be charged. All installments and deferred payments, whether or not they have been submitted to us for processing, shall be deemed to be a part of the original Card sale.

## 2. Authorizations.

**2.1 Obtaining Authorizations.** You are required to obtain authorization/approval codes for all Card transactions by contacting the center designated by Paymenttech. You acknowledge that authorization/approval code of a Card transaction indicates only that credit is available for the Card transaction at the time the authorization is given, and it does not constitute a representation from us or from an Association that a particular Card transaction is in fact a valid or undisputed transaction entered into by the actual Cardholder or an authorized user of the Card.

**2.2 Lack of Authorization.** We reserve the right to refuse to process any Sales Data presented by you (i) if you do not record a proper authorization/approval code, (ii) if we determine that the Sales Data is or will become uncollectible from the Cardholder to which the transaction would otherwise be charged, or (iii) if we determine that the Sales Data was prepared in violation of any provision of this Agreement.

## 3. Refunds and Adjustments.

**3.1 Disclosure of Refund Policy.** You are required to maintain a fair policy with regard to the return/cancellation of merchandise or services and adjustment of Card sales. You are required to disclose your return/cancellation policy to us on your application. Your return/cancellation policy must be disclosed to your customers.

**3.2 Changes to Policy.** Any change in your return/cancellation policy must be submitted in writing to us not less than 14 days prior to the effective date of such change. We reserve the right to refuse to process any Sales Data made subject to a revised return/cancellation of which we have not been notified in advance.

**3.3 Procedure for Refunds/Adjustments.** If you allow a price adjustment, return of merchandise, or cancellation of services in connection with a Card sale, you will prepare and deliver to us Sales Data reflecting such refund or adjustment within 3 days of receiving the Cardholder's request for such refund/adjustment. The amount of the refund/adjustment cannot exceed the amount shown as the total on the original Sales Data except by the exact amount required to reimburse the Cardholder for postage that the Cardholder paid to return merchandise. You are not allowed to accept cash or any other payment or consideration from a customer in return for preparing a refund to be deposited to the Cardholder's account nor to give cash refunds to a Cardholder in connection with a Card sale, unless required by law.

## 4. Settlement.

**4.1 Submission of Sales Data.** You are required to transmit your Sales Data to us no later than the next business day immediately following the day that such Sales Data is originated. You will be solely responsible for all communication expenses required to accomplish the transmission of Sales Data. For debit Card transactions that are credits to a Cardholder's account, you agree to transmit such transactions to us within 24 hours of receiving the authorization for such transaction. Unless otherwise indicated on Schedule A, you will be solely responsible for all communication expenses required to accept the transmission of Sales Data.

**4.2 Merchant's Settlement Account.** In order to receive funds from Paymenttech, you must maintain a Settlement Account at a bank that is a member of the Automated Clearing House ("ACH") system and the Federal Reserve wire system. You agree not to close your Settlement Account without giving us at least 5 days' prior written notice and substituting another Settlement Account. You are solely liable for all fees, costs, and expenses associated with your Settlement Account and for all overdrafts. You authorize Paymenttech to initiate electronic credit and debit entries and adjustments to your bank account at any time without regard to the source of any monies in the Settlement Account. This authority will remain in full force and effect until we notify your bank that all monies due from you under this Agreement have been paid in full. We will not be liable for any of your losses or expenses whatsoever resulting from delays in receipt of funds or errors in Settlement Account entries caused by third parties, including, without limitation, delays or errors by either the Associations or your bank.

**4.3 Travel and Entertainment Cards.** You cannot submit any T&E Card transaction for processing by Paymenttech unless you have a valid agreement in effect with the respective T&E Card company. For the T&E Card transactions designated on Schedule A, upon transmission of such Sales Data by you, we will forward the Sales Data to the appropriate T&E Card company. Except to the extent that we may provide funds settlement services for JCB transactions, payment of the proceeds due you will be governed by whatever agreement you have with that T&E Card company, and we do not bear any responsibility for their performance. If your agreement with a T&E Card company requires the T&E Card company's consent for us to perform the services contemplated by our Agreement, you are responsible for obtaining that consent.

**4.4 Transfer of Settlement Funds.** For all Card transactions, other than T&E Card transactions, we will process your Sales Data to facilitate the funds transfer between the various Associations and you for Card sales. Promptly after we receive credit for such Sales Data, we will provide provisional credit to the Settlement Account for the proceeds. The proceeds payable to you shall be equal to the amounts received by us in respect of your Sales Data minus the sum of the following: all fees, charges, and discounts set forth in Schedule A, all adjustments and Chargebacks, all equipment charges (if any), all Cardholder refunds, returns, and adjustments, all Reserve Account amounts, and any fees, charges, fines, assessments, penalties, or other liabilities that may be imposed on us or the Member from time to time by the Associations and all related costs and expenses incurred by us. You agree that all such fees, charges, discounts, adjustments, and all other amounts are due and payable by you at the time the related services are rendered to you; that all such Reserve Account amounts are due and payable by you upon our request; and that the related Chargebacks, Cardholder refunds, and adjustments, fees, charges, fines, assessments, penalties, and all other liabilities

are due and payable by you when we receive notice thereof from the Associations or otherwise pursuant to Section 4. In the event we do not deduct such amounts from the proceeds payable to you, you agree to pay all such amounts to us. Alternatively, at our option, we may debit the Settlement Account for such amounts.

**4.5 Negative Amounts.** To the extent Sales Data does not represent sufficient credits or the Settlement Account does not have a sufficient balance to pay amounts due or reasonably anticipated to become due under this Agreement, we may pursue one or more of the following options: (i) demand and receive immediate payment for such amounts; (ii) debit your Settlement Account for the amount of the negative balance; (iii) withhold your settlement payments until all amounts are paid; (iv) delay presentation of your refunds until you make a payment to us of a sufficient amount to cover the negative balance; (v) collect any amount due or which may become due to us from any of your bank accounts without notice to you; and (vi) pursue any remedies we may have at law or in equity. Furthermore, if the amount represented by your Sales Data in any day is negative due to refunds/customer credits being submitted by you in excess of your sales, you are required to provide us with sufficient funds prior to the submission of the Sales Data so as to prevent the occurrence of a negative balance.

**4.6 Delinquency/Merchant Fraud.** At any time and from time to time we may temporarily suspend or delay payments to you and/or designate an amount of funds that we must maintain in order to protect us against the risk of, among other things, existing, potential, or anticipated Chargebacks and to satisfy your other obligations under this Agreement (such funds being hereinafter referred to as the "Reserve Account"), which may be funded in the same manner as provided for negative balances in sub-section 4.5. The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for Chargebacks, returns, unshipped merchandise, and/or unfulfilled services and all additional liabilities anticipated under this Agreement. We may (but are not required to) apply funds in the Reserve Account toward, and may set off any funds that would otherwise be payable to the Merchant against, the satisfaction of any amounts which are or become due from Merchant pursuant to this Agreement. The Reserve Account will not bear interest, and you will have no right or interest in the funds in the Reserve Account. Any funds in the Reserve Account may be commingled with other funds, and need not be maintained in a separate account. Effective upon our establishment of a Reserve Account, you irrevocably grant to us a security interest in any and all funds, together with the proceeds thereof, that may at any time be in our possession and would otherwise be payable to you pursuant to the terms of this Agreement. You agree to execute and deliver to us such instruments and documents (including, without limitation, security agreements and releases) that we may reasonably request (i) to perfect and confirm the security interest and right of setoff set forth in this Agreement; and (ii) in connection with any return of Reserve Account funds.

**5. Accounting.** We will supply a detailed statement reflecting the activity for your Merchant account(s) by on-line access (or otherwise if we agree). We will not be responsible for any error that you do not bring to our attention within 45 days from date of such statement.

#### **6. Retrieval Requests.**

**6.1 Records.** You are required by the Associations to store original documentation of each Card transaction for at least 6 months from the date of the respective Card transaction, and to retain copies of all such Sales data for at least 18 months from the date of the respective Card transaction. You are not allowed to charge a fee for the creation or storage of such copies. We may, at our discretion, require you to deliver copies of Sales Data to us rather than storing it.

**6.2 Response to Retrieval Requests.** We will send you any Retrieval Request that we cannot satisfy with the information we have on file concerning any Card transaction. In response, you must provide us in writing by certified or overnight mail or by confirmed fax (or by other means as agreed to by Paymentech) the resolution of your investigation of such Retrieval Request and include legible copies of any documentation required by the Retrieval Request within 7 business days after we send it to you (or such shorter time as the Association Rules may require and of which we notify you). You acknowledge that your failure to fulfill a Retrieval Request in accordance with Association Rules may result in an irreversible Chargeback.

#### **7. Chargebacks.**

**7.1 Chargeback Reasons.** You may receive a Chargeback from a Cardholder or Card issuer for a number of reasons under the Association Rules. The following are some of the most common reasons for Chargebacks:

- (1) Your failure to issue a refund to a Cardholder upon the return or non-delivery of goods or services.
- (2) An authorization/approval code was required and not obtained.
- (3) The Sales Data is prepared incorrectly or fraudulently.
- (4) We did not receive your response to a Retrieval Request within 7 business days or any shorter time period required by the Association Rules.
- (5) The Cardholder disputes the Card sale or the signature on the sale documentation, or claims that the sale is subject to a set-off, defense, or counterclaim.
- (6) The Cardholder refuses to make payment for a Card sale because in the Cardholder's good faith opinion, a claim or complaint has not been resolved, or has been resolved by you in an unsatisfactory manner.
- (7) The Card was not actually presented at the time of the sale or you failed to obtain an electronic record or physical imprint of the Card, and the Cardholder denies making the purchase. The Merchant acknowledges that, under these circumstances, the fact that an authorization/approval code was obtained does not mean that a particular Card transaction is a valid or undisputed transaction entered into by the actual Cardholder or an authorized user of the Card.

**7.2 Excessive Chargebacks.** If we determine that you are receiving an excessive amount of Chargebacks, in addition to our other remedies under this Agreement we may take the following actions: (i) review your internal procedures relating to acceptance of Cards and notify you of new procedures you should adopt in order to avoid future Chargebacks; (ii) notify you of a new rate we will charge you to process your Chargebacks; (iii) collect from you (pursuant to sub-section 4.6) an amount reasonably determined by us to be sufficient to cover anticipated Chargebacks and all related fees, expenses, and fines; or (iv) terminate the Agreement with written notice of termination. You also agree to pay any and all Association fees and fines assessed against you or against Paymentech or Member relating to your violation of the Agreement, the Operating Guide, or the Association Rules with respect to your transactions or with respect to excessive Chargebacks under this Section.

**7.3 Claims of Cardholder Customers.** You have full liability if any Sales Data for which we have given the Settlement Account provisional credit is the subject of a Chargeback. Subsequently, you are allowed to resubmit applicable Sales Data for a second presentation, but only in accordance with Association Rules. To the extent that we have paid or may be called upon to pay a Chargeback or refund or adjustment for or on the account of a Cardholder and you do not reimburse us as provided in this Agreement, then for the purpose of our obtaining reimbursement of such sums paid or anticipated to be paid, we have all of the rights and remedies of such Cardholder under applicable federal, state, or local laws and you authorize us to assert any and all such claims in our own name for and on behalf of any such Cardholder customer individually or all such Cardholder customers as a class.

**8. Advertising.** Wherever you accept Cards, you will inform the public of the Cards that you honor. However, you may not indicate that any Association endorses your goods or services.

#### **9. Fees.**

**9.1 Schedule A.** You agree to pay us for our services as set forth in Schedule A in accordance with this Agreement. Unless otherwise expressly stated in Schedule A, such pricing is based on all transactions qualifying under the Association Rules for the lowest Association interchange rates. For Sales Data that does not qualify for the best rate, Association interchange fees provide for a "down-grade," and we will apply a higher rate than the qualifying rate shown on Schedule A. Fees payable under this Agreement that contain a fraction of a cent will be rounded up to the next full cent.

**9.2 Price Changes.** We may modify the pricing on Schedule A with 30 days' prior written notice. In addition, by giving written notice to you we may change our fees, charges, and discounts resulting from (i) changes in Association fees (such as interchange, assessments, and other charges); (ii) changes in pricing by any third party provider of a product or service used by you; or (iii) fees which are added by an Association or card issuer. Such new prices will be applicable to you as of the effective date established by the Association or third party provider.

#### **10. Termination.**

**10.1 Term.** The initial term of this Agreement shall commence on the earlier of (i) our acceptance hereof (as evidenced by the execution of the Agreement by us) or (ii) 5 days after the Agreement is executed by the Merchant and submitted to Paymentech, and shall continue until either (i) terminated by you by giving at least 30 days' prior written notice to us or (ii) terminated by us by giving notice to you (such termination by us to be effective as of a date set forth in such notice or, if no such date is set forth, to be effective as of the date such notice is received by you).

**10.2 Termination for Cause.** If our services provided under this Agreement fail to conform to generally accepted standards for such services in the Card processing industry then your sole remedy for such failure shall be that upon notice from you specifying the failure of performance, we will rectify such failure of performance. If we do not rectify our failure of performance within 30 days after receipt of written notification from you, then you may terminate this Agreement upon 30 days' written notice to us. If you terminate the Agreement within the first 3 years following the date of your execution of this Agreement, you agree to pay de-conversion fees of two hundred fifty dollars (\$250.00) for each Merchant location that has submitted Sales Data pursuant to this Agreement. Such amount will be funded, to the extent possible, according to the same methods for collecting amounts due under this Agreement. We may terminate this Agreement at any time for any reason upon written notice to you.

**10.3 Account Activity After Termination.** Termination does not affect either party's respective rights and obligations under this Agreement as to Sales Data submitted before termination. If you submit Sales Data to us after the date of termination, we may, at our discretion, process such Sales Data in accordance with the terms of this Agreement. Upon

notice of any termination of this Agreement, we may estimate the aggregate dollar amount of Chargebacks and other obligations, liabilities, and expenses that we reasonably anticipate subsequent to termination, and you agree to immediately deposit such amount, or we may withhold such amounts from your credits, in order to establish a Reserve Account pursuant to and governed by the terms and conditions of this Agreement.

**11. Indemnity.** You agree to indemnify Paymentech, Member, the Associations, affiliates, officers, directors, employees, agents, and sponsoring banks from any losses, liabilities, and damages of any and every kind (including, without limitation, our costs, expenses and reasonable attorneys' fees) arising out of any claim, complaint, or Chargeback (i) made or claimed by a Cardholder with respect to any Sales Data submitted by you, (ii) caused by your noncompliance with this Agreement, the Operating Guide, or the Association Rules, including any breach of a representation or warranty made by you, or (iii) resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against you. The indemnification provided for in this Section does not apply to any claim or complaint to the extent it is caused by Paymentech's own negligence or willful misconduct. The indemnity provided under this Section 11 shall survive the termination of this Agreement.

**12. No Disclosure of Cardholder Information.** We will exercise reasonable care to prevent disclosure or use of Card information, other than as permitted under the Association Rules. You will exercise reasonable care to prevent disclosure or use of Card information, other than (i) to your agents and contractors for the purpose of assisting you in completing a Card transaction, (ii) to the applicable Association, or (iii) as specifically required by law. You are prohibited from storing CVV2 or CVC2, magnetic stripe track data, and AVS and PIN data. Each party will store all media containing Card numbers in an area limited to selected personnel on a "need to know" basis only and prior to either party discarding any material containing Cardholder information, the party will destroy it in a manner rendering the Card account numbers unreadable. If at any time either party determines that Card account number information has been compromised, such party will notify the other party immediately and assist in providing notification to the proper parties, as we deem necessary. Merchant information may be shared by us with our affiliates subject to the provisions of this Agreement and Association Rules. You agree to comply with all security standards and guidelines that may be published from time to time by Visa, MasterCard, or any other Association, including, without limitation, the Visa U.S.A. Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection ("SDP"), and (where applicable) the VISA Payment Application Best Practices ("PABP") (described in more detail in the Operating Guide) (collectively, the "Security Guidelines"). All Service Providers you use must be recognized by Visa as CISP compliant service providers and payment applications you use must be recognized by VISA as compliant with PABP. You understand that failure to comply with the CISP, SDP or (where applicable) PABP requirements, or other Security Guidelines, or the compromise of any Card account information, may result in assessments, fines, and/or penalties by the Associations, and you agree to indemnify and reimburse us immediately for any assessment, fine, or penalty imposed on us or the Member due to any such event or your breach of this Section and any related loss, cost or expense incurred by us. You further agree to (i) exercise reasonable due diligence to ensure that all of your Service Providers, agents, business partners, contractors, and subcontractors maintain compliance with the Security Guidelines established by CISP, SDP, and (where applicable) PABP and (ii) provide us upon our request with evaluation of your compliance with Security Guidelines as required by the Associations. If any Association requires an audit of you or any of your Service Providers, agents, business partners, contractors, or subcontractors due to a data security compromise event or suspected event, you agree to cooperate with such audit and agree to pay for all costs and expenses related to such audit, including all of our costs relating to such audit, including attorney's fees.

**13. Information About Merchant's Business.**

**13.1 Additional Financial Information.** Each of Merchant and the undersigned Guarantors agrees to furnish to us upon 5 days' notice such financial statements and information concerning such Guarantors and Merchant and each of Guarantor's and Merchant's parents, subsidiaries, and affiliated entities as we may request.

**13.2 Other Information.** With prior notice and during your normal business hours, our duly authorized representatives may visit your business premises and may examine only that part of your books and records that pertain to your Sales Data and Card sales. You agree to provide us at least 30 days' prior written notice of your intent to change your product line or services, or your trade name, or the manner in which you accept Cards. If we determine such a change is material to our relationship with you, we may refuse to process Sales Data made subsequent to the change. You agree to provide us with prompt written notice if you are the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. You will also provide us with written notice of any adverse change in financial condition, intent to liquidate, substantially change the basic nature of your business, transfer or sell any substantial part (25% or more in value) of your total assets, or if you or your parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, change the control or ownership of Merchant or your parent, 30 days prior to such liquidation, change, transfer or sale taking place. You will also notify us of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three days after you obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy.

**14. Disclaimer; Limitation of Damages.** Subject to Section 5, we will, at our own expense, correct any data in and to the extent that such errors have been caused by us or by malfunctions of our intellectual property or machines. Under no circumstances will Paymentech's financial responsibility for our failure of performance under this Agreement exceed the total fees paid to us under this Agreement (net of Association interchange, assessments, and fines) for the 6 months prior to the time the liability arose. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT. WHILE ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR SERVICES TO WHICH THE UNIFORM COMMERCIAL CODE DOES NOT APPLY, PAYMENTECH, MEMBER, AND PAYMENTECH'S SPONSORING BANK HEREBY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE SERVICES, PRODUCTS, AND EQUIPMENT PROVIDED HEREUNDER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE. THIS AGREEMENT IS A SERVICE AGREEMENT, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PAYMENTECH AND MEMBER DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE) OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENTAL TO SUCH SERVICES.

**15. Miscellaneous.**

**15.1 Taxes.** You agree to pay any taxes imposed on the services, equipment, intellectual property, supplies, and other goods purchased OR tangible property provided under this Agreement, and you authorize us to increase the amount we collect from you to reflect any and all assessments or increases in the sales, use, occupational, property, lease, or other taxes imposed on such sale or lease of services, tangible property, or intellectual property, equipment, supplies, and other goods purchased.

**15.2 Application and Credit Check.** You represent and warrant that statements made on your Application for this Agreement are true as of the date of your execution of this Agreement. Your signature on this Agreement authorizes us to perform any credit check deemed necessary with respect to Merchant and its directors, officers, affiliates, principals, and guarantors.

**15.3 Section Headings.** The section headings of this Agreement are for convenience only and do not define, limit, or describe the scope or intent of this Agreement.

**15.4 Assignment.** We cannot assign this Agreement without your prior written consent, except that we may assign this Agreement to an entity qualified under Association Rules to perform our obligations under this Agreement. You cannot assign or transfer your rights or delegate your responsibilities under this Agreement without our prior written consent.

**15.5 Parties.** This Agreement binds you and us and our respective heirs, representatives, successors (including those by merger and acquisition), and permitted assigns. You represent and warrant that your execution of and performance under this Agreement (i) in no way breaches, contravenes, violates, or in any manner conflicts with any of your other legal obligations, including, without limitation, your corporate charter or similar document or any agreement between you and any third party or affiliated entity; (ii) has been duly authorized by all necessary action and does not require any consent or other action by or in respect of any third party; and (iii) that the person signing this Agreement on your behalf is duly authorized to do so. In providing services to you, we will not be acting in the capacity of your agent, partner, or joint venturer, and we are acting as an independent contractor. Each party agrees that any other party may publicly disclose, through press releases or otherwise, the existence of the business relationship that is the subject of this Agreement. Any such disclosure may identify the parties by name but shall not, without the prior written consent of the non-disclosing party, include any of the terms of this Agreement.

**15.6 Severability.** Should any provision of this Agreement be determined to be invalid or unenforceable under any law, rule, or regulation, including any Association Rule, such determination will not affect the validity or enforceability of any other provision of this Agreement.

**15.7 Waivers.** No term or condition of this Agreement may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.

**15.8 Entire Agreement.** The Association Rules, Operating Guide, Application, and all schedules, and attachments to this Agreement are made a part of this Agreement for all purposes. This Agreement represents the entire understanding between Merchant and Paymentech with respect to the matters contained herein. This Agreement shall prevail over the terms of any agreement governing the Settlement Account.

**15.9 Notices.** Except as otherwise provided in this Agreement, all notices must be given in writing and either hand delivered, faxed, or mailed first class, postage prepaid (and will be deemed to be given when so delivered or mailed), to the addresses set forth below or to such other address as either party may from time to time specify to the other party in writing.

**15.10 Governing Law; Waiver of Jury Trial; Arbitration.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of law provisions. Any action, proceeding, arbitration or mediation relating to or arising from this Agreement must be brought, held, or otherwise occur in the federal judicial district that includes Dallas County, Dallas, Texas. PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. Any

claim, dispute, or controversy ("Claim") by either you or Paymentech against the other, or against the officers, directors, employees, agents, parents, subsidiaries, affiliates, beneficiaries, agents, successors, or assigns of the other, arising from or relating in any way to this Agreement or to our relationship, including Claims regarding the applicability of this arbitration clause or the validity of the entire Agreement, shall be resolved exclusively and finally by binding arbitration administered by the National Arbitration Forum, under its Code of Procedure in effect at the time the Claim is filed, except as otherwise provided below. All Claims are subject to arbitration, no matter what theory they are based on. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other source of law. Claims and remedies sought as part of a class action, private attorney general, or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis. You and Paymentech will agree on another arbitration forum if the National Arbitration Forum ceases operations. The arbitration will be conducted before a single arbitrator and will be limited solely to the Claim between you and us. The arbitration, or any portion of it, will not be consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. If either party prevails in the arbitration of any Claim against the other, the non-prevailing party will reimburse the prevailing party for any fees it paid to the National Arbitration Forum in connection with the arbitration, as well as for any reasonable attorneys' fees incurred by the prevailing party in connection with such arbitration. Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered in a court of competent jurisdiction. Rules and forms of the National Arbitration Forum may be obtained and Claims may be filed at any National Arbitration Forum office, [www.arb-forum.com](http://www.arb-forum.com), or P.O. Box 50191, Minneapolis, Minnesota 55405, telephone 1-800-474-2371. Any arbitration hearing at which you appear will take place at a location within the federal judicial district that includes Dallas County, Dallas, Texas. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. This arbitration agreement applies to all Claims now in existence or that may arise in the future. Nothing in this Agreement shall be construed to prevent any party's use of (or advancement of any Claims, defenses, or offsets in) bankruptcy or repossession, replevin, judicial foreclosure or any other prejudgment or provisional remedy relating to any collateral, security, or other property interests for contractual debts now or hereafter owned by either party to the other. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT, YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR A JURY AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS (INCLUDING CLASS ACTIONS), BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, THOSE RIGHTS, INCLUDING ANY RIGHT TO A JURY TRIAL, ARE WAIVED AND ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.

**15.11 Force Majeure.** Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications or utility or power failures, equipment failures, labor strife, riots, war, nonperformance of our vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this Section 15.11 will affect or excuse your liabilities and obligations for Chargebacks, refunds, or unfulfilled products and services.

**16. Survival.** The provisions of Sections 4.2, 4.4, 4.5, 4.6, 7, 10.3, 11, 14, 15.10, and 17 shall survive the termination of this Agreement.

**17. Definitions.**

**17.1** "Application" is your statement of your financial condition and the characteristics of account that you have submitted to us on the cover pages of this Agreement and related information, to induce us to enter into this Agreement with you and that has induced us to process your Card transactions under the terms and conditions of this Agreement.

**17.2** "Association" is Visa, U.S.A., Inc., MasterCard International, Inc., any debit networks or any other payment method provider.

**17.3** "Association Rules" are the bylaws, rules, and regulations, as they exist from time to time, of the Associations.

**17.4** "Card" is both (i) the plastic card or other evidence of the account and (ii) the account number, issued to a Cardholder, which you accept from your customers as payment for their purchases from you, which comprise the transactions with respect to which Paymentech agrees to process. **17.5** "Cardholder" is the person to whom the Card is issued and who is entitled to use the Card.

**17.6** "Chargeback" is a reversal of a Card sale you previously presented pursuant to Association Rules.

**17.7** "Effective Date" means the date on which this Agreement takes effect pursuant to Section 10.1.

**17.8** Merchant, "you", and "your" is the Merchant identified in the Application on the cover page of the Agreement.

**17.9** Paymentech, "we", "our", and "us" is Paymentech, L.P., a Delaware limited partnership, having its principal office at 1601 Elm Street, Dallas, Texas 75201, by and on behalf of JPMORGAN CHASE BANK, N.A.

**17.10** "Retrieval Request" is a request for information by a Cardholder or Card issuer relating to a claim or complaint concerning a Card sale you have made.

**17.11** "Sales Data" is the evidence and electronic record of a sale or lease transaction representing payment by use of a Card or of a refund/credit to a Cardholder.

**17.12** "Service Provider" is any party that processes, stores, or transmits Cardholder information on your behalf.

**17.13** "T&E Card" is a travel and entertainment Card, charge Card, or credit Card issued by American Express or Novus/Discover or such other Card (other than a MasterCard or Visa Card) with respect to which we may agree to process transactions now or in the future.

**PERSONAL GUARANTY**

To induce Paymentech to enter into the foregoing Agreement (as the same may hereafter be renewed, modified, extended, or amended, the "Agreement"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the guarantors named on the cover page of the Agreement (each a "Guarantor" and collectively, the "Guarantors") jointly and severally, irrevocably, and unconditionally guarantee to Paymentech, L.P. ("Paymentech") and its successors and assigns the due and punctual payment of the "Indebtedness" (hereinafter defined). As used herein, the term "Indebtedness" means all indebtedness, obligations, and liabilities of the merchant identified on the cover page of the Agreement ("Merchant") to Paymentech at any time created or arising, including, without limitation, to all indebtedness, obligations, and liabilities of Merchant arising under the Agreement.

This Personal Guaranty is a guaranty of payment and not a guaranty of collection. Each Guarantor agrees that he or she is liable for the Indebtedness as primary obligor.

Paymentech may proceed against one or more Guarantors whether or not Paymentech proceeds against Merchant, any other obligors, or any collateral securing the Indebtedness. This Personal Guaranty may not be revoked by any Guarantor and shall continue to be effective with respect to any Indebtedness arising or created after any attempted revocation.

Each Guarantor acknowledges that he or she is a principal owner of Merchant's business and will benefit from the services and financial accommodation provided by Paymentech to Merchant's business. Each Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of Merchant and is familiar with the value of any and all collateral intended to be created as security for the payment of the Indebtedness. However, no Guarantor is relying on such financial condition or collateral, including, without limitation, the Merchant's Reserve Account (as defined in Section 4.6 of the Agreement) if any, as an inducement to enter into this Personal Guaranty.

The obligations of each Guarantor hereunder shall be enforceable irrespective of the validity, legality, or enforceability of Merchant's obligations (including without limitation, the expiration of any applicable limitations period) and shall not in any way be affected by or conditional upon (i) any action taken under the Agreement or the exercise of any right or power thereby conferred; (ii) the bankruptcy or similar proceedings involving or affecting Merchant; (iii) any assignment, modification, alteration, or amendment of, or addition to, the Agreement whether with or without such Guarantor's knowledge or consent; (iv) any renewal, extension, increase, modification, alteration or rearrangement of all or any part of the Indebtedness; (v) any adjustment, indulgence, forbearance, or compromise that might be granted by Paymentech to Merchant or any Guarantor; or (vi) any other action, inaction, or circumstance whatsoever (with or without notice to or knowledge of or consent by such Guarantor) that may in any manner vary the risks of such Guarantor or might otherwise constitute a legal or equitable defense or discharge of any surety or guarantor. The Guarantor hereby waives all defenses based on occurrences of the types described in clauses (i) through (vi) above.

Guarantors authorize Paymentech, from time to time, without notice or demand and without affecting their liability hereunder, to (i) renew, compromise, extend, accelerate, or otherwise change the time for payment of, or otherwise change the terms of, the Indebtedness or the Agreement; (ii) take and hold security for the payment of the Indebtedness or this Personal Guaranty, and exchange, enforce, waive, and release any such security, or take additional security; (iii) apply such security or the proceeds thereof in such order or manner as Paymentech, in its discretion, may determine; (iv) release, in whole or in part, Merchant or any Guarantor from liability for the payment of the Guaranteed Debt; (v) substitute any one or more of the Guarantors or acquire additional guarantors; and (vi) to obtain and review such information (including without limitation, the reports of any consumer credit bureau) as Paymentech may deem necessary to confirm Guarantors' creditworthiness.

Guarantors hereby waive notice of (i) the incurrence by Merchant of any Indebtedness; (ii) acceptance of this Personal Guaranty Agreement; (iii) any renewal, modification, extension, or amendment of the Agreement or of any other instrument or document pertaining to all or any part of the Indebtedness; (iv) the occurrence of any breach or default under the Agreement; (v) Paymentech's transfer or disposition of the Indebtedness, or any part thereof; (vi) sale or foreclosure (or posting or advertising for sale or foreclosure) of any collateral for the Indebtedness; (vii) protest, proof of non-payment, or default by Merchant; and (viii) any other action at any time taken or omitted by Paymentech. Guarantors hereby waive all presentment; demands for performance or payment, protests, notices of protest, nonperformance, dishonor, default and non-payment, and all other notices or formalities.

This Personal Guaranty shall be binding on, and inure to the benefit of, the parties hereto and their respective heirs, administrators, legal representatives, successors, and assigns. Guarantors may not, without the prior written consent of Paymentech, assign any of their rights, powers, duties, or obligations hereunder. Guarantors jointly and severally agree to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Paymentech in the enforcement of this Personal Guaranty. Paymentech's rights hereunder shall be cumulative of any and all other rights that Paymentech may have against Guarantors.

## Merchant Operating Guide

### General Rules APPLICABLE TO ALL TRANSACTIONS

#### 1. Acceptance of Cards

**1.1** In offering payment options to your customers, you may elect any one of the following options:

- Accept all types of Visa and MasterCard Cards - including consumer credit and debit/check cards, and commercial credit and debit/check cards.
- Accept only Visa and MasterCard credit cards and commercial cards. Those merchants choosing this option will accept all consumer credit cards (but not consumer debit/check cards) and all commercial card products, including business debit/check cards.
- Accept only Visa and MasterCard consumer debit/check cards. Those merchants choosing this option will accept all consumer debit/check card products (but not business debit/check cards) and will not accept any kind of credit cards (consumer or business).

The acceptance options above apply only to domestic transactions and, as such, they do not apply to Visa or MasterCard Cards issued by non-U.S. banks. In other words, if your customer presents a Visa or MasterCard Card issued from a European or Asian bank, for example, you must accept that card just as you would any other card (provided you receive a valid authorization and confirm the identity of the cardholder with a signature or otherwise, etc.), regardless of the acceptance option choice you have made and even if you have elected not to accept that type of Card from U.S. issuers.

**1.2** If you choose to limit the types of Cards you accept, the following rules apply to you:

- You must display appropriate signage to indicate acceptance of the limited acceptance category you have selected (that is, accept only debit/check card products or only credit and commercial products).
- If you elect limited acceptance, any Sales Data submitted into interchange outside of the selected product category will be assessed the standard interchange fee applicable to that card product and may also have additional fees/surcharges assessed.

**1.3** Additional Association rules that may be applicable to you may be viewed at the Associations' websites.

#### 2. Authorization/Approval Codes

**2.1** All sales require an authorization/approval code. You must request and authorization/approval code for the total amount of the transaction.

**2.2** An authorization/approval code indicates the availability of credit on the Card at the time of inquiry. It is not a promise or a guarantee that you will receive payment for the related transaction. It does not warrant that the person presenting the card is the rightful Cardholder.

#### 3. Refunds/Credits

**3.1** You shall complete a credit for the total amount of the refund and identify the merchandise being returned and any shipping and handling charges being returned. You shall imprint or record the credit voucher with the same card used to make the original purchase. For retail transactions, the credit voucher must be dated and signed by the Cardholder and the appropriate copy provided to the customer. Cash refunds should never be issued for Card sales. If you fail to follow these procedures, you may be unable to rebut a chargeback from the consumer for failure to issue a refund (even if you actually gave the refund by cash or check).

**3.2** Paperwork is not necessary for an even exchange. For an uneven exchange, complete a credit for the total amount of the merchandise being returned and complete a new sales transaction for any new merchandise purchased.

**3.3** You shall not process a Credit without having completed a previous purchase transaction with the same Cardholder.

#### 4. Processing Of Sales And Credit Transactions

**4.1** You must submit Sales Data (including credit vouchers) to us on or before the next business day after the date of the transaction. Late submission of Sales Data may result in higher Association fees and/or a chargeback to you.

**4.2** You must not submit sales slips for payment until the goods are delivered, shipped, or the services are performed (except as otherwise provided in the Merchant Agreement, and only if you have notified us that you are doing so on your application or otherwise in advance). If the Cardholder disputes being charged for merchandise or services before receiving them, the result will be a chargeback to you. We may from time to time contact customers to verify that they have received goods or services for which sales transactions have been submitted.

**4.3** You shall not present for processing any transaction that was not originated as a result of an act directly between the Cardholder and you. You shall not present for processing any transaction you know or should have known

to be (i) fraudulent or (ii) not authorized by the Cardholder. You shall be responsible for the actions of your employees while acting in your employ.

**4.4** The collection and payment of all federal, state and local taxes is your responsibility. Taxes collected shall be included in the total transaction amount and not collected separately as cash.

#### 5. Chargebacks

The term "Chargeback" refers to the debiting of the Settlement Account or withholding of settlement funds for all or part of the amount of a particular sale, as provided in the Merchant Agreement. There may be a chargeback if under any of the following circumstances, or as the Association Rules and operational requirements dictate from time to time. Consequently, additions and/or deletions to this list may occur.

- Cardholder account number is incorrect or otherwise invalid.
- Authorization/approval code was not received or other required authorization was not obtained.
- Authorization/approval code but not for exact amount or wrong transaction date.
- Cardholder never received merchandise/service requested.
- Cardholder's refund/credit was processed as a sale.
- Sales transaction for an incorrect amount.
- Cardholder was charged incorrectly.
- Cardholder was never credited for returned merchandise or a canceled order.
- Card was expired, counterfeit, altered, or invalid at time of sale.
- Cardholder's sales transaction was deposited more than once.
- Cardholder did not authorize or consent to the transaction.
- Signature on the sales slip does not reasonably match the signature on the Card.
- Card was not imprinted or magnetic strip was not electronically recorded (for example, "swiping" or "tapping" a card) through a terminal. Even if an electronic terminal is used, an imprint of the Card must be taken if the Card was not authorized through the terminal or was manually keyed into the terminal.
- Authorization/approval code is invalid.
- Sales slip was not signed by the Cardholder unless it was a mail order, telephone order or pre-authorized order in compliance with the Agreement and authorized by the Cardholder and indicated as such on the order.
- Cardholder asserts any disputes, claim, counterclaim, defense or offset against you.
- Sales slip or Sales Data or any material information thereon is illegible, incomplete, inaccurate or unsigned, or is not delivered to us within the required time limits.
- Sales slip or Sales Data is fraudulent or does not represent a bona fide transaction in the ordinary course of your business, or is subject to any claim of illegality, negligence, dishonesty or offset
- You have failed to provide copies of sales drafts requested by us (retrieval request) within the prescribed time period
- Suspicious transaction or fraudulent transaction

#### 6. Disputing Chargebacks

If you have reason to dispute or respond to a chargeback, then you must do so by the date provided by us on our report to you. We are not required to investigate, reverse or make any adjustment to any chargeback when thirty (30) calendar days have elapsed from the date of the chargeback. All responses to chargebacks must be in writing, and must contain the following information:

- Date of Debit/Credit advice
- Company case number
- Total amount of chargeback
- Date and dollar amount in which the sale/credit was originally submitted
- If known, the date and authorization approval code
- Any supporting documentation to substantiate claim. You should include a dated cover letter detailing reasons for requesting a review of the chargeback. You should retain a copy of the correspondence and all documentation for files. You should retain proof that we received your response.

#### 7. Data Security And Privacy

**7.1** You agree to post and maintain on all Merchant Web sites both your consumer data privacy policy (which must comply with all Association regulations, rules and guidelines) and your method of transaction security.

**7.2** You may not retain or store CVV2/CVC2 data subsequent to the authorization.

**7.3** You must comply with Visa's Cardholder Information Security Program ("CISP") and MasterCard's Security Data Program (MSDP). Pursuant to these programs, you must, among other things:

- install and maintain a working network firewall to protect data accessible via the Internet
- keep security patches up-to-date
- encrypt stored data and data sent over open networks
- use and update anti-virus software
- restrict access to data by business "need-to-know"
- assign a unique ID to each person with computer access to data
- not use vendor-supplied defaults for system passwords and other security parameters
- track access to data by unique ID;
- regularly test security systems and processes
- maintain a policy that addresses information security for employees and contractors; and
- restrict physical access to cardholder information.
- When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data.
- Reference the protection of cardholder information and compliance with the Visa CISP and MasterCard SDP Rules in contracts with other service providers.

**7.4** You must notify Paymentech or any third party vendor with Cardholder information. You are responsible for the CISP and SDP compliance of that party. CISP and SDP may require that you engage an approved third party vendor to conduct quarterly perimeter scans and/or an on-site security review of your systems in order to be compliant. The detailed CISP and SDP requirements can be accessed through the Visa and MasterCard websites at [www.Visa.com](http://www.Visa.com) and [www.MasterCard.com](http://www.MasterCard.com).

**7.5** The Visa and MasterCard rules provide that Cardholder information and transaction data is owned by the Associations, the card issuer and the Cardholder. Paymentech also asserts some ownership rights in the data to the extent it belongs to the MasterCard or Visa system.

**7.6** You are responsible for securing Cardholder information. You will not use any Card or Cardholder information other than for the sole purpose of completing the transaction authorized by the customer for which the information was provided to you, or as specifically allowed by Association Rules, or required by law. Paymentech or any Association may inspect Merchant's premises and computers, and the premises and computers of any company the Merchant has contracted with, for the purposes of verifying that Cardholder information is securely stored and processed, and is not used for any purpose other than processing the transactions to which it relates.



## Specialized Rules for RETAIL TRANSACTIONS

### 1. Presentation Of Cards

**1.1** You or your employee must examine each Card presented to determine that the Card presented is valid and has not expired by the terms on its face. You must exercise reasonable diligence to determine that the authorized signature on any Card presented corresponds to the Cardholder's signature on the transaction sales ticket. You must not honor expired, invalid, altered, counterfeit, or revoked Cards nor any Card presented by any person other than the proper Cardholder as evidenced by the authorized signature on the Card. WE IN OUR SOLE DISCRETION MAY DECLINE AT ANY TIME OR FROM TIME TO TIME TO PROCESS ANY SALES DATA THAT DOES NOT INCLUDE THE ACTUAL SIGNATURE OF A CARDHOLDER, EVEN IF THE CARDHOLDER'S CONSENT OR INSTRUCTIONS HAVE BEEN OBTAINED BY TELEPHONE OR BY MAIL.

**1.2** A Cardholder may authorize another person to use his or her Card for purchases, provided the user's signature appears on the back of the Card. The signature on the back must match the one on the sales slip. If the Card is not signed, in addition to requesting an Authorization, you may review positive identification as allowed by local and state law, such as a passport or driver's license, to confirm that the user is the Cardholder, record the information and require the Cardholder to sign the signature panel of the Card prior to completing the transaction.

**1.3** In order to protect yourself, you must never complete a transaction if the customer does not present his or her Card or if you cannot obtain an electronic swipe record or physical imprint of the Card (this includes mail, telephone and internet orders). If you elect to do so, you will be deemed to warrant the identity of the purchaser as the authorized holder of the Card, and if the Cardholder later denies making the purchase, you will not be able to rebut the chargeback.

### 2. Completion Of Sales Transaction

**2.1** You must use a suitable imprinter to legibly imprint Cards on Sales Data or, capture the information from the Card by electronic data capture. A photocopy of the Card is not an acceptable substitute for an imprint. If the account number is manually keyed into the terminal, you must imprint the Card. Your name, location, city and state must match the Merchant plate on the imprinter. You must notify us of any changes to the information on the Merchant plate. You must use one sales slip for all goods and services sold in the same transaction. In addition to having the Cardholder sign the sales slip, the sales date and dollar amounts and other information must be clearly written or printed on the sales slip or captured by an electronic device. A brief description of the goods sold or service rendered must be provided on the sales slip.

**2.2** Authorization/approval code numbers shall be clearly recorded in the appropriate place on the sales slip. Never circle or underline any information on the sales slip.

**2.3** Every sales slip and credit voucher must be imprinted (or printed from electronic draft capture equipment) with the Cardholder's account number and Merchant name. For mail, telephone, and pre-authorized orders, all information that would normally be imprinted from a Card must be clearly written in the appropriate areas on the order or sales slip. "Mail Order" or "Phone Order" should be written on the signature line of the sales draft.

**2.4** You will require the cardholder to sign the sales slip in your presence. You will give the customer a true and completed copy of the sales slip or appropriate facsimile. If the Cardholder's copy of the sales slip or credit voucher is printed from electronic draft capture equipment/terminal, it must contain no more than the last four digits of Cardholder's account number.

**2.5** You shall not require Cardholders to provide any personal information as a condition for honoring Cards unless otherwise required by the Association rules. Personal information includes but is not limited to a home or business telephone number, a home or business address, a social security number, or a photocopy of a driver's license.

**2.6** You shall not retain or store magnetic-stripe data after the authorization of a transaction, except as required to complete the transmission of such data to us.

### 3. Authorization/Approval Codes

**3.1** If so directed by a Card issuer or other entity from whom authorization is requested, you shall attempt to retain the Card by reasonable and peaceful means, notify us of the recovery of the Card, and ask for further instructions.

**3.2** If you are suspicious of the transaction for any reason at all, you should contact the Voice Authorization Center, state to the authorization clerk "This is Code Ten" and await instructions.

### 4. Forgeries/Counterfeit Cards

You should examine all notices received from us or from Visa or MasterCard or other credit card associations to help you determine whether a Card presented is

counterfeit. You should attempt to retain the Card while making an authorization request and then match the signature on the card with the one on the sales slip. You should compare the embossed account number on the Card to the account number printed on the receipt or displayed on the terminal. You should examine each Card to see if it looks genuine. You should use reasonable, peaceful efforts to recover any Card if (i) the printed four digits above the embossed account number do not match the account number, if applicable, (ii) you are advised by us or authorization center to retain it, or (iii) you have reasonable grounds to believe such Card is counterfeit, fraudulent or stolen. You shall be solely responsible for your actions in recovering/retaining Cards.

### 5. Limiting Customer Refunds And Exchanges (Credits) --Retail Only

You may limit your acceptance of returned merchandise or establish a policy to make price adjustments for any transactions provided that proper disclosure is made and purchased goods or services are delivered to the Cardholder at the time the transaction takes place. Proper disclosure by you shall be determined to have been given at the time of the transaction if the following words or similar wording reflecting your policy is legibly printed on all copies of the Sales Data, in letters approximately .25 inch high and in close proximity to the space provided for the Cardholder's signature: "NO REFUND," or "EXCHANGE ONLY," or "IN-STORE CREDIT ONLY."

### 6. Travel And Entertainment Services

At your option and as specified in the applicable sections of this Operating Guide, Travel & Entertainment Merchants may participate in one or more of the following Travel & Entertainment Services:

- Reservation Service
- Advance Lodging Service
- Priority Check-Out Service

Any Merchant participating in any of the above services must do so in accordance with the following requirements.

**6.1** Reservations Services. Merchants operating lodging establishments and enrolled in the Guaranteed Reservations Services shall institute and comply with the procedures as they are listed here and as they are amended from time to time by Visa and MasterCard:

**6.1.1** Reservation Procedures. When a Cardholder makes a reservation for accommodations at a lodging establishment of yours whether directly with you or otherwise and the Cardholder requires that the accommodations be guaranteed. You shall obtain the Cardholder's name, credit card account number, and expiration date, the Cardholder's name as it appears on the card, billing address, and phone number. You shall inform the Cardholder of your responsibilities and the Cardholder's obligations under the Reservation Services as follows:

- Guaranteed accommodations will be held until check-out time the day following the scheduled arrival unless canceled by the Cancellation Date. If the Cardholder has not claimed the guaranteed reservation or canceled it by the Cancellation Deadline, you may bill the Cardholder for one night's lodging, plus tax.
- You will tell the Cardholder the location of your lodging establishment. The rate of the reserved accommodations plus tax must be quoted and a confirmation number provided to the Cardholder. The Cardholder must be told to keep the confirmation number for future reference.

**6.1.2** Cancellation Procedures. You may establish your own Cancellation Deadline. Ordinarily, the Cancellation Deadline is 6 p.m. on the scheduled arrival date. For establishments requiring cancellation prior to 6 p.m. on the scheduled arrival date, the Cancellation Deadline shall not exceed 72 hours prior to the scheduled arrival date. If the reservation is made within 72 hours of the intended arrival, the Cancellation Deadline must be 6 p.m. establishment time on the date of arrival. If requested by the Cardholder, you shall provide a written confirmation of the reservation, including the Cardholder's account number and the provisions of the credit card Reservations Services related to the accommodations reserved, to the Cardholder. In all cases where you require cancellation prior to 6 p.m. establishment time on the scheduled arrival date, you shall provide written notice of the specific Cancellation Deadline to the Cardholder. You shall accept all cancellation requests from Cardholders, provided the cancellation request is made prior to the Cancellation Deadline. You shall provide to the Cardholder a cancellation number and advise the Cardholder that it should be retained for future reference. If requested, you shall provide to Cardholder written verification of the cancellation, including the Cardholder's name, credit card account number, expiration date, the cancellation number, and location of the accommodations canceled.

**6.1.3** Scheduled Reservation Date Procedures. If accommodations reserved under the Reservations Services have not been claimed or canceled prior to the Cancellation Deadline, you shall pre-register the Cardholder and assign specific

room(s) in accordance with the reservation. If the Cardholder does not claim the accommodations by check-out time the day following scheduled arrival and does not cancel the accommodations by the Cancellation Deadline, you may deposit a handwritten or typed credit card sales draft by indicating the Cardholder's credit card account number, expiration date, name embossed on the card, room number reserved, and the words "No-Show" on the Cardholder signature line for the amount of one night's lodging plus applicable tax as quoted to the Cardholder when the reservation was made. You shall follow authorization procedures as provided by us.

**6.1.4 Alternate Accommodations.** If accommodations that were guaranteed under the Reservations Services are unavailable when the Cardholder arrives, you shall provide the Cardholder with at least comparable accommodations at a comparable establishment for one night's lodging at no charge to the Cardholder. In addition, you shall provide the Cardholder transportation to the alternate establishment and, if requested, forward all communications to Cardholder to the alternate hotel and provide a three-minute telephone call to the Cardholder, all at no charge.

## **6.2 Advance Lodging Service**

Merchants operating lodging establishments and offering the Advance Lodging Deposit Service shall institute and comply with following procedures as they are listed here and as they are amended from time to time by Visa and MasterCard.

**6.2.1 Reservation Procedures.** You shall accept all Cards for advance deposit when the Advance Lodging Deposit Service is agreed to by the Cardholder. The amount of the Advance Lodging Deposit Transaction must not exceed the cost of fourteen nights of accommodations or the intended length of the stay, whichever is the least of the two. You shall inform the Cardholder of the Advance Deposit Requirements and the cancellation policy requirements. You shall inform the Cardholder that the accommodations will be held for the number of nights used to determine the amount of the Advance Lodging Deposit. You shall obtain the Cardholder's account number, Card expiration date, the name embossed on the Card, telephone number, mailing address, scheduled date of arrival and the intended length of stay. Any changes in the reservation made by the Cardholder must be provided to the Cardholder in writing at the Cardholder's request. You shall provide the Cardholder with a confirmation number and advise the Cardholder that the number must be retained. You shall inform the Cardholder that if the Cardholder has not checked in by check-out time following the last night of accommodations used to determine the amount of the Advance Lodging Deposit or if the reservation was not canceled by the specified time and date, the Cardholder will forfeit the Advance Lodging Deposit. You shall complete a Sales Draft for the amount of the Advance Deposit. The Sales Draft shall include the words "Advance Deposit" on the signature line, the Cardholder account number, expiration date and the name embossed on the Card, the Cardholder's telephone number and mailing address, the confirmation number scheduled check-in date, and the date and time the cancellation privileges expire without forfeiture of the Deposit if the accommodations are not used. You shall authorize the Advance Deposit in the same manner as other Lodging transactions. Mail the Cardholder copy of the Transaction to the Cardholder within three business days from the Transaction Date and deposit the Sales Draft as other Lodging Transactions.

**6.2.2 Cancellation Procedures.** You shall accept all cancellation requests from Cardholders provided the cancellation request is made prior to the specified cancellation date and time. You shall provide a cancellation number and advise Cardholder to retain number for future reference. You shall process a Credit for the entire amount of the Advance Deposit, which shall include the words "Advance Deposit" on the Credit Slip, the Cardholder account number, the Card Expiration date, the name embossed on the Card, the Cardholder's mailing address and the cancellation code. You shall mail the Cardholder copy to the Cardholder within three business days from the Transaction Date.

**6.2.3 Alternate Accommodations.** If accommodations that were guaranteed under the Advance Lodging Service are unavailable when the Cardholder arrives, you shall complete and deliver a Credit Slip for the entire amount of the Advance Lodging Deposit. In addition, you shall provide the Cardholder with at least comparable accommodations at a comparable establishment for the number of nights used to determine the Advance Lodging amount, not to exceed fourteen nights or until the reserved accommodations are made available at the original establishment, whichever comes first. In addition, you shall provide the Cardholder transportation to the alternate establishment and, if requested, transportation to and from the alternate establishment must be provided on a daily basis. You shall forward all communications to Cardholder to the alternate hotel and provide two three-minute telephone calls to the Cardholder, all at no charge.

## **6.3 Priority Check-Out Service**

Merchants operating lodging establishments and enrolled in the Priority Check-Out Service shall institute and comply with following procedures as they are listed here and as they are amended from time to time by Visa and MasterCard. You shall accept all Cards when a Cardholder requests the Priority Check-Out Service. You shall provide Cardholder with a Priority Check-Out Agreement which must contain, but is not limited to, the Cardholder account number, your name, location and telephone number, departure date of the Cardholder, Guest name and room number, a statement authorizing you to charge the designated Cardholder for the amount of the bill and to deposit the Sales Draft without the Cardholder signature and a legend identifying the Cardholder's request for specific billing receipts, including the name and address to whom the receipts are to be mailed. You shall inform the Cardholder that the Priority Check-Out Agreement must be complete and signed; the mailing address must be completed to receive a copy of the hotel bill supporting the final transaction amount. You shall ensure the account number on the completed Priority Check-Out Agreement matches the Cardholder account number imprinted on the Sales Draft. You shall complete the Sales Draft and write the words "Priority Check-Out" on the signature line. You shall follow normal Lodging authorization procedures. You shall mail a completed Sales Draft, itemized hotel bill, and signed Priority Check-Out agreement to the Cardholder within three business days of the Cardholder's departure. You shall maintain the itemized hotel bill and all supporting documentation for a minimum of six months from the Transaction Date.



## Specialized Rules for MAIL ORDER, TELEPHONE ORDER, AND INTERNET TRANSACTIONS

### **1 Completion Of Sale**

**1.1** You must submit one Sales Data record for all goods and services sold in the same transaction. The collection and payment of all federal, state and local taxes is your responsibility. Taxes collected shall be included in the total transaction amount and not collected separately by another form of payment.

**1.2** All available information about the sale, including handling and shipping charges, must be accurately recorded. You are responsible for determining that the purchaser is the person whose name appears as the Cardholder. If an account number is transposed into an invalid or inappropriate account number, the sale will result in a chargeback.

**1.3** You will provide to the customer a true and completed record of the sale.

**1.4** If you are authorized by us to accept Cards for mail, telephone and pre-authorized orders, all available information, including handling and shipping charges, must be accurately recorded. You are responsible for assuring (i) that the purchaser is the person whose name appears as the Cardholder's on the order, and (ii) the Card number is correct. If not, the sale may result in a chargeback.

### **2 Refunds And Exchanges (Credits) - Card-Not-Present Transactions Only**

You may limit your acceptance of returned merchandise or establish a policy to make price adjustments for any transactions. If your refund policy prohibits returns under certain circumstances, you may still receive a chargeback relating to such sales pursuant to the Association rules and regulations.

### **3 Recurring Transactions.**

For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholder's account, specifying the frequency of the recurring charge and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Paymentech or an Association; or (iii) an authorization/approval code that the Card is not to be honored. You must include in your Sales Data the electronic indicator that the transaction is a recurring transaction.

**Third Party**

**Agreements**

The following agreements are Third-Party Agreements entered into between Client and the Third Parties identified in the Third-Party Agreements. Client understands and acknowledges that Paymentech, L.P. is not a party to the Third-Party Agreements and shall not have any obligations or liabilities thereunder.

If Client desires to receive the products and/or services offered under a Third-Party Agreement, Client must check the appropriate box on the Merchant Processing Application, in which case the terms and conditions of the Third-Party Agreement shall be binding upon Client. Client acknowledges that the Third Parties are relying upon the information contained on the Merchant Processing Application and the Schedules thereto, and that the Merchant Processing Application and the Schedules thereto are incorporated by reference into the Third-Party Agreements.

## TeleCheck Services Agreement

This TeleCheck Services Agreement (the "Agreement") is entered by and between TeleCheck Services Inc., and the client as indicated on the Merchant Processing Application ("Client").

1. If you elect to subscribe to the TeleCheck® Services (the "TeleCheck Services") in the Merchant Processing Application, the terms and conditions of this Agreement shall apply, including payment and the Minimum Monthly Fee from that point forward, upon processing your first check through the TeleCheck Services or from the date you are entered into the TeleCheck system as an active Subscriber, whichever is earlier (the "Effective Date"). The terms and conditions of this Agreement are solely between you and TeleCheck; you shall not provide or resell, directly or indirectly, the Services provided by TeleCheck to any third party. You are not authorized to, and shall not in any manner utilize any Services in connection with any transaction conducted, in whole or in part, over the Internet or in any other non-face to face transaction. Any of the TeleCheck Services including, without limitation, funds settlement, billing and customer service, may be performed by one or more of TeleCheck's affiliates.
2. **Term, Termination and Amendment.** TeleCheck will provide the TeleCheck Services for an initial term of 12 months from the Effective Date. Thereafter, the TeleCheck Services shall automatically renew for successive 12 month terms until terminated as provided for herein. You may terminate the TeleCheck Services at the end of the initial term or any renewal term upon at least thirty days' prior written notice to TeleCheck. In the event TeleCheck changes the rates, fees or warranty limits hereunder, you may terminate the TeleCheck Services upon written notice received by TeleCheck from you within thirty days of your receipt of notice of such change. TeleCheck may terminate the TeleCheck Services at any time upon notice to you. TeleCheck reserves the right to amend, at its discretion, the terms and conditions herein, including, without limitation, any addenda, TeleCheck Operational Procedures, rates and fees, by providing you notice thereof and such amendments shall be effective 30 days from the date notice is mailed to you.
3. **Definitions.** As used in this Agreement, the following definitions apply: "Check Writer" means the drawer of a check; "Claim" means any arbitration award, assessment, charge, citation, claim, damage, demand, directive, expense, fine, interest, joint or several liability, lawsuit or other litigation, notice, infringement or misappropriation of any patent, trademark, copyright or other intellectual property right or violation of any law, and any consequential, indirect, special, incidental or punitive damages and any attorney's fees and expenses incurred in connection therewith. For purposes of the foregoing Claim definition, a Claim shall be considered to exist even though it may be conditional, contingent, indirect, potential, secondary, unaccrued, unasserted, unknown, unliquidated, or unmatured; "Consumer" means a check writer, person, or entity that authorizes an item; "Dishonored Item" means an Item having received a valid TeleCheck Approval Code pursuant to a Warranty Service Business Transaction, but which is dishonored upon presentment for payment; "Item" means an outstanding financial obligation pursuant to a check, including a check processed as an ECA® Business Transaction; "ECA Business Transaction" means a transaction for the contemporaneous purchase of goods or Services (including, without limitation, taxes), the payment for which is processed as an ECA transaction; provided, however, it does not include any ECA transactions for cash or payment on an account, debt or check already due you; "ECA Batch" means a collection of saved ECA transactions; "TeleCheck Operational Procedures" means TeleCheck's published policies and procedures contained

in various documents provided to you concerning the TeleCheck Services provided pursuant to this Agreement, the terms of which are incorporated in this Agreement as if fully set forth herein; "Returned Item" means any Item not paid by your financial institution or that fails to comply with the terms and conditions of this Agreement, including the Warranty Requirements; "TeleCheck Approval Code" means that TeleCheck has authorized an Item for warranty coverage under this Agreement pursuant to a Warranty Service Business Transaction; "TeleCheck Parties" means TeleCheck and its officers, directors, employees, shareholders, agents and attorneys; "Warranty Maximum": (a) for an Item processed as a non-ECA transaction means lower of (i) the face amount of the Item or (ii) the lesser amount set forth on the Merchant Processing Application (if any); and (b) for an Item processed as an ECA transaction means the lower of (i) the face amount of the item; or (ii) \$20,000.00; and "Warranty Service Business Transaction" means a transaction for the contemporaneous purchase of goods or Services pursuant to TeleCheck's warranty Service program and shall not include checks written for cash or for payment on an account, debt or check already due you.

4. **Fees, Rates and Warranty Changes.** You shall pay TeleCheck the fees and rates set forth on the Merchant Processing Application, attached Fee Schedule and Addenda, if any, or in the terms and conditions herein, as changed from time to time by TeleCheck, plus all applicable taxes. The Set-Up Fees First Location and Additional Location(s) are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Service. The ECA Conversion Fee is the fee charged to convert an existing Subscriber to the ECA service. The "Inquiry Rate" is the percentage rate set forth in the Fee Schedule which shall apply to each Item which is entered into the TeleCheck system whether by telephone, electronically or otherwise. The "Monthly Minimum Fee" is the minimum amount of inquiry fees that you shall pay on a monthly basis. If the total fees for your inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply; provided, however that if the Monthly Processing Fee exceeds the Monthly Minimum Fee, then no Monthly Minimum Fee will apply. The "Monthly Processing Fee" is the \$25.00 monthly fee for maintaining your account with TeleCheck, unless a different amount is set forth on the Merchant Processing Application. The "Statement Fee" is the \$5.00 monthly fee for your invoices. The "Charge Per Transaction" is the per transaction charge for all transactions determined by the method by which the transaction is delivered to TeleCheck. The "ECA Charge Per Transaction" is the additional per transaction charge for all ECA transactions submitted by you. The "Non-Imaging Surcharge" is a per transaction charge for every ECA transaction that is not processed using a TeleCheck approved imaging device. The "POS Support Charge" is a monthly fee for point of sale support services. The "Transaction Surcharge" is an additional charge for transactions going over third party networks. The "ECA Chargeback Fee" is a \$5.00 handling fee for each chargeback of an ECA transaction. The "ECA Funding Report Fee" is an additional fee to receive daily or weekly ECA funding reports. The "ECA Correction Fee" is a \$5.00 fee payable on each item in an ECA batch that must be corrected due to your error or at your request. The "Customer Requested Operator Call Charge" is an additional charge per operator-assisted authorization call not requested by TeleCheck. The "Voice Authorization Call" is an additional charge per operator-assisted authorization call requested by TeleCheck. The "Recovery Processing Fee" is a \$5.00 charge for each check that fails to meet Warranty Requirements for which TeleCheck elects, in its discretion, to reimburse you as a "Goodwill Item" for a specific Returned Item. A "Warranty Research Fee" of \$7.50 will be charged each time you request substantiation of a warranty payment/non-payment. These above fees are in addition to any fees charged by TeleCheck to you under any other agreement.
- 5.1. **Payment, Reserve Account, Security Interest; Funding Errors.** All fees and charges are due upon receipt. You authorize TeleCheck to debit from your financial institution account as provided to TeleCheck by you, all payments and other amounts owed (including, without limitation, all chargebacks, ECA Chargeback Fees and Returned Item Fees) to TeleCheck or its affiliates under this Agreement or any other agreement between you and TeleCheck or its affiliates, and to credit all amounts owing to you under this Agreement, to your financial institution account. If there are insufficient funds in your financial institution account to pay amounts owed to TeleCheck or its affiliates, or if there are any amounts otherwise not paid by you when due, including, without limitation, delinquent fees, chargebacks or rejected and reassigned warranty Items, you shall

immediately reimburse TeleCheck or its affiliates upon demand, or at TeleCheck's option, TeleCheck may offset such amounts due you from TeleCheck or its affiliates under this Agreement or any other agreement between you and TeleCheck or its affiliates. A delinquency charge of 1/2 % per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account over fifteen (15) days delinquent. TeleCheck shall have the right to suspend all services and obligations to you, including the payment of all warranties due and transactions previously authorized, during any period in which your account is delinquent. You agree to pay TeleCheck a \$25.00 fee for any check or ACH debit that is not paid by your financial institution upon presentment.

5.2. You expressly authorize TeleCheck to establish a Reserve Account (the "TeleCheck Reserve") for ECA Business Transactions. The amount of the TeleCheck Reserve shall be set by TeleCheck, in its sole discretion, based upon your processing history and the anticipated risk of loss to TeleCheck.

5.3. The TeleCheck Reserve shall be fully funded upon three (3) days' notice to you, or in instances of fraud or breach of this Agreement, the TeleCheck Reserve may be funded immediately at TeleCheck's election. The TeleCheck Reserve may be funded by all or any combination of the following: (i) one or more debits to your financial institution (and TeleCheck is hereby authorized to make such debits); (ii) one or more deductions or offsets to any payments otherwise due to you from TeleCheck or any of its affiliates; or (iii) your delivery to TeleCheck of a letter of credit. Any such letter of credit shall be issued or established by a financial institution acceptable to TeleCheck and in a form satisfactory to TeleCheck, both in TeleCheck's discretion. In the event of termination of the TeleCheck Services by either you or TeleCheck, an immediate TeleCheck Reserve may be established without notice in the manner provided above. Any TeleCheck Reserve will be held by TeleCheck for ten (10) months after termination of the TeleCheck Services. Your funds held in a TeleCheck Reserve may be held in a commingled TeleCheck Reserve for the reserve funds of TeleCheck's subscribers, without involvement by an independent escrow agent, and shall not accrue interest.

5.4. If your funds in the TeleCheck Reserve are not sufficient to cover the delinquent fees, chargebacks or rejected and reassigned warranty Items, or any other fees and charges due from you to TeleCheck or its affiliates, or if the funds in the TeleCheck Reserve have been released, you shall immediately pay TeleCheck such sums upon request. In the event of failure by you to fund the TeleCheck Reserve, TeleCheck may fund such TeleCheck Reserve in the manner set forth in subsection 5.3. above.

5.5. To secure your obligation to TeleCheck and its affiliates under this Agreement and any other agreement for provision of other services, you grant to TeleCheck a lien and security interest in and to any of your funds pertaining to the transactions contemplated by this Agreement now or hereafter in the possession of TeleCheck, whether due or to become due to you from TeleCheck. Any such funds, money or amounts may be commingled with other funds of TeleCheck, or, in the case of any funds held pursuant to the foregoing sections, with any other funds of other subscribers of TeleCheck. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, TeleCheck is hereby authorized by you at any time and from time to time, without notice or demand to you or any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of your obligations to TeleCheck and its affiliates under this Agreement and any other agreement with TeleCheck or any of its affiliates including, without limitation, fees for any other services (including any check or credit Card processing services), whether such obligations are liquidated, unliquidated, fixed contingent, matured or unmatured. You duly agree to execute and deliver to TeleCheck such instruments and documents as TeleCheck may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment, and subordination set forth in this Agreement.

5.6. In the event any ECA Business Transaction is not funded or otherwise paid by TeleCheck in accordance with this Agreement, you are required to notify TeleCheck thereof in writing within sixty (60) days from the date of such ECA Business Transaction. If you fail to so notify TeleCheck within said sixty (60) period, TeleCheck will have no liability and you are precluded from asserting any claims, damages or losses relating to TeleCheck's failure to fund such ECA Business Transaction.

## TERMS APPLICABLE ONLY TO TELECHECK® WARRANTY SERVICE PROGRAM

6.1. **Warranty.** The sole purpose of the TeleCheck warranty service program is to provide information and processing services to you. TeleCheck warrants the accuracy of its information provided that all requirements set forth in the Warranty Requirements in Section 14.1 are strictly met. A Dishonored Item shall be deemed to be a breach of the warranty and as your sole and exclusive remedy for such breach, you may receive payment of the face amount of the Dishonored Item up to the Warranty Maximum, subject to the terms, conditions, and limitations contained in this Agreement and any addenda hereto. The warranty does not apply where payment has been stopped due to a dispute over goods or services between you and consumer, or where you have contacted TeleCheck for a TeleCheck Approval Code on more than one check per Warranty Service Business Transaction.

6.2. **TeleCheck Approval Code.** You acknowledge that TeleCheck will use its internal and proprietary risk management systems to evaluate the risk associated with any particular Item and to assist in its decision whether or not to issue a TeleCheck Approval Code. The decision to issue a TeleCheck Approval Code shall be within the discretion of TeleCheck.

7. **"Goodwill" of a Returned Item.** TeleCheck, in its discretion, may voluntarily reimburse you for a specific Returned Item. TeleCheck's election to reimburse a Returned Item(s) shall not act as a waiver of TeleCheck's right to decline to pay any other Returned Item.

## TERMS APPLICABLE ONLY TO TELECHECK® ELECTRONIC CHECK ACCEPTANCE® SERVICE

1.8. **ECA® Service.** The terms in Sections 9.1. and 10. apply only if you use the TeleCheck Electronic Check Acceptance® service. The terms in Sections 9.1. and 10. do not apply to Warranty Service Business Transactions that are not ECA Business Transactions.

9.1. **ECA Processing.** You shall not submit to TeleCheck for processing any ECA transaction exceeding \$20,000,000. For each ECA Business Transaction that TeleCheck issues a TeleCheck Approval Code, TeleCheck shall, via an electronic funds transfer, effect a credit to your financial institution account for the amount of such transaction as part of an ECA batch. Such credit shall occur: (i) within two banking days following your regular close-out of the point of sale terminal and transmission to TeleCheck for settlement processing the saved ECA Business Transaction, provided that the ECA batch is closed and received by TeleCheck by 9:00 p.m. Central Standard Time; and (ii) regardless of whether or not consumer's ECA transaction is paid by consumer's financial institution. TeleCheck reserves the right to decline to process any transaction as an ECA Business Transaction.

9.2. TeleCheck will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties including, but not limited to any Automated Clearing House ("ACH") network participant or your financial institution. In addition to any other remedies available to TeleCheck under this Agreement, you agree that should you breach or fail to comply with any Terms or Conditions in this Agreement, TeleCheck may, upon at least a 24 hours' notice, change processing or payment terms to suspend settlement or other payments of any and all funds, money and amounts now due or hereafter to become due until TeleCheck has had reasonable opportunity to investigate such event. In cases where TeleCheck, in its discretion, has reason to believe that there is fraudulent activity relating to one or more transactions you submit, no prior notice shall be required.

10. **Retention of ECA Authorization Receipts.** You shall cause the consumer to sign an ECA authorization receipt in a form approved by TeleCheck prior to submission of each ECA Business Transaction to TeleCheck for processing. You shall maintain the signed ECA authorization receipt for a minimum of two (2) years from the date of the transaction or for the period specified by the rules of the National Automated Clearing House Association ("NACHA"), whichever is longer. Within seven (7) days of TeleCheck's request, you shall physically deliver either the original or a legible copy of the signed ECA authorization receipt to TeleCheck. You shall, upon reasonable notice and during normal business hours, permit TeleCheck to audit you for your compliance with this requirement.



**TERMS APPLICABLE ONLY TO  
TELECHECK® VERIFICATION SERVICE**

11. The terms in Section 1.12. apply only if you use the TeleCheck verification service.
12. The sole purpose of the TeleCheck verification service (BasX® or otherwise) is to provide coded information to assist you in deciding whether or not to accept an item. TeleCheck does not guarantee the accuracy or completeness of the information and you agree that there shall be no payment to you by TeleCheck for any loss from transactions processed through the verification service (BasX® or otherwise) and that you assume all risks that items accepted by you may be dishonored. The Warranty Maximum on any item processed through TeleCheck verification service (BasX® or otherwise) shall be zero. You shall be billed a flat fee for whole or partial calendar months even if services are not used but are available for use by you.
13. If you have elected to subscribe to the Small Ticket Program, all items that exceed \$50.00 will be processed through the verification service only. Accordingly, you assume all risks that said items exceeding \$50.00 may be dishonored and TeleCheck will make no payment on said items.

**GENERAL TERMS**

- 14.1 Warranty Requirements and ECA Representations.** TeleCheck will reimburse you for one Item, up to the Warranty Maximum, per Warranty Service Business Transaction which meets all of the following applicable requirements, and you represent and warrant with respect to all Warranty Service Business Transactions and ECA Business Transactions submitted to TeleCheck for processing under this Agreement the following applicable representations:

- (a) The check must be a first party check drawn on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution and must be made payable to you. The name of the individual or company must be imprinted or typed on the check by the check manufacturer. If a P.O. Box is used or the address is not imprinted by the check manufacturer, a physical address description must be written on the check according to TeleCheck's Operational Procedures.
- (b) You received a completely filled out paper check from the consumer;
- (c) The consumer authorized the debiting of consumer's account and the ECA debit entry is in all respects properly authorized and in an amount agreed to by the consumer;
- (d) You shall have made an inquiry to TeleCheck in strict accordance with TeleCheck's Operational Procedures and you must have obtained a TeleCheck Approval Code;
- (e) TeleCheck Subscriber Number, check writer's telephone number (including area code), a physical address description, identification type and number and TeleCheck Approval Code must all be printed or written on the check for Warranty Service Business Transactions;
- (f) The Warranty Service Business Transaction represents an obligation of the person who is presenting the respective Warranty Service Business Transaction and the respective transaction is for merchandise actually sold or rented or services actually rendered for the actual price of such merchandise or services (including tax and shipping) and does not involve any element of credit for any purpose;
- (g) The signature and physical description of the check writer or consumer on the check and the ECA authorization receipt, if applicable, must reasonably correspond to any signature and description contained in the piece of identification;
- (h) The signature in the signature block on the check must not be substantially different from the name imprinted on the check;
- (i) The date of the check and the ECA Business Transaction, if applicable, must accurately coincide within one calendar day of both (1) the date of the inquiry call to TeleCheck and (2) the date the transaction actually occurred; (Checks may not pre-date or post-date by more than one calendar day the date of the inquiry call and the transaction date);
- (j) The amount shown in words and figures on the check and the amount on the consumer's ECA authorization receipt, if applicable,

must all agree exactly; the amount shown in words and figures on the check must be (1) less than or equal to the amount entered into the TeleCheck system or (2) no more than \$1.00 over the amount entered into the TeleCheck system;

- (k) The check must have been deposited in your financial institution account and received by TeleCheck for purchase within thirty (30) days of the date of the check;
- (l) You must have contacted TeleCheck for a single TeleCheck Approval Code on only one check per Warranty Service Business Transaction;
- (m) You received a signed ECA authorization receipt from consumer and either consumer or you voided the signed paper check to which the ECA Business Transaction relates;
- (n) You have no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectability of the consumer's obligation or relieve the consumer from liability;
- (o) The paper check to which the ECA Business Transaction relates is a personal check and not a business check; and
- (p) The consumer shall have signed a separate ECA authorization receipt for each ECA Business Transaction submitted to TeleCheck.

**14.2. All of the above requirements and representations are material terms of this Agreement.** By electing to subscribe to the TeleCheck Services, you acknowledge your full knowledge and understanding of the above requirements and representations as they pertain to the services provided to you under this Agreement. You shall not be entitled to recover any amounts under this Agreement if you fail to timely satisfy any of the terms or conditions of or breaches any representation contained in: (i) Section 14.1, or (ii) any other terms, conditions or limitations in this Agreement.

- 15. Collection and Returned Item Fees.** TeleCheck shall be entitled to collect from the consumer and retain any fees or exemplary damages, in addition to the amount of the check or ECA Business Transaction, if applicable, which are allowed by law. You shall follow all TeleCheck policies and procedures and post at TeleCheck's direction any notices which in TeleCheck's opinion may be required for TeleCheck to collect any such amounts arising from returned, dishonored or unpaid checks or ECA Business Transactions.

- 16. Assignment of Checks and ECA Business Transactions.** By electing to subscribe to the TeleCheck Services, you ASSIGN, TRANSFER AND CONVEY to TeleCheck all of your rights, title and interest in any: (i) check submitted to TeleCheck for coverage under the Warranty Service Program; or (ii) ECA Business Transaction submitted by you to TeleCheck under this Agreement. You shall, at TeleCheck's request, in TeleCheck's discretion, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

- 17. Reassignment and Chargeback.**

**17.1.** TeleCheck, as applicable, may: (i) reassign to you any check purchased by TeleCheck pursuant to the Warranty Service Program provisions of this Agreement, or (ii) chargeback to you and debit your financial institution account any ECA Business Transaction submitted to TeleCheck for processing pursuant to this Agreement, in any of the following circumstances:

- (a) The goods or services, in whole or in part, for which an Item was submitted, have been returned to you, have not been delivered by you or are claimed by the check writer to have been unsatisfactory or are subject to any dispute, set-off or counterclaim;
- (b) You have received full or partial payment or security in any form whatsoever to secure payment of the: (i) check or the ECA Business Transaction; or, (ii) goods or services for which the check or ECA Business Transaction was issued or authorized;
- (c) The transaction for which the check or the ECA Business Transaction was tendered, or transfer to TeleCheck of the check writer's check or ECA Business Transaction is for any reason (i) not permitted by applicable law; or (ii) a court of law determines that the check or ECA Business Transaction is, in whole or in part, not due and payable by the consumer, unless such determination results from the check writer's bankruptcy proceeding;

- (d) The check or funds transfer was not issued in connection with a Warranty Service Business Transaction or an ECA Business Transaction;
- (e) Any of the representations made by you as set forth in Section 14.1 are or become false or inaccurate;
- (f) You failed to comply with any of the terms and conditions of this Agreement;
- (g) You or any of your owners, agents or employees: (i) materially altered either the check or the ECA authorization receipt; or (ii) accepted the check or processed the ECA Business Transaction with reason to know that the check or the ECA Business Transaction was likely to be dishonored or that the identification used to authorize the check or the ECA Business Transaction was forged, altered or did not belong to the check writer;
- (h) The ECA authorization receipt was incomplete or unsigned;
- (i) A duplicate ECA Business Transaction relating to the same ECA Business Transaction was received and processed or the original paper check was deposited, thereby creating a duplicate entry against the check writer's financial institution account;
- (j) A legible copy of the ECA authorization receipt is not received by TeleCheck within seven (7) days of a request by TeleCheck;
- (k) The consumer disputes authorizing the ECA Business Transaction or the validity or accuracy of the transaction;
- (l) You receive notice that the check writer of a dishonored Item filed bankruptcy and failed to notify TeleCheck of the bankruptcy within three business days of receipt of such notice; or
- (m) A TeleCheck Approval Code has not been issued for the ECA Business Transaction or the closeout of the ECA batch and transmission of the ECA Business Transaction to TeleCheck for settlement processing does not occur within seven (7) days from the date the TeleCheck Approval Code is issued for the ECA Business Transaction.

**17.2. You shall immediately notify TeleCheck upon the happening of any of the above circumstances.** If the check (including a check processed as an ECA Business Transaction) is reassigned as provided herein, TeleCheck may debit your financial institution account in the amount paid by TeleCheck for the Item, or upon request, you shall remit the amount of the Item to TeleCheck. TeleCheck may also chargeback to you any amount over the Warranty Maximum on any ECA Business Transaction where TeleCheck has not received payment for such ECA Business Transaction within sixty (60) days of the date of the ECA Business Transaction. Upon reassignment or charging back of an Item, TeleCheck shall have no further liability to you on such Item. Following termination of TeleCheck Services, you shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section 17.2 and Section 17.1.

- 18. Updating Information.** With regard to any Items submitted or reported to TeleCheck, you shall promptly notify TeleCheck if: (i) a check writer makes any payment to you on a Dishonored Item; (ii) there is a return of goods or services, in whole or in part, which were paid with a Dishonored Item; or, (iii) there is a dispute of any amount, notice of bankruptcy or any other matter with regard to a Dishonored Item.
- 19. Credit Law Compliance.** You certify that: (i) you have a legitimate business need, in connection with a business transaction initiated by the consumer, for the information provided by TeleCheck under this Agreement regarding such consumer; and, (ii) the information provided by TeleCheck will only be used for permissible purposes as defined in the Fair Credit Reporting Act, and applicable state and federal laws, with the exception that the information will not be used for employment purposes, and will not be used by you for any purpose other than a single business transaction between you and consumer, occurring on the date of inquiry call to TeleCheck. Neither you, nor your agents or employees, shall disclose the results of any inquiry made to TeleCheck except to the consumer about whom such inquiry is made and in no case to any other person outside your organization. If you decide to reject any transaction, in whole or in part, because of information obtained from TeleCheck, you agree to provide the consumer with all information required by law and TeleCheck.

- 20. Use of TeleCheck Materials and Service.** TeleCheck grants to you, and you accept, a nonexclusive, nonassignable and nontransferable temporary permission, uncoupled with any right or interest, to use the TeleCheck marks: TELECHECK® TELECHECK® TELECHECK® ELEC-TRONIC CHECK ACCEPTANCE®, ECA®, and the TELECHECK LOGO® (collectively, the "TeleCheck Marks") and to use and display decals, identification data and other materials provided by TeleCheck during the term of the TeleCheck Services solely in connection with the offering of the TeleCheck services authorized under this Agreement. In addition, the following may appear at least once on every piece of advertising or promotional material used by you: ("insert applicable TeleCheck Mark") is a trademark owned by TeleCheck International, Inc. and is licensed for use by "Your Name"; provided, however, that no such advertising or promotion using any TeleCheck Mark or TeleCheck name shall be done without the prior written consent of TeleCheck. You shall use the designation "®" and "sm" in conjunction with those TeleCheck Marks which are registered trademarks and service marks, respectively, of TeleCheck. Upon termination of the TeleCheck services, you shall either return or destroy all TeleCheck materials (including, without limitation, the prompt removal of decals or other materials that are affixed and displayed to the public). The monthly fees payable to TeleCheck by you under this Agreement shall apply for all months or fractions of a month any materials or TeleCheck-owned equipment remain in use by you. You shall maintain the confidentiality of this Agreement and any information provided to you by TeleCheck, including, without limitation, TeleCheck Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential. You shall not permit any persons other than your own officers or employees at your locations to use the TeleCheck Subscriber Number assigned by TeleCheck.

You shall not use any TeleCheck Marks in conjunction with or on the Internet. You shall take all actions reasonably required by TeleCheck to ensure that the TeleCheck Marks and other TeleCheck materials do not become part of the public domain or are otherwise appropriated by any person or entity to the detriment of TeleCheck. You acknowledge TeleCheck's ownership of the TeleCheck Marks and agree that you will do nothing inconsistent with such ownership. You shall promptly notify TeleCheck of any unauthorized use of the TeleCheck Marks by third parties of which you become aware.

- 21. Use of Information.** You agree that: (i) any data and other information relating to an Item or consumer obtained by TeleCheck in connection with any service provided hereunder (including any electronic or other image of all or any portion of any check or Driver's License or other identification) shall be owned by TeleCheck with all right, title, and interest thereto; (ii) TeleCheck may use any credit information provided to a TeleCheck affiliate or to your credit Card processor for TeleCheck's credit review; (iii) TeleCheck may provide or receive any experiential information regarding you or your customers to or from any TeleCheck affiliate or to your credit Card processor; and (iv) TeleCheck is entitled to obtain your credit Card sales data from point of sale equipment or from any TeleCheck affiliate or your credit Card processor for use in TeleCheck's aggregate reporting of retail sales trends.
- 22. TeleCheck Procedures.** You shall strictly follow all TeleCheck Operational Procedures provided to you, as may be amended from time to time by TeleCheck, in its discretion, including the TeleCheck Operational Procedures relating to the TeleCheck Marks. To the extent that there is any conflict between the TeleCheck Operational Procedures and the terms of this Agreement, the terms of this Agreement shall govern. If you are authorized to use the TeleCheck-owned or -supplied equipment and/or ECA services pursuant to this Section, you will use such equipment or service only for the processing of completely filled out checks (i.e., negotiable instruments). Any other use of TeleCheck-owned or -supplied equipment or ECA services is unauthorized and you covenant not to make any such use of the equipment or ECA services. Should you make any use of TeleCheck-owned or -supplied equipment or ECA services other than those expressly authorized by this Agreement, you agree to indemnify, defend and hold harmless TeleCheck as set out in Section 24.
- 23. Assignment of Agreement.** The obligations and rights under this Agreement may be assigned by you only with the prior written consent of TeleCheck. TeleCheck may freely assign its rights, benefits or duties hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of TeleCheck and your heirs, executors, administrators, successors and assigns.



24. **Legal Responsibility.** In the event you violate any terms or conditions of this Agreement, you shall indemnify, defend and hold harmless TeleCheck and its affiliates from and against all claims arising therefrom, including, payment of all costs and reasonable attorney's fees, for actions taken by TeleCheck, whether by suit or otherwise, to defend TeleCheck or its affiliates from any claims related thereto or to preserve or enforce TeleCheck's rights under this Agreement, and TeleCheck shall have the right to immediately repossess all equipment owned by TeleCheck. In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, you shall: (i) promptly notify TeleCheck of the Claim(s) or legal action; (ii) reasonably cooperate with TeleCheck in the making of any Claim(s) or defense(s); and (iii) provide information, assist in the resolution of the Claim(s) and make available at least one employee or agent who can testify regarding said Claim(s) or defense(s). You shall indemnify, defend, and hold harmless the TeleCheck Parties from any Claim(s) arising from any false or inaccurate representation made by you or from your failure to strictly comply, in whole or in part, with any: (i) terms and conditions pursuant to this Agreement and any addenda hereto or TeleCheck Operational Procedures; or (ii) applicable law. Upon written notice from TeleCheck to you, you shall immediately undertake the defense of such Claim by representatives of your own choosing, subject to TeleCheck's reasonable approval; provided, however, that TeleCheck shall have the right to control and undertake such defense by representatives of its own choosing, but at your cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws. In no event shall TeleCheck be liable to you, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill. Notwithstanding anything to the contrary contained in the Agreement, in no event shall TeleCheck's liability under this Agreement for all Claims arising under, or related to, this Agreement exceed, in the aggregate (inclusive of any or all Claims made by you against TeleCheck, whether related or unrelated), the lesser of: (i) the total amount of fees paid to TeleCheck by you pursuant to this Agreement during the 12-month period immediately preceding the date the event giving rise to such Claim(s) occurred; or (ii) \$75,000.00.
25. **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT, THE SALE OF ANY EQUIPMENT BY TELECHECK TO YOU, OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY YOU. All decisions to reject any check or ECA transaction, driver's license or other form of identification or payment for your products or services are solely your responsibility. You assume all risks that any and all checks (including checks processed as ECA Transactions) accepted by you may be dishonored, whether or not TeleCheck has issued a TeleCheck Approval Code with respect to such check(s).
26. **Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing, addressed or transmitted to the party to be notified at such party's address or number as provided on the front of the Merchant Processing Application or at such party's last known address or number, and shall be: (i) if sent by TeleCheck, hand delivered or delivered by facsimile transmission, overnight courier or certified, registered or regular mail; or (ii) if sent by you, certified or registered mail, postage prepaid return receipt requested. Any notice delivered hereunder shall be deemed effective, as applicable, upon delivery, if hand delivered or sent by overnight courier; upon receipt as evidenced by the date of transmission indicated on the transmitted material, if by facsimile transmission; on the date of delivery indicated on the return receipt, if mailed by certified or registered mail; or ten (10) days after mailing, if by regular mail (or as otherwise required by applicable law). The parties' addresses may be changed by written notice to the other party as provided herein.
27. **Force Majeure.** TeleCheck shall not be held responsible for any delays in, or failure or suspension of service caused by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, act of God, or other causes reasonably beyond the control of TeleCheck.
28. **Governing Law and Integration.** You shall comply with all applicable laws, regulations and rules, including NACHA rules and guidelines, relating to the services provided hereunder. This Agreement, plus any addenda attached hereto, constitute the entire agreement between the parties concerning the subject matter hereof and supersedes all prior and contemporaneous understandings, representations, and agreements in relation to its subject matter. AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.
29. **Severability and Interpretation.** If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. Neither this Agreement, nor any addenda or TeleCheck Operational Procedures, shall be interpreted in favor or against any party because such party or its counsel drafted this Agreement, or such addenda or TeleCheck Operational Procedures. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement. This Agreement is solely for the benefit of TeleCheck (and its affiliates) and you and no other person or entity shall have any right, interest or claim under this Agreement. As used in this Agreement, (i) the term "include," or any derivative of such term, shall not mean that the terms following such term are the only types of such items; (ii) the term "shall" indicates a mandatory obligation; (iii) the term "may" indicates a permissive election and does not imply any duty to exercise such election; and (iv) the term "discretion" means the sole and absolute discretion of the party granted the discretion, absent an express limitation on such discretion.
30. **Amendment and Waiver.** No modification, amendment or waiver of any of the terms and conditions of this Agreement shall be binding upon TeleCheck, whether written, oral, or in any other medium, unless made in writing and approved and signed by TeleCheck. All rights and duties within this Agreement are material and time is of the essence; no waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party; no waiver by either party of a breach or any provision of this Agreement shall constitute a waiver of any prior or subsequent breach of the same or any other provision of this Agreement; no failure to exercise, and no delay in exercising, any right(s) hereunder on the part of either party shall operate as a waiver of any such right; all of TeleCheck's rights are cumulative; and, no single or partial exercise of any right hereunder shall preclude further exercise of such right or any other right.
31. **Damages.** Upon your breach or unauthorized termination of the TeleCheck Services, TeleCheck shall be entitled to recover from you liquidated damages in an amount equal to ninety percent (90%) of the total aggregate charges payable for the unexpired portion of the then current term of the TeleCheck Services. TeleCheck and you hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of your breach or unauthorized termination of the TeleCheck Services, to the possibility that TeleCheck will not be able to mitigate its damages, and to the expense savings that TeleCheck may obtain by not having to provide services, equipment or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach or unauthorized termination of TeleCheck Services and will not be construed as a penalty.
32. **Survivability.** All representations, warranties, indemnities and covenants made herein shall survive the termination of this Agreement and shall remain enforceable after such termination.

## Gift Card Processing Agreement

This Gift Card Processing Agreement (the "Agreement") is entered into by and between First Data Merchant Services Corporation, a Florida corporation, and having offices located at 6200 South Quebec Street, Greenwood Village, Colorado 80111 ("FDMS"), and the client as indicated on the Merchant Processing Application ("Client").

1. **Definitions.** Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 1 or as defined elsewhere in this Agreement.

- a. "ACH" means the Automated Clearing House system.
- b. "Affiliate" means, with respect to either party, any entity that controls, is controlled by or is under common control with such party.
- c. "Gift Card" means an encoded magnetic stripe plastic card that accesses Gift Card Data maintained in the FDMS Database.
- d. "Gift Card Data" means the current value and record of transactions corresponding to each Gift Card issued under the Program.
- e. "Gift Card Number" means the identifying number of a Gift Card.
- f. "Gift Card Production Company" means a company selected and retained by FDMS or Client to produce Gift Cards and provide related products or services for the Program.
- g. "Gift Cardholder" means any person in possession of or that uses a Gift Card.
- h. "Designated Location" means any store or other place of business (including a direct marketing program or Internet site), located in the U.S.A., and at or through which Client issues Gift Cards and/or processes transactions using Gift Cards issued under the Program. Designated Locations include any help desk or IVR through which transactions are processed under the Program.
- i. "FDMS Database" means the database on which Gift Card Data for each Gift Card issued under the Program is maintained.
- j. "IVR" means an automated interactive voice response system accessed via a toll-free telephone number.
- k. "PIN" means a personal identification number.
- l. "POS Terminal" means an electronic point-of-sale terminal that has been programmed and certified to FDMS' specifications in order to be able to process online transactions under the Program.
- m. "Program" means Client's program pursuant to which Client issues Gift Cards to Gift Cardholders and FDMS provides the Services to enable such Gift Cardholders to use such Gift Cards to purchase goods and services at Designated Locations.
- n. "Services" means the services provided by FDMS in connection with the Program as further described in this Agreement.

2. **Services.** Subject to the terms and conditions of the Agreement, FDMS agrees to provide the Services set forth in Schedule A (Gift Card Services) in connection with the Program.

3. **Responsibilities of Client.** The responsibilities of Client are set forth in Schedule B.

4. **Fees and Payment.**

- a. Client shall pay FDMS the fees set forth on the Gift Card Set Up Form, which is incorporated by reference herein. Client shall also be responsible for the payment of any taxes imposed by any applicable governmental authority in connection with any products or services covered by this Agreement (other than those taxes based solely on the net income of FDMS). All fees are due and payable within thirty (30) days of the date of FDMS' invoice for such fees. Fees not paid as set forth above shall incur interest at the rate equal to the lesser of (i) ten percent (10%) per annum, or (ii) the maximum rate permitted by applicable law from the date on which payment should have been made until the date on which FDMS receives the payment. To facilitate the payment of fees under this Agreement, Client authorizes FDMS to

debit and/or credit Client's designated U.S. based bank account through the ACH system, or at the discretion of FDMS, invoices shall be sent to Client at the address indicated on the Merchant Processing Application.

- b. FDMS may increase rates from time to time to the extent necessary to pass through increases in the costs of the underlying goods and services used or provided by FDMS in connection with the provision of Services. Any such adjustments shall become effective upon written notice to Client.

5. **Term and Termination.**

- a. This Agreement shall be effective upon the date the Agreement is approved by FDMS' credit department (the "Effective Date"), and shall continue until the third (3rd) anniversary of the Effective Date (the "Initial Term"). Following the expiration of the Initial Term, this Agreement shall automatically renew for successive one year periods (each a "Renewal Term"), unless one party gives the other party written notice of termination at least 180 days prior to the end of the Initial Term or any Renewal Term.
- b. This Agreement may be terminated at any time: (i) by either party in the event that the other materially breaches any term or condition of this Agreement and fails to cure such breach within thirty (30) days of written notice of such breach from the non-breaching party; (ii) by FDMS if Client fails to pay any amount due within ten (10) business days after written notice to Client of its failure to pay such amount; (iii) by FDMS upon written notice to Client in the event that Client's operation of the Program results in a violation of law or regulation (by Client or FDMS); or (iv) by either party upon written notice to the other after the filing by the other of any petition in bankruptcy or for reorganization or debt consolidation under the federal bankruptcy laws or under any comparable law, or upon the other party's making of an assignment of its assets for the benefit of creditors, or upon the application of the other party for the appointment of a receiver or trustee of its assets.
- c. If (i) this Agreement is terminated for any reason other than FDMS' material breach prior to the expiration of the Initial Term or any Renewal Term, or (ii) Client suspends or terminates the Program prior to the expiration of the Initial Term or any Renewal Term, then in addition to any other remedies contained herein or otherwise available to FDMS, Client shall pay FDMS, as liquidated damages, upon demand, an amount equal to: the average monthly fees incurred by Client under this Agreement during the six (6) months preceding the effective date of such termination or suspension (or, if the Agreement has been in effect for less than six (6) months, the average monthly fees incurred by Client under this Agreement from inception of the Agreement), multiplied by the number of months (including any pro rata portion of a month) then-remaining in the Initial Term or the Renewal Term. Client acknowledges and agrees that the amount calculated in the manner specified above is a reasonable estimate of FDMS' probable damages in the event of such termination or suspension and does not constitute a penalty. Nothing in this Section 5(c) shall prohibit or limit FDMS' right to recover damages in the event that this Agreement is terminated by FDMS due to a breach by Client or shall be deemed to waive or otherwise limit Client's obligations pursuant to Section 7(a).
- d. If requested by Client, FDMS may, in its sole and absolute discretion, continue to provide the Services for all previously issued and unexpired Gift Cards for up to twelve (12) months following the termination of this Agreement; provided, however, that FDMS shall not activate any new Gift Cards after the effective date of termination. FDMS' obligation to provide continuing Services after termination is contingent upon Client's agreement to pay for such services in accordance with the terms of this Agreement, and FDMS may require advance payment for some portion or all of the estimated cost of such Services to be provided after termination.
- e. Termination of this Agreement shall not affect Client's obligation to pay for services rendered or obligations due and owing under this Agreement prior to termination.

- f. The provisions of Sections 5 and 6 of Schedule B (Responsibilities of Client) and Sections 5(c), 5(d), 5(e), 6, 7 and 8 hereof shall survive any termination of this Agreement. Any other provisions of this Agreement which are to be performed after termination or expiration to effectuate their intent shall survive termination of this Agreement.

## 6. Confidentiality.

- a. For the purposes of this Agreement, the term "Confidential Information" means any data or information obtained by one party hereto ("Recipient") regarding the other party ("Discloser") or their respective businesses that is not generally known to the public, including, without limitation: (i) information about the products, services, operations, procedures, customers, suppliers, sales, pricing, business plans and marketing strategies of Discloser, its Affiliates and the customers, clients and suppliers of any of them; (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords Discloser a competitive advantage over its competitors; (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable; and (iv) the terms of this Agreement, including any schedules, addenda, amendments or other attachments hereto.
- b. Confidential information of Discloser shall be used by Recipient only to exercise its rights and to perform its obligations under this Agreement. Recipient shall receive the Confidential Information of Discloser in confidence and not disclose the Confidential Information to any third party, except as may be agreed upon in writing by Discloser. Recipient shall safeguard all Confidential Information of Discloser using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material. Upon request by Discloser or upon termination of this Agreement, Recipient shall return to Discloser or destroy all Confidential Information of Discloser in its possession or control.
- c. The obligations of confidentiality and restrictions on use in this Section shall not apply to any Confidential Information that: (i) was in the public domain prior to the date of this Agreement or subsequently came into the public domain through no fault of Recipient; (ii) was received from a third party free of any obligation of confidence of Recipient to the third party and which third party, to Recipient's knowledge, was not under an obligation to keep the information confidential; (iii) was already in Recipient's possession prior to receipt from Discloser; (iv) is required to be disclosed by law, regulation or court order after giving Discloser as much advance notice as practical of the possibility of disclosure; or (v) is subsequently and independently developed by Recipient's employees, consultants or agents without use of or reference to Discloser's Confidential Information.
- d. Except as specifically provided for herein, this Agreement does not confer any right, license, interest or title in, to or under the Confidential Information of Discloser to Recipient. Except as specifically provided for herein, no license is hereby granted to Recipient under any patent, trademark, copyright, trade secret or other proprietary rights of Discloser.
- e. Recipient acknowledges that breach of the restrictions on use or disclosure of any Confidential Information of Discloser would result in immediate and irreparable harm to Discloser, and money damages would be inadequate to compensate for that harm. Discloser shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

## 7. Indemnification.

- a. Client shall indemnify and hold harmless FDMS, its directors, officers, employees, agents and Affiliates from and against any and all third party claims, losses, liabilities, damages and expenses, including reasonable attorneys' fees, (collectively "Claims") to the extent that any such Claim is caused by or arises out of: (i) any failure of Client to comply with any law or regulation applicable to the Program; (ii) any

dispute between Client and any Gift Cardholder, including, without limitation, any dispute regarding the goods or services purchased using a Gift Card or the payment of any amounts owed or alleged to be owed by one or more such persons to any other such persons; (iii) any instructions or procedures that Client may provide to FDMS in connection with the Program; (iv) any actual or alleged loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number or PIN; (v) Client's use or operation of Gift Card Authorization Equipment; and (vi) any Claim or action against FDMS for actual or alleged infringement of any patent, copyright, trademark, trade secret or other proprietary right of any person arising in connection with the production of Gift Cards or related products for Client using artwork, designs, specifications or concepts provided by Client.

- b. FDMS shall indemnify and hold harmless Client and its directors, officers, employees, agents and Affiliates from and against any and all Claims to the extent that any such Claim is caused by or arises out of: (i) any failure of FDMS to comply with any law or regulation applicable to FDMS' business as a service provider; or (ii) any error in the FDMS Database, unless the error is caused by incorrect information submitted by Client or is otherwise made in accordance with Client's instructions.

## 8. Limitation of Liability; Disclaimer of Warranties.

- a. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, FDMS' CUMULATIVE AGGREGATE LIABILITY FOR ANY LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED BY CLIENT AND, IN ANY EVENT, SHALL NOT EXCEED THE LESSER OF (I) THE AMOUNT OF FEES PAID TO FDMS BY CLIENT UNDER THIS AGREEMENT DURING TWELVE (12) MONTHS PRIOR TO THE DATE THAT THE LIABILITY ARISES, OR (II) TWENTY THOUSAND DOLLARS (\$20,000).
- b. IN NO EVENT SHALL EITHER PARTY, THEIR AFFILIATES, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST REVENUES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT BY THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER EITHER PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. THIS AGREEMENT IS A SERVICE AGREEMENT, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, FDMS DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM OR USES OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

9. **Publicity.** Neither FDMS nor Client shall release or publish news releases, public announcements or other publicity relating to this Agreement or to the transactions contemplated by it without the prior review and written approval of the other party; provided, however, that either party may make such disclosures as are required by legal, accounting or regulatory requirements after making reasonable efforts in the circumstances to consult in advance with the other party. Notwithstanding the foregoing, Client agrees that FDMS may refer to Client as a customer of FDMS and include Client's name in its customer lists, including any customer list posted on FDMS' or an Affiliate's Internet site(s).

10. **Force Majeure.** Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, elements of nature or other acts of God, any outbreak or escalation of hostilities, war, riots or civil disorders, utility or telecommunications failures or fluctuations, or any other cause, whether similar or dissimilar



to those referenced above, beyond the reasonable control of such party. In any such event, the nonperforming party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

#### 11. General.

- a. All notices hereunder shall be in writing and shall be deemed given when personally delivered, or when sent by facsimile transmission with receipt confirmed, one day after being sent by a reputable overnight courier, or three business days after being mailed by certified mail, return receipt requested, in each case directed: (a) if to Client, to the address shown in the Merchant Processing Application; (b) if to FDMS, to First Data Merchant Services Corporation, 6200 South Quebec Street, Suite 420, Greenwood Village, Colorado 80111, Attention: General Manager, with a copy to 12500 East Belford Avenue, M/S – MC-5, Englewood, Colorado 80112, Attention: Legal Department; or (c) to such other addresses for each party as specified by such party in a notice given to the other party.
- b. The parties agree that they are acting hereunder as independent contractors and that nothing contained in this Agreement shall be deemed or construed by the parties hereto, or any third party, to create the relationship of agency, partnership or joint venture between the parties. No party to this Agreement has, and shall not hold itself out as having, any authority to enter into any contract or create any obligation or liability on behalf of, in the name of, or binding upon the other parties.
- c. Client may not assign its rights or delegate its obligations under this Agreement without FDMS' prior written consent, which consent shall not be unreasonably withheld. Any assignment in violation of this Section shall be null and void. All provisions contained in this Agreement shall extend to and be binding upon the parties hereto or their respective successors and permitted assigns.
- d. FDMS may subcontract with one or more Affiliates or third parties to provide any service or services required to be provided by FDMS hereunder, provided that no such use of subcontractors shall relieve FDMS of its obligations under this Agreement.
- e. This Agreement constitutes the complete and exclusive statement of the agreement between the parties, and supersedes and merges all prior proposals and all other agreements, whether oral or written, between the parties relating to the subject matter hereof. Any documents of Client or FDMS referring to such party's terms and conditions, such as vendor manuals, codes of conduct, requests for proposals, purchase orders or invoices that are not expressly contained or incorporated herein, or are contrary to the terms and conditions contained herein, shall not be binding upon the parties.
- f. No change, modification, or waiver of any term or condition of the Agreement shall be valid unless in writing signed by each party. A party's waiver of a breach of any term or condition in the Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.
- g. The parties intend every provision of this Agreement to be severable. If a court of competent jurisdiction determines that any term or provision is illegal or invalid for any reason, the illegality or invalidity shall not affect the validity of the remainder of this Agreement.
- h. This Agreement is entered into solely for the benefit of FDMS and Client, and shall not confer any rights upon any person not expressly a party to this Agreement.
- i. The laws of the State of Colorado, excluding its rules on conflicts of laws, shall govern the interpretation, validity, and enforcement of this Agreement. Any litigation arising out of or related to this Agreement shall be commenced and maintained exclusively in the state or federal courts sitting in the city and county of Denver and the State of Colorado. FDMS AND CLIENT HEREBY AGREE THAT GENERAL CONTRACT LAW SHALL GOVERN THIS AGREEMENT, AND EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT AS ADOPTED IN ANY FORM IN ANY STATE SHALL NOT APPLY TO THIS AGREEMENT.

- j. FDMS AND CLIENT IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO THIS AGREEMENT.
- k. FDMS AND CLIENT HEREBY IRREVOCABLY WAIVE PERSONAL SERVICE OF PROCESS AND CONSENT THAT SERVICE OF PROCESS UPON IT MAY BE MADE BY CERTIFIED MAIL OR FACSIMILE, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 11(a).

## SCHEDULE A — GIFT CARD SERVICES

1. FDMS will arrange for the production of Gift Cards and other services related thereto by the Gift Card Production Company for the Program in accordance with the specifications and fees set forth on Schedule C (Gift Card Set-Up Form).
2. FDMS shall establish and maintain individual stored value card accounts on the FDMS Database for each Gift Card issued under the Program.
3. FDMS shall provide Client with the capability to process selected transactions under the Program through POS Terminals or FDMS approved software applications at Designated Locations.
4. Upon receipt of transaction information from a Designated Location by the FDMS Database, FDMS will compare the proposed transaction amount with the account balance maintained on the FDMS Database corresponding to the Gift Card or Gift Card Number that was presented at the Designated Location. If the account balance is greater than or equal to the amount of the proposed transactions, FDMS will authorize the transaction. If the account balance is less than the amount of the proposed transactions, FDMS will decline the transaction. Client understands and agrees that an authorization by FDMS only indicates the availability of sufficient value on a Gift Card account at the time of authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number.
5. FDMS shall provide an IVR, twenty-four (24) hours per day, seven (7) days per week, through which Client and Gift Cardholders may process selected transactions under the Program.
6. FDMS shall provide a terminal support help desk staffed with live operators, accessible through the IVR, twenty-four hours a day, seven days a week, (Christmas Day excluded), through which Client may process selected transactions under the Program.
7. If directed by Client, FDMS will program the FDMS Database to automatically deduct a service fee from the unused balance of Gift Card accounts on a periodic basis. The determination of whether to deduct such service fees and the amount and frequency thereof shall be made solely by Client. IF CLIENT ELECTS TO IMPOSE SERVICE FEES, CLIENT UNDERSTANDS THAT ANY AND ALL REQUIRED DISCLOSURE INFORMATION RELATED TO SERVICE FEES (for example, custom language that appears on the back of the Gift Card that discloses the terms of the service fee program to Gift Cardholders) IS THE RESPONSIBILITY OF CLIENT. CLIENT SHALL HOLD FDMS HARMLESS AND INDEMNIFY FDMS FOR ANY VIOLATION OF ANY LOCAL, STATE, OR FEDERAL LAWS OR REGULATIONS IN REGARDS TO SERVICE FEES.
8. On a daily basis, FDMS shall provide Client with a Transaction Listing Report, an Outstanding Liability Report and, if requested by Client (and where applicable), an ACH Report. Such reports will be accessible by Client through a designated Internet site. FDMS will maintain reports on the Internet site for Client's use for sixty (60) days. FDMS may, in its discretion, provide additional or custom reports, as may be requested by Client from time to time, at a fee to be determined by FDMS.
9. Client will at all times own all right, title and interest in and to all Gift Card Data generated under the Program. FDMS will retain the Gift Card Data for each Gift Card on the FDMS Database for a period of twenty-four (24) months following the earlier of the date that the Gift Card expires (if applicable) or the date that the account balance reaches zero. Thereafter, FDMS may remove the Gift Card Data from the FDMS Database and archive such Gift Card Data in any manner determined by FDMS in its reasonable business judgment. Notwithstanding the foregoing, within ninety (90) days of Client's written request, during the first twelve (12) months following the expiration or termination of this Agreement, FDMS shall deliver Client's Gift Card Data to Client in a mutually agreeable format.

## SCHEDULE B — RESPONSIBILITIES OF CLIENT

1. Client shall be responsible, at its sole cost and expense, for the sale and other distribution of Gift Cards to Gift Cardholders and for any marketing or advertising of the Program.
2. Client is solely responsible for obtaining authorization in advance of each transaction. Client is solely responsible for any losses it may incur in conducting transactions when an authorization is not obtained, including, without limitation, transactions conducted when the FDMS Database or the Gift Card Authorization Equipment is not in service. Client assumes all risk of erroneous or fraudulently obtained authorizations, unless such erroneous or fraudulently obtained authorization is caused directly by FDMS. Client understands and agrees that an authorization by FDMS only indicates the availability of sufficient value on a Gift Card account at the time of authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number. Client is responsible for the accuracy of all data transmitted by it for processing by FDMS.
3. Client shall be responsible for accessing and comparing the reports supplied by FDMS to its own records and promptly notifying FDMS of any necessary adjustments to Gift Card accounts. Client acknowledges that FDMS will make adjustments to Gift Card accounts pursuant to Client's instructions, and FDMS shall have no liability for any errors to Gift Card accounts that are made in accordance with Client's instructions.
4. Client shall comply with all laws and regulations applicable to the Program, including but not limited to any election by Client to impose service fees. Client acknowledges and agrees that it is solely responsible for interpreting all laws and regulations applicable to the Program, for monitoring changes in laws and regulations applicable to the Program, and for determining the requirements for compliance with laws and regulations applicable to the Program. FDMS shall be entitled to rely upon and use any and all information and instructions provided by Client for use in performing the Services, and FDMS shall have no liability whatsoever for any noncompliance of such information or instructions with laws or regulations.
5. As between Client and FDMS, Client shall bear all risk related to the loss or theft of, alteration or damage to, or fraudulent, improper or unauthorized use of any Gift Card, Gift Card Number or PIN: (i) in the case of Gift Cards ordered through FDMS in accordance with Schedule A Section I, upon delivery of such Gift Cards to Client or Client's Designated Locations, as applicable, and (ii) in the case of Gift Cards obtained by Client from a third party or Gift Cards which Client requests to be delivered in a pre-activated state, whether such loss occurs before or after delivery of such Gift Cards to Client or Client's Designated Location.
6. Client agrees that, during the term of this Agreement, it will not, either internally or through a third party, offer any other proprietary, closed network, online stored value card program.