

TeleCheck  
Services

Terms and  
Conditions

**TELECHECK SOLUTIONS AGREEMENT**

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## I. Services

This TeleCheck Solutions Agreement (**Agreement**) is entered into by and between TeleCheck Services, LLC (**TeleCheck**) and Client (**Client**) as indicated on the Merchant Processing and/or Telecheck Service Application and Agreement executed by Client (**Application**). Pursuant to the terms set forth in this Agreement, TeleCheck will provide Client with the services indicated in the Application, which may include: (i) coded information that it may use when deciding whether to accept a check or electronic funds transfer item (each an **Item**, and together, **Items**) when provided by its consumers as payment, (ii) settlement processing services and (iii) warranty or verification services; all as described in this Agreement (together, **Services**). TeleCheck will be Company's exclusive provider of the Services during the Term (defined below) of this Agreement. Client agrees to the terms of this Agreement by signing the Application; clicking "Accept" or "Install" when presented via an App (as applicable and described below); or using any of the Services. Client acknowledges that the Specialty Items (Settlement Only) service does not include receiving coded information, warranty or verification services.

**I.1. Delivery by Application.** If the TeleCheck Services are provided through TeleCheck's check acceptance application (**App**) that resides on a Clover® point of sale device (a **Device**), Client agrees that this Agreement will govern Client's access to and use of TeleCheck's Services on such App. Client's use of its Device is subject to its agreement with the supplier of the Device (and not TeleCheck), and this Agreement does not alter Client's agreement with its Device supplier. Client will comply with the terms of its agreement with the Device supplier; and warrants that it is authorized to install and use TeleCheck's App on the Device.

**I.2. Submitting Items.** Client will designate the types of Items it accepts and that it will submit to TeleCheck for processing under this Agreement as indicated on the Application. Client must submit the Item to TeleCheck through the appropriate service. For example, checks presented in person by consumers at Client's point of sale can only be submitted through the In-Person Warranty (or Verification) service, checks sent through the mail to Client can only be submitted through the By Mail/Drop Box service. Client will submit all of its designated Items to TeleCheck for processing under this Agreement. Except for Items processed through the By Mail/Drop Box service, TeleCheck will analyze each Item that Client submits for processing and, in its discretion, provide Client with an approval or decline code with respect to each Item. TeleCheck will give Client operating guidelines and specifications, as applicable, to assist Client with properly accepting and submitting its Items for processing (operating guidelines and specifications may be provided to Client electronically or made available via the Internet).

**I.3. Information Warranty.** If Client has selected a warranty service in the Application, TeleCheck warrants the accuracy of the information given in its approval code (the **Information Warranty**) when an Item meets the warranty requirements described below. Items that satisfy TeleCheck's Information Warranty and meet the corresponding warranty requirements are **Eligible Items**. TeleCheck will purchase Eligible Items that are subsequently dishonored, returned, reversed, or otherwise not paid by a consumer's financial institution (these Items are **Return Items**). Client's sole remedy for a breach of TeleCheck's Information Warranty is the right to require TeleCheck to purchase an Eligible Item that became a Return Item. TeleCheck's liability to Client for breach of its Information Warranty will not exceed the lesser of: (a) the amount of the Eligible Item, or (b) the Warranty Maximum set forth in the Application. Client may accept Items that do not receive an approval code or that do not meet the warranty requirements (these Items are **Ineligible Items**); however, Ineligible Items are not covered under TeleCheck's Information Warranty and TeleCheck will not purchase them.

**I.4. Warranty Requirements.** Client represents and warrants that each Item it submits to TeleCheck for processing and coverage under the Information Warranty meets the following requirements:

**A. General Requirements.** The following apply to all Items unless otherwise specified:

- (1) the Item was submitted to TeleCheck for processing according to TeleCheck's operating guidelines and specifications, and Client obtained a single approval code for it;
- (2) the Item is drawn on the consumer's deposit account at a United States or Canadian financial institution (for example, and without limitation, money orders, cashier's checks, travelers checks, insurance checks, credit card checks, or non-first party Items are Ineligible Items);
- (3) the Item, or a clear image of the Item (if submitted using a mobile or other optical imaging device), shows the consumer's name, address, check number, and routing and account numbers in the MICR line (not applicable if the payment is online or over the phone);
- (4) the Item is a properly completed first party Item that is dated, payable to Client, made out for the amount due to Client for its goods or services, and signed by the consumer (not applicable if the payment is online or over the phone);

- (5) the consumer authorized debiting its account by electronic funds transfer or remotely created check for the amount of the Item (an **Authorization**) in accordance with TeleCheck's operating guidelines and specifications and the rules of the National Automated Clearinghouse Association (**NACHA Rules**), as applicable, for the services utilized;
- (6) the Item represents the consumer's payment obligation to Client for its goods or services, and has not been used in another transaction;
- (7) the amount of the Item (a) is for the price of Client's goods or services, (b) matches the amount submitted to TeleCheck for processing, and (c) does not exceed the Warranty Maximum;
- (8) the Item was not submitted as a split sale or in other ways to avoid these warranty requirements or the Warranty Maximum;
- (9) the Item is not for credit, cash, or payment on an account, debt, or Item already due to Client;
- (10) the Item does not pre-date or post-date the date of the transaction and corresponding inquiry to TeleCheck by more than 1 calendar day;
- (11) the transaction and corresponding Item are not subject to any stop payment, dispute or setoff right;
- (12) Client is not aware of anything that invalidates the Item, prevents its collection, or relieves the consumer from liability for it; and
- (13) Client provided the notices required by applicable Law (defined in **Section 21.1** below), authorizing TeleCheck to process the Item as an electronic funds transfer or remotely created check and imposing (and authorizing such processing of) a fee for Return Items.

**B. Requirements For In Person Payments:** If a consumer presents a paper check in-person at Client's point of purchase location, in addition to those in Section 1.4 A. above, the following requirements apply and must be followed in accordance with TeleCheck's operating guidelines and specifications: (a) the consumer signed an authorization to debit consumer's account and consumer's signature on the authorization reasonably matches the name imprinted on the Item; (b) the authorization must be clearly and conspicuously posted and a copy of the authorization must be provided to the consumer and (c) the Item must be voided and returned to the consumer after submission to TeleCheck for processing. If such in-person payment is approved as a paper check that cannot be settled as an electronic funds transfer, the additional requirements in **Section 1.4 E** below apply.

**C. Requirements For Online Payments:** If a consumer makes an online payment, the following requirements apply in addition to those in **Section 1.4 A** above: (a) the consumer electronically authorized the transaction in accordance with TeleCheck operating guidelines and specifications and (b) the payment website site authenticates the consumer's identity and uses appropriate site security and internet session security standards in accordance with the NACHA Rules.

**D. Requirements for Mail/Drop Box Checks:** If the consumer provides a paper check which was mailed in or submitted in a drop box to Client, the requirements in **Section 1.4 A** above apply, except (a) the check must be for payment that is not more than 60 days past due; (b) the check must not be post-dated or dated earlier than 20 days from the date of inquiry to TeleCheck; and (d) Client must securely store the check for at least 60 days following the corresponding payment transaction at which time it must be destroyed. Additionally, the consumer must not have notified Client that the check was not to be converted into an electronic funds transfer. If such mail/drop box check is approved as a paper check that cannot be settled as an electronic funds transfer, the additional requirements in **Section 1.4 E** below apply.

**E. Requirements for Mobile Checks or any Checks Approved as Paper Only.** If TeleCheck approves an Item as a paper check that could not be settled as an electronic funds transfer (i.e. check is to be deposited by Client) or the check is submitted to TeleCheck as an image through a mobile device (either, a **Paper Settlement Item**), the following requirements apply in addition to those in **Section 1.4 A** above: (a) the check must include the consumer's name (imprinted by the manufacturer), physical address (imprinted by the manufacturer or written on the check according to TeleCheck's operating guidelines – P.O. Boxes will not be accepted), phone number (with area code), identification type and number (imprinted or written on check), Client's TeleCheck Number and TeleCheck's approval code; (b) the consumer's signature must reasonably match the name imprinted on the check and (c) Client must send Paper Settlement Items that were presented in-person at Client's point of purchase and that become Return Items directly from its financial institution to TeleCheck within 30 days of the date on the check. If the Paper Settlement Item was mailed in or submitted in a drop box by the consumer to Client, or if the Item was presented by the consumer to Client and submitted through a mobile device by Client to TeleCheck, and subsequent to the transaction TeleCheck instructs Client to deposit the check (due to image quality issues (a **Redeposit Check Item**), Client must deposit the Redeposit Check Item within 2 days of TeleCheck's instruction to do so and TeleCheck must receive it for purchase within 45 days of the date on the check. Paper Settlement Items and Redeposit Check Items may only be presented once

for payment (TeleCheck will not accept Paper Settlement Items or Redeposit Check Items that Client or its financial institution presented for payment more than once). In addition, Client must securely store the physical check for at least 60 days following the corresponding payment transaction.

**1.5. Electronic Images.** If the Item is submitted to TeleCheck by Client as an image using a mobile device or other image reader, the ability to settle imaged Eligible Items to the banking system depends on (a) the quality of the image and (b) the banking system's ability to accept the image for settlement processing. Client will use a third party provider to capture images of Items using a mobile device (this third party, an **Image Vendor**) and submit those images to TeleCheck. Client acknowledges that its Image Vendor will require some of Client's account information (including, without limitation, merchant account number, contact name, email address and device identifier) to submit Item images to TeleCheck; and authorizes TeleCheck to provide the Image Vendor with the information necessary to allow it to submit Item images to TeleCheck on behalf of Client. TeleCheck is not responsible for the image quality of Items submitted through Client's Image Vendor, or submission of the images by Client's Image Vendor to TeleCheck. Client will destroy the physical checks that were submitted as electronic images after storing them securely for at least 60 days.

**1.6. Authorization.** Client will maintain a copy of each consumer's Authorization for the longer of: (a) 2 years, or (b) the period of time required by the NACHA Rules. Client will provide TeleCheck with legible copies of Authorizations within 7 days of TeleCheck's request for them.

**1.7. Assignment of Items.** Client assigns all if its right, title, and interest in each Eligible Item that it submits to TeleCheck for warranty coverage when the Item becomes a Return Item. Client will reasonably aid TeleCheck in its enforcement of the rights associated with an assigned Eligible Item.

**1.8. Processing Notices; Return Item Fees.** Client will post, and provide consumers with, notices at the point of sale that are required to process Items using the Services and to collect fees on Return Items. Client will assess the highest fee amount allowed by applicable Laws on all Return Items, which TeleCheck may collect and retain from consumers.

**1.9. "Goodwill" of an Ineligible Item.** TeleCheck may elect to provide warranty coverage for an Ineligible Item that Client submits for processing. Providing warranty coverage for an Ineligible Item will not constitute a course of dealing, waiver of rights, or prevent TeleCheck from rejecting warranty coverage for any other Ineligible Items.

**1.10. Updating Information.** Client will promptly notify TeleCheck if (a) a consumer makes any payment to Client or returns any goods in connection with a Return Item that is subject to warranty coverage, or (b) Client cancels any services paid for by an Item that is subject to warranty coverage; both representing a full or partial satisfaction of the Return Item. Client's notice of payment or cancellation of services will identify the consumer.

**1.11. Chargeback.** TeleCheck may chargeback any Eligible Item that it purchased from Client for coverage under the Information Warranty if:

- (1) the consumer returned the goods or services (in whole or in part) that were paid for with the Item;
- (2) Client has not delivered the goods or services that were paid for using the Item;
- (3) the Item is subject to any stop payment, dispute, or setoff;
- (4) the consumer makes full or partial payment to Client for the Item, or provides any form of security to ensure its payment;
- (5) the goods or services were initially delivered on credit or under a lease;
- (6) the purchase transaction, the payment represented by the Item, or transferring the Item to TeleCheck (by assignment or otherwise) is void or invalid for any reason other than the consumer's bankruptcy;
- (7) Client breaches the applicable warranty requirements for Eligible Items;
- (8) Client submits multiple Items or duplicate Items related to the same transaction for processing (e.g., deposits a paper Item previously submitted for processing as an electronic Item without TeleCheck's direction to do so);
- (9) Client does not submit its Items to TeleCheck for processing within 1 calendar day of the transaction date (for batch processing, Items must be submitted to TeleCheck for processing within 7 calendar days of the transaction date);
- (10) the consumer disputes authorizing the Item, its validity, or the amount debited for it (except in the case of third party fraud committed with a consumer's check);
- (11) the consumer's Authorization is incomplete or invalid;
- (12) Client fails to provide TeleCheck with a legible copy of an Authorization within 7 days of a request for it; or
- (13) Client breaches this Agreement, alters an Item or approval code, or submits an Item with Knowledge it is likely to become a Return Item. **Knowledge** means facts or circumstances which, if known, would cause a merchant, using commercially reasonable judgment, to independently refuse to accept an Item (including, without limitation, splitting single transactions into smaller components or resubmitting Items that were previously denied).

Client will immediately notify TeleCheck if it has Knowledge that any of the above circumstances occur. Client will continue to be responsible for its chargebacks after termination of this Agreement. TeleCheck may chargeback any amounts that exceed the Warranty Maximum for an Eligible Item.

## 2. Non-Warranty Services

**2.1. No Liability for Non-Warranty Services.** If any of the verification services or the Specialty Items (Settlement Only) services are selected by Client in the Application (**Non-Warranty Services**), TeleCheck will have no liability for any Item that is processed using the Non-Warranty Services that is subsequently returned, dishonored, reversed or otherwise unpaid, and does not warranty the checks processed using the Non-Warranty Services. There will be no payment to Client for any loss from transactions processed through the Non-Warranty Services. Client assumes all risks that Items accepted by Client may result in Return Items. Client will be fully responsible and liable to TeleCheck for all Return Items, regardless of the reason or timing. TeleCheck will deduct or offset all Return Items against any amounts to be paid to Client for Items settled under this Agreement or, alternatively, TeleCheck may initiate debits to Client's Settlement Account (defined in Section 3.1 below) for all such Return Items.

**2.2. Representations and Warranties.** Client represents and warrants that each Item submitted under any of the Non-Warranty Services complies with the following, (a) the Item was submitted to TeleCheck in accordance with the TeleCheck's operating guidelines and specifications, (b) the consumer authorized debiting its account by electronic funds transfer or remotely created check for the amount of the Item in accordance with TeleCheck's operating guidelines and specifications and NACHA Rules including, without limitation, providing any necessary notices to consumer (not applicable to the Specialty Items (Settlement Only) services) and (c) the requirements in **Sections 1.4.1 B., C. and D** (as applicable to the type of Item presented) have been complied with.

## 3. Settlement

**3.1.** Client will identify one or more bank accounts held in its name (each, a **Settlement Account**) that TeleCheck will use in connection with the Services. Client authorizes TeleCheck to (a) initiate credits to the Settlement Account for proceeds that correspond to Client's transactions; (b) initiate debits to the Settlement Account for any amounts that may be owed or are required to be paid under this Agreement; (c) initiate the transaction to a consumer's deposit account on Client's behalf for Items that are owed to it; and (d) initiate adjustments related to the foregoing (including, without limitation, adjustments for chargebacks or partial adjustments). TeleCheck may initiate any transfer by Automated Clearing House (**ACH**) entry.

**3.2.** TeleCheck reserves the right to decline processing any Item. TeleCheck will initiate a funds transfer for Client's transactions that were processed under this Agreement; less any amounts due from Client for fees, refunds, adjustments or its other obligations. TeleCheck will typically credit Client's settlement funds to its Settlement Account within 2 banking days once the transactions are finally submitted to TeleCheck for settlement processing.

**3.3.** TeleCheck may recover amounts associated with any adjustments for an Item that are made to the Settlement Account at Client's request or due to its error. TeleCheck may also recover amounts associated with any fees that a consumer paid to its financial institution because of these adjustments.

**3.4.** Client must promptly notify TeleCheck if it fails to receive any settlement funds or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if Client provides inaccurate information about, or fails to notify TeleCheck of changes to, the Settlement Account. TeleCheck is not responsible for settlement errors that arise if Client provides inaccurate information about, or fails to notify TeleCheck of changes to, the Settlement Account.

## 4. Financial Information

Client will promptly provide any financial or other information reasonably requested by TeleCheck to perform credit risk, security, qualification, and other reviews related to providing the Services, transactions submitted, fulfillment of obligations to TeleCheck, or the financial condition of Client. Client authorizes TeleCheck to obtain information from third parties when performing credit risk, security, qualification, and other reviews.

## 5. Notice of Material Changes

Client will provide TeleCheck with reasonable advance notice of any material change in the nature of Client's business (including, without limitation, any change to Client's operations that would materially affect its products sold, services provided, or the procedures it follows for payments acceptance). The failure to provide TeleCheck with this notice constitutes a material breach of this Agreement.

## 6. Client's Payment Obligations

**6.1. Fees.** Client will pay TeleCheck for: (a) all fees and charges for the Services that are set forth in the Application or Agreement; (b) all Items that are charged back; (c) all adjustments required in connection with Client's transactions; and (d) all costs, liabilities, or other obligations imposed on TeleCheck by third parties as a result of transactions submitted by Client, its actions, or inactions.

**6.2. Other Fees.** Client will also pay TeleCheck for the following fees and charges for the Services (as applicable): (a) **Customer Requested Operator Call Fee** (also called **CROC** or **Voice Authorization Fee**), which is an additional \$2.50 fee per operator or Interactive Voice Response (IVR)-assisted call that Client initiates, but TeleCheck does not request; (b) **December Risk Surcharge**, which is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in the month of December; (c) **Funding Report Fee**, which is a \$10.00 monthly fee to receive daily funding or weekly funding reports (the Funding Report Fee does not apply if TeleCheck provides the funding report monthly); (d) **Inquiry Rate**, which is the percentage rate that applies to the face amount of each Item (up to the Warranty Maximum) that Client submits to TeleCheck for authorization (whether or not TeleCheck issues an approval code for the Item); (e) **Monthly Minimum Fee**, which is the minimum aggregate amount of the Inquiry Rate fees that Client must pay on a monthly basis (if the total Inquiry Rate fees for Client's Items submitted during any month is less than the Monthly Minimum Fee, then the Monthly Minimum Fee will apply); (f) **Monthly Processing Fee** is a monthly fee for handling Client's account; (g) **Special Handling Fee**, which is a \$5.00 fee applied when the following occur: (1) a chargeback of an Eligible Item, (2) an Item processed for payment must be corrected due to Client's error or at Client's request, or (3) TeleCheck elects (in its discretion) to process an Item that fails to meet the applicable warranty requirements, or that is a Return Item, as a "Goodwill" Item; (h) **Transaction Fee**, which is the additional per transaction charge for each Item that Client submits to TeleCheck for authorization or processing (whether or not TeleCheck issues an approval code for the Item); and (i) **Unauthorized Return Fee** is a fee applicable to any Item that is dishonored, returned, reversed, or otherwise not paid by the Consumer's financial institution for the reason that such Item is unauthorized by the Consumer.

## 7. Reserve

**7.1.** TeleCheck may require Client to fund a cash reserve (**Reserve**) in an amount that reflects TeleCheck's assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of TeleCheck, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that Client may have to TeleCheck. The Reserve is not a segregated fund that Client may claim to own. TeleCheck is obligated to pay to Client any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to Client's payment transactions have expired.

**7.2.** The obligations due to Client from the Reserve will not accrue interest unless required by applicable Laws.

**7.3.** TeleCheck will notify Client if a Reserve is established (including its amount) or if the amount of the Reserve is modified.

**7.4.** TeleCheck may set off any obligations that Client owes to TeleCheck from the Reserve.

**7.5.** Although Client acknowledges that the Reserve is a general obligation of TeleCheck, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of Client that is held by TeleCheck, Client grants and acknowledges that TeleCheck has a security interest in the Reserve and, at TeleCheck's request, will provide documentation to reflect this security interest.

## 8. Setoff and Priority.

All funds that TeleCheck owes to Client under this Agreement are subject to Client's payment obligations under this Agreement. TeleCheck may setoff or recoup amounts Client owes to TeleCheck against any funds that TeleCheck owes to Client.

## 9. Statements, Reporting

TeleCheck will provide Client with statements or electronic reporting (together, **Statements**) reflecting the fees, settlement amounts, and other information related to the Services. Client must review the Statements and inform TeleCheck of any errors within 60 days following the date that the error was, or should have been, reported; provided, Client must report settlement or funding errors to TeleCheck within 30 days (reporting errors will enable TeleCheck to recover amounts or prevent them from continuing). TeleCheck will have no obligation to provide refunds for errors that Client reports more than 60 days or 30 days (as applicable) after the errors were, or should have been, reported. Client and TeleCheck will work together to resolve issues or disputes that arise in connection with the Statements, or the funds credited or debited to the Settlement Account.

## 10. Term

This Agreement begins on the earlier of the dates when Client signs its Application, submits its first Item for processing under this Agreement, or when Client downloads the App (this date, the **Effective Date**). The length of this Agreement's initial term is 12 months from the Effective Date (**Initial Term**); provided, however, that Client may terminate this Agreement if Client gives and TeleCheck receives written notice of termination within 30 days of the Effective Date. This Agreement will automatically renew for successive one-year periods (each, a **Renewal Term**), unless TeleCheck or Client provides the other with at least 30 days' written notice of non-renewal at the end of the Initial Term. The Initial Term together with any Renewal Term(s) is the **Term** of this Agreement.

## 11. Termination; Modification; Suspension

**11.1. General Termination.** Either Client or TeleCheck may terminate this Agreement by giving 30 days' advance notice if the other materially breaches this Agreement and fails to remedy the breach within 30 days of receiving notice of it. TeleCheck may terminate this Agreement upon written notice to Client for any reason (with or without cause) during its Term. If the Services are delivered through TeleCheck's App, Client may terminate this Agreement for any reason (with or without cause) during its Term by uninstalling the App.

**11.2. Modification.** TeleCheck may modify this Agreement's terms (including, without limitation, its fees) upon 30 days' notice to Client, during which notice period Client may terminate this Agreement by providing written notice of termination to TeleCheck. Client's continued use of the Services after the 30 day period contained in a notice of modification from TeleCheck will constitute Client's acceptance of the new terms.

**11.3. Suspension.** TeleCheck may suspend its Services or settlement of any funds under this Agreement if it determines that questionable activity occurs with respect to Client's payment transactions (including, without limitation, if there are excessive Return Items associated with Client's Items, Client breaches the NACHA Rules, or if required by applicable laws. TeleCheck may also suspend or terminate its Services if requested by its Originating Financial Depository Institution.

## 12. Confidential Information

**12.1. Confidentiality.** Neither party will disclose non-public information about the other party's business (including, without limitation, the terms of this Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

**12.2. Disclosure.** The recipient may disclose the other party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors or vendors) that need to know it in connection with the recipient's performance under this Agreement, and are bound by confidentiality obligations materially similar to those required under this Agreement; and (2) in response to a subpoena, court order, or as required under applicable Laws or NACHA Rules.

## 13. Data Use; Security

**13.1. Data Use.** TeleCheck owns all right, title and interest in the data it obtains from providing the Services to Client.

**13.2. Data Security.** Client will implement commercially reasonable practices, including administrative, physical and technical safeguards, that are designed to: (a) maintain the security and confidentiality of Consumer Information, (b) protect against reasonably anticipated threats to the security or integrity of Consumer Information, and (c) protect against unauthorized access to or use of Consumer Information that could result in substantial harm or inconvenience to the consumer. **Consumer Information** is customer information Client receives in connection with any transaction contemplated by this Agreement.

## 14. License to Marks

TeleCheck grants Client a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free license to use the trademarks, service marks and logos (together, **Marks**) that TeleCheck provides to Client during the Term of this Agreement. Client (a) may use the Marks only in the United States; (b) may use the Marks only in connection with its use of the Services; (c) will follow the branding guidelines that TeleCheck provides or makes available from time-to-time; and (d) will not use materials containing the Marks without TeleCheck's prior written permission. Client will not otherwise distribute, lease, sublicense, sell, modify, copy or create derivative works from the Marks. TeleCheck reserves to itself all right, title, interest or license (express or implied) to the Marks that are not specifically granted to Client under this Agreement; and may suspend or terminate this license upon written notice to Client.

## 15. Indemnification

Client will indemnify, defend, and hold TeleCheck harmless for all losses, damages, costs, or expenses (including reasonable attorney's fees) claimed against it by third parties, which arise from Client's gross negligence, willful misconduct, or breach under this Agreement.

## 16. Exclusion of Damages

TeleCheck will not be liable for lost profits, revenues, or business opportunities, nor any exemplary, punitive, special, indirect, incidental, or consequential damages (whether direct or indirect); regardless of whether these damages were foreseeable or TeleCheck was advised they were possible.

## 17. Limitation of Liability

TeleCheck's aggregate liability for any losses, damages, costs, or expenses (including reasonable attorneys' fees) arising from any cause (regardless of the form of action or legal theory) in connection with this Agreement will be limited to the lesser of (i) \$50,000, or (ii) the total fees paid to TeleCheck under this Agreement during the 12 months preceding the event giving rise to such liability.

## 18. Notices

Written notices (other than normal operations) required under this Agreement will be sent by certified mail or national courier (with tracking and delivery confirmation). TeleCheck may also provide written notices required under this Agreement by regular mail. Notices will be effective upon receipt. Notices to Client will be sent to the address it provides on the Application. Notices to TeleCheck will be sent to: TeleCheck Services, LLC, Attn: TeleCheck Merchant Services, Mail Stop A-12, 7301 Pacific Street, Omaha, NE 68114; with copies to TeleCheck Services, LLC, Attn: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065 and [legalpapers@firstdata.com](mailto:legalpapers@firstdata.com)

## 19. Third Party Beneficiaries

There are no third party beneficiaries to this Agreement other than TeleCheck's subsidiaries and affiliates involved in providing the Services to Client. Each party is responsible for the performance of any third parties it uses in connection with the Services, and their compliance with the terms of this Agreement. TeleCheck is not responsible or liable to Client for any errors or breaches of this Agreement that occur because of Client's third party providers (e.g., without limitation, issues that arise from ACH network participants, or if Client uses third party providers or applications to capture electronic images of Items to submit to TeleCheck). TeleCheck may audit Client's compliance with this Agreement upon reasonable notice, during normal business hours, and at TeleCheck's expense; and as required by the NACHA Rules. TeleCheck's Originating Depository Financial Institution may also audit Client's compliance with this Agreement and the NACHA Rules.

## 20. Waivers

A party's delay or failure to exercise any of its rights under this Agreement will not be a waiver of those rights.

## 21. Compliance with Law, Choice of Law, Waiver of Jury Trial

**21.1. Compliance with Law.** The parties will comply with all laws, regulations, and rules (including ACH's network rules, requirements, and standards; the **NACHA Rules**) (together **Laws**) that are applicable to their respective performance obligations under this Agreement. Client acknowledges that it is the Originator under the NACHA Rules with respect to its transactions and agrees to comply with its obligations as an Originator. Client certifies that it has a legitimate business need, in connection with business transactions initiated by consumers, for the information provided by TeleCheck. Client certifies that the information provided by TeleCheck will only be used for permissible purposes under the Fair Credit Reporting Act, will not be used for employment purposes, and will not be used by Client for any purpose other than one transaction between Client and a consumer. Client and its agents or employees shall not disclose the results of any inquiry made to TeleCheck except to the consumer about whom such inquiry is made. If Client rejects any item (in whole or in part) because of the information obtained from TeleCheck, Client shall provide to consumers all information required by applicable Laws.

**21.2. Choice of Law; Waiver of Jury Trial.** This Agreement will be governed by New York law (without regard to its choice of law provisions). The courts of New York, New York will be the proper venue for legal proceedings brought in connection with this Agreement. **TeleCheck and Client each waive their right to a jury trial for claims arising in connection with this Agreement.**

## 22. Entire Agreement, Amendment, Counterparts

The defined term **Agreement** includes its schedules, addenda, and any amendments (capitalized terms used in the schedules, addenda, or amendments without definition will have the meanings given to them in this Agreement). This Agreement is the entire agreement between the parties and replaces any prior agreements or understandings (written or oral) with respect to its subject matter. Except as set forth in Section 11.2, modifications to this Agreement must be in writing, executed by the parties. This Agreement and any amendments may be executed electronically and in counterparts, each of which constitutes one agreement when taken together. Electronic and other copies of the executed Agreement are valid.

## 23. Assignment

Client may not assign this Agreement without TeleCheck's written consent. TeleCheck may assign this Agreement upon notice to Client. This Agreement will be enforceable against a party's permitted successors or assigns. This Agreement may not be continued, assumed, or assigned in the event of a bankruptcy or other insolvency event without consent from the non-bankrupt or insolvent parties.