TeleCheck Services, Inc.
P.O. Box 4514
Houston, TX 77210-4514
1-800-366-1054

TeleCheck® Service Agreement

SERVICES OFFERED

☐ ECA® Warranty ☐ Paper Check Acceptance Warranty ☐ Other: _____

SERVICE PROVIDED TO:

SUBSCRIBER NAME *(Your Company LEGAL Name)*:		
DBA:		
CONTACT NAME:	FEDERAL TAX ID:	
PHONE #:	FAX #:	
ADDRESS:		
CITY:	STATE:	ZIP:
VISA/MC #:		
EQUIPMENT TYPE:	E-MAIL ADDRESS:	

BILL TO:

SUBSCRIBER NAME *(Your Company LEGAL Name)*:		
DBA:		
CONTACT NAME:	FEDERAL TAX ID:	
PHONE #:	FAX #:	
ADDRESS:		
CITY:	STATE:	ZIP:
SIC:	SIC DESCRIPTION:	
PLATFORM: ☐ BuyPass ☐ Cardnet ☐ FDR/Omaha ☐ Memphis ☐ Nashville ☐ Paymentech ☐ Other: _____		

SERVICE FEES

See TeleCheck Agreement for definitions and any additional fees. NOTE: See Section 26 "Damages" for early termination fees/liquidated damages.

MONTHLY CHECK VOLUME	AVERAGE CHECK SIZE	WARRANTY MAXIMUM	PRICING PROGRAM *(per location)*		
			ONE RATE *(per location)*	FLAT FEE *(per location)*	OTHER *(Name here)* *List Fees in Fee Section*
		$_____ / ☐ Face Value	$_____	$_____	

MONTHLY MINIMUM *(per location)*	INQUIRY RATE	TRANSACTION FEE	MONTHLY STMT/ PROCESSING FEE	CUSTOMER REQUESTED OPERATOR CALL (CROC)	DECEMBER RISK SURCHARGE	SET-UP FEE	OTHER FEES
			$5.00 ACH	$2.50	0.10%		

ECA PROCESSING

FUND SUBSCRIBER	SUMMARIZE FUNDING	ECA FUNDING REPORT FEE *(Monthly Included at No Charge)*	AUTO CLOSE:
☐ Per Location ☐ Per Bill To	☐ Per Location ☐ Per Bill To	(Choose Only One): ☐ $10 Per Month for Weekly ☐ $15 Per Month for Daily	_____ ☐ AM ☐ PM Time Zone: ☐ ET ☐ CT ☐ MT ☐ PT

FUNDING INFORMATION *(PLEASE ATTACH A VOIDED CHECK AND/OR BANK LETTER)*

Payments to TeleCheck by Merchant and Credits to Merchant by TeleCheck

BANK NAME:		CONTACT NAME:	PHONE #:
CITY:	STATE:	ABA TRANSIT #: *(9 Digits)*	ACCOUNT #:

REFERENCE AND CREDIT CHECK INFORMATION

LEGAL STRUCTURE: ☐ Private Corporation ☐ Public Corporation ☐ Sole Proprietorship ☐ Non-Profit ☐ Partnership ☐ LLC ☐ Other *(please specify)*: _____	STATE INCORPORATED	MONTH / YEAR STARTED	# OF EMPLOYEES

OWNER/OFFICER *(For Verification Purposes)*			OWNER/OFFICER TWO *(For Verification Purposes)*			
FIRST NAME:	LAST NAME:	TITLE:	FIRST NAME:	LAST NAME:		TITLE:
SOCIAL SECURITY #:	HOME ADDRESS:		SOCIAL SECURITY #:	HOME ADDRESS:		
CITY:	STATE: ZIP CODE:	HOME PHONE #:	CITY:	STATE:	ZIP CODE:	HOME PHONE #:

SPECIAL INSTRUCTIONS: _____

By signing below, each of the undersigned authorizes us to request and obtain from a consumer reporting agency, personal and business consumer reports. If approved, each of the undersigned also authorizes us to obtain subsequent consumer reports in connection with the maintenance, updating, renewal or extension of the Agreement. Each of the undersigned furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit financial information to us. It is our policy to obtain certain information in order to verify your identity while processing your account application.

ACH Debit and Credit Authorization: Subscriber authorizes its Financial Institution to pay and charge to 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 TeleCheck's services. This authorization shall remain in effect until thirty days after revoked in writing.

The undersigned Subscriber, at the rates set forth above and in the Agreement (plus all applicable taxes, shipping and handling fees), and for the covered location(s), hereby employs the TeleCheck® authorization services for an initial period of 12 months (Check here: ____ for an initial term of 24 months), subject to the terms of this Agreement. The terms and conditions of the Agreement, including payment and the Minimum Monthly Fee, shall apply upon processing Subscriber's first check through the TeleCheck service or the date Subscriber is entered into the TeleCheck system as a subscriber, whichever is earlier.

THIS AGREEMENT INCLUDES ALL OF THE TERMS AND CONDITIONS ON THE ATTACHED SIDES. THIS AGREEMENT HAS BEEN EXECUTED ON BEHALF OF AND BY THE AUTHORIZED MANAGEMENT OF EACH PARTY AS OF THE EFFECTIVE DATE.

I ACKNOWLEDGE THAT I HAVE RECEIVED ALL 6 PAGES OF THIS AGREEMENT.

Signature **X** _____ Date _____ Signature **X** _____ Date _____

Printed Name _____ Title _____ Printed Name _____ Title _____

NOTE: Signature required for each Owner/Officer listed in this Merchant Application Form.

MARKET CHANNEL SALES		*FOR INTERNAL USE ONLY*
MARKET CHANNEL NAME:		APPROVED/TELECHECK MANAGEMENT *(Signature)*
REP. NAME:	REP. ID #:	
REP OR SALES OFFICE E-MAIL ADDRESS:		DATE:

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Not valid and binding until approved by an Authorized Manager of TeleCheck

1. Term, Termination and Amendment. TeleCheck Services, Inc. ("TeleCheck") will provide the Electronic Check Acceptance® ("ECA®") Warranty Services ("ECA Warranty Services") or Paper Check Acceptance Warranty Services ("Paper Warranty Services"), as selected on the face page of this Agreement for an initial term of 12 or 24 months from the Effective Date (as specified on the face of this Agreement); provided, however, that Subscriber may terminate this Agreement if Subscriber gives and TeleCheck receives written notice of termination within the first 30 days of the Agreement. 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 30 days' prior written notice to TeleCheck. TeleCheck reserves the right to amend, at its discretion, this Agreement, including, without limitation, any addenda and the TeleCheck Operational Procedures, by providing Subscriber notice and such amendments shall be effective 30 days from the date notice is mailed to Subscriber. In the event TeleCheck changes the rates, fees or warranty limits hereunder, Subscriber may terminate this Agreement upon written notice received by TeleCheck within such 30 day period. TeleCheck may terminate this Agreement at any time upon notice to Subscriber. Subscriber may terminate this Agreement at anytime upon written notice if TeleCheck has failed to cure a material breach of this Agreement within 30 days following written notice of that breach given by Subscriber. Any of the TeleCheck services, including, without limitation, funds settlement, billing and customer service, may be performed by one or more of TeleCheck's affiliates.

2. Definitions. As used in this Agreement, the following definitions apply: **"ACH Network"** means the Automated Clearing House Network, a processing and delivery system that provides for the distribution and settlement of electronic credits and debits. **"Authorization Receipt"** means the written authorization receipt, in the form approved by TeleCheck, signed by Consumer for each ECA Warranty Transaction. **"Batch"** means a collection of saved transactions transmitted to TeleCheck for settlement processing. **"Claim"** means any claim, demand, directive, suit or other proceeding, notice, damage, expense (including reasonable attorney's fees), assessment, fine or liability of any kind. **"Consumer"** means a person or entity that authorizes an Item. **"ECA Warranty Transaction"** means a transaction processed by TeleCheck as an electronic funds transfer, a remotely created check or a paper check for the contemporaneous purchase of goods or services by a Consumer. **"Effective Date"** means the earlier of the date Subscriber's first check is processed through the TeleCheck® service or the date Subscriber is entered into the TeleCheck system as a subscriber. **"Item"** means an outstanding financial obligation pursuant to a paper check, electronic funds transfer or remotely created check processed under this Agreement. **"NACHA Rules"** means the National Automated Clearing House Association Operating Rules and Guidelines, as amended from time to time, that govern the ACH Network. **"Paper Warranty Transaction"** means a transaction for the contemporaneous purchase of goods or services pursuant to TeleCheck's Paper Warranty Services program. **"Return Item Fee"** means any fee or exemplary damages allowed by law that may be assessed on a Return Item. **"Return Items"** mean any Items that are dishonored, returned, reversed, charged back or otherwise unpaid by a Consumer's financial institution upon presentment for payment, regardless of the reason or timing. **"Returned Payment"** means any financial obligation pursuant to this Agreement not paid by Subscriber's financial institution. **"Subscriber's Account"** means Subscriber's financial institution account. "**TeleCheck Approval Code"** means (a) for warranty services, that TeleCheck has authorized an Item for warranty coverage under this Agreement, and (b) for verification services, that TeleCheck has authorized an Item as eligible for processing. **"TeleCheck 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. **"TeleCheck Parties"** means TeleCheck and its affiliates and their respective officers, directors, employees, shareholders, agents and attorneys. **"Warranty Maximum"** (a) for an Item processed as an ECA Warranty Transaction means the lower of (i) the face amount of the Item; (ii) the amount set forth on the face of this Agreement; (iii) $25,000.00; or (iv) $50.00 for a Subscriber under Flat Rate billing; and (b) for an Item processed as a Paper Warranty Transaction means the lower of (i) the face amount of the Item; (ii) the amount set forth on the face of this Agreement; (iii) $99,999.99; or (iv) $50.00 for a Subscriber under Flat Rate billing.

TERMS APPLICABLE ONLY TO TELECHECK ECA WARRANTY SERVICES

3. ECA Warranty Services.

3.1 Description. The TeleCheck ECA Warranty Services provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept an Item; (b) processing services; and (c) warranty services for ECA Warranty Transactions that comply with the warranty requirements of Section 3.3, all in accordance with this Agreement.

3.2 Processing Services. For each ECA Warranty Transaction that TeleCheck issues a TeleCheck Approval Code that is processed by TeleCheck as an electronic funds transfer or remotely created check, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's Account for the amount of such transaction as part of a batch credit. Such credit shall typically occur within 2 banking days following Subscriber's regular close-out of the point of sale terminal and transmission of the saved ECA Warranty Transactions to TeleCheck for settlement processing, provided that the Batch is closed and received by TeleCheck by 9:00 p.m. Central Time. TeleCheck may reduce such credit, or initiate a debit, by the amount of any necessary adjustments for ECA Warranty Transactions, including, without limitation, chargebacks or partial adjustments, to Subscriber's Account. TeleCheck reserves the right to decline to process any transaction as an ECA Warranty Transaction.

TeleCheck shall not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, without limitation, any ACH Network participant or Subscriber's financial institution. Notwithstanding anything contained herein to the contrary, TeleCheck shall be entitled without notice to place a hold on or suspend payment of any amounts now due or hereafter to become due should an excessive amount of Return Items or other questionable activity occur as determined by TeleCheck in its discretion, or as otherwise required by law. In addition to any other remedies available to TeleCheck under this Agreement, Subscriber agrees that, if Subscriber breaches or fails to comply with this Agreement, TeleCheck may, with notice to be provided within 3 business days following such action, change processing or payment terms, suspend settlement or other payments of any amounts now due, or hereafter to become due, until TeleCheck has had reasonable opportunity to investigate such event. Continuance of service and payment processing during any period of delinquency shall not constitute a waiver of TeleCheck's rights of suspension or termination. In the event TeleCheck makes a partial adjustment to an Item or a credit to a Consumer's account at the request of Subscriber or as a result of a Subscriber error, and the Item becomes a Return Item, TeleCheck may recover all such amounts from Subscriber. TeleCheck may also recover from Subscriber the amount of any fees paid by a Consumer to Consumer's financial institution which resulted from a Subscriber error.

3.3 Warranty Requirements. TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Subscriber one Item per ECA Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the Item. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such Item subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each ECA Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

(a) The check is a first party check drawn on Consumer's account at a United States financial institution and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer;

(b) Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 3.6(f)), including through split sales;

(c) The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber, except that a Consumer purchase transaction at a grocery store may also include cash back not to exceed $25.00 above the purchase amount;

(d) The signature of Consumer on the Authorization Receipt is not substantially different from the name imprinted on the check;

(e) The date of the check and the ECA Warranty Transaction accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);

(f) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectibility of Consumer's obligation or relieve Consumer from liability;

(g) The transaction is not subject to any stop payment, dispute or set-off;

(h) Subscriber complied with all applicable laws, rules, regulations, and NACHA Rules;

(i) Consumer authorized the debiting of Consumer's account and the debit entry is in an amount agreed to by Consumer. Subscriber received a separate signed and completed Authorization Receipt from Consumer for each ECA Warranty Transaction;

(j) The paper check to which the ECA Warranty Transaction relates: (i) has not been used in any other transaction, (ii) is voided on the front by Consumer or Subscriber, and (iii) is returned to Consumer;

(k) The amount entered into the TeleCheck system and on the Authorization Receipt match exactly and does not exceed the Warranty Maximum; and

(l) If the ECA Warranty Transaction is approved as a paper check not eligible for processing as an electronic funds transfer, each representation and warranty set forth Section 4.2 shall be applicable to such ECA Warranty Transaction.

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3.4 Authorization Receipts. Subscriber shall (a) maintain the signed Authorization Receipt for a minimum period of 2 years from the date of the transaction or for the period specified by the NACHA Rules, whichever is longer, (b) physically deliver either the original or a legible copy of the signed Authorization Receipt to TeleCheck within 7 days of TeleCheck's request, and (c) permit TeleCheck to audit Subscriber (upon reasonable notice and during normal business hours) for compliance with this requirement.

3.5 Assignment of ECA Warranty Transactions. By electing to subscribe to the TeleCheck ECA Warranty Services, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any ECA Warranty Transaction submitted by Subscriber to 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.

3.6 Chargeback and Reassignment. TeleCheck may chargeback to Subscriber any ECA Warranty Transaction processed by TeleCheck, or reassign to Subscriber any ECA Warranty Transaction which has been approved as a paper check and purchased by TeleCheck, in any of the following circumstances:

(a) The goods or services, in whole or in part, for which the ECA Warranty Transaction was submitted, have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;

(b) Subscriber has received full or partial payment or security in any form to secure payment of the Item, or the goods or services for which the Item was issued or authorized were initially delivered on credit or under a lease;

(c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the Item is not permitted by applicable law; or a court of law determines that the Item is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;

(d) Any of the representations made by Subscriber as set forth in Section 3.3 are or become false or inaccurate;

(e) Subscriber failed to comply with this Agreement;

(f) Subscriber, or any of Subscriber's owners, agents or employees (i) materially altered either the check or the Authorization Receipt; or (ii) processed the transaction with reason to know that the Item was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction;

(g) The Authorization Receipt was incomplete or unsigned, or a legible copy of the Authorization Receipt was not received by TeleCheck within 7 days of a request by TeleCheck;

(h) A duplicate ECA Warranty Transaction relating to the same transaction was received and processed, or the original paper check was deposited, thereby creating a duplicate entry against Consumer's financial institution account;

(i) Consumer disputes authorizing the ECA Warranty Transaction or the validity or accuracy of the transaction;

(j) Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice; or

(k) The closeout of the Batch and transmission of the ECA Warranty Transaction to TeleCheck for settlement processing did not occur within 7 days from the date the TeleCheck Approval Code was issued for the transaction

Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the Item is charged back or reassigned as provided herein, (a) TeleCheck may debit Subscriber's Account in the amount paid by TeleCheck for the Item, (b) deduct or offset such Item against any amounts to be paid to Subscriber for ECA Warranty Transactions, or (c) upon request, Subscriber shall remit the amount of the Item to TeleCheck. TeleCheck may also chargeback to Subscriber any amount over the Warranty Maximum on any ECA Warranty Transaction where TeleCheck has not received payment for such transaction within 60 days of the date of the ECA Warranty Transaction. Upon charging back or reassigning 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 reassignments, chargebacks and adjustments made under this Section.

3.7 Account Reconciliation. Payments processed by TeleCheck will be reflected on settlement reports made available to Subscriber by TeleCheck. Subscriber agrees to notify TeleCheck promptly of any discrepancy between Subscriber's records and the information provided in the reports, or of any funding failures or errors. In the event any ECA Warranty Transaction is not funded or otherwise paid by TeleCheck in accordance with Section 3.2, Subscriber is required to notify TeleCheck in writing within 30 days from the date of such transaction. If Subscriber fails to notify TeleCheck within such 30 day period of the discrepancy, funding failure or error, TeleCheck shall have no liability and Subscriber is precluded from asserting any claims, damages or losses arising from such discrepancy, funding failure or error.

3.8 "Goodwill" of a Non-Compliance Item. TeleCheck, in its sole discretion, may voluntarily elect not to chargeback or reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 3.3. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to chargeback or reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

3.9 Reserve Account Establishment and Funding. Subscriber expressly authorizes TeleCheck to establish a reserve account for ECA Warranty Transactions. The amount of the reserve account shall be set by TeleCheck, in its sole discretion, based upon Subscriber's processing history and the anticipated risk of loss to TeleCheck. The reserve account shall be fully funded upon 3 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: (a) one or more debits to Subscriber's Account (and TeleCheck is hereby authorized to make such debits); (b) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (c) Subscriber's delivery to TeleCheck of a letter of credit issued or established by a financial institution acceptable to, and in a form satisfactory to, TeleCheck. In the event of termination of this Agreement by either TeleCheck or Subscriber, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by TeleCheck for 10 months after termination of this Agreement. Subscriber's funds may be held in a commingled reserve account for the reserve funds of TeleCheck's subscribers without involvement by an independent escrow agent, and shall not accrue interest. 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 to TeleCheck or its affiliates, or if the funds in the reserve account have been released, Subscriber shall immediately pay TeleCheck such sums upon request. In the event of a failure by Subscriber to fund the reserve account, TeleCheck may fund such reserve account in the manner set forth above.

3.10 Fees and Rates. Subscriber shall pay TeleCheck the fees and rates set forth on the face of this Agreement and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The **"Inquiry Rate"** is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The **"Transaction Fee"** is the additional per transaction charge for each ECA Warranty Transaction. The **"One Rate"** is a monthly fee for the ECA Warranty services, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee, Monthly Processing/Statement Fee and December Risk Charge. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional $10.00 processing fee will be charged, and (b) Subscriber represents that the Monthly Check Volume as stated in the face of this Agreement is accurate. Subscriber acknowledges that the fee is tied to monthly check volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check volume exceeds TeleCheck's parameters. The **"Flat Rate"** is a monthly fee for the ECA Warranty services, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee and December Risk Charge. The **"Monthly Minimum Fee"** is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The **"Customer Requested Operator Call Fee"** is an additional fee per operator-assisted call not requested by TeleCheck. The **"December Risk Surcharge"** is an additional percentage charge for each transaction in December. The **"Monthly Statement/Processing Fee"** is a monthly fee for handling Subscriber's account. The **"Set Up Fees"** are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The **"Dual ID Surcharge"** is an additional 85 basis points (0.85%) charge for each transaction if the amount of the Item exceeds the MICR floor limit established by TeleCheck for Subscriber, and Subscriber is prompted for but does not obtain a second form of identification. The **"Funding Report Fee"** is a $15.00 monthly fee to receive daily funding reports or $10.00 monthly fee to receive weekly funding reports. The **"POS Support Fee"** is a $10.00 monthly fee for point of sale support services. The **"Chargeback Fee"** is a $5.00 handling fee for each chargeback of an ECA Warranty Transaction. The **"Correction Fee"** is a $5.00 fee payable

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on each Item that must be corrected due to Subscriber's error or at Subscriber's request. The **"Recovery Processing Fee"** is a $5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a **"Goodwill Item"** for a specific Return Item. A **"Warranty Research Fee"** of $7.50 may be charged each time Subscriber requests substantiation of a warranty payment/non-payment. A **"Terminal Application Update Fee"** of $25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

TERMS APPLICABLE ONLY TO TELECHECK PAPER CHECK ACCEPTANCE WARRANTY SERVICES

4. Paper Check Acceptance Warranty Services.

4.1 Description. The TeleCheck Paper Warranty services provide Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept a check; and (b) warranty services for checks that meet the warranty requirements of Section 4.2, all in accordance with this Agreement.

4.2 Warranty Requirements. TeleCheck warrants the accuracy of its information provided that all requirements set forth in this Section are strictly met. TeleCheck agrees to purchase from Subscriber one check per Paper Warranty Transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability shall be limited by the Warranty Maximum and warranty requirements, and shall not exceed the amount of the check. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such check subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each Paper Warranty Transaction submitted to TeleCheck for processing under this Agreement that:

(a) The check is a first party check drawn on Consumer's account at a United States or Canadian financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer is imprinted or typed on the check by the check manufacturer. If a P.O. Box is used or an address is not imprinted by the check manufacturer, a physical address description is written on the check according to TeleCheck Operational Procedures;

(b) Subscriber made an inquiry to TeleCheck in strict accordance with TeleCheck Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 4.4(f)), including through split sales;

(c) The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and the transaction is not for credit, cash or payment on an account, debt or check already due Subscriber, except that a Consumer purchase transaction at a grocery store may also include cash back not to exceed $25.00 above the purchase amount;

(d) The signature in the signature block on the check is not substantially different from the name imprinted on the check;

(e) The date of the check accurately coincides within 1 calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than 1 calendar day the date of the inquiry call and the transaction date);

(f) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectibility of Consumer's obligation or relieve Consumer from liability;

(g) The TeleCheck Subscriber Number, Consumer's telephone number (including area code), identification type and number and TeleCheck Approval Code are printed or written on the check;

(h) The amount shown in words and figures on the check is (i) less than or equal to the amount entered into the TeleCheck system; or (ii) no more than $1.00 over the amount entered into the TeleCheck system;

(i) The check is deposited in Subscriber's Account and received by TeleCheck for purchase within 30 days of the date of the check. Such check has been sent directly from Subscriber's financial institution after being presented for payment only once (no re-presentments shall be allowed, whether paper or electronic); and

(j) The transaction is not subject to any stop payment, dispute or set-off.

4.3 Assignment of Checks. By electing to subscribe to the Paper Warranty Services, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any check submitted to TeleCheck for coverage 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.

4.4 Reassignment. TeleCheck may reassign to Subscriber any check purchased by TeleCheck pursuant to the Paper Warranty Services provisions of this Agreement, in any of the following circumstances:

(a) The goods or services, in whole or in part, for which the check was issued have been returned to Subscriber, have not been delivered by Subscriber, are claimed by Consumer to have been unsatisfactory, or are subject to any stop payment, dispute or set-off;

(b) Subscriber has received full or partial payment or security in any form to secure payment of the check, or the goods or services for which the check was issued were initially delivered on credit or under a lease;

(c) The transaction is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the check is not permitted by applicable law; or a court of law determines that the check is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;

(d) Any of the representations made by Subscriber as set forth in Section 4.2 are or become false or inaccurate;

(e) Subscriber failed to comply with this Agreement;

(f) Subscriber, or any of Subscriber's owners, agents or employees: (i) materially altered the check; or (ii) accepted the check with reason to know that it was likely to be dishonored (including failure to receive a TeleCheck Approval Code) or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a check. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction; or

(g) Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice.

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 check, or upon request, Subscriber shall remit the amount of the check to TeleCheck. Upon reassignment of a check, TeleCheck shall have no further liability to Subscriber on such check. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section.

4.5 "Goodwill" of a Non-Compliance Item. TeleCheck, in its sole discretion, may voluntarily elect not to reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 4.2. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

4.6 Fees and Rates. Subscriber shall pay TeleCheck the fees and rates set forth on the face of this Agreement and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The **"Inquiry Rate"** is the percentage rate which shall apply to the face amount of each Item (up to the Warranty Maximum), for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The **"Transaction Fee"** is the additional per transaction charge for each transaction. The **"One Rate"** is a monthly fee for the TeleCheck service, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee, Monthly Processing/Statement Fee and December Risk Charge. In order to qualify for such rate, (a) TeleCheck must be authorized to debit all payments and other amounts owed from Subscriber's Account, and if TeleCheck is unable to process the debit, an additional $10.00 processing fee will be charged, and (b) Subscriber represents that the Total Monthly Check Volume as stated in the face of this Agreement is accurate. Subscriber acknowledges that the fee is tied to monthly check volume and recognizes that TeleCheck may, in accordance with Section 1.1, increase the fee or institute traditional billing if Subscriber's monthly check volume exceeds TeleCheck's parameters. The **"Flat Rate"** is a monthly fee for the Paper Warranty services, and is intended to replace the Inquiry Rate, Transaction Fee, Monthly Minimum Fee and December Risk Charge.The **"Monthly Minimum Fee"** is the minimum aggregate amount of Inquiry Rate fees that Subscriber shall pay on a monthly basis. If the total Inquiry Rate fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The **"Customer Requested Operator Call Fee"** is an additional fee per operator-assisted call not requested by TeleCheck. The **"December Risk Surcharge"** is an additional percentage charge for each transaction in December. The **"Monthly Statement/ Processing Fee"** is a monthly fee for handling Subscriber's account. The **"Set Up Fees"** are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The **"Dual ID Surcharge"** is an additional 85 basis points (0.85%) charge for each transaction if the amount of the Item exceeds the MICR floor limit established by TeleCheck

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for Subscriber, and Subscriber is prompted for but does not obtain a second form of identification. The **"POS Support Fee"** is a $10.00 monthly fee for point of sale support services. The **"Recovery Processing Fee"** is a $5.00 fee for each Item that fails to meet warranty requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a **"Goodwill Item"** for a specific Return Item. A **"Warranty Research Fee"** of $7.50 may be charged each time Subscriber requests substantiation of a warranty payment/non-payment. A **"Terminal Application Update Fee"** of $25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

TERMS APPLICABLE ONLY TO TELECHECK PAPER CHECK ACCEPTANCE VERIFICATION SERVICES

5. Paper Verification Services.

5.1 Description. The TeleCheck Paper Check Acceptance Verification services provide Subscriber with coded information to assist Subscriber in deciding whether or not to accept a check. TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber for any loss from transactions processed through the Paper Verification services. Subscriber assumes all risks that checks accepted by Subscriber may result in Return Items.

5.2 Fees and Rates. Subscriber shall pay TeleCheck the fees and rates set forth on the face of this Agreement and addenda, if any, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The **"Transaction Fee"** is the per transaction charge for each Item for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The **"Flat Rate"** is a monthly fee for the Paper Verification service, and is intended to replace the Transaction Fee and Monthly Minimum Fee. The **"Monthly Minimum Fee"** is the minimum aggregate amount of Transaction Fees that Subscriber shall pay on a monthly basis. If the total Transaction Fees for Subscriber's inquiries for any month are less than the Monthly Minimum Fee, then the Monthly Minimum Fee shall apply. The **"Customer Requested Operator Call Fee"** is an additional fee per operator-assisted call not requested by TeleCheck. The **"Monthly Statement/Processing Fee"** is a monthly fee for handling Subscriber's account. The "Set Up Fees" are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck Services.

The following additional fees may be also be charged by TeleCheck: The **"POS Support Fee"** is a $10.00 monthly fee for point of sale support services. A **"Terminal Application Update Fee"** of $25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

GENERAL TERMS APPLICABLE TO ALL TELECHECK SERVICES

6. Payment. All fees and charges are due upon receipt of invoice. Subscriber authorizes TeleCheck to debit from Subscriber's Account, all payments and other amounts owed (including, without limitation, all Return Items, Returned Payments, chargebacks, adjustments, fees and charges, and delinquency charges) under this Agreement 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 Account. If there are insufficient funds in Subscriber's Account to pay amounts owed to TeleCheck or its affiliates, or if debits to Subscriber's account are rejected due to ACH debit blocks, or if there are any amounts otherwise not paid by Subscriber when due, including, without limitation, delinquency charges, 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 or recoup such amounts against any amounts due Subscriber under this Agreement or any other agreement between Subscriber and TeleCheck or its affiliates. A delinquency charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account over 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 fee of $25.00 or the highest amount permitted by law, whichever is lower, for any Returned Payment. Subscriber shall also be responsible for paying for all of the point of sale supplies related to the TeleCheck services (i.e., paper and ink for terminals, rubber stamps, if applicable).

7. Security Interest. To secure Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement (including any check or credit card processing 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 or its affiliates, whether now or hereafter due or to become due to Subscriber from TeleCheck. Any such funds may be commingled with other funds of TeleCheck, or, in the case of any funds held in a reserve account, 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 and 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, including, without limitation, fees for any other services (including any check or credit card processing services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. 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 set off, recoupment and subordination set forth in this Agreement.

8. Point of Sale Notices; Return Item Fees. Subscriber agrees to follow procedures and post and provide at TeleCheck's direction any notices (including any updates to such notices) which in TeleCheck's opinion may be required for TeleCheck to process the Item and/or the Return Item Fee, as an electronic funds transfer, draft or otherwise. Subscriber also agrees to assess a Return Item Fee on all Return Items, and that TeleCheck shall be entitled to collect and retain the Return Item Fee from Consumer.

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

10. Credit Law Compliance. Subscriber certifies that (a) Subscriber has a legitimate business need, in connection with a business transaction initiated by Consumer, for the information provided by TeleCheck under this Agreement regarding such Consumer; and (b) the information provided by TeleCheck shall only be used for permissible purposes as defined in the Fair Credit Reporting Act, and applicable state and federal laws, with the exception that the information shall not be used for employment purposes, and shall not be used by Subscriber for any purpose other than a single business transaction between Consumer and Subscriber occurring on the date of the inquiry call to TeleCheck. Neither Subscriber, nor Subscriber's agents or employees, shall disclose the results of any inquiry made to TeleCheck except to Consumer about whom such inquiry is made and in no case to any other person outside 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 Consumer with all information required by law and TeleCheck.

11. Use of TeleCheck Materials and Marks. Pursuant to authorization granted to TeleCheck by TeleCheck International, Inc., the owner of the trademarks referenced in this section, TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, nonassignable and nontransferable limited license, uncoupled with any right or interest, to use the **TELECHECK** and the **TELECHECK logo** service marks, and for those Subscribers who are receiving ECA Warranty Services, the **TELECHECK ELECTRONIC CHECK ACCEPTANCE** and **ECA** service marks (collectively, the "TeleCheck Marks") as follows. Subscriber may use and display decals, identification data and other materials provided by TeleCheck during the term of this Agreement at Subscriber's location solely in connection with the offering of TeleCheck services as authorized under this Agreement. 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. Subscriber agrees that upon termination of this Agreement it will, at its own expense, either return or destroy all TeleCheck materials (including the prompt removal of any TeleCheck decals, electronic files, logos or other materials or references to TeleCheck that are displayed to the public, including those affixed to equipment, doors or windows). The monthly fees payable by Subscriber will apply for all months or fractions of a month that any materials or TeleCheck-owned equipment remain in use. Subscriber shall not create any print, electronic or Internet-based materials including but not limited to any advertising or promotional materials using any TeleCheck Marks without the prior written consent of TeleCheck. Subscriber acknowledges TeleCheck International, Inc.'s ownership of the TeleCheck Marks and will not contest the validity of the marks or the ownership thereof. Subscriber further agrees to refrain from performing any acts that might discredit, disparage, dilute, infringe or negatively affect the value of the TeleCheck Marks or constitute unfair competition to TeleCheck or TeleCheck International, Inc. Subscriber agrees promptly to bring to TeleCheck's attention any unauthorized use of the TeleCheck Marks by third parties of which Subscriber becomes aware. Subscriber shall use the TeleCheck Marks pursuant to any guidelines provided by TeleCheck, as may be amended from time to time. The following shall appear at least once on every piece of advertising or promotional material created by Subscriber which uses the TeleCheck Marks and has received prior written approval from TeleCheck: "The ("Applicable Mark") trademark is owned by TeleCheck International, Inc. and is licensed for use by ("Subscriber Name")".

12. 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 any electronic or other image of all or any portion of any check or driver's license or other identification) shall be

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owned by TeleCheck, with all right, title, and interest thereto; (b) TeleCheck may use any credit information provided to a TeleCheck affiliate for TeleCheck's credit review; and (c) TeleCheck may provide or receive any experiential information regarding Subscriber or Subscriber's customers to or from any TeleCheck affiliate.

13. TeleCheck Operational Procedures. Subscriber shall strictly follow all TeleCheck Operational Procedures provided to Subscriber, as may be amended from time to time by TeleCheck, in its discretion.

14. Limitation of Liability. In no event shall either TeleCheck or Subscriber be liable to the other party, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental, indirect or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL TELECHECK'S LIABILITY UNDER THIS AGREEMENT FOR ALL CLAIMS ARISING UNDER, OR RELATED TO, THIS AGREEMENT EXCEED, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY SUBSCRIBER AGAINST TELECHECK, WHETHER RELATED OR UNRELATED), THE LESSER OF: (A) THE TOTAL AMOUNT OF FEES PAID TO TELECHECK BY SUBSCRIBER PURSUANT TO THIS AGREEMENT DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE EVENT GIVING RISE TO SUCH CLAIMS OCCURRED; OR (B) $75,000.00.

15. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER. All decisions to reject any Item, driver's license or other form of identification or payment for Subscriber's products or services are solely Subscriber's responsibility.

16. Changes in Law or NACHA Rules. Notwithstanding anything to the contrary in this Agreement, if the continued performance of all or any portion of the obligations of TeleCheck becomes impossible or illegal due to changes in applicable federal, state or local laws or regulations, or by NACHA Rules, as determined by TeleCheck in its reasonable discretion, TeleCheck may, upon 30 days written notice to Subscriber, request to modify or discontinue TeleCheck's performance of its obligations to the extent necessary to avoid a violation of law or NACHA Rules or, if TeleCheck chooses in its sole discretion to incur additional expenses to comply, request to increase its fees to cover the additional cost of compliance. Additionally, if any fees or charges to TeleCheck increase for processing transactions through the ACH Network, TeleCheck may request to increase its fees to cover such increases. If TeleCheck makes such request and the parties are unable to agree upon corresponding changes to the terms and conditions of this Agreement within 30 days of such request, TeleCheck may terminate this Agreement upon 30 days written notice.

17. Updating Information. With regard to any Return Items submitted to TeleCheck, Subscriber shall promptly notify TeleCheck if: (a) a Consumer makes any payment to Subscriber; (b) there is a return of goods or services, in whole or in part; or (c) there is a dispute of any amount, notice of bankruptcy or any other matter.

18. Confidentiality. Subscriber shall maintain the confidentiality of this Agreement and any information provided to Subscriber by TeleCheck, including, without limitation, TeleCheck Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential. Such information shall not be used except as required in connection with the performance of this Agreement or disclosed to third parties.

19. No Resale, Assignment of Agreement. This Agreement is solely between TeleCheck and Subscriber. Subscriber shall not provide or resell directly or indirectly, the services to any other third party. 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 Subscriber's heirs, executors, administrators, successors and assigns.

20. Indemnification. In the event Subscriber (a) fails to strictly comply, in whole or in part, with any: (i) terms and conditions of this Agreement and any addenda hereto or TeleCheck Operational Procedures; or (ii) applicable law, rules, regulations and NACHA Rules, or (b) makes any false or inaccurate representation, Subscriber shall indemnify, defend and hold harmless the TeleCheck Parties from and against any and all Claims arising therefrom, including payment of all costs and reasonable attorneys' fees for actions taken by TeleCheck, whether by suit or otherwise, to defend the TeleCheck Parties from any Claim related thereto or to preserve or enforce TeleCheck's rights under this Agreement. 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 Claims or legal action; (b) reasonably cooperate with TeleCheck in the making of any Claims or defenses; and (c) provide information, assist in the resolution of the Claims and make available at least one employee or agent who can testify regarding such Claims or defenses. 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.

21. Notices. Any notice or other communication required or permitted to be given hereunder shall be delivered by facsimile transmission, overnight courier or certified or registered 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 face of this Agreement or at such party's last known address or number. Any notice delivered hereunder shall be deemed to have been properly given (a) upon receipt if by facsimile transmission, as evidenced by the date of transmission indicated on the transmitted material, (b) upon receipt if deposited on a prepaid basis with a nationally recognized overnight courier for next business day delivery, and (c) on the date of delivery indicated on the return receipt, if mailed by certified or registered mail. TeleCheck shall also be permitted to provide notice by regular mail and such notice shall be deemed effective 10 days after mailing. The parties' addresses may be changed by written notice to the other party as provided herein.

22. Force Majeure. TeleCheck shall not be held responsible for any delays in or failure or suspension of service caused by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), transmission link failures, communication failures, failure, delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve system, failure, delay or error by any third party or any other third party system, strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, act of God or other causes reasonably beyond the control of TeleCheck.

23. Compliance with Laws, Governing Law and Integration. The parties agree to comply with all applicable federal and state laws, regulations and rules, including NACHA Rules, relating to the services provided hereunder. Subscriber certifies that it has not been suspended by NACHA or any credit card association, or cancelled by an ODFI or Third Party Sender (as defined in the NACHA Rules). This Agreement, plus any addenda attached hereto, constitutes the entire Agreement between the parties concerning 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.**

24. Severability and Interpretation. If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. Neither this Agreement, nor any addenda or TeleCheck Operational Procedures, shall be interpreted in favor or against any party because such party or its counsel drafted such document. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement. This Agreement is solely for the benefit of TeleCheck (and its affiliates) and Subscriber and no other person or entity shall have any right, interest or claim under this Agreement.

25. Amendment and Waiver. No modification, amendment or waiver of any of the terms and conditions of this Agreement shall be binding upon TeleCheck unless made in writing and approved and signed by TeleCheck. No waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party. No waiver by any 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. The parties agree that no failure or delay in exercising any right hereunder 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.

26. Damages. Upon Subscriber's breach of this Agreement, including any unauthorized termination, TeleCheck shall be entitled to recover from Subscriber liquidated damages in an amount equal to ninety percent (90%) of the aggregate Monthly Minimum Fees and Monthly Statement/Processing Fees payable for the unexpired portion of the then current term of this 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 of this Agreement, 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 or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach and shall not be construed as a penalty.

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

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