

3. Definitions. The following definitions shall apply for the purposes of this Agreement:

“**ACH**” means the Federal Reserve Bank’s Automated Clearing House, that provides for the inter-bank clearing of electronic entries for participating financial institutions.

“**Administration Portal**” means the website to be used by the Merchants to access, review and manage the Merchants’ use of the Services.

“**Goods and Services**” means the specific categories of Goods and Services that would generally be provided by a Merchant operating under the merchant category code represented to EZCheck for that Merchant.

“**Merchant**” means the business customer sponsored and underwritten by EZCheck for participation in Services.

“**Merchant Account**” means the commercial demand deposit checking account designated by Merchant for use in conjunction with the Services.

“**NACHA**” means the National Automated Clearing House Association.

“**ODFI**” means the bank acting as the Originating Depository Financial Institution as defined by NACHA rules.

“**Personally Identifiable Information**” means any information that alone or in combination with other information, relates to a specific, identifiable individual and includes the individual’s name, social security number, credit card number, telephone number, street address, email address, driver’s license number or various account numbers.

“**Process**” means electronically relating the respective account numbers and Transactions of the Merchants so as to monitor and maintain the same on behalf of the Customer.

“**RDFI**” means the bank that receives ACH entries from the ACH Network and posts the entries to the Receiver’s account.

“**SMS Transaction**” means a Transaction completed via single short message service (i.e., text message), whether such Transaction requires one text message or two text messages to complete.

“**Stored-value card**” means a mag-stripe card or smart card sold or provided as a gift or loyalty card that replaces traditional paper gift or loyalty certificates used in retail, restaurant, lodging and other establishments.

“**Transaction**” means any activation, credit, accrual, redemption or inquiry involving any of the Merchant’s account numbers.

4. Fees and Rates. Merchant shall pay EZCheck the fees and rates set forth in this Agreement plus all applicable taxes, as amended from time to time by EZCheck. The Transaction Fee is the charge per transaction for all transactions charged to EZCheck by reason of Merchant’s use of the Service. The Service Fee is a monthly fee for services associated with software maintenance and customer support. EZCheck reserves the right to change at its discretion, any fees, rate and/or charges by giving written notice to Merchant. Such changes shall be effective as of the date of the notice. Merchant’s failure to give EZCheck written notice of termination of this Agreement after such notice of changes shall be deemed to constitute acceptance of the changes.

5. Payment. All fees and charges are due and payable upon receipt. Unless otherwise agreed by EZCheck in writing, Merchant authorizes EZCheck to debit all payments owing to EZCheck under this Agreement and to credit all amounts owing to Merchant under this Agreement to the Merchant Account. If there are insufficient funds in the Merchant Account to pay amounts owed to EZCheck, including delinquent fees, Merchant shall immediately reimburse EZCheck upon demand. A delinquency charge of 1-1/2 percent per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account 20 days delinquent. Without prejudice to its rights, EZCheck reserves the right to suspend its services and obligations to Merchant during any period that the Merchant Account is delinquent. Continuance of service and payment during any period of delinquency shall not constitute a waiver of EZCheck rights of suspension or termination. For any check or ACH debit in payment of services or charges provided herein, Merchant agrees to pay EZCheck a Returned Item Fee of \$35 for each such payment that is not paid by merchant’s bank upon presentment. Merchant agrees that the Returned Item Fee may be debited from its Merchant Account.

6. Transaction Processing. Authorizations must be obtained for every transaction, unless otherwise specified in the Procedures guide. If the Stored-value card has expired or the funds have been depleted, refer your internal merchant policy to re-activate, re-issue or accept a different form of payment for the balance for goods and services. You agree to follow the steps for completing transactions as set forth below and the Procedures Guide, which may be modified or supplemented by future guides or updates. Total the sale, including tax, and follow the instructions in your Quick Reference Guide to authorize the transaction using your point of sale terminal. Return the Stored-value card and customer copy of the sales draft to the customer. EZCheck will not be liable for any delays in receipt of funds or errors in credits or debits caused by third parties including but not limited to ACH Network providers or the Merchant’s financial institution. EZCheck will not be liable for any charge-back, returned check or other non-payment by the customer for payment of a Stored-value card.

7. Returns and Exchanges. Merchant agrees to establish and maintain a fair and uniform policy consistent with your existing operation procedures for the exchange and return of merchandise purchased with a Stored-value card. All disputes involving the goods or services purchased with a Stored-value card will be settled between you and the cardholder. You agree to indemnify and hold us harmless from any claim or liability relating to any such dispute. Any internal operating policy regarding non-cash credit through the use of the Stored-value card program is your expressed decision. You agree to indemnify and hold us harmless for any claim relating to any dispute regarding your non-cash credit policy.

8. Card Regulations and Reorders. Merchant agrees to comply with all state and federal statutes and regulations related to stored-value cards, including but not limited to expiration dates, maintenance or dormancy fees. Merchant agrees to pay EZCheck a processing fee of \$1.00 per transaction for all maintenance or dormancy fees applied to Merchant’s cardholder accounts. Merchant agrees to place additional card reorders with EZCheck at the then stated purchase prices based on quantity and card type. EZCheck accepts no responsibility for the functionality or accuracy of cards ordered or purchased through another card provider or issuer.

9. Reporting and Reconciliation. For transactions provided for under this Agreement, EZCheck will provide Merchant with transaction volume reporting and transaction fee record keeping in a format and manner to be determined by EZCheck. Merchant agrees to notify EZCheck promptly of any discrepancies between Merchant’s records and the information in the reports provided by EZCheck. If Merchant fails to notify EZCheck within 60 days of the transaction of any such discrepancy or funding error, Merchant shall be precluded from asserting any losses, claims or liability against EZCheck arising from such discrepancies or errors.

10. EZCheck Procedures. EZCheck shall supply Merchant with a Procedures Guide by EZCheck, the terms of which are incorporated into this Agreement. Merchant agrees to comply with and to be bound by additional items contained in the Procedures Guide as amended from time to time. To the extent that there is any conflict between the Procedure Guide and terms of this Agreement, the terms of this Agreement shall govern.

11. Third-Party Partners. EZCheck’s third party processing services partner is providing some of the processing Services specified in this Agreement. Each third party services partner shall have the right to enforce directly against Merchant the terms of this Agreement which relate to the provision of the third party services partner’s processing services to Merchant and the ownership and protection of the intellectual property rights of the third party services partner and its licensors in and to its processing services. Merchant acknowledges that the third party services partners shall have no responsibility or liability with regard to EZCheck’s obligations to Merchant under this Agreement.” Paycloud is a trademark of SparkBase, Inc., and may not be used except as authorized in writing by Paycloud.

12. Sublicense Agreement Limitations. The Administration Portal may be used by the Merchant only to process the Merchant’s Transactions and may not be used for any other purpose whatsoever. For the avoidance of doubt: (a) the Merchant may not access or use the Administration Portal except in accordance with this Agreement and applicable law, (b) the Merchant may not access or use the Administration Portal in a manner that infringes upon the privacy rights or intellectual property rights of EZCheck or any Third Party Partner and (c) the Customer may not access or use the Administration Portal to reverse engineer, copy aspects of, take images from or derive the source code to the Administration Portal software or to any other portion of the EZCheck Platform, including any other EZCheck products, Services or other technology of EZCheck or any Third Party Partner. Merchant may not use the Administration Portal other than in connection with use of the Services.

13. Rules and Regulations. Merchant agrees to comply with current NACHA rules and regulations (“Rules”) regarding the processing of ACH transactions. EZCheck will make copies of all such Rules available to Merchant upon Merchant’s request. Such Rules are hereby made part of this Agreement and incorporated herein by this reference.

14. Personally Identifiable Information. The Merchant acknowledges that to Process Transactions, EZCheck may receive Personally Identifiable Information from the Merchant or the Merchant’s customers and Merchant further acknowledges that it has obtained, either directly or indirectly, the right to use any such Personally Identifiable Information.

15. Warranty of Application. In connection with this Agreement, Merchant has executed and delivered an application to EZCheck containing information describing the nature of Merchant’s business and, where applicable, the individual(s) who is Merchant’s principal owner(s). Merchant warrants to EZCheck and ODFI that all information, accompanying financial data (personal or business), and statements contained in such application are true, correct, and complete. Merchant further agrees to notify EZCheck promptly of any changes which may occur from time to time regarding any information contained in such application, including, but not limited to, the identity of the principal owner(s), type of Goods and Services provided and how sales are completed. Merchant and principal owner(s) identified on approved applications shall be jointly and severally liable to EZCheck and ODFI and remain liable for any and all losses, costs and expenses suffered or incurred by EZCheck or ODFI, resulting from incorrect or incomplete information contained in the application or Merchant’s failure to report all changes to EZCheck in accordance herewith. If, in EZCheck’s sole judgment, a significant discrepancy exists between Merchant’s actual processing activity and the activity described in Merchant’s Application, EZCheck may immediately and without notice, suspend all processing and funding activity until EZCheck, in its sole opinion, feels confident in allowing subsequent processing activity.

16. Indemnification. Merchant shall indemnify and hold EZCheck and ODFI, its affiliates, officers, directors and employees, harmless from and against all claims, actions, losses and expenses, including attorney’s fees and costs, incurred by EZCheck and ODFI, its affiliates, officers, directors and employees, arising out of, related to or in connection with a) any breach by Merchant of any of its duties or obligations under this Agreement, or b) any disputes Merchant may have with any Consumer related to any ACH Services provided under this Agreement. This indemnification shall survive the termination of this Agreement.

17. Hold Harmless. Merchant agrees to promptly inform EZCheck of collection or dispute of any amounts recorded, or items Submitted, to EZCheck and to hold EZCheck harmless for any liability arising from Merchant’s failure to do so.

18. Use of EZCheck’s Materials. Merchant shall have the use of decals, identification data, software and other material furnished by EZCheck during the term of this Agreement. Merchant shall not permit any person other than its own officers or employees at subscribing locations to use the EZCheck Merchant Number assigned by EZCheck. Merchant agrees that upon termination it will return or destroy all EZCheck materials, uninstall all EZCheck software and return, in good condition, all EZCheck equipment. The monthly fees to Merchant will apply for all months or fractions of a month any materials or equipment remain in use.

19. Use of Merchant Information. Merchant agrees that EZCheck may use any credit information provided to EZCheck or an EZCheck affiliate for EZCheck’s credit review. Merchant also agrees that EZCheck may share any experiential information it has regarding Merchant with any EZCheck affiliate.

20. Assignment of Agreement. Merchant may assign this Agreement only with prior written consent of EZCheck. EZCheck may freely assign this Agreement, its rights,

benefits of duties hereunder. This Agreement shall insure to the benefit of and be binding upon the successors and assigned of EZCheck and the heirs, executor, administrators, successors, and assigns of Merchant.

21. Legal Responsibility. In the event of Merchant's violation of the terms of this Agreement, Merchant agrees to pay all cost, including reasonable attorneys' fees, for steps taken by EZCheck whether by suit or otherwise, to defend, preserve or enforce its rights under this Agreement and EZCheck shall have the right to immediately repossess all equipment owned by EZCheck. In the event of any legal action with third parties, customers, businesses, or regulatory agencies concerning any transaction or event arising under this Agreement, Merchant agrees to: (a) promptly notify EZCheck of the claim or legal action; (b) reasonably cooperate with EZCheck 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 said claims or defenses. EZCheck and Merchant shall each be responsible for its own attorneys' fees and court costs except as otherwise provided by this paragraph.

22. Personal Guarantee. To induce and in consideration of EZCheck's acceptance of this Agreement, any individual(s), by execution as Guarantor(s) hereby unconditionally and irrevocably personally guarantees the full and faithful performance by Merchant of each and all of its duties and obligations as herein set forth, whether prior or subsequent to termination of this Agreement. In the event of default or nonpayment by Merchant, such Guarantor(s) hereby agree to personally indemnify and pay EZCheck for any and all funds due EZCheck from Merchant pursuant to the terms of this Agreement and hereby authorizes EZCheck to initiate debits from Guarantor's personal checking or savings accounts if necessary to secure such indemnity or payment.

23. Warranty Limitations. Except as expressly set forth herein, EZCheck makes no warranty, express or implied, and it is agreed that no implied at law warranty shall arise from this Agreement or from performance by EZCheck, and there are expressly excluded all warranties of merchantability and fitness for a particular purpose. In no event shall EZCheck be liable to Merchant or to any other person for any loss or injury to earnings, profits or goodwill or for any incidental or consequential damages with respect to its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, in no event shall EZCheck's liability under this Agreement exceed the total amount of fees paid to EZCheck by Merchant pursuant to this Agreement during the preceding 12-month period.

24. Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be hand delivered or delivered by facsimile transmission or overnight courier or U.S. Postal Service addressed or transmitted to the party to be notified at such party's address or number as provided on the front of this Agreement or at such party's last known address or number. Any notice delivered hereunder shall be deemed effective upon delivery, if hand delivered or sent by overnight courier, or upon deposit with the U.S. Postal service, or upon receipt, as evidenced by the date of transmission indicated on the transmitted material if by facsimile transmission. Merchant's continued use of the affected service after receipt of such notice will evidence Merchant's acceptance of the affected service after receipt of such notice. The parties addressed may be charged by written notice to the other party as provided herein.

25. Force Majeure. EZCheck shall not be held responsible for any delays in, or failure or suspension of service cause by mechanical or power failure, strikes, labor difficulties, fire, earthquakes, inability to operate or obtain service for its equipment, unusual delay in transportation, act of God, or other causes reasonably beyond the control of EZCheck.

26. Covering Law and Jurisdiction. Merchant agrees to comply with all application laws, rules and regulations relating to the services provided hereunder. This Agreement plus any addenda attached herein is the entire Agreement between the parties concerning the processing of Services, and supersedes all previous understanding, 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. Any suit relating to this Agreement MUST be brought in Houston, Harris County, Texas.

27. Severability. If any provision of this Agreement, or the application of such provisions to any person or circumstance, is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such fact shall not affect the remaining provisions to persons or circumstances other than those to which it is held invalid, and in lieu of each such provision there shall be substituted a new provision as similar as possible to the provision declared invalid, illegal or unenforceable.

28. Waiver. All rights and duties within this Agreement are material and time is of the essence. No waiver of any right hereunder shall be deemed effective unless in writing executed by the waiving party. The parties agree that no failure to exercise and no delay in exercising, any right hereunder on the part of whether party shall operate as a waiver of any such right. The parties agree that no single or partial exercise of any right hereunder shall preclude its further exercise.

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

30. Entire Agreement. This Agreement together with all applicable Application information constitutes a fully integrated agreement and the entire Agreement between the parties with respect to its subject matter. All prior or contemporaneous agreements, understandings or representations in relation to the subject matter of this Agreement are merged herein.