



# ELECTRONIC CHECK TRANSFER AGREEMENT

P. O. BOX 219219, Houston, TX 77218-9219  
Phone 800-797-5302 – Fax 281-647-6936

SALESPERSON'S NAME AND ISO NUMBER \_\_\_\_\_

This agreement is entered into by and between EZCheck®, a Texas L.L.C., (referred to herein as "EZCheck") and the undersigned hereafter referred to as "Merchant".

**1. Term, Termination and Amendments.** This Agreement shall have a term of one (1) year from the date of acceptance by an authorized representative of EZCheck. This Agreement will renew for successive one year terms unless terminated by either party with written notice to the other at least thirty (30) days prior to the termination of the then existing term. In the event EZCheck changes the Fees, Rates or Check Limits, Merchant may terminate this Agreement upon thirty (30) days written notice to EZCheck. EZCheck may terminate this Agreement at any time upon written notice to Merchant. This Agreement, plus any addenda, including Fees, Rates and Check Limit, may be changed or amended from time to time by EZCheck by providing Merchant with written notice. Amendments to Fees, Rates and Check Limit shall take effect immediately. Other such amendments shall be effective thirty (30) days from mailing. If Merchant terminates this Agreement prior to the termination date of the then existing term, for any reason except as expressly set forth above, Merchant shall be subject to pay EZCheck an amount equal to the greater of (a) \$125, or (b) six (6) months of the current Monthly Minimum and Merchant Club fees for each Merchant location. Except as specifically provided herein, this Agreement may not be altered, amended, or otherwise varied except by written mutual agreement of the parties.

**2. Service Type.** Merchant agrees to utilize EZCheck's Electronic Check Transfer (ECT) Service as indicated by the Merchant's initials, (initial only one) and solely for point of sale transactions at the location(s) listed in this Agreement.

**Guarantee.** EZCheck shall purchase 100% of the face amount of the check, up to the **Check Limit**, for any approved ECT transaction that meets all Warranty Requirements and Representations on the reverse side of this Agreement. **Merchant acknowledges that EZCheck shall establish the Check Limit as part of the New Account Information materials. EZCheck may, at its sole discretion, increase or decrease the Check Limit upon written notice.**

**Non-Guarantee.** EZCheck shall have zero liability on any dishonored check accepted by Merchant. Merchant agrees that there will be no payment for any loss from check transactions processed by EZCheck that are returned unpaid by either the Checkwriter's bank or the ACH Network. Merchant agrees to be liable for all ECT transactions that are returned, dishonored, reversed or that cannot be collected through Checkwriter's account and that are not subsequently covered by debit against Merchant Account.

### FEES & RATES

BASE DISCOUNT RATE (% OF FACE VALUE OF EACH CHECK)	TRANSACTION FEE	MONTHLY SERVICE FEE	MONTHLY MINIMUM FEE	MERCHANT CLUB FEE	RETURN ITEM FEE
%	\$	\$	\$	\$	\$ 2.50

### REQUIRED CHECK INFORMATION

ESTIMATED MONTHLY CHECK DOLLAR VOLUME	AVERAGE CHECK SIZE

### EQUIPMENT REQUIREMENTS. The following Equipment must be certified by EZCheck for ECT Service.

TERMINAL	TERMINAL	IMAGER	CHECK READER
NURIT	VERIFONE	RDM	IVI/EN3000
HYPERCOM	EZ VIRTUAL	MAGTEK	MAG-TEK
INGENICO	OTHER	VERIFONE	OTHER

Is EZCheck to supply equipment?  YES  NO. If YES, an Equipment Order Form must be completed.

### MERCHANT INFORMATION REQUIRED

COMPANY NAME/DBA		
CONTACT NAME – IF DIFFERENT THAN OWNER	TAX ID NUMBER	
LOCATION ADDRESS		
CITY	STATE	ZIP CODE
PHONE WITH AREA CODE	FAX WITH AREA CODE	
MAILING ADDRESS INCLUDING CITY, STATE AND ZIP– IF DIFFERENT THAN LOCATION		
EMAIL ADDRESS	URL ADDRESS	
MERCHANDISE/SERVICE SOLD	# OF LOCATIONS	YEARS IN BUSINESS

### OWNER/OFFICER INFORMATION REQUIRED

NAME		
TITLE		
RESIDENCE ADDRESS		
CITY	STATE	ZIP CODE
PHONE WITH AREA CODE		
SOCIAL SECURITY NUMBER		% EQUITY OWNERSHIP
DRIVER'S LICENSE # AND STATE OF ISSUANCE		
TYPE OF BUSINESS (CHECK ONE) <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership		

**NOTE:** For additional locations on the above Company/DBA and Owner/Officer, attach a signed Multi-Location Addendum(s) and forward with this Agreement. If any of the additional locations are depositing to an account different than the account indicated herein, attach a voided check for each of those locations as well.

### MERCHANT ACCEPTANCE

This Agreement includes all of the terms and conditions contained on the front and back of this Agreement. This Agreement is not valid and binding until signed by an authorized manager of EZCheck. Merchant authorizes EZCheck or agent of EZCheck, or any credit reporting agency used by EZCheck, to make whatever inquiries that EZCheck deems appropriate to investigate, verify or research references, statements or data obtained from Merchant for the purpose of this application or any application for accompanying POS terminal(s) or equipment financing.

**Personal Guarantee:** To induce and in consideration of EZCheck acceptance of this Agreement, the undersigned (herein referred to as "Guarantor") unconditionally, personally, individually, jointly and severally guarantees performance of the Merchant's obligations under this Agreement and payment of all sums due hereunder and hereby continues to personally indemnify EZCheck for any and all funds due from Merchant under the terms of this Agreement.

**ACH Debit/Credit Authorization:** Merchant hereby authorizes EZCheck/Bank in accordance with this Agreement to initiate debit/credit entries to Merchant's Account, as indicated per the attached copy of a voided check from the Merchant. The authority is to remain in full force and effect until (a) EZCheck/Bank has received written notification from Merchant of its termination in such a manner as to afford EZCheck/Bank reasonable opportunity to act on it; and (b) all obligations of Merchant to EZCheck/Bank that have arisen under this Agreement have been paid in full.

X \_\_\_\_\_  
AUTHORIZED MERCHANT SIGNATURE DATE

EZCHECK CORPORATE OFFICE USE ONLY	
EZCHECK MERCHANT# _____	
X _____	_____
EZCHECK'S AUTHORIZED SIGNATURE ONLY	DATE OF ACCEPTANCE

VOIDED CHECK FROM MERCHANT CHECKING ACCOUNT MUST BE ATTACHED TO THIS AGREEMENT (DO NOT USE A DEPOSIT TICKET)

3. **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 Base Discount Rate shall be applied to the face amount of all checks processed for authorization by EZCheck, and debited daily from Merchant's funding credit. The Merchant Club Fee is a monthly fee for services associated with POS equipment maintenance and customer support as outlined in Paragraph 21 below. EZCheck reserves the right to change at its discretion, any Fees, or Rates 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.

4. **Payment.** All Fees and Rates 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 (including all chargebacks) and to credit all amounts owing to Merchant under this Agreement to Merchant's Account. If there are insufficient funds in Merchant's Account to pay amounts owing to EZCheck, including delinquent fees, Merchant shall immediately reimburse EZCheck upon demand. EZCheck may, at its option, offset such amount against any amounts due Merchant from EZCheck, including funding of transactions, under this or any other agreement between Merchant and EZCheck. 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 stated in paragraph 17, EZCheck reserves the right to suspend its services and obligations to Merchant, including the payment of ECT transactions due and all ECT transactions previously authorized, during any period which Merchant's 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 \$25 for each such payment that is not paid by merchant's bank upon presentation. Merchant agrees that the Return Item Fee may be debited from its ACH account.

5. **ECT Process.** For each ECT transaction that EZCheck approves, EZCheck shall initiate via the Automated Clearing House (ACH) system an Electronic Funds Transfer (EFT) credit to Merchant's Account in the amount of such transaction as part of an ECT batch credit less applicable Rates and/or Fees. Such credit shall occur within three banking days following Merchant's regular transmission to EZCheck for processing the saved ECT transactions ('ECT batch'). Such credit shall occur regardless of whether or not customer's ECT transaction is paid by consumer's financial institution. EZCheck reserves the right to decline to process any transaction as an ECT transaction.

6. **Transactions Qualifying For ECT.** Only transactions (a) originally made payable to Merchant, (b) for which the MICR number imprinted on the check is read and approved by the check reader device working in conjunction with EZCheck's system are eligible for EFT credit to Merchant's Account. ECT transaction as used herein shall include only a transaction for the contemporaneous purchase of goods or services and shall not include transactions for cash or for payment on an account or a check already due Merchant.

7. **Warranty Requirements.** EZCheck will reimburse Merchant for one check per ECT transaction that is returned unpaid, up to the Check Limit, which meets all of the following requirements: (a) check must be a first party check drawn on a United States or Canadian financial institution and must be made payable to Merchant, (no credit card convenience checks, traveler's checks or third party checks); (b) the name of the individual or company must be imprinted on the check by the check manufacturer, (no starter or temporary checks); (c) if P.O. Box is used or address is not imprinted by the check manufacturer, a physical address must be written on the check; (d) Merchant shall have made an inquiry to EZCheck according to EZCheck's authorization procedures and received an approval code; (e) EZCheck Merchant Number, check writer's telephone number including area code and identification type and number used for authorization must be written on the face of the check; (f) the signature and physical description of check writer must reasonably correspond to any signature and description contained in the piece of identification used for authorization; (g) the signature on the signature block must not be substantially different from the name imprinted on the check; (h) the date of the check must be no more than one day from the actual inquiry date to EZCheck, (no Pre- or Post-Dated checks); (i) the amount authorized by EZCheck and the amount shown in words and figures on the check must all agree; (j) and the check, if processed as a paper item and manually deposited in Merchant's Account must be received by EZCheck for purchase within thirty (30) days of the date the check was authorized. Warranty does not apply to a check on which payment has been stopped or authorization revoked due to disputes over payment of goods and/or services between Merchant and Customer.

8. **Representations.** Merchant represents and warrants with respect to all ECT transactions submitted by Merchant to EZCheck under this Agreement that (a) the checkwriter has authorized the debiting of his/her account and that the ECT transaction is in all respects properly authorized and in an amount agreed to by the customer; (b) Merchant received a signed EFT receipt from the checkwriter and either the checkwriter or Merchant voided the paper check to which the ECT transaction relates; (c) the ECT transaction represents an obligation of the person who is tendering the check and the ECT transaction is for merchandise actually sold or rented or services actually rendered for the actual price of such merchandise or services (including tax) and does not involve any element of credit for other purposes; (d) the signature and physical description of the checkwriter reasonably correspond to any signature and description contained in the piece of identification and the signature on the ECT receipt is not substantially different from the name imprinted on the check to which the ECT transaction relates; (e) the amount of the ECT transaction and the amount on the ECT receipt all agree and are not the subject of any dispute, setoff or counterclaim and the date of the ECT transaction accurately coincides with the date the transaction actually occurred; (f) Merchant has no reason to believe or have notice of any fact, circumstance or defense which would impair the validity or collectibility of the checkwriter's obligation or relieve the checkwriter from liability for the ECT transaction; (g) the check to which the ECT transaction relates is a personal check and not a business check or payroll check; (h) the ECT transaction is not the result of a phone order, mail order or internet order; (i) the checkwriter shall have signed a separate ECT receipt for each ECT transaction processed; (j) and Merchant may not split the sale among multiple payment authorizations to circumvent the established Check Limit. No split sales. Merchant agrees to indemnify and hold EZCheck harmless for any losses, liabilities, cost, expenses and/or consequential damages whatsoever incurred by EZCheck as a result of a breach by Merchant of any of these representations.

9. **Assignment of Checks/ECT Transactions.** By the execution of this Agreement, Merchant ASSIGNS, TRANSFERS and CONVEYS to EZCheck all of Merchant's rights, title and interest in any check or ECT transaction submitted to or processed by EZCheck for reimbursement under this Agreement and agrees, at EZCheck's request, to endorse such checks and to take any further action reasonably deemed necessary by EZCheck to aid in the enforcement of such rights, including but not limited to providing a copy of the sales invoice, sales contract or work order for which the check was written or the ECT transaction was authorized.

10. **Chargeback or Reassignment of ECT Transactions or Checks.** EZCheck may chargeback to Merchant and debit Merchant's Account for any ECT transaction processed by EZCheck or any check reimbursed by EZCheck pursuant to this Agreement in any of the following circumstances: (a) the goods and/or services for which the check or ECT transaction was issued have been returned to Merchant, have not been delivered by Merchant, or are claimed by the purchaser to have been unsatisfactory; (b) Merchant has received full or partial payment or security in any form whatsoever for secure payment of the check or ECT transaction, or the goods or services for which the ECT transaction was issued were initially delivered on credit or under a lease; (c) the business transaction for which the ECT transaction or check was tendered is for any reason illegal, void, invalid or a court of law determines that the check in whole or in part is not due and payable by the checkwriter; (d) Merchant has failed to comply with the terms and conditions of this Agreement including, but not limited to, the Warranty Requirements; (e) the ECT transaction was not a qualifying transaction as defined in paragraph 6; (f) Merchant failed to comply with any of the representations made in paragraph 8; (g) a duplicate ECT transaction was received and processed or the original paper check was deposited, thereby creating a duplicate entry against the checkwriter's financial institution account; (h) Merchant, or any of its owners, agents or employees intentionally altered the check to proceed the ECT transaction with reason to know that it was likely to be dishonored (including having received a Non-Approved Code) or that the identification used was forged or did not belong to the customer; (i) the ECT receipt was incomplete or unsigned; (j) a legible copy of the ECT receipt is not received by EZCheck within 7 days of a request by EZCheck; or (k) the customer disputes authorizing the ECT transaction or the validity or accuracy of the ECT transaction debit to his account; or (l) if Merchant has any outstanding items with EZCheck or EZCheck affiliates, settlement banks or leasing companies. Merchant shall immediately notify EZCheck upon the happening of any of the above circumstances. EZCheck may also chargeback to Merchant any amount over the Check Limit where EZCheck has neither received payment for such ECT transactions from the checkwriter or checkwriter's financial institution. If a check is reassigned as provided herein, EZCheck may debit Merchant's Account in the amount reimbursed by EZCheck for the check, and upon request, Merchant shall remit the amount of the check to EZCheck. Upon chargeback or reassignment of a check, EZCheck shall have no further liability to Merchant. Following termination of this Agreement, Merchant shall continue to bear initial responsibility for any chargebacks and adjustments made under this paragraph.

11. **Collection And Returned Check Fees.** Merchant agrees that EZCheck shall be entitled to collect from the check writer and retain any fees of exemplary damages in addition to the check amount, which are allowed by law. Merchant agrees to follow procedures and post all notices that in EZCheck's opinion may be required for it to collect any such amounts arising from returned or dishonored checks or unpaid ECT transactions. For checks or ECT transactions that do not qualify for guarantee, (either the items do not meet the requirements under this Agreement or the Merchant utilizes the Non-Guarantee ECT service), the Merchant may elect to utilize EZCheck's collection services. Merchant will receive a reimbursement payment equal to 65% of the amount collected of the face value of the check. Should Merchant accept payment for items that have been reimbursed by EZCheck, or submitted to EZCheck for collection, Merchant shall notify EZCheck within 24 hours of collecting payment and Merchant shall be responsible for collecting all applicable check fees. EZCheck shall bill the Merchant for all applicable fees and have no further liability under this Agreement.

12. **Deposit Of Paper Checks.** Any transaction which: (a) does not qualify as an ECT transaction, as described in paragraph 6 above; or (b) does not meet all of the representations described in paragraph 8, must be physically deposited by Merchant to Merchant's Account. Merchant will forward or notify Merchant's depository bank to forward returned checks directly to EZCheck for collection efforts within 30 days of authorization.

13. **Merchant Account.** Merchant agrees to maintain a commercial demand deposit checking account designated by Merchant for use in conjunction with ECT services. Merchant agrees to immediately reimburse EZCheck and ODFI for any shortfalls that occur due to non-sufficient funds in Merchant Account that are covered by EZCheck. Merchant also agrees to authorize EZCheck to suspend crediting of ECT transactions to Merchant Account, without prior notice to Merchant, if Merchant should breach or fail to comply with any terms of this Agreement, or if either EZCheck or ODFI in its sole opinion deems itself at risk relative to any services performed under this Agreement.

14. **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 or bank statements 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.

15. **Rules and Regulations.** Merchant agrees to comply with current National Automated Clearing House Association (NACHA), rules and regulations ("Rules") regarding the processing of ECT 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. Merchant agrees to hold EZCheck harmless for any liability due to Merchant's non-compliance with NACHA rules.

16. **EZCheck Procedures.** EZCheck shall supply Merchant with its ECT Quick Reference Guide ("ECT Guide") as may be changed from time to time 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 ECT Guide as amended from time to time. To the extent that there is any conflict between the ECT Guide and terms of this Agreement, the terms of this Agreement shall govern.

17. **Settlement Advance.** As a condition of providing services under this Agreement, or continued processing of ECT transactions, Merchant may be required, at the option of EZCheck, to fund and maintain an advance ("Settlement Advance") with ODFI in an amount to be determined by EZCheck in its sole discretion based on Merchant's processing history and potential risk of loss to EZCheck. Merchant hereby acknowledges and agrees that any Settlement Advance will be deposited in an EZCheck account for exclusive use by EZCheck or ODFI for purposes of offsetting any Returns or other Merchant obligations under the Agreement not recoverable from Merchant Account. If Merchant's Settlement Advance falls below the required amount, Merchant hereby authorizes EZCheck to immediately replenish the Settlement Advance to an amount to be determined by EZCheck via an ACH debit to Merchant Account or by a direct deposit to the Settlement Advance account within twenty-four (24) hours after verbal or written notification from EZCheck of the replenishment requirement. In the event of fraud or breach of this Agreement by Merchant the Settlement Advance may be funded immediately at EZCheck's election via an ACH debit to Merchant's Account or applying funds from ECT transactions due Merchant. No interest will be paid on the Settlement Advance. In addition, Merchant hereby acknowledges and agrees that EZCheck may use the Settlement Advance in whatever manner it desires, i.e., commingling with other merchant funds, etc., subject to EZCheck's requirement, should this Agreement be terminated, to refund any remaining Settlement Advance balance ninety (90) days after the termination date ("Termination Period"). Merchant hereby grants EZCheck and ODFI a security interest in any Settlement Advance that EZCheck or ODFI may enforce for purposes of securing any obligation owed by Merchant under this Agreement without notice or demand to Merchant. Merchant's obligation to maintain a Settlement Advance shall survive the termination of this Agreement for the duration of the Termination Period during which time EZCheck's and ODFI's security interest shall continue.

18. **Right of Setoff.** Merchant hereby acknowledges and agrees that EZCheck shall have a right to setoff against any and all fees or other funds owed EZCheck by Merchant under this Agreement.

19. **Retention Of EFT Receipts.** Merchant agrees to have the checkwriter sign an EFT receipt in a form approved by EZCheck for each ECT transaction processed through EZCheck. Merchant agrees to maintain the signed EFT receipt for a minimum period of two years from the date of the transaction or for the period specified by the rules of the NACHA, whichever is longer. Upon request by EZCheck, Merchant shall promptly produce either the original or a legible copy of the EFT receipt to EZCheck within seven days of EZCheck's request. Merchant agrees upon reasonable notice and during normal business hours that EZCheck may audit Merchant for its compliance with this requirement.

20. **Non-Guarantee.** If Merchant utilizes EZCheck's Non-Guarantee services, information is given only to assist Merchant in deciding whether or not to accept a check. EZCheck does not guarantee the accuracy or completeness of the information and there will be no payments to Merchant by EZCheck for any loss from check transactions processed by EZCheck. Merchant assumes all risk on checks accepted by Merchant and processed by EZCheck and EZCheck's liability on any check processed through the Non-Guarantee service shall be zero.

21. **Equipment.** EZCheck will replace or repair equipment for Merchants that are members of the 'Merchants Club' upon Merchant's request. A swap fee of \$29.95 will be charged per equipment item replaced. If replacement equipment is mailed to Merchant, it is Merchant's responsibility to return defective equipment to EZCheck's office within 7 business days or Merchant will be deemed to have purchased equipment and be billed for such equipment. A fee of \$40.00 per hour plus the cost of parts will be charged for any repair of equipment beyond ordinary wear and tear. A reprogramming fee of \$15.00 will be charged for each occasion that a piece of equipment is reprogrammed for additional features or different information. Merchant shall not permit persons other than authorized representatives of EZCheck to adjust, maintain, program or repair any equipment. Merchant shall bear the entire risk of loss, theft, or damage of or to equipment. There is a 90-day manufacturer's warranty on sold equipment.

22. **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.

23. **Credit Law Compliance.** Merchant certifies that it has a legitimate business need, in connection with a business transaction involving the consumer, for the information provided by EZCheck under this Agreement. Merchant also certifies that the information provided by EZCheck will only be used for permissible purposes as defined in the Fair Credit Reporting Act, and applicable state laws, with the exception that the information will not be used for employment purposes, and will not be used by Merchant for any purpose other than one transaction between Merchant and customer. Merchant agrees that neither it nor its agents or employees will disclose the results of any inquiry made to EZCheck except to the person about whom such inquiry is made and in no case to any other person outside the Merchant's organization and that Merchant shall defend, and hold harmless, EZCheck for all liability resulting directly or indirectly from any disclosure forbidden herein. If Merchant decides to reject any transaction, either wholly or partly because of information obtained from EZCheck, Merchant agrees to provide the customer with all information required by law or EZCheck.

24. **Use of EZCheck's Materials.** Merchant shall have the use of decals, identification data 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 and return, in good condition, all EZCheck's equipment. The monthly fees to Merchant will apply for all months or fractions of a month any materials or equipment remain in use.

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

26. **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.

27. **Application.** In connection with this Agreement, Merchant has executed and delivered an Application containing, among other things, information describing Merchant's business and the individuals who are the principal owners of Merchant. Merchant warrants that all information and statements contained in such Application are true, correct and complete. Merchant further agrees to promptly notify EZCheck of any and all changes which may occur from time to time regarding any information contained in such Application, including but not limited to, the identity of principal owners and the type of goods and services provided. EZCheck reserves the right to immediately terminate this Agreement based upon the nature of changes reported by Merchant or discovered by EZCheck. Merchant and principal owner(s), identified on the Application shall be jointly and severally liable to EZCheck, and remain liable for any and all loss, costs and expense suffered or incurred by EZCheck, resulting from incorrect or incomplete information contained in 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.

28. **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 cost except as otherwise provided by this paragraph.

29. **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. In no event shall EZCheck be liable to Merchant or to any other person for any loss or injury to earnings, profits or goodwill for any incidental or consequential damages. Merchant agrees that a decision to reject any check or ECT transaction, driver's license or other forms of identification or payment for its products and/or services shall be made solely Merchant's own responsibility. 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.

30. **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, and 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 continued use 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.

31. **Force Majeure.** EZCheck shall not be held responsible for any delays in or failure of suspension of service caused 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.

32. **Covering Law and Jurisdiction.** Merchant agrees to comply with all applicable 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 electronic and paper checks, 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 brought relating to this Agreement MUST be brought in Houston, Harris County, Texas.

33. **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.

34. **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.

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

36. **Entire Agreement.** This Agreement together with any Addenda 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.