



MERCHANT AGREEMENT

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CARDSERVICE INTERNATIONAL MERCHANT AGREEMENT

This Agreement ("Agreement") is entered into, by and between the undersigned Merchant ("Merchant"), the member FDIC-insured bank identified in the Merchant Application and Agreement ("Bank"), represented by its Registered Service Provider, Cardservice International, Inc. ("Cardservice International"), an Independent Sales Organization and Merchant Services Provider for Bank. The guarantor(s) signing this Agreement is also a party as a continuing guarantor(s) pursuant to paragraph 8.21. To the maximum degree permitted by law and by MasterCard International, Inc. ("MasterCard") and Visa U.S.A Inc. ("Visa") rules and regulations, it is the intention of the parties that the rights of Bank set forth in this Agreement or arising from this Agreement may be exercised by Cardservice International. Within the context of this Agreement and to the full extent permitted by law and by MasterCard and Visa rules and regulations, the rights granted to Cardservice International shall also be for the benefit of any company affiliated with Cardservice International to the extent such affiliate may have or may have had a prior relationship with Merchant concerning or related to credit card processing. Merchant, Cardservice International, and Bank make this Agreement in consideration of the mutual covenants set forth herein.

This Agreement shall not be effective until the Merchant's signed Merchant Application, which incorporates this Agreement by reference, is approved by Bank. Therefore, Cardservice International representative's signature hereon constitutes only an offer made on behalf of, and is contingent upon approval by Bank and Cardservice International, which is located in Moorpark, California. This offer shall automatically expire after thirty (30) days unless both Merchant and Cardservice International's corporate office have also signed this Agreement. If Merchant reasonably anticipates that it will have sales volume in excess of \$10,000 per month in combined MasterCard and Visa transactions, Merchant, at the request of Cardservice International and Bank, shall submit its current financial statement with this Agreement. Merchant's financial condition shall be one of the factors on which acceptance of this Agreement shall be conditioned. Merchant acknowledges that this Agreement is premised upon Merchant having a floor limit of ZERO dollars. By entering into this Agreement, Merchant agrees to comply with and be subject to all MasterCard or Visa rules and regulations as they may exist from time to time, including, but not limited to, chargeback procedures and the resolution of any disputes relating thereto. Any violation of MasterCard and Visa rules and regulations by Merchant shall constitute a breach of this Agreement and may, at the option of

Cardservice International and Bank, be grounds for terminating this Agreement.

ARTICLE 1 — GENERAL RULES AND REGULATIONS

DEFINITIONS

Account Number — A unique sequence of numbers assigned to a cardholder account that identifies the issuer and type of financial transaction card.

Association Bank — A licensed association member that acquires the data relating to a transaction from the card acceptor or merchant and submits that data into interchange, either directly or indirectly.

Authorization — The process used by card issuers to approve or decline a transaction request (this only validates this transaction; it does not guarantee the sale).

Automated Clearing House (ACH) — One of the groups of processing institutions that have networked together to exchange (clear and settle) electronic debit transactions.

Average Ticket — A predetermined dollar amount that the merchant can process on a per-sale basis.

Batch — A set of records within the merchant's closing transmission through the point-of-sale terminal.

Card Issuer — The financial institution that issues a credit card.

Cardholder — The customer to whom a card has been issued or the individual authorized to use the card.

Monthly Volume — A predetermined dollar amount that the merchant can process through the terminal.

1.01 HONORING CARDS

Merchant shall honor, in accordance with the terms and conditions of this Agreement and in accordance with all MasterCard and Visa rules and regulations in existence at the time of the transaction, without discrimination, all MasterCard and Visa credit cards ("Cards") when properly presented as payment by Merchant's customers ("Cardholders") in connection with bona fide legal transactions. If Merchant does not transact business with the general public (e.g., a private club), Merchant shall be deemed to have complied with this nondiscrimination rule if it honors all valid Cards of Cardholders who have purchasing privileges or

memberships with Merchant. Merchant shall not, through an increase in price or otherwise, impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check, or similar means. Merchant may offer discounts for the purpose of inducing payment by cash, check, or other means not involving the use of a Card, provided that the discount is offered to all prospective buyers. Merchant shall not establish minimum or maximum transaction amounts.

1.02 ADVERTISING

Merchant shall display any advertising or promotional materials provided by Cardservice International and Bank so as to be readily visible to Merchant's customers. This material will be designed to inform the public that Cards will be honored at Merchant's place of business. Merchants that do not deal with the general public, as well as companies subject to government regulation prohibiting such advertising or promotion or other Merchants expressly exempted by MasterCard or Visa, are excluded from this advertising display requirement. Merchant shall not display or use advertising or promotional materials which suggest, implicitly or explicitly, that Merchant honors only Cards issued by Bank. Merchant shall have the right to use or display the proprietary names and symbols associated with Cards only while this Agreement is in effect or until Merchant is notified by Bank, Cardservice International, MasterCard, or Visa to stop such usage. Merchant shall use only the proprietary names and symbols associated with Cards to indicate that Cards are accepted for payment and shall not indicate, directly or indirectly, that Cardservice International and Bank, MasterCard or Visa endorses Merchant's products or services.

1.03 CARD EXAMINATION AND CARD RECOVERY

Before accepting any Card, Merchant shall:

- (a) Check the date on which the Card becomes valid and the date on which the Card expires. Merchant shall not accept any Card that is not yet valid or that has expired;
- (b) Examine the signature on each Cardholder's Card. Merchant shall not honor any Card where the signature on the sales draft does not correspond to the signature on the Card;
- (c) Not request or record personal Cardholder information, such as home or business telephone number, a home or business address, driver's license, or other such identification onto the sales draft as a condition of the sale unless such information is required under specific circumstances cited in MasterCard or Visa rules and regulations;

- (d) Examine all Card security features (such as, by way of example only, a hologram) included on the Card. Merchant shall use its best efforts to retain, by reasonable and peaceful means, any Card which appears to be counterfeit, fraudulent or stolen when:
 - (i) Merchant is directed to do so by Bank or Cardservice International's designated authorization center; or
 - (ii) Merchant has, or should have, reasonable grounds to believe that a Card is counterfeit, fraudulent, or stolen. Merchant's obligation to retain or recover a Card does not authorize Merchant to commit any breach of the peace or to cause any injury to persons or property, and Merchant in fact agrees not to commit any such breach of the peace or to cause any injury to persons and/or property.

1.04 PRIOR AUTHORIZATION

Prior to accepting Card for payment, Merchant shall use due diligence to verify that Cardholder is authorized to use the Card presented and that such Card is genuine.

- (a) In addition to the requirements set forth elsewhere in this Agreement, as part of Merchant's due diligence, Merchant shall obtain prior authorization for every transaction processed through Merchant's electronic terminal or, if such authorization is not reasonably possible, then authorization shall be obtained by telephone. Merchant shall follow all instructions received in the authorization process. After receiving authorization, Merchant may consummate only the transaction authorized and must post the authorization number on the sales draft. Whenever authorization is obtained by a method other than through the electronic terminal, the Merchant shall execute a sales draft with the Cardholder's signature and the credit card information imprinted onto the draft.
- (b) Obtaining authorization shall not, by itself, satisfy Merchant's obligation to exercise due diligence. Neither shall authorization constitute a waiver by Bank of any other procedures required of Merchant by this Agreement or any MasterCard or Visa rules or regulations. Authorization shall not validate a transaction which would otherwise be invalid. Authorization shall not validate a transaction involving the use of an expired card or a transaction wherein Cardholder's signature does not match or has not been authorized by Cardholder. Merchant shall remain fully liable for any chargeback and fees related to an invalid transaction, whether or not prior authorization was obtained.

1.05 DELIVERY OF COPY OF SALES DRAFT

Merchant shall deliver a true and complete copy of the sales draft, credit draft or other transaction memorandum to the Cardholder at the time of the transaction.

1.06 ENTRY AND PRESENTMENT OF TRANSACTIONS

Merchant shall transmit a daily batch to Cardservice International and Bank containing all sales data relevant to electronic transactions, except that:

- (a) When authorization is obtained by telephone, Merchant shall enter the data obtained from the Cardholder/Authorization Center onto a manually imprinted sales draft and forthwith transmit this data into its electronic terminal. The transaction shall be communicated to Cardservice International and Bank in such form as Cardservice International and Bank may from time to time specify or as may be required under any applicable laws, rules, or regulations; or
- (b) Merchant shall present no sales data until the goods have been shipped or the services performed and Merchant has otherwise performed all of its principal obligations to the Cardholder in connection with the transaction. If Cardservice International and Bank request a copy of such sales draft, credit draft or other transaction memorandum or evidence, Merchant shall provide Cardservice International and Bank with said copy, no later than three (3) calendar days from the date of request.

1.07 MULTIPLE TRANSACTION RECORDS ; PARTIAL CONSIDERATION

Merchant shall include on one transaction record the entire amount due for each transaction, unless:

- (a) The Cardholder pays the balance of the amount due at the time of transaction in cash or by check; or
- (b) All or some goods or services are to be delivered or performed at a later date, and Cardholder signs two separate sales drafts, one of which represents a deposit and the second of which represents payment of the balance, and the "balance" sales draft is completed only upon delivery of goods or performance of the services. In such case, Merchant agrees:
 - (i) To note on the sales draft the word "deposit" or "balance," as appropriate; and

- (ii) Not to present the “balance” sales draft until all goods are delivered or all services are performed; or
- (c) In accordance with MasterCard and Visa regulations, Merchant shall not divide a single transaction. By way of example only, a single transaction shall not be divided into two (2) or more smaller transactions.

1.08 TELEPHONE ORDERS, MAIL ORDERS AND PREAUTHORIZED ORDERS

If a Card transaction is made in such a manner that the credit card is not present at the time of the transaction as, by way of example, a telephone order (“TO”), mail order (“MO”), or preauthorized order (“PO”), the sales draft may be completed without a Cardholder’s signature or a Card imprint. In such case, however, Merchant agrees:

- (a) To print legibly on the sales draft sufficient information to identify Merchant and the Cardholder, including all embossed information on Card, including, but not limited to, Merchant’s name and address, Cardholder’s name and any other names which appear on the Card, Cardholder’s account number, expiration date and any effective date on the Card; and
- (b) To print legibly on the signature line of the sales draft the letters “TO,” “MO,” or “PO,” as appropriate; and
- (c) In the case of a preauthorized order, to require Cardholder to execute and deliver to Merchant a written preauthorization, which Merchant must retain and make available to Bank upon request; and
- (d) Not to deliver goods or perform services covered by a preauthorization after being notified that the preauthorization has been canceled, declined or that the Card is not to be accepted.

In any nonimprint transaction, either manual or electronic, Merchant acts solely at his own risk and shall waive the right to dispute any chargeback arising from a failure to produce to Bank/Cardservice International an imprinted draft.

1.09 PREAUTHORIZED LODGING AND VEHICLE RENTAL TRANSACTIONS

Regardless of the terms and conditions of any written preauthorization form, the sales draft amount of any lodging or vehicle rental transaction which has been preauthorized shall include only that portion of the transaction, including any applicable taxes, evidencing a bona fide renting of real or personal property by Merchant to a Cardholder and shall not include any consequential charges. Nothing herein is intended

to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card transaction.

1.10 RETURNS AND ADJUSTMENTS; CREDIT DRAFTS

If Merchant has a policy of permitting refunds, exchanges, returns, or adjustments for cash customers, Merchant shall maintain the same policy for persons making purchases through use of a Card. However, Merchant may restrict its refund or return policy as to any Card transaction if Merchant discloses such policy to Cardholder in writing before obtaining Cardholder's signature. According to MasterCard and Visa regulations, any refund or adjustment policy must be made by printing appropriate notice (such as "No Refunds or Exchanges") on all copies of the sales drafts in close proximity to the space for the Cardholder's signature. Except as provided above, if Merchant accepts any goods for return, any services are terminated or canceled, or Merchant allows any price adjustment (other than involuntary refunds required by applicable airline or other tariffs or otherwise by law), then Merchant shall not make any cash refund. Instead, Merchant shall electronically complete and transmit promptly to Bank the credit data evidencing the refund or adjustment, and deliver to the Cardholder a true and complete copy of the credit draft at the time the refund or adjustment is made, together with the date and amount of the credit, in sufficient detail to identify the transaction. Merchant shall imprint or legibly reproduce on each credit draft the embossed information from the Card and from Merchant's imprinter. The amount of the credit draft may not exceed the amount of the original transaction as reflected on the sales draft.

IN CONJUNCTION WITH EACH CREDIT TRANSACTION, MERCHANT SHALL HAVE SUFFICIENT FUNDS AVAILABLE IN BANK TO COVER THE AMOUNT OF SUCH TRANSACTION AND ANY RELATED FEES.

Merchant shall not under any circumstance:

- (a) Accept payment from a Cardholder for the purpose of depositing funds to the Cardholder's Account.
- (b) Process a Credit Transaction Receipt without having completed a previous retail transaction with the same Cardholder.

1.11 PAYMENTS

Merchant shall not receive any payments from a Cardholder for charges included on any transaction resulting from use of any Card. Neither shall Merchant receive any payments from a Cardholder to prepare and

present a credit draft for the purpose of effecting a deposit to the Cardholder's account.

1.12 CASH ADVANCES

Merchant shall not use, at its location or through its electronic terminal, Merchant's own credit card or any credit card which Merchant is authorized to use. Such use is deemed a Cash Advance. Cash Advances are prohibited and can result in immediate termination and addition to the Combined Terminated Merchant File, Terminated Merchant File and Match File.

1.13 REFINANCING EXISTING DEBT

Merchant shall not process any transaction representing the refinancing of an existing obligation of a Cardholder, including, but not limited to, obligations:

- (a) Previously owed Merchant except where the refinancing results from a conversion of Merchant's existing credit program to a MasterCard or Visa program and appropriate documentation is provided to Cardservice International and Bank; or
- (b) Arising from the dishonor of a Cardholder's personal check; or
- (c) Representing the collection of any other pre-existing indebtedness.

1.14 RELEASE OF CARDHOLDER ACCOUNT INFORMATION

Unless required by law, Merchant shall not, under any circumstances, sell, purchase, provide, or otherwise disclose Cardholder's account information or other Cardholder personal information to anyone except Issuer or Cardservice International and Bank.

1.15 PURGED TRANSACTIONS

Merchant acknowledges that batches of transactions that are not closed and transmitted within forty-five (45) days shall be automatically purged and erased from the processing system and are not recoverable. Merchant releases Cardservice International and Bank from any loss they may sustain as a result of such purging and erasure and agrees to indemnify each of them for any losses, including attorneys' fees and costs, that they may sustain from any source because of this.

1.16 MONTHLY VOLUME AND AVERAGE TICKET

Merchant represents that the estimated monthly Card sales volume and average ticket amount appearing on the Merchant Application is a

reasonable estimate. Merchant acknowledges that any monthly volume in excess of that estimated by Merchant will cause Cardservice International to review Merchant's file and that this review may result in delay in transmission of funds and possible interruption or termination of service.

1.17 KEYED PERCENTAGE

Merchant warrants that the keyed percentage appearing on merchant's application is a reasonable estimate. Merchant also understands and acknowledges that if the keyed percentage exceeds the stipulated percentage set forth in the Merchant Application, Cardservice International will review the merchant account. Such review may result in immediate increase of discount rates and fees, delay in the transmission of funds, and/or termination of the Merchant Agreement.

ARTICLE 2 — REPRESENTMENT, PAYMENT AND CHARGEBACK

FEES

Chargeback, Credit or Debit, or Representment — \$15.00 each

Documentation Retrieval Request — \$10.00 each

DEFINITIONS

Chargeback — A procedure in which a disputed transaction is returned to the Merchant by the card-issuing bank (via the merchant's bankcard processor) for possible resolution.

Credit Slip (Draft or Voucher) — A record of a return or refund of a transaction presented by the Merchant to the Cardholder and Merchant's bankcard processor.

Representment — A procedure in which a disputed transaction is returned to the card-issuing bank.

Retrieval Request — A request made by a Card Issuer to a Merchant (via the bankcard processor) for a copy of a sales slip when there is a question about a transaction.

Sales Slip (Draft) — A record of a sale to use as evidence of purchases made with a Card.

2.01 TRANSMISSION OF DATA

Instead of depositing paper sales or credit drafts with Bank, Merchant shall transmit all sales data and credit data to Cardservice International

and Bank by means of magnetic tape or electronic data. "Sales data" refers to information transmitted by Merchant which is combined in a sales draft or the electronic or magnetic tape record that is the equivalent of such a sales draft. "Credit data" refers to the information transmitted by Merchant combined in a credit draft or the electronic or magnetic tape record that is the equivalent of such a credit draft. All data ("Transaction Records") transmitted shall be in a media form and format approved in advance by Cardservice International and Bank and shall be presorted and organized according to Cardservice International and Bank's instructions. It shall include all information which appears on the sales or credit draft. All references in this Agreement to "sales drafts," "credit drafts," "sales data," or "credit data" shall include, as applicable, Transaction Records transmitted electronically or on magnetic tape, or in original format.

2.02 ACCEPTANCE AND DISCOUNT

Subject to Merchant not being in default of this Agreement and subject to Bank's chargeback rights, Bank agrees to accept valid Transaction Records from Merchant during the term of this Agreement and to pay Merchant the total amount represented by the Transaction Records, less any applicable discount fees and other charges agreed to by the parties and all setoff rights Bank may have. Any payment made by Bank to Merchant shall not be final but shall be subject to subsequent review and verification by Bank. Upon thirty (30) days' written notice to Merchant, Cardservice International and Bank retain the right to change the fees set forth in this Agreement.

2.03 ENDORSEMENT

Merchant shall endorse any Transaction Record it presents to Cardservice International and Bank. If Merchant fails to do so, Merchant shall be deemed to have endorsed any Transaction Record it presents to Cardservice International and Bank in favor of Cardservice International and Bank, and Merchant hereby appoints Cardservice International and Bank, acting either jointly or alone, as its attorney in fact to supply such endorsement on Merchant's behalf.

2.04 CHARGEBACKS

After acceptance by Cardservice International and Bank, Merchant shall nevertheless repay Bank the amount represented by the Transaction Record, plus any applicable chargeback or related fee, if Bank has been charged back by another financial institution or if any one or more of the following circumstances exist:

- (a) The Transaction Record or any material or information on a sales or credit draft (such as, by way of example only, the account number, expiration date of the Card, Merchant description, transaction description or notation of prior authorization for the transaction amount or date) is illegible, incomplete or otherwise not discernible, is not endorsed or is not delivered to Cardservice International and Bank within the required time limits;
- (b) The Cardholder account number was declined or was not authorized on the transaction date and Merchant failed to reject the transaction;
- (c) The sales draft does not contain the imprint of a Card that was valid, effective, and unexpired on the transaction date;
- (d) The transaction was one for which prior credit authorization was required and prior credit authorization was not obtained or a valid authorization number is not correctly and legibly included on the Transaction Record;
- (e) The Transaction Record is a duplicate of an item previously paid;
- (f) The Cardholder disputes the execution of the Transaction Record, the sale, delivery, quality or performance of the goods or services purchased, or alleges that a credit adjustment was requested and refused or that a credit adjustment was issued by Merchant but not posted to Cardholder's account;
- (g) The price of the goods or service shown on the Transaction Record differs from the amount shown on the copy of the sales draft or the receipt delivered to the Cardholder at the time of the transaction;
- (h) Cardservice International and Bank reasonably determine that Merchant has violated any term, condition, covenant, warranty or other provision of this Agreement in connection with the Transaction Record or the transaction to which it relates;
- (i) Cardservice International and Bank reasonably determine that the Transaction Record is fraudulent or that the related transaction is not a bona fide transaction in Merchant's ordinary course of business, or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including, without limitation, negligence, fraud or dishonesty on the part of Merchant or Merchant's agents or employees;

- (j) The Transaction Record arises from a mail or telephone order transaction which the Cardholder disputes entering into or authorizing, or which involves an account number that never existed or that has expired and has not been renewed;
- (k) Merchant fails to provide Cardservice International and Bank with any sales draft or credit draft in accordance with this Agreement;
- (l) Multiple authorization attempts were made by Merchant for a single transaction;
- (m) Merchant has divided a single transaction, in violation of MasterCard and Visa regulations or of this Agreement; or
- (n) The Transaction Record is otherwise subject to chargeback by the Card Issuer or Cardholder in accordance with the Associations' MasterCard/Visa rules or applicable law.

2.05 CHARGEBACK AND SECURITY INTEREST

Merchant covenants, agrees and acknowledges that, simultaneously with each purchase by Cardservice International, or Bank with respect to Bankcard transactions hereunder of Debt, a contingent and unmatured claim for chargeback accrues against Merchant in favor of Cardservice International and Bank for the amount that Cardservice International and/or Bank is required, or has the right, to pay to or repurchase for MasterCard or Visa with respect to any fees, discounts, customer credits and adjustments, charges, fines, assessments, penalties or other items which may be charged back to Merchant by Cardservice International and/or Bank, and that all settlements or credits given or payment made by Cardservice International and/or Bank in connection with such purchases are provisional, and subject to revocation, chargeback or refund, subject to the other terms of this Agreement, the rules and regulations of MasterCard or Visa, and their Operating Procedures. The right of Merchant to receive any amounts due or to become due to it from Cardservice International and/or Bank is expressly subject and subordinate to the chargeback, setoff, lien and security interest rights of Cardservice International and Bank without regard to whether such chargeback, setoff, lien and security interest rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

2.06 CHARGEBACK AND DOCUMENTATION RETRIEVAL FEE

Merchant shall pay Bank a \$15.00 fee for each chargeback, credit, or debit presentment. Such fee shall be increased to \$25.00 any time that

chargebacks are classified as “excessive” as defined in paragraph 2.09 of this Agreement. Merchant shall pay a \$10.00 fee for each Documentation Retrieval Request. The amount of these fees is subject to change by Cardservice International and Bank upon Cardservice International and Bank giving Merchant thirty (30) days’ notice of any change.

2.07 WITHHOLDING

If Bank reasonably believes that any of the circumstances listed in paragraph 2.04 exist or are likely to exist with respect to any Transaction Record which Bank has accepted and forwarded to Cardholder’s issuing bank for payment, Bank may withhold from payments due Merchant under this Agreement the Transaction Record amount less any discount until such time that:

- (a) Bank is itself charged back by the issuing bank for the transaction. In such event, Bank shall retain the funds and return the Transaction Record to Merchant pursuant to the chargeback procedure of paragraph 2.04; or
- (b) The period of time by which Cardholder must dispute the Transaction Record and the issuing bank exercise its chargeback rights against Bank has expired; or
- (c) Bank otherwise determines to its exclusive satisfaction that a chargeback on the Transaction Record will not occur.

Upon termination of this Agreement, Bank/Cardservice International may withhold payment to Merchant for such period of time reasonably determined by Cardservice International and Bank as necessary to establish a reserve to cover any chargebacks, credit drafts and uncollected discounts or fees, including, but not limited to, costs for accounting, investigation and account management, which may result from transactions previously processed and appearing after the termination date.

2.08 DISPUTES WITH CARDHOLDER

All disputes between Merchant and any Cardholder relating to any Card transaction shall be settled between Merchant and such Cardholder. Merchant shall, in accordance with paragraph 8.13, indemnify Bank, Cardservice International, MasterCard and Visa from any claim or suit brought by Cardholder relating to any transaction with Merchant.

2.09 EXCESSIVE CHARGEBACKS AND RETRIEVAL REQUESTS

Merchant agrees that if Cardservice International and Bank are presented, during any monthly period, with the lesser of (a) chargeback or documentation retrieval requests in excess of MasterCard or Visa rules as they may exist from time to time, (b) chargebacks relating to Merchant's transactions processed by Bank in excess of one percent (1%) of the average monthly dollar amount of such transactions or (c) Documentation Retrieval Requests in excess of three percent (3%) of the total number of transactions processed, then such chargebacks or retrieval requests shall be conclusively deemed to be excessive under applicable MasterCard and Visa regulations. Cardservice International and Bank may thereupon terminate this Agreement or take such other action as may be authorized herein or by applicable MasterCard or Visa regulations. The percentage figure in this paragraph shall not be deemed to be, nor shall be, a limitation of Bank's rights to establish a reserve pursuant to the terms of this Agreement. Merchant agrees that the amount or extent of any such reserve shall be based on Cardservice International and Bank's reasonable estimation of the need for it, in light of circumstances known to them at the time.

ARTICLE 3 — TERMINATION, MODIFICATION AND COMPLIANCE WITH LAW

3.01 COMPLIANCE WITH LAW

Merchant shall comply with all laws, ordinances and regulations applicable to Merchant, Merchant's business and any Card transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations. Neither Cardservice International nor Bank shall have any obligation to notify or advise Merchant of the existence of such laws or changes in such laws. Merchant warrants that it has the right to sell the products it sells and to use the trade names it uses.

3.02 MODIFICATION REQUIRED BY LAW

This Agreement is subject to such modifications, changes and/or additions as may be required, or determined by Cardservice International and Bank, by reason of any state or federal statute, judicial decision, MasterCard or Visa rules or regulations, or the regulation or ruling of any federal agency having jurisdiction over Cardservice International and Bank or Merchant. Such modifications, changes and additions may be made unilaterally by Cardservice International and Bank, shall be in writing and shall be effective immediately upon dispatch by Cardservice International and Bank.

This Agreement may only be modified as approved in writing by the Bank and the corporate office of Cardservice International. No field representative of Bank or Cardservice International is authorized to make any modification to this Agreement or to make any representation which is not set forth in this Agreement.

3.03 REFUSAL OR REVOCATION OF CREDIT AND REPAYMENT BY MERCHANT

Bank may refuse to accept any sales draft or revoke its prior acceptance thereof in any one or more of the following circumstances:

- (a) The transaction giving rise to the sales draft was not made in compliance with all terms and conditions of this Agreement, as well as all applicable laws, rules or regulations; or
- (b) The Cardholder disputes his or her liability to Cardservice International and Bank or other issuer for any reason, including, but not limited to, those chargeback rights enumerated in MasterCard and Visa operating regulations in effect from time to time; or
- (c) The transaction giving rise to the sales draft was not a bona fide transaction directly between Merchant and Cardholder. Merchant shall not accept any transaction on behalf of any other person or persons, or any other business.

No Merchant shall process any transaction accumulated prior to the issuance of a Merchant Number. If such refusal or revocation occurs, Merchant shall, in addition to any penalties and fees, immediately repay Bank the full amount credited by Bank to Merchant's account on the basis of such sales draft.

3.04 TERMINATION

The term of this Agreement shall be six (6) months unless otherwise provided for herein. Notwithstanding this six (6)-month term, Merchant may terminate this Agreement on thirty (30) days' written notice to Cardservice International and Bank, provided Merchant pays Cardservice International \$300.00 as an early cancellation fee. Merchant and Cardservice International mutually agree that said \$300.00 is a reasonable estimate of the costs and expenses Cardservice International will incur due to an early cancellation by Merchant.

For a period of six (6) months from the effective date of this Agreement, Cardservice International will not increase the initial discount rate offered to Merchant except as that rate is affected by any increased charges to Cardservice International in Interchange, Assessments and Communication costs from MasterCard, Visa and communications

suppliers, or any other fees beyond Cardservice International's control. This rate guarantee is void if Merchant has a higher than allowable percentage of keyed transactions, retrievals or chargebacks or if this Agreement is in a renewal period.

Notwithstanding the six (6)-month term, Bank may terminate this Agreement, without cause, upon thirty (30) days' prior written notice to Merchant.

Bank may terminate this Agreement immediately for cause if any of the following occur:

- (a) If Merchant is or becomes bankrupt or is otherwise unable to pay its debts as they become due; or
- (b) If Merchant violates any term, condition, covenant, or warranty of this Agreement; or
- (c) If Merchant is identified on the Combined Terminated Merchant File. MERCHANT ACKNOWLEDGES THAT SUCH IDENTIFICATION IS GROUNDS FOR IMMEDIATE TERMINATION OF THIS AGREEMENT AND OF IMMEDIATE TERMINATION OF SERVICE.

Upon the effective date of any termination, Merchant's rights to make Card transactions, to deposit transactions with Cardservice International and Bank, and to use sales draft forms, credit draft forms, promotional material and/or any other items provided or made available through Cardservice International and Bank shall cease. However, Merchant's obligations in connection with any Transaction Record accepted by Cardservice International and Bank before or after termination shall survive such termination, including, without limitation, Merchant's chargeback obligations. Following the effective date of termination, Merchant shall maintain funds on deposit on account available to Bank for a reasonable time. Based upon Cardholder and Issuer chargeback rights, the amount of funds shall be reasonably adequate to cover all chargeback deposit charges, refunds, and fees, including, but not limited to, costs for accounting, investigation and account management, incurred by Cardservice International and Bank pursuant to this Agreement, MasterCard or Visa operating regulations, or the regulations of any processing facility. Bank is hereby irrevocably authorized by Merchant to charge such account, or other accounts maintained by Merchant, for the amount of such matters. Merchant shall pay Bank for all such matters upon demand by Bank, together with all costs and expenses incurred by Cardservice International and Bank, including reasonable attorneys' fees.

3.05 AUTOMATIC RENEWAL

This Agreement will be automatically renewed for successive periods of six (6) months unless either party notifies the other, in writing, of its intention not to renew no less than thirty (30) days and no more than ninety (90) days prior to the end of each term.

3.06 TERMINATED MERCHANT FILE AND MATCH SYSTEM

MERCHANT EXPRESSLY ACKNOWLEDGES that MasterCard's Member Alert to Control High-Risk Merchants ("MATCH") system and Visa's Terminated Merchant File ("TMF"), or any successor thereto, contain the business name and the names and personal identification of Merchant's principal(s). Cardservice International shall submit this information to MATCH and TMF when a Merchant has been terminated for one or more of the reasons specified in MasterCard or Visa operating regulations. Such reasons include, but are not limited to, fraud, counterfeit drafts, unauthorized Transactions, excessive Chargeback and retrieval requests, laundering or the apparent existence of a high-security risk.

MERCHANT ACKNOWLEDGES THAT CARDSERVICE AND BANK ARE REQUIRED TO REPORT MERCHANT'S NAME AND THE NAMES AND PERSONAL IDENTIFICATION OF ITS PRINCIPALS TO MATCH AND TMF WHEN A MERCHANT IS TERMINATED FOR ONE OR MORE OF THE REASONS SPECIFIED IN MASTERCARD OR VISA OPERATING REGULATIONS. MERCHANT EXPRESSLY AGREES AND CONSENTS TO SUCH REPORTING BY CARDSERVICE AND BANK, AND RELEASES EACH FROM ANY DAMAGES FOR DOING SO IN GOOD FAITH.

ARTICLE 4 — GATEWAY PROGRAMMING

4.01 APPLICABILITY TO THIS AGREEMENT

In addition to all other provisions of this Merchant Agreement, the provisions of this Article 4 shall apply if Merchant has elected to utilize the electronic commerce payment system offered by Cardservice International.

4.02 ELECTRONIC PAYMENT SYSTEM

So long as Merchant is current in the obligations to Cardservice International and is not otherwise in breach of this Merchant Agreement, Cardservice International shall provide Merchant the use of its Internet-based electronic payment system.

4.03 PROGRAMMING OF WEB SITE

While Cardservice International provides specific APIs or programming scripts to Merchant or Merchant's Web site programmer(s), Merchant acknowledges that such sample programming scripts are insufficient to allow the Merchant's Web site to function with the LinkPoint Secure Payment Gateway. Programming of the Merchant Web site and its functionality are the sole responsibility of Merchant.

4.04 MERCHANT'S PROGRAMMING AGENT

Merchant has the sole responsibility to select and employ any competent programming agent to accomplish the programming required to make the Merchant's Web site function correctly with the LinkPoint Secure Payment Gateway.

4.05 FEES SUBJECT TO FLUCTUATION

All fees for Gateway service are based on the number of monthly transactions processed by Merchant. The amount of these fees will therefore fluctuate based on Merchant's volume. The Merchant Agreement provisions requiring notice prior to a change in fees shall not apply to any transactions governed by this Article 4.

4.06 TECHNICAL SUPPORT

Merchant shall be responsible for all technical support for Web site-related issues.

4.07 SHUT DOWNS

Cardservice International reserves the right, from time to time, without prior notice, to shut down and restart the LinkPoint Secure Payment Gateway service for maintenance and/or software upgrades for time periods of at least one minute and generally not exceeding five minutes.

ARTICLE 5 — LINKPOINT VIRTUALCHECK

DEFINITIONS

LinkPoint VirtualCheck Discount Rate — Negotiated percentage rate set forth in the Merchant Application section of this Agreement.

LinkPoint VirtualCheck Transaction Fee — A charge for each LinkPoint VirtualCheck transaction submitted to Cardservice for processing. This is in addition to any transaction fee charged for bankcard transactions.

LinkPoint VirtualCheck Return Item Fee — A charge for each LinkPoint VirtualCheck item returned to Cardservice.

LinkPoint VirtualCheck Transaction Cancellation Fee — A charge for canceling a LinkPoint VirtualCheck transaction not yet submitted to the ACH system.

LinkPoint VirtualCheck Reversal Fee — A charge for canceling a LinkPoint VirtualCheck transaction that has already been submitted to the ACH system. A second ACH transaction is submitted to reverse a prior ACH transaction. The LinkPoint VirtualCheck reversal fee is \$15.00 per occurrence.

LinkPoint VirtualCheck Nonconforming Transaction Fee — A penalty charged to the merchant for violations of the Rules and/or Regulations. The LinkPoint VirtualCheck nonconforming transaction fee is \$100.00 per occurrence.

5.01 PURPOSE

Cardservice International will provide Merchant Automated Clearing House (“ACH”) services. These transactions will be placed through a bank with whom Cardservice International has a relationship and who will be acting as the Originating Depository Financial Institution (“ODFI”). Cardservice International will debit money (“Debit Entry”) for purposes of collecting Automatic Payments from the accounts of the Merchant’s customers (“Customers”) and/or credit money (“Credit Entry”) for the purpose of paying Merchant’s accounts payable. Cardservice International will provide these services in accordance with the terms and conditions of this Agreement, the Operating Rules (“Rules”) of the National Automated Clearing House Association (“NACHA”) and the applicable Federal Regulations (“Regulations”) governing ACH transactions as they exist at the time of your transactions. “Entry” shall mean either a Credit Entry or a Debit Entry. All provisions of Merchant Agreement shall remain in full force and effect and are reaffirmed, including but not limited to Cardservice International’s right to establish reserve accounts, hold-back procedures and the granting of security interests.

5.02 ANTICIPATED VOLUME

Merchant acknowledges that if any of the anticipated monthly LinkPoint VirtualCheck volume amount, average LinkPoint VirtualCheck ticket amount or maximum LinkPoint VirtualCheck transaction amount are exceeded, Cardservice International has the right to terminate or suspend services or to impose such other conditions as it, in its sole and absolute discretion, deems appropriate.

5.03 REPRESENTATIONS BY MERCHANT

With respect to all Entries Merchant asks Cardservice International to originate, Merchant covenants and represents that:

- (a) Each Customer has authorized the debiting and/or crediting of his or her account;
- (b) Each Entry is for an amount the Customer has agreed to; and
- (c) Each Entry is in all other respects properly authorized.

5.04 REVOCATION OF AUTHORITY

Merchant shall cease initiating Entries immediately upon receipt of actual or constructive notice of a Customer's termination or revocation of Merchant's authority.

5.05 IDENTIFYING NUMBERS

Merchant understands that Cardservice International may rely solely on identifying numbers provided by Merchant or Customer to determine the bank and account of a Customer even if the numbers identify a bank or account holder different from the one identified by name.

5.06 REGULATORY COMPLIANCE

Merchant shall be responsible for conforming its policies and procedures with the Rules and Regulations. Merchant is urged to consult Merchant's counsel regarding such compliance.

5.07 NOTICE OF ERRONEOUS/UNAUTHORIZED TRANSFERS

Merchant shall regularly and promptly review all entries and other communications sent to Merchant and to immediately notify Cardservice International if any discrepancy exists between Merchant's records and those provided by Cardservice International, the ODFI or Merchant's bank or with respect to any transfer that Merchant believes was not authorized by Merchant or Customer. If Merchant fails to notify Cardservice International within fourteen (14) calendar days after the date that Cardservice International mails or otherwise provides a statement of account or other report of activity to Merchant, Merchant will be responsible for all losses or other costs associated with any erroneous or unauthorized transfer. The foregoing does not limit Merchant's liability for other breaches of this Agreement.

5.08 PROCESSING ENTRIES

Cardservice International is responsible only for processing Entries that have been transmitted by Merchant in a timely manner and in proper

format. From time to time, Cardservice International will notify Merchant of the acceptable means of transmission, the proper format and applicable cut-off times.

5.09 ORIGINATING TRANSACTIONS

Cardservice International will use the information provided by Merchant to originate Merchant's entries to the ACH. Merchant acknowledges that Cardservice International may reject Merchant's entries for any reason permitted or required by the Rules or Regulations. Merchant also acknowledges that Merchant's Entry may be rejected by Cardservice International or its origination may be delayed if processing the Entry would cause Cardservice International to violate any Federal Reserve or other regulatory risk-control program or any other law or regulation. At Merchant's request, Cardservice International may make such efforts as it deems reasonable to reverse or delete an entry, but it shall not be required to do so. All requests shall be made in writing and faxed, delivered, mailed or otherwise transmitted to Cardservice International.

5.10 RETURNED ENTRIES

Cardservice International shall apply returned entries to Merchant's account when they are received. Returned items reports will be available to Merchant via the LinkPoint Secure Payment Gateway.

5.11 NOTICE OF CHANGE INFORMATION AND RETRANSMISSION

Merchant shall not initiate entries until such time as the Notice of Change ("NOC") information has been received and records have been updated. Cardservice International shall have no obligation to retransmit an entry if the original transmission was not in compliance with these terms and conditions. If Merchant requests that the return item be retransmitted, Cardservice International may do so in accordance with the Rules. Merchant shall pay any costs associated with the retransmission.

5.12 METHOD OF TRANSFER

Cardservice International will transfer all funds to a custodial account at Cardservice International's ODFI. Merchant shall not be entitled to interest on such funds. Cardservice International will hold the funds until all preliminary returns have cleared. The funds will then be transferred to the financial institution and account of Merchant's choice. The standard hold period is five (5) banking days. Should questionable activity occur, or if the Merchant's return rate increases significantly, this hold period may be extended by Cardservice International at its absolute discretion.

5.13 SETTLEMENT AND FINALITY

After expiration of the hold period for debit entries, Cardservice International will conditionally credit Merchant's account. However, this credit will not become final until Cardservice International has been paid the full amount of the entries in immediately available funds and all of Customer's rights to dispute the transaction have expired and the transaction has become irreversible in all other ways. If any debit entry is returned to Cardservice International, Merchant authorizes Cardservice International to debit Merchant's account for the amount of the returned item plus fees and costs incurred by Cardservice International. If Merchant's account has insufficient funds to cover Merchant's obligations, Merchant shall pay Cardservice International the amount of any deficiency on demand in immediately available funds or Cardservice International may, without further demand or authorization, debit any account maintained by Merchant. Any credit entries created by Merchant will be debited from Merchant's account in accordance with the hold period prior to the credit being distributed to Merchant's payees' accounts. If the debit entry is returned for any reason, the credit entry will be canceled.

5.14 REPORTS

Cardservice International shall make available to Merchant various activity reports via the LinkPoint Secure Payment Gateway.

5.15 LIMITS OF LIABILITY

Cardservice International will be responsible for its performance of the ACH services as a Third Party Processor in accordance with the Rules and Regulations. However, Merchant and Cardservice International agree that in addition to the limitations of liability contained in the Merchant Agreement, Cardservice International shall not be liable for errors, acts or failures to act of others, including, but not limited to, banks, communications carriers and clearing houses through which Entries may be originated or through which Cardservice International receives or transmits information. No such person or entity shall be deemed Cardservice International's agent.

5.16 PRICING AND PAYMENT

Cardservice International will notify Merchant in writing of, and Merchant agrees to pay promptly, the fees and charges that Cardservice International establishes from time to time. The current fees and charges are set forth in the Application section of this Agreement. There are no additional fees for data storage. Merchant authorizes Cardservice International to obtain payment of these fees and any other amounts due

it by debiting Merchant's account and, in consideration for Cardservice International entering into this Agreement, and other good and valuable consideration, hereby irrevocably appoints Cardservice International as its attorney in fact to so do.

5.17 RELEASE OF INFORMATION

Unless required by law, or by the terms of this Agreement, Merchant shall not, under any circumstances, sell, purchase, provide, or otherwise disclose any Customer's account information or other Customer personal information to anyone. Merchant shall store all data securely. Cardservice International may advise potential users of the services that Cardservice International has a relationship with Merchant.

5.18 TERMINATION

Cardservice International or Merchant may terminate the LinkPoint VirtualCheck Services called for in this Agreement at any time by written notice and without any cancellation fee. Any termination will not affect Merchant's or Cardservice International's rights or obligations arising before the termination.

5.19 NONSUFFICIENT FUNDS (NSF) FEE

If Merchant has obtained Customer's active prior consent to do so, Merchant may elect to charge Customers a NSF item fee as authorized by law but not to exceed \$25.00. After receipt of instructions from Merchant and proof of Customer's consent, Cardservice International will attempt to collect such fee on Merchant's behalf following a specified number of days after the principal is collected. No NSF item fee will be collected until the principal has been collected. "Active prior consent" means that if the notification occurred online, then the Customer must have affirmatively indicated his or her consent prior to being able to proceed with the submission of the check for payment.

ARTICLE 6 — DEBIT CARD PROGRAM

6.01 APPLICABILITY TO THIS AGREEMENT

In addition to all other provisions of this Merchant Agreement, the provisions of this Article 6 shall apply if Merchant elected to utilize the debit card online network.

6.02 SERVICES

Bank shall sponsor Merchant for membership in the debit card online network that Merchant has selected. Merchant acknowledges that

sponsorship does not guarantee acceptance. Cardservice International shall process and settle Merchant's debit card transactions.

6.03 MERCHANT OBLIGATIONS

Until and unless otherwise authorized by Cardservice International, Merchant shall utilize Cardservice International's compatible terminals, PIN pads or systems capable of processing all Automatic Clearing House (ACH) debit card transactions as well as online debit card transactions.

Merchant shall abide by all applicable laws, statutes, and regulations in addition to all the rules and regulations of the debit card online network that Merchant has selected. Failure to do so shall subject Merchant, at Bank's or Cardservice International's sole discretion, to immediate termination.

Merchant shall be responsible for all paper copy of debit card transactions, in accordance with the applicable debit card network rules.

Within one business day of the original transaction, Merchant shall balance each location to the system for each business day that such location is open.

Merchant shall be responsible for all telephone message unit costs, if any, as they are incurred by Merchant for any of the services that are provided.

Unless specifically noted herein, the responsibility for the installation of and training in the use of terminals shall be with Merchant.

Merchant shall be responsible for entering data correctly. If an entry is made incorrectly, Cardservice International shall use its best efforts to assist Merchant in correcting the entry, but cannot guarantee that the effort will be successful.

6.04 NO LIABILITY

Merchant agrees and acknowledges that neither Cardservice International nor Bank shall have any liability, either in tort or in combination thereof, for claims arising from debit card transactions except in the case of gross or willful conduct on the part of Bank or Cardservice International. In no event shall Bank or Cardservice International be liable for special, consequential, indirect or exemplary damages, including lost profits, revenues and business opportunities.

6.05 DEBIT FEES

Debit and other fees as set forth from time to time on the Merchant Application are to be paid by Merchant. These fees are subject to change upon thirty (30) days' prior notice to Merchant from Cardservice International.

Merchant shall also be charged the network fees as set forth on the Merchant Application, on a per transaction, per network basis for the networks that service the Merchant's location.

NOTE: All fees and other charges shall be settled monthly through the Automated Clearing House (ACH).

ARTICLE 7 — OTHER FEES AND SUPPORT

FEES

Bankcard Monthly Minimum Fee	\$25.00 minimum
Customer Support Fee	\$10.00 per month
Documentation Fee	\$ 2.00 per page
Checking Account Change Fee	\$25.00 per change
Reject Fee	\$15.00 per item, or \$25.00 per daily batch

DISCOUNT PERCENTAGES

Qualified Rate — A percentage rate set forth in the Merchant Application section of this Agreement. Refer to the Merchant Application section of this Agreement for current pricing.

Mid-Qualified Rate — A percentage rate set forth in the Merchant Application section of this Agreement. Refer to the Merchant Application section of this Agreement for current pricing.

Nonqualified Rate — A percentage rate set forth in the Merchant Application section of this Agreement. Refer to the Merchant Application section of this Agreement for current pricing.

As mandated by Visa, all direct marketing merchants (businesses where the credit card is not present at the time of the sale) and nondirect marketing merchants who accept mail order and telephone order transactions must utilize the Address Verification Service (AVS) or face additional nonqualifying fees as well as increased risk. All AVS inquiries will incur a \$0.05 AVS fee.

BATCH HEADER FEE

A Merchant is billed a batch header fee each time a batch is transmitted to the Host for settlement. The batch header fee ranges from \$0.20 cents to \$0.30 cents. This fee is negotiated and assigned by the Agent or sales representative at the time the Merchant applies for an account.

TRANSACTION FEE

A Merchant is billed a transaction fee each time communication is made with the host via the POS terminal. This fee is negotiated and assigned by the agent or sales representative at the time the Merchant applied for an account. This fee may be increased for mid-qualifying or non-qualifying transactions.

7.01 PRECEDENCE

To the extent there is any inconsistency between the merchant rates and fees that appear in the Internet Merchant Agreement and merchant fees that appear in the Merchant Application, the merchant rates and fees set forth in the Merchant Application shall govern.

7.02 DISCOUNT PERCENTAGE

Merchant shall pay Bank discount percentages, batch header fees and transaction fees for processing the credit card drafts. The discount percentages shall include consideration for Qualifying, Mid-Qualifying, and Nonqualifying transactions. Merchant hereby authorizes Bank to debit any of the Merchant's Accounts for payment of any and all fees and the discount percentage which shall be paid at the rate established as set forth on the Merchant Application portion of this Agreement. Said discount percentage may be revised from time to time upon thirty (30) days' written notice to Merchant except as noted in section 1.17 of this Agreement.

7.03 MONTHLY MINIMUM FEE

Merchant shall pay a monthly minimum charge of \$25.00 or such other sum as may be determined by Cardservice International and Bank from time to time upon thirty (30) days' notice to Merchant.

7.04 CUSTOMER SUPPORT FEE

Merchant shall pay to Cardservice International and Bank a Customer Support Fee of \$10.00 per month or such other sum as may be determined by Cardservice International and Bank from time to time upon thirty (30) days' notice to Merchant.

7.05 REJECT FEE

Merchant acknowledges that failure by Merchant to maintain sufficient funds in its checking account to execute its obligations under this Agreement will result in the imposition of a Reject Fee in the amount of \$15.00 per item or \$25.00 per daily batch as applicable. This fee is subject to change as may be determined by Cardservice International and Bank from time to time upon thirty (30) days' notice to Merchant.

7.06 DOCUMENTATION FEE

If Cardservice International and Bank are required to provide documentation, such as, by way of example only, statement copies, Merchant shall pay to Cardservice International a fee of \$2.00 per page provided to Merchant. This fee is subject to change as may be determined by Cardservice International and Bank from time to time upon thirty (30) days' notice to Merchant.

7.07 IMPRINTERS, TERMINALS AND SUPPLIES

Merchant shall have imprinter(s) and terminal(s) used to process Card transactions, and shall maintain them in good working order and shall notify Cardservice International and Bank prior to any change of the imprinted or programmed information. Merchant is under no obligation to purchase or lease imprinter(s) and terminal(s) from Cardservice International. However, all imprinters, terminal(s) or other equipment provided to Merchant by Cardservice International shall remain the property of Cardservice International until fully paid for. Merchant hereby grants to Cardservice International a security interest in such equipment for so long as any amount remains to be paid. Merchant agrees and authorizes Cardservice International to debit Merchant's bank account to pay for terminal(s), equipment and/or operational supplies until the entire balance of said terminals, equipment and/or operational supplies is paid in full. Cardservice International may upgrade or otherwise modify its computer system at any time without prior notice to Merchant. Merchant agrees to provide Cardservice International access to Merchant's computer terminals in the event that Cardservice International deems it necessary in order to upgrade or otherwise modify its system.

ARTICLE 8 — GENERAL PROVISIONS

8.01 FORMS

Merchant shall use only such forms or modes of transmission for sales data as are provided or approved in advance by Cardservice International and Bank. Merchant shall not use forms or equipment

available through Cardservice International except in connection with Card transactions hereunder. Cardservice International will make sales drafts and forms available by fee and on order of Merchant.

8.02 RECORDS

Merchant shall preserve a copy of the actual paper sales drafts and credit drafts for at least one year after the date Merchant presents the transaction data to Cardservice International and Bank. Merchant shall retain original transaction data or make legible microfilm copies of both sides of such actual paper Transaction Records, and store for a minimum of three (3) years. Within three (3) calendar days of receipt of Cardservice International and Bank's request, Merchant shall provide to Cardservice International and Bank, at Merchant's cost, either the actual paper Transaction Record, if requested by Cardservice International and Bank, or a legible microfilm thereof comparable in size to the actual paper Transaction Records. In addition, Merchant shall, within three (3) calendar days of Cardservice International and Bank's request, provide any other documentary evidence available to Merchant and reasonably requested by Cardservice International and Bank to meet its obligations under law, including, but not limited to, its obligations under the Fair Credit Reporting Act, or its obligations to otherwise respond to questions concerning Cardholder accounts. Following termination, for so long as Merchant is required to retain the same, Merchant shall promptly provide Cardservice International and Bank with all original and microfilm copies of records required to be retained at the time of termination.

- (a) Merchant assumes full and exclusive responsibility for the security of all data and records it obtains, whether received or in transit, or accumulates, as a result of entering into the Merchant Agreement with Cardservice International. Neither Bank or Cardservice International nor their agents, contractors, licensees, employees, officers, directors or affiliates warrant the security of such data and records. Losses to bank or to Cardservice International arising from any breach of such security shall give rise, inter alia, to chargeback rights by Cardservice International and Bank.

8.03 CHANGE IN TRANSMISSION METHOD

Merchant shall give Cardservice International and Bank at least thirty (30) days' prior written notice of its desire to alter in any material respect its medium of transmission of sales data and credit data to Cardservice International and Bank. Any change shall be subject to Bank's and Cardservice International's prior approval.

8.04 SUPPLEMENTARY DOCUMENTS

References to "this Agreement" include any supplementary agreements, addenda, appendixes and amendments and any other agreements, schedules, appendixes and amendments promulgated by Cardservice International and Bank and furnished to Merchant from time to time.

8.05 AMENDMENT

Cardservice International and Bank may amend this Agreement at any time by mailing written notice to Merchant of any amendment at least thirty (30) days prior to the effective date of the amendment. The amendment shall become effective on the date specified by Cardservice International and Bank unless Cardservice International and Bank receive Merchant's notice of termination of this Agreement before such effective date.

8.06 MERCHANT ACCOUNT

In order to facilitate the transfer of payments between the parties hereto, or any affiliate thereof, Merchant may maintain a commercial deposit account with Bank. Said account shall be subject to such terms and conditions (including, without limitation, the imposition of service charges and fees) as may be agreed to by Bank and Merchant. In the absence of any express written agreement, the standard terms and conditions applicable to commercial deposit accounts offered by Bank shall apply. As amounts become payable, whether or not under this Agreement, to Bank and/or Cardservice International (including any company affiliated with Cardservice International), or to Merchant under this Agreement, Bank may, unless otherwise agreed in writing, make payments to or receive payments from Merchant by crediting or debiting such account without prior notice. If such a commercial deposit account is not maintained by Merchant, payment between the parties shall be made in a manner satisfactory to Cardservice International and Bank.

8.07 ALL NOTICES

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if delivered personally. If Merchant transmits by U.S. Mail, postage prepaid, notice shall be deemed served upon confirmed receipt by Cardservice International and Bank. If service by Cardservice International facsimile transmission is used, Merchant shall mail the original of the communication to the receiving party on the date of transmission, by first class mail, postage prepaid, and it shall be deemed served on the day of confirmed receipt by Cardservice International and Bank. If Bank and/or Cardservice International use

service by Cardservice International facsimile transmission, service is deemed to have been duly given on the day of transmission. If Cardservice International facsimile transmission is not used, notice shall be given by first class mail, postage prepaid, and it shall be deemed served on the day of mailing. Unless otherwise required by this Agreement, all communications to Cardservice International must be addressed as follows:

Cardservice International, Inc.
Attention: Merchant Services
P.O. Box 5180
Simi Valley, CA 93062-5180
Facsimile: (805) 552-8552

Communications to Merchant shall be addressed to the address appearing on the Merchant Application. Any party may change its address for purposes of this paragraph by giving the other parties written notice of the new address in the manner set forth above.

8.08 EFFECT OF HEADINGS

The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

8.09 POINT-OF-SALE TERMINAL SERVICES

The point-of-sale (POS) terminal can be utilized to obtain various services, some of which originated with Cardservice International and Bank, and others which are provided by a third party. These services include authorization and electronic draft capture for major credit cards, and other data needed to process information electronically. Merchant agrees that when the services do not originate with Bank or Cardservice International, Merchant will abide by the regulations of the third party, provided that said regulations do not contradict or infringe upon MasterCard, Visa, Bank, and Cardservice International regulations. Merchant agrees to release Cardservice International and Bank from all liability for any damage to Merchant arising from services which do not originate from Bank and/or Cardservice International.

8.10 ADHERENCE

Merchant agrees to be responsible and liable for adhering to all provisions of this Agreement without exception and in full. Failure to abide by the provisions herein constitute, among other remedies provided for herein, grounds for possible interruption or termination of service.

8.11 CHANGE IN BANKING INFORMATION

Merchant shall notify Cardservice International of any change in business checking account, change of bank, or any other banking information. Merchant shall pay Cardservice International a fee in the amount of \$25.00 for each checking account change.

8.12 TIME LIMITATION FOR ASSERTING CLAIMS AND INSTITUTING ACTIONS

Despite any statute to the contrary, any claim arising from or relating to this Agreement (whether contract, tort, or both) shall be brought within two (2) years after it arises, provided that with respect to any claim or dispute concerning fees, charges or other costs charged to Merchant, Merchant must have, within ninety (90) days of the assessment of any disputed fee, charge or costs, appealed such determination to Cardservice International in writing by United States certified mail, return receipt requested, and such appeal must have been denied.

8.13 INDEMNIFICATION

Merchant and Guarantor shall, jointly and severally, indemnify, defend, and hold harmless Cardservice International and Bank, MasterCard and Visa against and with respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorneys' fees, that Cardservice International and Bank, MasterCard and Visa shall incur or suffer, that arise, result from, or relate to any breach of, or failure by Merchant to perform any of its representations, warranties, covenants or agreements in this Agreement or in any schedule, supplemental agreement, appendix or other instrument furnished or to be furnished to Merchant under this Agreement or in the event Bank or Cardservice International are named as parties to any litigation involving Merchant brought by a party not party to this Merchant Agreement.

8.14 LIMITATION OF LIABILITY

Cardservice International and Bank's liability to Merchant with respect to any Card transaction shall not exceed the amount represented by the Transaction Record in connection with that transaction, less any applicable discount or fees. Cardservice International and Bank shall in no event be liable for any incidental or consequential damages whatsoever.

8.15 ENTIRE AGREEMENT; WAIVER

This Agreement, together with supplemental agreements, appendixes and schedules, constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior

and contemporaneous agreements, representations and understandings of the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

8.16 RESERVE ACCOUNT

In addition to the security interest and chargeback rights granted to Bank by Merchant, Merchant hereby authorizes Bank to establish a Reserve Account, with or without prior notice to Merchant, at any time prior to, at or after termination of this Agreement, to ensure Bank's recovery of any liabilities owed it or reasonably anticipated to be owed it by Merchant pursuant to this Agreement.

- (a) Such liabilities include, but are not limited to, those arising out of actual and/or potential post-termination chargebacks, as well as any and all post-termination fees, including, but not limited to, costs for accounting, investigation and account management, charges and expenses due or anticipated to be due Bank from Merchant.
- (b) Merchant agrees that if Bank does establish the Reserve Account, it shall be in any amount that Bank, in its sole discretion, deems reasonable under the circumstances. The Reserve Account may be funded and/or replenished by Bank's withholding or withdrawing from, or freezing all or any part of, the Commercial Account and/or accounts maintained by Merchant with Bank. Unless Bank agrees otherwise in writing with Merchant, the Reserve Account shall not bear interest.
- (c) Bank may enforce its security interest in the Reserve Account without notice or demand. Bank's right to sums owed it by Merchant pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Account. Bank's rights with respect to the Reserve Account, as well as the security interest granted Bank under this Agreement, shall survive the termination of this Agreement.

8.17 BANKRUPTCY

No assignee for the benefit of creditors, successor in interest, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Agreement. In the event any party becomes insolvent, makes

an assignment for the benefit of its creditors, files a petition or otherwise seeks relief under or pursuant to any other bankruptcy, insolvency or reorganization statute or proceeding, or if any party dissolves, discontinues or substantially discontinues its business or if a receiver, trustee, or similar officer is appointed for Merchant or for a substantial portion of Merchant's business or assets, or if any judgment, writ of attachment execution, levy or similar process against any party is served on the others or is issued with respect to any substantial part (valued at twenty percent [20%] or more of the total tangible assets) of the property of any party, the other parties may, at their sole election, terminate this Agreement by written notice to the others.

8.18 LAW AND VENUE

This Agreement shall be construed in accordance with, and governed by, California law as applied to contracts that are executed and performed entirely in California. The parties agree that any suit, action, or proceeding arising out of or relating to this Agreement, or the interpretation, performance or breach of this Agreement, shall be instituted in any court of the state of California located in Ventura County. Each party irrevocably submits to the jurisdiction of those courts and waives all objections to jurisdiction or venue that it may have under the laws of the state of California or otherwise in those courts in any suit, action, or proceeding. The parties expressly stipulate, consent to and agree that the specific geographic location as the place of performance of this Agreement, in its entirety, shall be within the county of Ventura in the state of California. By this special contract, the exclusive venue for any action between them shall be within the county of Ventura in the state of California.

8.19 ASSIGNABILITY

Merchant may not assign this Agreement, or any rights hereunder, directly or by operation of law, without the prior written consent of Cardservice International and Bank. For purpose of this Agreement, assignment shall include, but not be limited to, transfer of control of Merchant and any ownership change which results in a new majority owner. Without such written consent, Merchant shall continue to be bound by this Agreement.

8.20 ATTORNEYS' FEES AND COSTS

Merchant shall be liable for and shall indemnify and reimburse Cardservice International and Bank for any and all attorneys' fees and other costs and expenses paid or incurred by Cardservice International and Bank in the enforcement of this Agreement, or in collecting any

amounts due from Merchant to Cardservice International and Bank hereunder or resulting from any breach of any of the terms or conditions of this Agreement. In addition, whether legal action is contemplated or commenced against Merchant, Cardservice International shall be entitled to recover from Merchant all of its investigative and other costs related to searching for the whereabouts of Merchant or any Guarantor. Merchant authorizes Cardservice International, at its sole option and without prior notice, to deduct such investigative and other costs from any monies that Merchant may have on deposit with Cardservice International or which Merchant has previously authorized Cardservice International to access.

8.21 GUARANTORS

As a primary inducement to Cardservice International and Bank to enter into this Agreement with Merchant, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Cardservice International and Bank pursuant to this Agreement, as it now exists or as it may be amended from time to time, whether before or after termination or expiration and whether or not Guarantor has received notice of any amendment. If Merchant breaches this Agreement, Cardservice International and Bank may proceed directly against Guarantor or any other person or entity responsible for the performance of this Agreement, without first exhausting its remedies against any other person or entity responsible therefore to it, or any security held by Bank.

8.22 FORCE MAJEURE

Cardservice International and Bank shall have no liability to Merchant for delay or failure to perform any part of this Agreement on account of an act of God or the public enemy, fire, explosion, flood, earthquake, riot, war, sabotage, accident, embargo or any circumstances of like or different character beyond Bank's and Cardservice International's reasonable control or by interruption or delay in transportation, inadequacy or shortage or failure of supply of materials, utilities, computer software, or equipment breakdown, labor trouble, or compliance with any order, direction, action or request of any governmental officer, department or agency.

8.23 CUMULATIVE REMEDIES

All remedies of Cardservice International and Bank hereunder are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy and shall not preclude the exercise of any other remedy.

No failure on the part of Cardservice International and Bank to exercise, and no delay in exercising any right or remedy hereunder, shall operate as a waiver of such right or remedy.

8.24 BREACH OF OTHER AGREEMENTS

This Agreement is the principal agreement between Merchant and Cardservice International and Bank. In order to further effectuate the subject matter of this Agreement, the parties acknowledge that a number of additional agreements may be entered into between them. Merchant hereby agrees that Merchant's breach of any of those additional agreements shall also constitute a breach of this Agreement.

8.25 FIDUCIARY RELATIONSHIP

As provided in California Financial Code Section 952 as it now exists and as it may be amended from time to time, whenever Merchant has a deposit held arising from or subject to this Agreement with any bank which, pursuant to this Agreement, Merchant is not entitled to, Merchant's entitlement to such deposit shall be as a fiduciary of Cardservice International and Bank until any claim by Cardservice International and Bank has been resolved. Merchant agrees that its failure to repay, within twenty (20) calendar days of notification, to Cardservice International and Bank funds Merchant is not entitled to, shall result in a presumption that Merchant intends to misappropriate such funds.

8.26 SECURITY INTEREST AND MERCHANT PERFORMANCE REQUIREMENT

To secure Merchant's performance under this Agreement, including without limitation, Merchant's obligations arising out of chargebacks, Merchant hereby grants, pursuant to the California Uniform Commercial Code, Cardservice International and Bank a security interest in Merchant's electronic terminal, printer, imprinter and imprinter plate. Further, Merchant grants to Bank a security interest in all sales drafts, credit drafts, and in all deposits, regardless of source, made to Merchant's account established or designated and maintained pursuant to this Agreement, as well as in the proceeds of those deposits, and in all other accounts maintained by Merchant. Bank may enforce this security interest by:

- (a) Making an immediate debit (charge) to any account, without notice or demand of any kind, and/or interrupting the electronic transmission of funds to any account through the Automated Clearing House (ACH) system; and/or

- (b) Freezing the entire account, without notice or demand of any kind, upon Cardservice International and Bank's reasonable determination that Merchant has breached any term of this Agreement; and/or
- (c) Taking possession of any or all of Merchant's sales drafts, verifications and confirmations of transactions; and/or
- (d) Taking possession of any and/or all of Merchant's electronic terminals, printers, imprinters and imprinter plates.

Merchant shall provide any statement or notice that Cardservice International and Bank determines to be necessary to preserve and protect Bank's security interest. Merchant's granting of this security interest in no way limits Merchant's liabilities to Cardservice International and Bank under this Agreement.

8.27 SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

8.28 CHANGE OF MERCHANT NAME OR BUSINESS TYPE

Changes, by way of example only, business name change, business telephone and/or address change, or any banking information shall be submitted, in writing, to Cardservice International and Bank by Merchant under the terms provided in this Agreement. Merchant represents that it is engaged in the business specified on the Merchant Application portion of this Agreement. Merchant shall not process payment transactions for any other type of business.

This ends the Cardservice International Merchant Agreement.

TELECHECK SERVICE AGREEMENT

1. Term, Termination and Amendment. TeleCheck will provide the services, and any specified equipment and maintenance, to this Agreement for an initial term of 12 or 24 months as specified on the face of this Agreement from the Effective Date, provided, however, that Subscriber may terminate this Agreement if Subscriber gives and TeleCheck receives written notice of termination within thirty days of the Effective Date. Thereafter, this Agreement shall automatically renew for successive 12-month terms until terminated as provided for herein. Subscriber may terminate this Agreement at the end of the initial term or any renewal term upon at least thirty (30) days' prior written notice to TeleCheck. In the event TeleCheck changes the rates, fees or warranty limits hereunder, Subscriber may terminate this Agreement upon written notice received by TeleCheck within thirty (30) days of Subscriber's receipt of notice of such change. TeleCheck may terminate this Agreement at any time upon notice to Subscriber. TeleCheck reserves the right to amend at its discretion the TERMS AND CONDITIONS, including, without limitation, any addenda, Operation's Procedures, rates, and fees, by providing Subscriber notice, and such amendments shall be effective 30 days from the date notice is mailed.

2. Definitions. As used herein the following definitions apply: "check writer" means the drawer of a check; "Claim" means any claim, suit, proceeding, damage, expense (including, without limitation, attorneys' fees), assessment, fine or liability of any kind (including, without limitation, any based on intellectual property rights or law); "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 or check already due Subscriber; "ECA batch" means a collection of saved ECA transactions; "Operational Procedures" means TeleCheck's published policies and procedures contained in various documents provided to Subscriber, concerning the services, equipment and maintenance 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 Subscriber’s financial institution or that fails to comply with the TERMS AND CONDITIONS of this Agreement, including, the Warranty Requirements; “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 the lower of (i) the face amount of the Item or (ii) the lesser amount set forth on the face of the Agreement; and (b) for an Item processed as an ECA transaction means the lower of (i) the face amount of the Item or (ii) \$5,000.00; 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 or check already due Subscriber.

3. Fees, Rates and Warranty Changes. Subscriber shall pay TeleCheck the fees and rates set forth on the face of the Agreement, or the attached Rate Schedule, if any, as changed from time to time by TeleCheck, plus all applicable taxes. The percentage rate set forth as the Inquiry Rate, or the rates stated in the Rate Schedule, if any, shall apply to the face amount of each Item, whether such Item is approved or declined, which is entered into the TeleCheck system by telephone, electronically or in writing, up to the Warranty Maximum. The Monthly Minimum fee is the minimum amount of inquiry fees that Subscriber shall pay on a monthly basis. If the total fees for Subscriber’s inquiries for any month are less than the Monthly Minimum fee, then the Monthly Minimum fee shall apply. Additional Inquiry Fees are those fees for inquiries exceeding the dollar volume of inquiries included in the Monthly Minimum fee. The Processing Fee is a monthly fee for handling Subscriber’s account. 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 for an ECA Subscriber. 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 associated with equipment maintenance. The Transaction Surcharge is an additional charge for transactions going over third-party networks. The ECA Chargeback Fee is a 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 fee payable on each Item in an ECA batch that must be corrected due to Subscriber error or at the request of the Subscriber. The Customer Requested Operator Call charge is an additional charge of \$1.50 per operator-assisted call not requested by

TeleCheck. A Warranty Research Fee of \$7.50 will be charged each time Subscriber requests substantiation of a warranty payment/nonpayment. These fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

4.1 Payment, Reserve Account, Security Interest. All fees and charges are due upon receipt. Subscriber authorizes TeleCheck to debit all payments and other amounts owed (including, without limitation, all chargebacks and Returned Item fees) to TeleCheck or its affiliates under this or any other Agreement between Subscriber and TeleCheck or its affiliates, and to credit all amounts owing to Subscriber under this Agreement, to Subscriber's financial institution account as provided to TeleCheck by Subscriber. If there are insufficient funds in Subscriber's financial institution account to pay amounts owed to TeleCheck or its affiliates, or if there are any amounts otherwise not paid by Subscriber when due, including, without limitation, delinquent fees, chargebacks or rejected and reassigned warranty Items, Subscriber shall immediately reimburse TeleCheck or its affiliates upon demand, or at TeleCheck's option, TeleCheck may offset such amounts against any amounts due Subscriber from TeleCheck or its affiliates under this or any other agreement between Subscriber and TeleCheck or its affiliates. A delinquency charge of 1½% per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account over 15 days delinquent. TeleCheck shall have the right to suspend all services and obligations to Subscriber, including the payment of all warranties due and all transactions previously authorized, during any period in which Subscriber's account is delinquent. Subscriber agrees to pay to TeleCheck a \$25.00 fee for each check or ACH debit that is not paid by Subscriber's bank upon presentment.

4.2 Subscriber expressly authorizes TeleCheck to establish a reserve account (the "Reserve Account"). The amount of the Reserve Account shall be set by TeleCheck, in its sole discretion, based upon Subscriber processing history and the anticipated risk of loss to TeleCheck.

4.3 The Reserve Account shall be fully funded upon three days' notice to Subscriber, or in instances of fraud or breach of this Agreement, the Reserve Account may be funded immediately at TeleCheck's election. The Reserve Account may be funded by all or any combination of the following: (i) one or more debits to Subscriber's financial institution (and TeleCheck is hereby authorized to make such debits); (ii) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (iii) Subscriber's 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 sole direction. In the event of termination of this agreement by either Subscriber or TeleCheck, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by TeleCheck for ten months after termination of this Agreement. Subscriber's funds held in a reserve account may be held in a commingled Reserve Account for the reserve funds of TeleCheck's Subscribers, without involvement by an independent escrow agent.

4.4 If Subscriber's funds in the Reserve Account are not sufficient to cover the delinquent fees, chargebacks or rejected and reassigned Warranty items, or any other fees and charges due from Subscriber, or if the funds in the Reserve Account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In event of a failure by Subscriber to fund the Reserve Account, TeleCheck may fund such Reserve Account in the manner set forth in subsection 4.3, above.

4.5 To secure Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement for the provision of related equipment or services, Subscriber grants to TeleCheck a lien and security interest in and to any of Subscriber's funds pertaining to the transactions contemplated by this Agreement now or hereafter in the possession of TeleCheck, whether now or hereafter due or to become due to Subscriber 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 paragraphs, 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 Subscriber at any time from time to time, without notice or demand to subscriber or to 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 Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement with TeleCheck or any of its affiliates for any related equipment or related services (including any check or credit card processing services, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Subscriber agrees to duly execute and deliver to TeleCheck such instruments and documents as TeleCheck may reasonably request to perfect and confirm the lien, security interest, right of setoff, recoupment and subordination set forth in this Agreement.

5. Equipment. Title to all rental equipment, if any, is retained by TeleCheck. Upon termination of this Agreement, Subscriber at Subscriber's expense shall return all equipment to TeleCheck in good repair, ordinary wear and tear excepted. Monthly rental fees will apply to all months or fractions of a month any equipment remains in use by or actual or constructive possession of Subscriber. TeleCheck will replace or repair equipment rented or maintained by TeleCheck upon Subscriber's request; provided, however, that a swap fee of \$29.95 shall be charged per equipment item replaced. If replacement equipment is mailed to Subscriber, it is Subscriber's responsibility to return replaced equipment to TeleCheck's office within 5 business days or Subscriber shall be deemed to have purchased and be billed for such equipment. A fee of \$40.00 per hour plus the cost of parts shall be charged for repair of any damage to the equipment rented or maintained by TeleCheck, ordinary wear and tear excepted. A reprogramming fee of \$25.00 will be charged for each occasion that a piece of equipment is reprogrammed for additional features or different information. Subscriber shall not permit persons other than authorized representatives of TeleCheck to adjust, maintain, program or repair any equipment. Subscriber shall bear the entire risk of loss, theft or damage of or to equipment, whether or not owned by Subscriber. There is a 90-day manufacturer's warranty on purchased equipment. A fee for the shipping and handling of equipment and parts will be charged to the Subscriber.

Terms Applicable Only to the TeleCheck Warranty Service Program

6. Warranty. The sole purpose of the TeleCheck warranty service program is to provide information and processing services to Subscriber. TeleCheck warrants the accuracy of its information provided that all requirements set forth in paragraph 13.1 are strictly met. A Dishonored Item shall be deemed to be a breach of the warranty and, as Subscriber's sole and exclusive remedy for such breach, Subscriber 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 Subscriber and consumer, or where Subscriber has called TeleCheck for approval on more than one check per Warranty Service Business Transaction. This Agreement is solely between the Subscriber and TeleCheck; the Subscriber shall not provide or resell, directly or indirectly, the services provided by TeleCheck to any third party. Subscriber is not authorized to, and shall not in any manner, utilize the TeleCheck services in connection with any transaction conducted, in

whole or in part, over the Internet or in any other non-face-to-face transaction.

7. “Goodwill” of a Returned Item. TeleCheck, in its discretion, may voluntarily reimburse a Subscriber for a specific Returned Item. TeleCheck’s election to reimburse a Returned Item shall not act as a waiver of TeleCheck’s right to decline to pay any other Returned Item.

**Terms Applicable Only to the TeleCheck[®] Electronic Check
AcceptanceSM (ECA) Service.**

8. The terms in paragraphs 9 and 10 apply only if Subscriber uses the TeleCheck electronic funds transfer service.

9. ECA Processing. The Warranty Maximum for an ECA transaction is \$5,000.00. Subscriber shall not submit to TeleCheck for processing any ECA transaction exceeding \$5,000.00. For each ECA transaction that TeleCheck approves, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber’s financial institution account for the amount of such transaction as part of an ECA batch credit. Such credit shall occur: (i) within two banking days following Subscriber’s regular closeout of the point-of-sale terminal and transmission to TeleCheck for processing the saved ECA transaction (“ECA batch”) provided that the ECA batch is closed and received by TeleCheck by 11:00 p.m. Central 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.

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

Terms Applicable Only to the TeleCheck Verification Service.

11. The terms in paragraph 12 apply only if Subscriber uses the TeleCheck verification service.

12. The sole purpose of the TeleCheck verification service is to provide coded information to assist Subscriber in deciding whether or not to accept an Item. TeleCheck does not guarantee the accuracy or completeness of the information, and Subscriber agrees that there shall be no payment to Subscriber by TeleCheck for any loss from transactions processed through the verification service and that Subscriber assumes all risks that Items accepted by it may be dishonored. The Warranty Maximum on any Item processed through the TeleCheck verification service shall be zero.

General Terms

13.1 Warranty Requirements and ECA Representations. TeleCheck will reimburse Subscriber for one Item, up to the Warranty Maximum, per Warranty Service Business Transaction which meets all of the following applicable requirements, and Subscriber represents and warrants 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 Subscriber. The name of the individual or company must be imprinted 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 must be written on the check according to TeleCheck's Operational Procedures;
- (b) Subscriber 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) Subscriber shall have made an inquiry to TeleCheck strictly according to TeleCheck's Operational Procedures;
- (e) TeleCheck Subscriber Number, check writer's telephone number (including area code), identification type and number and Approval Code must all be printed or written on the check;
- (f) The Warranty Service Business Transaction or the ECA Business Transaction represents an obligation of the person who is presenting the respective Warranty Service Business Transaction or ECA 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 receipt, if applicable, must reasonably correspond to any signature and description contained in the piece of identification;
 - (h) The signature in the signature block 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 with the date of the inquiry call to TeleCheck and the date the transaction actually occurred (no Pre- or Postdated checks);
 - (j) The amount of the check entered into the TeleCheck system and the amount shown in words and figures on the check and the amount on the consumer's ECA receipt, if applicable, must all agree;
 - (k) The check must have been deposited in Subscriber's bank and received by TeleCheck for purchase within thirty (30) days of the date of the check;
 - (l) Subscriber received a signed ECA receipt from consumer and either consumer or Subscriber voided the signed paper check to which the ECA Business Transaction relates;
 - (m) Subscriber has no reason to believe or have notice of any fact, circumstance or defense which would impair the validity or collectibility of the consumer's obligation or relieve the consumer from liability;
 - (n) The paper check to which the ECA Business Transaction relates is a personal check and not a business check;
 - (o) The consumer shall have signed a separate ECA authorization receipt for each ECA Business Transaction submitted to TeleCheck for processing.

13.2 All of the above requirements and representations are material terms of this Agreement. By execution of this Agreement Subscriber acknowledges Subscriber's full knowledge and understanding of the above requirements and representations as they pertain to the services provided to Subscriber under this Agreement. Subscriber shall not be entitled to recover any amounts under this Agreement if Subscriber fails to timely satisfy each of the terms and conditions of or

breaches any representation contained in: (i) paragraph 13.1, or (ii) any other terms, conditions, and limitations in this Agreement.

14. 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. Subscriber shall follow all TeleCheck policies and procedures and post at TeleCheck's direction any notices which in TeleCheck's opinion may be required for it to collect any such amounts arising from returned, dishonored or unpaid checks or ECA Business Transactions.

15. Assignment of Checks and ECA Business Transactions. By the execution of this Agreement, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any: (a) check submitted to TeleCheck for the Warranty Service Program; or (b) ECA Business Transaction processed by TeleCheck under this Agreement. Subscriber shall, at TeleCheck's request, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

16.1 Reassignment and Chargeback. TeleCheck, as applicable, may: (a) reassign to Subscriber any check purchased by TeleCheck pursuant to the Warranty Service provisions of this Agreement, or (b) charge back to Subscriber and debit Subscriber's 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 the check was issued, or, for which the ECA Business Transaction was submitted, have been returned to Subscriber, have not been delivered by Subscriber, or are claimed by the purchaser to have been unsatisfactory or are subject to any dispute, setoff or counterclaim;
- (b) Subscriber has 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 of the check writer's check to TeleCheck or the 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 Subscriber as set forth in paragraph 13.1 are or become false or inaccurate; or, Subscriber failed to comply with any of the Terms and Conditions of this Agreement;
- (f) Subscriber, or any of its owners, agents or employees:
 - (i) Materially altered either the check or the ECA 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;
- (g) The ECA receipt was incomplete or unsigned;
- (h) 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;
- (i) A legible copy of the ECA receipt is not received to TeleCheck within 7 days of a request by TeleCheck; or
- (j) The consumer disputes authorizing the ECA Business Transaction or the validity or accuracy of the transaction debit to his account.

16.2 Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the check is reassigned as provided herein, TeleCheck may debit Subscriber's account in the amount paid by TeleCheck for the Item, or upon request, Subscriber shall remit the amount of the Item to TeleCheck. TeleCheck may also charge back to Subscriber any amount over the Warranty Maximum on any ECA Business Transaction where TeleCheck has not received payment for such ECA Business Transaction within 60 days of the date of the ECA Business Transaction. Upon reassignment or charging back an Item, TeleCheck shall have no further liability to Subscriber on such Item. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any re-assignments, chargebacks and adjustments made under paragraph 16.1.

17. Updating Information. With regard to any Items submitted or reported to TeleCheck, Subscriber shall promptly notify TeleCheck if: (a) a check writer makes any payment to Subscriber on a Dishonored Item; (b) there is a return of goods or services, in whole or in part, which were paid with a Dishonored Item; or, (c) there is a dispute of any amount or any other matter with regard to a Dishonored Item.

18. Credit Law Compliance. Subscriber certifies that: (a) it has 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, (b) the information provided by TeleCheck will be used only 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 Subscriber for any purpose other than one business transaction between Subscriber and consumer. Neither Subscriber, nor its 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 the Subscriber's organization. If Subscriber decides to reject any transaction, in whole or in part, because of information obtained from TeleCheck, Subscriber agrees to provide the consumer with all information required by law and TeleCheck.

19.1 Use of TeleCheck Materials. TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, nonassignable and nontransferable temporary permission, uncoupled with any right or interest, to use TeleCheck's marks: **TELECHECK**[®], **TELECHEQUE**[®], **TELECHECK**[®] **ELECTRONIC CHECK ACCEPTANCE**SM, **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 this Agreement solely in connection with the offering of the TeleCheck services authorized under this Agreement. In addition, the following shall appear at least once on every piece of advertising or promotional material used by Subscriber: ("Applicable Mark") is a trademark owned by TeleCheck International, Inc., and is licensed for use by "Subscriber 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. Subscriber 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 this Agreement, Subscriber 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 to Subscriber will apply for all months or fractions of a month any materials or TeleCheck-owned equipment remain in use. Subscriber shall maintain the confidentiality of this Agreement and any information provided to it by TeleCheck, including, without limitation, TeleCheck Operational Procedures or other proprietary business information, whether or not such information is marked confidential. Subscriber shall not permit any persons other than its own officers or employees at Subscriber's locations to use the TeleCheck Subscriber Number assigned by TeleCheck.

19.2 Subscriber shall not use any TeleCheck Marks in conjunction with or on the Internet. Subscriber 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. Subscriber acknowledges TeleCheck's ownership of the TeleCheck Marks and agrees that it will do nothing inconsistent with such ownership. Subscriber shall promptly notify TeleCheck of any unauthorized use of the TeleCheck Marks by third parties of which Subscriber becomes aware.

20. Use of Information. Subscriber agrees that: (a) any data and other information relating to an Item or consumer obtained by TeleCheck in connection with any service provided hereunder (including, without limitation, 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; (b) TeleCheck may use any credit information provided to a TeleCheck affiliate or to Cardservice International for TeleCheck's credit review; and, (c) TeleCheck may provide or receive any experiential information regarding Subscriber to or from any TeleCheck affiliate or Cardservice International.

21. TeleCheck Procedures. Subscriber shall strictly follow all Operational Procedures provided to Subscriber, as may be amended from time to time by TeleCheck, including, without limitation, the Operational Procedures relating to the TeleCheck Marks. To the extent that there is any conflict between the Operational Procedures and the terms of this Agreement, the terms of this Agreement shall govern.

22. Assignment of Agreement. This Agreement may be assigned by Subscriber only with the prior written consent of TeleCheck. TeleCheck may freely assign this Agreement, 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 the heirs, executors, administrators, successors and assigns of Subscriber.

23. Legal Responsibility. In the event Subscriber violates any term(s) of this Agreement, Subscriber shall pay all costs, including, without limitation, reasonable attorneys' fees, for actions taken by TeleCheck whether by suit or otherwise, to defend, preserve or enforce its 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, Subscriber shall: (a) promptly notify TeleCheck of the Claim(s) or legal action; (b) reasonably cooperate with TeleCheck in the making of any Claim(s) or defense(s); and (c) 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). Subscriber shall indemnify, defend, and hold harmless the TeleCheck Parties from any Claim(s) arising from any false or inaccurate representation made by Subscriber or from Subscriber's failure to strictly comply, in whole or in part, with any: (a) TERMS AND CONDITIONS pursuant to this Agreement and any addenda hereto or Operational Procedures; or (b) applicable law. A Claim shall be considered to exist even though it may be conditional, contingent, indirect, secondary, unliquidated, or unmatured. Upon written notice from TeleCheck to Subscriber, Subscriber shall immediately undertake the defense of such Claim by representatives of its 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 Subscriber's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws. Notwithstanding anything to the contrary in this Agreement, in no event shall TeleCheck be liable to Subscriber or to any other person under this Agreement or otherwise for any: (a) punitive, exemplary, special, incidental or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill; or (b) liability in an amount greater than the total amount of fees paid to TeleCheck by Subscriber pursuant to this Agreement during the preceding 12-month period.

24. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 6, 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 SUBSCRIBER, OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIM-

ITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER. All decisions to reject any check or ECA transaction, driver's license or other form of identification or payment for Subscriber's products or services are solely Subscriber's responsibility. Subscriber assumes all risks that any and all checks accepted by Subscriber may be dishonored, whether or not TeleCheck has authorized said check(s).

25. Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be hand delivered or delivered by facsimile transmission or overnight courier or certified or registered mail (and if sent by Subscriber by mail, postage prepaid return receipt requested) addressed or transmitted to the party to be notified at such party's address or number as provided on the front of this Agreement or at such party's last known address or number. Any notice delivered hereunder shall be deemed effective upon delivery, if hand delivered or sent by overnight courier, and upon receipt, as evidenced by the date of transmission indicated on the transmitted material if by facsimile transmission, or the date of delivery indicated on the return receipt, if mailed as aforesaid. The parties' addresses may be changed by written notice to the other party as provided herein.

26. 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), strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delay in transportation, act of God, or other causes reasonably beyond the control of TeleCheck.

27. Governing Law and Integration. Subscriber shall comply with all applicable laws, rules and regulations 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. **THIS 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.**

28. 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 Operational Procedures, shall be interpreted in favor or against any party because such party or its counsel drafted this Agreement, or such addenda or 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.

29. Amendment and Waiver. No modification, amendment or waiver of any of the TERMS AND CONDITIONS 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.

30. Damages. Upon Subscriber's breach or unauthorized termination of this Agreement, TeleCheck shall be entitled to recover from Subscriber 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 Agreement. TeleCheck and Subscriber hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of Subscriber's breach or unauthorized termination, 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 this Agreement and will not be construed as a penalty.

31. Survivability. All representations, warranties, indemnities and covenants made herein shall survive the termination of this Agreement and shall remain enforceable after such termination.

32. ACH Debit and Credit Authorization. Subscriber authorizes its Financial Institution to pay and charge its account by electronic fund

transfer the amount due TeleCheck under this Agreement and to accept all credits and debits made to its account by electronic fund transfer as a result of using TeleCheck's check authorization and processing services. This authorization shall remain in effect until 60 days after revoked in writing.

This ends the TeleCheck Service Agreement.